

sportscotland

Advice note on Persons of Significant Control ("PSC")

Outline of note

The purpose of this advice note is to advise **sportscotland** as to whether or not it should be included on the PSC Register of any sports governing bodies.

This note should be considered in conjunction with the advice note on Persons of Significant Control produced by Harper Macleod LLP for sports governing bodies and sent to **sportscotland** on 29 August 2016. Unless otherwise defined, terms used in this note have the same meaning as set out in the aforementioned advice note on Persons of Significant Control.

Advice to sportscotland

1. Could sportscotland be considered a PSC of a relevant sports governing body?

On the basis that **sportscotland** generally: (i) does not hold a membership interest in any relevant sports governing bodies; (ii) does not have voting rights in any relevant sports governing bodies; and (iii) does not have the ability to control the board of any relevant sports governing bodies, it would appear that **sportscotland** will generally not be considered to have significant influence or control in terms of the first three of the five PSC Conditions (as detailed in the aforementioned advice note on Persons of Significant Control).

If **sportscotland** is to be considered to have significant influence or control of any of the relevant sports governing bodies, it will likely be in respect of the fourth Condition. On this basis, **sportscotland** may wish to consider and review its relationships and connections with all relevant sports governing bodies and form a view as to whether or not it may have significant influence or control over any of them.

On a practical level, the perception of significant influence or control will likely be determined by the reliance of the particular sports governing body on **sportscotland** for funding for the sport. Some of the larger sports, such as football, are unlikely to have **sportscotland** exercising significant influence or control over them as they are likely to have multiple streams of income in addition to any **sportscotland** funding, with **sportscotland**'s percentage of funding being in the minority.

However, smaller sports which are more heavily reliant on **sportscotland** funding may find themselves being subject to significant influence or control by **sportscotland** if decisions are made in respect of the sports governing body in such a way so as to ensure that **sportscotland** will not look to withdraw or withhold (in whole or in part) the funding provided to the sports governing body. The guidance provides that a person would be considered to exercise significant influence or control if they are a person "who is regularly consulted on board decisions and whose views influence decisions made by the board".

If **sportscotland** does suspect that it exerts significant influence or control over any of the relevant sports governing bodies, it should then consider if this influence or control is exerted by virtue of one of the "excepted roles". For example, if **sportscotland** significantly influences or controls a relevant sports governing body pursuant to the terms of its financial funding agreement with the sports governing body, then there will be no requirement for a PSC to be included on the sports governing body's PSC Register as it would be excepted, as **sportscotland** are dealing with the sports governing body under a third party commercial or financial agreement.

However, if **sportscotland's** significant influence and control is through an excepted role or the relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or if the role or relationship forms one of several opportunities which **sportscotland** has to exercise significant influence or control, then the **sportscotland** relationship may be a PSC relationship.

Further, if a relevant sports governing body is reliant on funding on a charitable basis from **sportscotland**, due to the fact that this is not provided on a commercial basis, it would be difficult for **sportscotland** to justify that any significant influence or control it exerts falls within an excepted role. In this scenario, the **sportscotland** relationship may be a PSC relationship.

2. Could **sportscotland** be entered on a PSC Register of a sports governing body?

In terms of the PSC Register statutory requirements, it is unlikely that **sportscotland** could be entered on a PSC Register in respect of a relevant sports governing body.

As **sportscotland** is an entity created by Royal Charter, it is not a relevant legal entity and, as such, cannot be recorded on a PSC Register. However, if **sportscotland** was to be considered a government department, then it could fall into the PSC category of "other registrable person". If this were to be the case, then **sportscotland** could, if it was considered to have a PSC relationship with any relevant sports governing bodies, be entered on a PSC Register.

Our understanding is that **sportscotland** is not a government department. If this is the case it cannot, even if it is considered a PSC, be entered on a PSC Register.

If **sportscotland** considers that the fourth PSC Condition is relevant in respect of any relationship it has with any relevant sports governing body, the sports governing body would be required to 'look through' **sportscotland** and look to identify any individual or entity that has majority ownership and/or significant influence or control of **sportscotland**.

In these circumstances an individual or entity will have majority ownership or control if it holds a 'majority stake'. A majority stake includes:

1. holding a majority of the voting rights in the legal entity;
2. being a member of the legal entity and have the right to appoint or remove a majority of its board of directors;
3. being a member of the legal entity and controlling a majority of the voting rights by agreement with other members; or
4. holding the right to exercise or actually exercising dominant influence or control over the legal entity.

If it is discovered that there is an individual or relevant legal entity or other registrable person with a majority stake in that legal entity their details must be entered on the PSC register. If there is another legal entity which is not a relevant legal entity or other registerable person which has a majority stake, you must also look at the ownership and control of that legal entity and so on until you find either an individual, relevant legal entity or other registrable person with a majority stake. If there is no-one who meets the majority stake criteria then this fact must be entered on the PSC Register.

On the basis that **sportscotland** may be considered to fall into the fourth PSC Condition in respect of any relevant sports governing body, then such sports governing body must 'look through' **sportscotland** to ascertain if there is an individual, relevant legal entity or other registrable person that holds a majority stake in **sportscotland** in terms of the four majority stake options above.

3. What should sportscotland do if it does exercise influence or control over a relevant sports governing body

It is for each relevant sports governing body to determine if **sportscotland** exercises significant influence or control in terms of any of the five PSC Conditions. If any sports governing body believes this to be the case it is then for them to notify **sportscotland**. **sportscotland** would then be required to reply to the particular sports governing body within one month (failure to respond, without a valid reason, may be a criminal offence) and notify it that **sportscotland** is not registrable in respect of their PSC Register and that the sports governing body should 'look through' it to any individual or legal entity which may have a majority stake in **sportscotland**.

Going forward, if **sportscotland** has significant influence or control and becomes aware that this has changed or if any of the information required for the PSC Register has to be changed, then it should contact any relevant sports governing body and notify it as soon as possible.

Should **sportscotland** have any queries or require any further information in respect of the PSC regime, please contact Craig McKerracher at craig.mckerracher@harpermacleod.co.uk or Paul Macdonald at paul.macdonald@harpermacleod.co.uk.

Harper Macleod LLP
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