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## **Environment, Climate Change and Land Reform Committee**

## **Comataidh Atharrachadh Clìomaid is Ath-leasachaidh Fearann**

# **Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft]**



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# Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/environment-committee.aspx>



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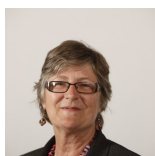
# Committee Membership



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**Richard Lyle**  
Scottish National Party



**Angus MacDonald**  
Scottish National Party



**Mark Ruskell**  
Scottish Green Party



**Stewart Stevenson**  
Scottish National Party

# Membership

1. There have been membership changes during the reporting period:
  - Graeme Dey MSP left the Committee on 28 June 2018
  - Donald Cameron MSP left the Committee on 6 September 2018
  - Alex Neil MSP left the Committee on 6 September 2018
  - Gillian Martin MSP joined the Committee on 6 September 2018
  - Alex Rowley MSP left the Committee on 30 October 2018
  - Rhoda Grant MSP joined the Committee on 1 November 2018

# Introduction

2. Provision for the Regulations to establish a Register of Persons Holding a Controlled Interest in Land is made in the Land Reform (Scotland) Act 2016.<sup>i</sup> The purpose of the draft Regulations<sup>ii</sup> is to increase public transparency in relation to individuals who have control over decision-making in relation to land. The explanatory document accompanying the Regulations<sup>iii</sup> states they are intended to ensure that—

” there can no longer be categories of land owner or tenant where, intentionally or otherwise, control of decision-making is obscured. In conjunction with other transparency regimes, this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land. We do not require double reporting for entities subject to other regimes as we do not want to duplicate existing publicly available information.

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i Land Reform (Scotland) Act 2016.

ii Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021.

iii Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 - Explanatory Document.



# Previous Parliamentary Consideration of the Land Reform (Scotland) Bill

3. The Environment, Climate Change and Land Reform (ECCLR) Committee's predecessor, the Rural Affairs, Climate Change and Environment (RACCE) Committee reported on the Land Reform (Scotland) Bill at Stage 1 in 2015.<sup>iv</sup>
4. The Policy Memorandum (PM)<sup>v</sup> to that Bill stated—

” As a matter of public policy it is of fundamental importance to know who owns land, who has the power to make decisions on how the land is managed and who is benefiting from the land. The PM also outlined there can be instances where trying to determine some of these factors is complicated, either due to complex ownership structures (such as the use of shell companies or trust ownership), and/or by lack of information.

## Transparency of Land Ownership

5. In its Stage 1 consideration of the Land Reform (Scotland) Bill<sup>vi</sup> the RACCE Committee received strong views that Part 3 (information about control of land) was weak and likely to have little effect in achieving the desired policy outcome of greatly improving the transparency of land ownership and of those in control of land in Scotland.
6. There was strong support for better information being available about land ownership and concerns that the Bill did not go far enough in this area and did not deliver on the ambitions and intentions of the review and consultation which informed the Bill. Evidence on the human rights aspects of the Bill was also critical of the lack of detail contained in Part 3 and the difficulty in then attempting to assess any potential human rights implications. There were particular concerns around opaque company structures and land held in trust and about the need to define terms used in Part 3, such as "controlling interest".
7. The RACCE Committee was of the view that Part 3 of the Bill as introduced was not likely to achieve all its objectives (in terms of increased transparency about who owns, controls and benefits from the land) and the Bill required to be amended to address this. The RACCE Committee considered that Part 3 of the Bill must support the principle that people in Scotland have the right to know who owns, controls, and benefits from the land.
8. The Committee recommended the Scottish Government consider amendments to—

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iv Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

v Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 - Policy Memorandum.

vi Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 - Policy Memorandum.

- Require those who wish to buy land and register title in Scotland to be registered EU entities and require current non-EU registered owners to register within 5 years of the commencement of the provision;
- Require those who wish to buy land and register title in Scotland to provide a named contact point in Scotland and;
- Require those who wish to buy land and register title in Scotland to clearly identify those who will control the land and those who may benefit from that ownership and control.

## Right of Access to the Register

9. In considering the rights of access to the Register, the PM<sup>vii</sup> stated the key consideration will be that the interested party must have some justifiable reason for needing this information and that must be related to the land in question. The RACCE Committee recommended<sup>viii</sup> that the Scottish Government consider amending the parameters of the power set out in Section 35 to allow everybody in Scotland the right to access information about those in control of land, rather than limiting that to only those affected by that land.

## Ease of Access

10. Concerns were expressed that the process to access information may be complicated and costly and that it was not clear who the "request authority" would be. The Registers of Scotland, said that the Keeper does not wish to be the request authority as the role of the Keeper is not, and should not become, judicial.<sup>ix</sup>

## Power of the Keeper to Request Information Relating to Proprietors of Land

11. There were concerns in relation to the powers given to the Keeper, which some felt to be weak. Some considered that the Keeper should be able to require, rather than to just request, information. Some stakeholders suggested the ultimate sanction of the provisions would be not being able to register title in Scotland, a point which John King of the Registers of Scotland, agreed with.<sup>x</sup>

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vii Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 - Policy Memorandum.

viii Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

ix Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

12. The Scottish Government confirmed that the Bill did not include any requirement for people to comply with requests for information, and provides the Keeper with no powers of sanction for non-compliance, stating that:
  - ” Section 36 does not include provision allowing for regulations to impose civil penalties or offences. If the Keeper was able to require information to be disclosed about controlling interests as a condition of registration this would mean that an owner of land would not be able to obtain a real right to ownership of land without disclosing information about any individuals who had a controlling interest in the owner of the land. At present there is not sufficient evidence as to the benefits of requiring disclosure of such information to justify making this a condition of registration.
13. The other main criticism of this section concerned the lack of detail contained in the Bill, and that the provisions will be taken forward via secondary legislation. The Delegated Powers and Law Reform (DPLR) Committee expressed concerns<sup>xi</sup> with the level of detail provided and recommended the provisions relating to the establishment of the Register be subject to an enhanced affirmative procedure.
14. In its report at Stage 1<sup>xii</sup> the RACCE Committee recommended that the Scottish Government bring forward amendments to strengthen the powers given to the Keeper so that she can require information and impose sanctions for non-compliance.
15. The Scottish Government brought forward amendments at Stage 3 requiring Ministers to make regulations requiring information to be provided about persons who have controlling interests in owners and tenants of land, and about the publication of that information in a public register to be kept by the Keeper of Registers of Scotland.

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x Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

xi Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

xii Rural Affairs, Climate Change and Environment Committee. 10th Report, 2015 (Session 4). *Stage 1 Report on the Land Reform (Scotland) Bill*.

## Purpose of the Regulations

16. Part 3, Sections 39 to 43 of the Land Reform (Scotland) Act 2016<sup>xiii</sup> provide for the establishment of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 ("the Regulations").<sup>xiv</sup>
17. The explanatory document<sup>xv</sup> states that—
  - ” The overarching purpose of the Regulations is to increase public transparency in relation to individuals who have control over decision-making in relation to land. They are intended to ensure there can no longer be categories of land owner or tenant where, intentionally or otherwise, control of decision-making is obscured. In conjunction with other transparency regimes, this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land. We do not require double reporting for entities subject to other regimes as we do not want to duplicate existing publicly available information. The Regulations will also aid policy making by enabling a fuller picture of those individuals who have control over decisions about land in Scotland.

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<sup>xiii</sup> Land Reform (Scotland) Act 2016.

<sup>xiv</sup> Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021.

<sup>xv</sup> Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 - Explanatory document.

# Parliamentary Procedure

18. The procedure for laying the Regulations<sup>xvi</sup> before Parliament is set out in Section 40 of the Land Reform (Scotland) Act 2016.<sup>xvii</sup> The Regulations are subject to an enhanced affirmative procedure where the draft of the first Regulations and explanatory document may only be laid following consultation. Scottish Ministers are required to have regard to any representations about the proposed draft Regulations that are made to them within the period of 60 days beginning with the date on which the copy of the proposed draft Regulations is laid before the Parliament. In calculating the 60 day period no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days. The explanatory document must give reasons for the provisions contained in the proposed draft Regulations and provide details of any consultation undertaken, representations received and any changes made to the proposed draft Regulations as a result of those representations.

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<sup>xvi</sup> Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021.

<sup>xvii</sup> Land Reform (Scotland) Act 2016.

# Consultation

19. A consultation on the policy proposals for a new register was carried out by the Scottish Government from September – December 2016.<sup>xviii</sup> Responses and an analysis of the responses were subsequently published online.
20. The consultation document explained at paragraph 18—
  - ” The Scottish Government is keen to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. Improved information about who controls land owners and tenants in Scotland will therefore help empower people, including community groups, and give them the opportunity to understand who is in control of land owners and tenants. This transparency should also allow people to engage constructively with any person with a controlling interest who makes decisions in relation to land that might have an impact on sustainable development.
21. On 20 June 2018 the Scottish Government published the proposed draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations)<sup>xix</sup> alongside an explanatory document<sup>xx</sup> and a consultation.<sup>xxi</sup> This consultation sought views on the proposals in the draft regulations and on the proposed implementation of the new Register. The consultation concludes on 8 November 2018.

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<sup>xviii</sup> Scottish Government Consultation: Improving Transparency in Land Ownership in Scotland: A Consultation on Controlling Interests in Land.

<sup>xix</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>xx</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

<sup>xxi</sup> Scottish Government Consultation: Improving the Transparency of Land Ownership: A Consultation on Draft Regulations.

## Summary of the Regulations

22. The Regulations<sup>xxii</sup> require that a new Register be created – the Register of Persons Holding a Controlled Interest in Land. The Register will contain information about the persons who can influence or control owners and tenants of land. There will be an entry for each controlled person detailing who is in a position to influence or control them. Duties will be placed on owners and tenants of land, and persons who can influence or control them, to provide information for inclusion in the Register. The explanatory document states this information will enable members of the public to engage with the respective parties. It will be a criminal offence not to comply with the duties, punishable by a fine.
23. The Register will be created and held by the Keeper of the Registers of Scotland who will be under duties to enter the relevant information onto the Register, and to act on any notices provided to the Keeper if there are changes in the relevant information.
24. The Keeper will have the power to amend the Register should the information in it be inaccurate, and questions about the accuracy of information in the Register can be referred to the Lands Tribunal.
25. Individuals whose information is to be included in the Register as a person with influence or control over another may make a “security declaration”. This would be made on the basis that inclusion in the Register of one or more of the individual's required details would put them, or another person connected to them, at risk of violence, abuse, threat of violence or abuse, or intimidation. While a security declaration is in force no information about that individual will be disclosed in the Register.
26. The Regulations apply to owners of land and tenants of registrable leases (that is, leases of over 20 years). The explanatory document<sup>xxiii</sup> states the Regulations primarily seek to address two particular scenarios in which there is currently a lack of transparency as to the control or influence of the decision-making of an owner or tenant of land. Firstly, where the legal owner or tenant of the land is an opaque legal entity, such as an overseas company, or secondly, where they hold the title or lease in an arrangement which is not necessarily discernible from the Land Register itself, such as a trust arrangement.
27. The explanatory document states—

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<sup>xxii</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>xxiii</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

” the Regulations will result in the disclosure of information about persons who have influence or control over the person listed as the owner or tenant of the land by means of the existence of one of the following types of association: a contractual or other arrangement with a person to give that person influence or control over significant decisions in relation to the land; a partnership, including any Scottish partnership where at least one partner is an individual; a trust; an unincorporated association, and; an overseas legal entity.

28. Where information similar to that which is required for the Register is already reported and publicly available, the information is not duplicated in the Register. The explanatory document states this prevents the same information being gathered, recorded and held in different places, and minimises the administrative burden on public services and on those who are already under requirements to report this information elsewhere. Categories of entities who are an owner or a tenant of land and who meet this condition are therefore not required to provide information for inclusion in the Register as an owner or tenant of land. They may, however, still be recorded as an associate of another owner or tenant of land.
29. The Regulations have five Parts and three Schedules—
- **Part 1** sets out that the Regulations will come into force on 1 April 2021, and explains the meanings of terms used in the Regulations.
  - **Part 2** sets out what information the Register is to contain, how and when entries should be amended or removed, and how people can search the Register for information.
  - **Part 3** sets out the duties on persons to provide information for publication in the Register, the information that they are required to provide and the offences that are committed in the case of non-compliance.
  - **Part 4** contains miscellaneous provisions, including in relation to making referrals to the new register in case of inaccuracy, offences, defences, and individual culpability.
  - **Part 5** relates to application and transitional provisions. Schedule 1 identifies who is required to "notify of controlled interests and associates" as set out in Part 3.
  - **Schedule 2** sets out the entities that are subject to other transparency regimes and to which the duty in Part 3 to provide details of controlled interests and associates does not apply.
  - **Schedule 3** sets out details for the making and revocation of security declarations, and for appeals against decisions about security declarations.



## The UK Regime

30. The UK Government introduced provisions to establish a register of beneficial ownership as part of the Small Business, Enterprise & Employment Act 2015.<sup>xxiv</sup> The Register launched in 2016 and is known as the People with Significant Control (PSC) register.<sup>xxv</sup>
31. In July 2018 the Department for Business, Energy and Industrial Strategy (BEIS) published the Draft Registration of Overseas Entities Bill<sup>xxvi</sup> for consultation. BEIS states<sup>xxvii</sup> —

” The Bill will require any overseas entity that wishes to own land in the UK to take steps to identify their beneficial owner(s) and to register them. Once registered, an overseas entity will obtain an overseas entity ID and will be required to update their information annually, until such time as it successfully applies to be removed from the live register of overseas entities. In order to comply with the updating duty, the overseas entity will have to annually deliver updated information (or confirm that the information in relation to it on the overseas entities register is up-to-date) and statements required for registration and will have to have taken steps to identify registrable beneficial owners (including sending notices to such beneficial owners). Failure to provide an update on the information held on the register is an offence under the Bill, as is delivering (or causing to be delivered) misleading, false or deceptive information. In order to register title to land, an overseas entity will have to be registered with Companies House and to have complied with the updating duty – the entity will then be referred to as “registered overseas entity”, using the term used in the Bill.

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<sup>xxiv</sup> Small Business Enterprise and Employment Act 2015.

<sup>xxv</sup> People with Significant Control Register.

<sup>xxvi</sup> Draft Registration of Overseas Entities Bill.

<sup>xxvii</sup> UK Government Consultation on the Draft Registration of Overseas Entities Bill.

# Accompanying Documents

## Explanatory Document

32. Section 42 of the Land Reform (Scotland) Act 2016<sup>xxviii</sup> requires that the explanatory document must give reasons for the provisions contained in the regulations. The Law Society of Scotland stated<sup>xxix</sup> - "We consider that such explanations would greatly enhance the users' understanding of the requirements of the RCI". They also said the explanatory document requires to be more informative rather than merely explaining in plain language what the Regulation says.

33. The Committee considers there is scope to improve the drafting of the explanatory document to further explain the reasons for the provisions and clarify definitions. Further comment on this is provided later in the report.

## Privacy Impact Statement

34. The proposed draft Regulations were accompanied by a Privacy Impact Statement.<sup>xxx</sup> A number of the issues raised in this Statement are considered by the Committee later in the report.

## Partial Business and Regulatory Impact Assessment (BRIA)

35. The proposed draft Regulations were accompanied by a partial Business and Regulatory Impact Assessment (BRIA).<sup>xxxii</sup> This states that the Scottish Government will work during the consultation period to develop a robust estimate of the costs associated with compliance with the proposals in the draft regulations. The Scottish Government anticipate costs associated with: familiarisation with the requirements and procedures of the new Register; gathering the required information and verifying its accuracy; administration tasks including providing the requiring information and maintaining it as current and accurate on the Register.

36. Based upon the BRIA for the Persons of Significant Control (PSC) register<sup>xxxii</sup> the Scottish Government indicate that costs associated with compliance with the new

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xxviii Land Reform (Scotland) Act 2016.

xxix The Law Society of Scotland. Written submission.

xxx Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Privacy Impact Statement.

xxxii Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Partial Business and Regulatory Impact Assessment.

Registers are likely to be higher during the transition year (the set-up phase). In relation to the PSC register, the UK Government estimated these costs to be 4.8 times as much as regular annual compliance costs. The partial BRIA for the Scottish regulations states that average annual on-going costs (following the transition year) are expected to be significantly lower.

37. The partial BRIA also indicates that the Registers of Scotland operate as a trading fund and so rely on the income they receive to meet the costs of the services they provide. It states that the Scottish Government policy approach to public services aims to make them as accessible as possible, and as low cost as possible, in the public interest. The proposed draft regulations do not propose that a fee be charged for accessing the Register. The Committee understands the Scottish Government is in the process of working with the Registers of Scotland to determine the on-going running costs of the Register.

38. The Committee understands the cost of accessing the Register will be free. However, relevant information on many entities will be held on other registers to avoid duplication. The Committee understands that accessing many of these registers incurs a cost. The Committee is unclear if accessing information in relation to ownership, controlling and beneficial interest will then incur a cost if that information is held on another register.

39. The Committee considers accessing relevant information on different entities should not incur a cost if, to avoid duplication, this information is held in different registers. The Committee recommends the Scottish Government provide clarity on this and on the potential cost implications to the Registers of Scotland if accessing relevant information (potentially via a portal) is to be free for users.

40. The Committee recognises there may be wider implications for the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland. The Committee recommends the Scottish Government give further consideration to the potential impacts and costs of establishing and managing the Register and enforcing the related requirements.

## Consideration by the Delegated Powers and Law Reform Committee

41. In its report<sup>xxxiii</sup> the Delegated Powers and Law Reform (DPLR) Committee drew the proposed draft Regulations to the attention of the Parliament on the following reporting grounds: On ground (h), as the meaning of paragraph 15(a) to (c) of schedule 1 could be clearer. The effect of those sub-paragraphs is to provide examples to explain the type of situation where significant influence or control may exist in respect of an overseas entity. Reference is made to “company”. This could be clearer as the provision is not intended to refer to U.K. companies.
42. On the general ground, there is an instance of drafting which is not gender neutral. Draft regulation 7(1) refers to the Keeper of the Registers of Scotland as “she”.
43. The DPLR Committee noted that the Scottish Government has undertaken to correct these matters in the next version of the draft Regulations.

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<sup>xxxiii</sup> Delegated Powers and Law Reform Committee. 35th Report, 2018 (Session 5). *Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 4 September 2018.*

# Consideration by the Environment, Climate Change and Land Reform Committee

44. The Environment, Climate Change and Land Reform (ECCLR) Committee hosted a Call for Views<sup>xxxiv</sup> on the proposed draft Regulations from 29 June to 17 August 2018. The Committee asked whether—
- The proposed Regulations fulfil the requirements of Section 39 of the Land Reform (Scotland) Act 2016;
  - The proposed arrangements for a Register of Persons Holding a Controlled Interest in Land are likely to be fit for purpose from the perspective of a) landowners and tenants b) associates and c) individuals and community organisations;
  - There are any improvements that could be made to the proposed arrangements to make information more accessible;
  - There is any information that won't be covered by the proposed Regulations that you believe should be (and why);
  - The contact details which must be provided to the Keeper of the Registers of Scotland are sufficient;
  - The Security Declaration process outlined in the proposed Regulations is fit for purpose;
  - The offences set out in the proposed Regulations are appropriate; and
  - Any other aspect of the proposed Regulations requires amendment.
45. A total of 12 responses were received. The Committee received supplementary submissions from Scottish Land and Estates, the Law Society of Scotland and the Registers of Scotland.
46. The Committee took evidence from Scottish Government officials on 26 June 2018. The Committee then heard from Global Witness, the Law Society of Scotland, Community Land Scotland, Scottish Land and Estates and the Scottish Property Federation on 23 September 2018. The Committee took evidence from the Keeper of the Registers of Scotland on 2 October 2018 and from the Cabinet Secretary for Environment, Climate Change and Land Reform on 23 October 2018.

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<sup>xxxiv</sup> Environment, Climate Change and Land Reform Committee. Call for Views on the Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

## Overall Response to the Regulations

47. The evidence received by the Committee indicated a broad level of support for the Register of Controlled Interests (RCI) but highlighted some specific concerns.
48. Global Witness<sup>xxxv</sup> welcomed the creation of the Register, particularly the principle that it "covers all types of legal entities and non-natural persons", that it will apply to land owners and long-term leaseholders; as well as apply to all land in Scotland and will include public disclosure of those who control various forms of Trusts. However, they said the proposed regulations fulfil the requirements of Section 39 of the Land Reform (Scotland) Act 2016, taken at their minimum level of interpretation and in practical terms the decision to exclude entities already subject to other transparency regimes (as per Regulation 3 and Schedule 2) to avoid the risk of double reporting, results in a system which will be very complicated for the general public to find out who really controls Scotland's land.
49. Community Land Scotland considered that "fully transparent and accurate information on beneficial ownership of land is critical to enabling communities to fully engage in aspects of existing legislation in relation to land rights in Scotland".<sup>xxxvi</sup>
50. Scottish Land and Estates broadly welcomed "the principles behind the regulations and is fully supportive of achieving transparency in ownership". However, they stated they need to be "clearly understood", and are "not sufficiently comprehensible or accessible". They suggested the regulations need to be made more understandable to ensure compliance and a communications campaign well in advance of April 2021 was necessary to assist with explanation.<sup>xxxvii</sup>
51. Shepherd and Wedderburn,<sup>xxxviii</sup> Pinsent Masons,<sup>xxxix</sup> the Scottish Property Federation<sup>xi</sup> and the Law Society of Scotland<sup>xli</sup> made numerous specific and technical recommendations. The Scottish Property Federation believe that improving the transparency of property ownership in Scotland is best done through completion of the Land Register to include "controlling interests". Their key concern is that "the Regulations are practical and do not make it harder or less attractive for overseas investment in Scottish real estate".<sup>xlii</sup>

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<sup>xxxv</sup> Global Witness. Written submission.

<sup>xxxvi</sup> Community Land Scotland. Written submission.

<sup>xxxvii</sup> Scottish Land and Estates. Written submission.

<sup>xxxviii</sup> Shepherd and Wedderburn. Written submission.

<sup>xxxix</sup> Pinsent Masons. Written submission.

<sup>xi</sup> The Scottish Property Federation. Written submission.

<sup>xli</sup> The Law Society of Scotland. Written submission.

<sup>xlii</sup> The Scottish Property Federation. Written submission.

52. The Registers of Scotland did not make any specific comments about the proposals, stating that they "worked closely with Scottish Government officials as the draft regulations were drawn up", and are therefore satisfied that the "role envisaged for the Keeper of the Registers of Scotland in the draft regulations is appropriate and practical".<sup>xliii</sup>

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<sup>xliii</sup> The Registers of Scotland. Written submission.

## Those Affected by the Register

53. The explanatory document<sup>xliv</sup> sets out the persons, bodies and entities that will be affected by the proposals in the draft regulations as—
- Persons who own or tenant land subject to contractual or other arrangements with an individual;
  - Partnerships and persons who own or tenant land on their behalf;
  - Trusts and persons who own or tenant land as trustees of a trust;
  - Unincorporated bodies and persons who own or tenant land on their behalf; and
  - Overseas legal entities.
54. To avoid requiring the duplication of existing information the Scottish Government are proposing in the draft regulations<sup>xlv</sup> that entities which currently report under the UK Government's PSC regime do not also have to report their associates (i.e. their controlling interests) in the new Register. This means that the following categories of entity would not have to report their controlling interests in the Register—
- UK companies;
  - Limited Liability Partnerships;
  - Eligible Scottish Partnerships "Scottish Limited Partnerships (SLPs) and Qualifying Scottish Partnerships (general partnerships where each of the partners is a limited company);
  - Societas Europaeae; and,
  - Unregistered companies.
55. The explanatory document states the Scottish Government is also proposing in the draft Regulations that some bodies do not have to report their associates under the new Register on the basis of other reporting duties they are under i.e.—
- Scottish Charitable Incorporated Organisations (SCIOs);
  - Charitable Incorporated Organisations (CIOs); and
  - Mutual and public authorities.
56. However, some information about the entities subject to other transparency regimes may appear on the Register, if such an entity (e.g. a UK company) is an associate of a recorded person. In such a case, that associate is required to provide: its

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<sup>xliv</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

<sup>xlv</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).



name; if applicable, a registered number; the address of its registered office or, where it does not have a registered office, a contact address; and the paragraph of Schedule 2 of the Regulations (list of persons subject to other transparency regimes) that applies to it.

57. Schedule 2 sets out the entities that are subject to other transparency regimes and to which the duty in Part 3 to provide details of controlled interests and associates does not apply
58. The Committee explored the scope of the Regulations and whether that should specifically exempt certain people, contractual arrangements, or situations and, if so, who should be specifically listed as exempt.
59. In their written submission Global Witness said that "the decision to exclude entities already subject to other transparency regimes (as per [Part] 3 and Schedule 2) to avoid the risk of double reporting, results in a system which will be very complicated for the general public to find out who really controls Scotland's land".<sup>xlvi</sup> Community Land Scotland<sup>xlvii</sup> added that—

” Such complexity is likely to be exacerbated if the Scottish Government decides to exclude foreign entities who are beneficial owners of property across the UK as a consequence of proposed new regulations on the Registration of Overseas Entities to be implemented on a UK-wide basis.

60. The UK Government has committed to establish an operational Register of Overseas Entities' Beneficial Owners by 2021. Their proposed register will apply to overseas companies that own land anywhere in the UK. The Scottish Government stated,<sup>xlviii</sup> when consulting for the RCI—

” It remains our intention that our respective proposals are complementary and that we do not duplicate information where there is already transparency. We will therefore consider the UK Government's proposals and, if we consider them suitable for our purposes, our final regulations may take account of them.

61. As the UK Government intends to create a Register of Overseas Entities' Beneficial Owners Shepherd and Wedderburn "recommend that overseas entities no longer be included in the RCI arrangements",<sup>xlix</sup> stating—

” While it is appreciated that the requirements of the RCI go beyond the proposed triggers for registration in the UK Register proposals, it is important to avoid duplication, as has already been identified by Scottish Government. Rather than have two Registers capturing the same information, there might be scope for incorporating elements of the RCI proposals into the UK legislation.

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<sup>xlvi</sup> Global Witness. Written submission.

<sup>xlvii</sup> Community Land Scotland. Written submission.

<sup>xlviii</sup> Scottish Government Consultation: Improving the Transparency of Land Ownership: A Consultation on Draft Regulations.

<sup>xlix</sup> Shepherd and Wedderburn. Written submission.

62. The Law Society of Scotland share these concerns, adding that this "could be dealt with by including such entities at this stage but including in the Regulations a provision that they will no longer be subject to the requirements of the Register when the Register of Beneficial Owners of Overseas Companies comes into effect".<sup>i</sup>
63. Pinsent Masons<sup>ii</sup> consider it would be helpful for the Regulations to make it clear who is exempt from the Regulations, in addition to the entities set out in Schedule 2. The explanatory document states that "the Regulations are not intended to impact upon owner-occupier situations in which only one party is registered as the legal owner of the land e.g. a couple where only one party is the legal owner etc."<sup>iii</sup> They highlight a cohabiting partner or spouse could fall within the Regulations and, in their view, clarity is needed. Both the Law Society of Scotland,<sup>liii</sup> and Scottish Land and Estates<sup>liiv</sup> also provide examples of those who should be specifically listed as exempt.
64. The Committee understands the Regulations do not require SCIOs or CIOs to report in the Register but the Committee heard that information on their trustees is excluded from any search of related registers.
65. Paragraph 2(9) of Schedule 2 does not require an overseas entity to report if that entity has shares admitted to trading on a regulated market in an EEA state or other markets listed in legislation. Having shares admitted for trading on these markets requires the entity to meet a number of reporting requirements. These requirements are considered equivalent to those set out by the PSC regime. The Scottish Government consider that the transparency requirements in relation to these entities are already met and there is no policy gain in requiring them to also provide information for the RCI.
66. Paragraphs 2(4), 2(5), 2(7) and 2(8) of Schedule 2 sets out that mutual societies including cooperatives and community benefit societies will not be required to report where they own land or are a tenant of a registrable lease. This is on the basis that similar reporting are required for the Financial Conduct Authority for publication in their Mutuals Public Register.
67. Paragraph 3 of Schedule 2 sets out that public authorities to which the Freedom of Information (Scotland) Act 2002 or the Freedom of Information Act 2000 apply will not be required to report. These Acts apply widely to public sector bodies including Ministers, non-departmental public bodies, local authorities and health boards etc. The explanatory document states in each of these cases, the control of the organisation will already be transparent through legislation. The Scottish Government consider there would be no policy gain in requiring such persons to register in the Register.

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<sup>i</sup> The Law Society of Scotland. Written submission.

<sup>ii</sup> Pinsent Masons. Written submission.

<sup>liii</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

<sup>liii</sup> The Law Society of Scotland. Written submission.

<sup>liiv</sup> Scottish Land and Estates. Written submission.

68. Paragraph 4 of Schedule 2 sets out that an eligible Scottish partnership and a limited liability partnership are not required to report.
69. The explanatory document states the Regulations do not propose that persons be registered as associates in respect of their shareholdings for the same reason that it is not proposed to register beneficiaries of a trust. The explanatory document also states that holding a purely financial interest in land does not in itself equate to control over the land owner or tenant.
70. In their written evidence, Scottish Land and Estates<sup>lv</sup> note that various arrangements have not been included in the Register and suggest the inclusion of: 1991 Act secure agricultural tenancies; crofting tenancies and protected and secure tenancies prior to the Housing (Scotland) Act 1988.
71. Shepherd and Wedderburn<sup>lvi</sup> suggested there should be more and clearer guidance on the persons to whom the Regulations do not apply and it should also be clear in the Regulations e.g.—
- individuals who own or rent and occupy their own home;
  - non-entitled spouses or non-entitled civil partners are not associates (as arguably, the definition of associate in paragraph 1(b) of Schedule 1 Part 1 could be interpreted as applying to them);
  - partners in partnerships, where all of the partners are individuals and all hold title or are tenants under the lease (where there is no non-partner individual exercising control); and
  - trustees in trusts where all of the other trustees are individuals and all hold the titles or are tenants under the lease (where there is no non-trustee individual exercising control).
72. Shepherd and Wedderburn<sup>lvii</sup> suggested that guidance should indicate the action an owner of a partnership property should take where there are no associates in relation to the property. They also highlight that the Regulations include references to directors and other officers of limited companies and members of Limited Liability Partnerships (LLPs) in relation to offences under the Regulations but these entities are exempt from the Regulations, and suggest the guidance should reflect this.
73. Global Witness<sup>lviii</sup> suggested one element that needs further consideration is whether the balance between the need to avoid the problem of double reporting, which was the justification for the exclusions, is balanced against the extent to which the public interest purposes of the regulations are being met. Global Witness also expressed concerns about whether the regulations capture those who should be caught—

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<sup>lv</sup> Scottish Land and Estates. Written submission.

<sup>lvi</sup> Shepherd and Wedderburn. Written submission.

<sup>lvii</sup> Shepherd and Wedderburn. Written submission.

<sup>lviii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 21.

” We are worried that the complexity of the regulations will create potential loopholes that might be exploited by those who want to continue to remain anonymous for the reasons that they have not made the information public before....We welcome the fact that the regulations are drafted in a very inclusive way, so that the entities that are excluded are very limited.

We hope that that approach will enable the keeper and the Scottish Government to ensure that, even if new types of corporate vehicles are created in the future, such vehicles will still be captured by the regulations to ensure that ownership by those who want to remain anonymous does not simply move into corporate entities that are not covered. The breadth and scope of the regulations is important in ensuring that there is flexibility to adapt to the type of structures that might be created in future.

74. Providing oral evidence to the Committee, Megan MacInnes of Global Witness<sup>lix</sup> raised questions about the way in which the regulations are structured and whether they will enable identification of who owns the land. She suggested it is not clear whether the regulations will always be able to disclose the natural persons, the human beings, behind the land. She suggested in some cases that will only end up taking us to yet another non-natural legal entity. That is demonstrated in the Regulations' diagram 4, which ends up with a trustee and goes no further—

” We are concerned about what is being proposed here and at UK level for the PSC register and the 25 per cent voting threshold. For example, the 25 per cent voting threshold might mean that we would end up with a number of entities holding less than 25 per cent and therefore not being required to disclose the natural persons who have the interest. That is one area in which we think the regulations are not clear. As drafted, they will not let us get to the natural persons.

Another concern is that the way in which the regulations are drafted means that it is not clear how a member of the public would know whether the register of persons holding a controlled interest is complete. As far as we can see, the drafting means that there will be no way of knowing whether there is not a recorded person or associate registered for a piece of land, and it will not be possible to know whether that is because the information should be there but has not been registered, or because there is no eligible recorded person or associate.

It will not be possible to have a complete picture of the extent to which what is in the register is incomplete or complete. That information is just not available for the missing plots of land.<sup>lx</sup>

75. When questioned as to how this issue could be resolved Megan MacInnes<sup>lxi</sup> suggested it will be impacted by how the proposed Register relates to the Land Register and whether the ScotLIS (Scotlands' Land Information System) portal will

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<sup>lix</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 18.

<sup>lx</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 18.

be able to give a clearer indication or flag up a title of land for which that information is missing, or for which there is not an eligible recorded person or associate.

76. The Committee sought to understand the implications of including foreign entities who are beneficial owners of property across the UK and whether double reporting in this way could significantly improve the process for the general public. The Committee understands the UK regulations have not yet defined exactly what types of foreign entities will be included in the UK register. The Committee is also concerned that the UK register may not be up and running in advance of the RCI. The Committee also understands the expectation is the UK register will include mainly corporate entities but will not include trusts.
77. When questioned, the Keeper<sup>lxii</sup> confirmed that as currently drafted the Land Tribunal for Scotland would rule on whether a certain category of individual should be in scope.

78. The Committee is of the view that we should know who owns the land and who benefits from that ownership. While the Committee recognises the desire to ensure duplication is minimised the Committee is concerned that there are a large number of proposed exclusions from the Register. The Committee understands that similar information may be captured in a number of other registers, however, it is unclear to the Committee whether the required information is sufficiently mirrored across all of these registers.
79. The Committee is not convinced that the public interest purpose of the Register is appropriately balanced against the desire to avoid double reporting. The Committee is concerned that as drafted there is potential for loopholes and it is unclear whether the regulations and related registers will always enable identification of who owns the land (the natural person).
80. The Committee is also concerned that information on many excluded organisations will not be captured in any register and the rationale for exclusion for some of these is that the required information is publically available and/or can be accessed via a request under Freedom of Information legislation. While this may be technically possible the Committee is concerned that the level of fragmentation of information will not enable a member of the public or interested stakeholder to access the required information at a single point. The Committee discusses these concerns later in the report.
81. The Committee considers foreign entities need to be covered by the RCI until a review of the UK Register can be undertaken to determine overlap and identify what to exclude from the RCI. The Committee therefore recommends the final Register include foreign entities, as is currently proposed.
82. The Committee recommends the Scottish Government review the arrangements that have been identified as not being included (e.g. the tenancies identified by

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lxi Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 18.

lxii Environment, Climate Change and Land Reform Committee. *Official Report*, 2 October 2018, Col 5.

Scottish Land and Estates) to ensure all omissions are addressed and exclude those entities that are exempt from the Regulations.

83. The Committee would welcome further information from the Scottish Government on the process of monitoring the completion of the Register and the ability of the Keeper to assess the extent to which the Register is complete and identify gaps in the Register.
84. The Committee recommends the guidance on those to whom the Regulations do not apply should be enhanced and this should be clear in the body of the Regulations.
85. The Committee recommends the Scottish Government address these concerns in finalising the draft regulations.
86. The Committee comments on the use of the ScotLIS portal later in the report.

## Creation of a Separate Register

87. The RCI will be one of 20 separate registers held by the Registers of Scotland. The Committee explored whether consolidation of the land registration data to include controlling interests would be more effective than the creation of a separate register.
88. There were differences of opinion over whether there should be one single register, or multiple registers to include different sets of information, but all witnesses agreed that however the new RCI is set out it must be transparent, useful and accessible.
89. The Committee asked the Keeper if, when developing the Register of Controlled Interests, consideration was given to creating one single register, and why was this discounted. The Keeper stated<sup>lxiii</sup>—

” It almost does not matter that the information is kept in separate registers; what matters is how we allow people to bring together and aggregate the information when they view it. Under our proposal for introducing the register, ScotLIS Scotland's Land Information Service will, for example, allow someone to look at a piece of land and then look through to see whether a controlled interest is registered for that land. It will be seamless for the person who is looking; they will not know that the information about the controlled interest is held in a separate database. They will be able to see all the information that has been drawn together, so that is a much more elegant solution.

90. The Committee subsequently asked the Cabinet Secretary for an update on the development and integration of all 20 registers on ScotLIS and for detail of the work to publicise ScotLIS to ensure that citizens are aware of the availability of this information. The Cabinet Secretary said<sup>lxiv</sup> ScotLIS will not provide access to all Registers, but it will provide access to the Land Register, the Register of Sasines,

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<sup>lxiii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 2.

The Crofting Register, register of Inhibitions, Register of Deeds, Register of Judgements and the RCI.

91. The Cabinet Secretary<sup>lxv</sup> also said that an awareness raising exercise is planned before the Register is operational, to raise the profile and ensure that those who need to register do so. This reflects the calls from many stakeholders.
92. The Committee agrees that ensuring all information about all land, ownership and interest is transparent and accessible via a single point is vitally important. The Committee considers this to be more important than whether the information is held on one or more registers. However, as the Regulations are currently constructed, the Committee is concerned and remains unconvinced that reliance on multiple registers (with varying information requirements and potential associated costs of access) and excluding information that is in the public domain, it is uncertain to deliver the intention of the Land Reform (Scotland) Act to know who owns land, who has the power to make decisions on how the land is managed and who is benefiting from the land, as set out in the Policy Memorandum to the Bill.
93. The Committee considers the process of accessing information to be critical to meeting the policy objectives. The Committee asks the Scottish Government to provide clarification on the registers that will be accessible via ScotLIS and provide an indication of any land based or land related registers that will be excluded from ScotLIS. If land based registers are to be excluded the Committee asks the Scottish Government to provide an explanation of the rationale for this.
94. The Committee would welcome further detail on the plans to publicise the RCI and the means of access to it when the plans have been fully developed. The Committee encourages the Scottish Government to continue to work with stakeholders on this as a rigorous publicity campaign will be required to ensure all those who may be affected by the requirements of the Register are made aware of their duties to comply. The Committee looks forward to receiving further information on the plans of the Scottish Government for publicising the Register.

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<sup>lxiv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 43.

<sup>lxv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 43.



## Process of Accessing Information

95. Stakeholders, including Global Witness<sup>lxvi</sup> and Community Land Scotland<sup>lxvii</sup>, highlighted the process of accessing information on the RCI as potentially onerous. Community Land Scotland state<sup>lxviii</sup> that they have—

” reservations as to the extent to which the proposed arrangements are likely to be fit for purpose for individuals and community organisations. Under the proposals, these users of the Register will have to undertake several steps to ascertain specific instances of land ownership and control in Scotland.

96. Global Witness<sup>lxix</sup> sets these out—

- Step 1 - "Access the Land Register or the Register of Sasines, to find the name of the entity registered as owning or leasing the land in question"
- Step 2 - "Identify the type of entity registered and therefore which transparency register they are subject to"
- Step 3 - "If they are subject to the RCI, then search on that Register for the list of recorded persons and associates"

or

- Step 4 - "If the entity is a Schedule 2 listed entity and therefore excluded from the RCI, then search on the PSC Register (or other listed Registers) to find the details of the registered beneficial owner"

97. Global Witness also said<sup>lxx</sup> the RCI is described as having the public purpose benefit of "help[ing] people and communities to know more about, and engage with, the individuals who control the decision making of land owners and tenants of land in Scotland."

They recommended further consideration as to whether the regulations as proposed adequately balance the need to avoid the problem of double reporting, with the need to ensure the Register meets its public interest purpose and is ultimately user-friendly.

98. Community Land Scotland<sup>lxxi</sup> further noted that the process—

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lxvi Global Witness. Written submission.

lxvii Community Land Scotland. Written submission.

lxviii Community Land Scotland. Written submission.

lxix Global Witness. Written submission.

lxx Global Witness. Written submission.

lxxi Community Land Scotland. Written submission.



- ” risks being excessively complex and time-consuming for individuals and communities to undertake. Such complexity is likely to be exacerbated if the Scottish Government decides to exclude foreign entities who are beneficial owners of property across the UK as a consequence of proposed new regulations on the Registration of Overseas Entities to be implemented on a UK-wide basis.
99. Global Witness<sup>lxxii</sup> shares these concerns but when questioned, Global Witness agreed that it would be difficult to develop a more simplified process.
100. Stakeholders considered this process to be more onerous for those with little or no legal understanding.
101. The Committee heard that there is a difference between information that is required by a register and information that is publicly disclosed. The issue of what should and should not be disclosed is discussed later in the report.
102. Global Witness<sup>lxxiii</sup> stated it is very important that there is a specific and narrow reason, simply relating to what is described in the security declaration, for what information should not be disclosed. To expand any further the list of information that should not be disclosed would create loopholes that would result in the regulations not having the desired effect.
103. The Committee heard that ScotLIS provides a potential model to enable access, because it has two tiers of access. It has open public access, which provides a limited amount of information, and it has registered-user access.
104. The Committee asked the Keeper how the Registers of Scotland propose to ensure that accessing information on the RCI is not excessively complex and time-consuming for individuals and communities and what help and guidance will be available for individuals and communities to access and understand the Register. The Committee also asked how the Registers of Scotland will balance the public interest for accessible information with a workable and transparent system.
105. The Keeper<sup>lxxiv</sup> undertook to—
- ” think through what kind of searches people might want to do on the information. People will want to look at a piece of land and track through and understand who has the controlling interest in that land. They might want to look at an individual and ask whether they have a number of controlling interests in a number of pieces of land, or they might want to look at a recorded person and see who all their associates are. We will think about all the possible ways in which someone might want to interrogate the information, and we will ensure that that is designed into the system right from the beginning and that we structure the underlying data in a way that can support all those kinds of queries.

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<sup>lxxii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 6.

<sup>lxxiii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 10.

106. On the subject of guidance, the Keeper<sup>lxxv</sup> stated—
- ” We would absolutely provide guidance to make sure that people can use the system effectively and find what they are looking for. The system is not worth having if people cannot find what they need when they are searching.
107. In relation to the need for a lawyer to navigate the system, the Keeper<sup>lxxvi</sup> referred to ScotLIS and agreed strongly that there should not be "a situation in which only lawyers can navigate these registers".
108. The Committee asked the Cabinet Secretary what work has been carried out, or is planned, to develop user guidance and if stakeholders will be involved in its development. The Committee also asked for an indication of the timetable for finalising and laying of the Regulations and publication of guidance.
109. The Cabinet Secretary<sup>lxxvii</sup> indicated that the intention of the Scottish Government was that the guidance would be available at the time the Regulations come into force. The Cabinet Secretary confirmed that the Scottish Government was in discussion with stakeholders on this and referred to the evidence from the Keeper that user testing will be carried out before the Regulations come into force and the Register goes live.
110. The Cabinet Secretary<sup>lxxviii</sup> indicated the revised draft regulations would be ready in Autumn 2019 and the final regulations laid in 2020.

111. The Committee believes that the proposed process and mechanism of accessing information must meet the aspirations expressed in the Policy Memorandum to the Land Reform (Scotland) Act 2016 - that it is of fundamental importance to know who owns land, who has the power to make decisions on how the land is managed and who is benefiting from the land.

112. The Committee considers there should be an open data approach to enable the public and relevant stakeholders to have access to as much of the data as possible. The Committee agrees it is important to keep the reasons for excluding information or access to information to a minimum.

113. The Committee considers the Scottish Government needs to give more thought to the purposes of accessing the register (both top down and bottom up) and the type of information people will be looking for. The Committee was re-assured by the commitment of the Registers of Scotland to undertake user testing and to

<sup>lxxiv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 3.

<sup>lxxv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 3.

<sup>lxxvi</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 3.

<sup>lxxvii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 44.

<sup>lxxviii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 44.

consider what kind of searches people will want to do to ensure that it is designed into the system from the beginning and that the underlying data is structured to support all those kinds of queries. The Committee looks forward to receiving an update on this and further information on the guidance to be provided to the public.

114. However, the Committee remains concerned that much of Scotland's land will remain out-with this system and urges the Scottish Government to re-think this approach. If the Register is to meet the aspirations of a transparent and accessible system all of this information should be accessible in a simple and straightforward way. People should not be required to go out-with the system to seek the information they need and they should not be required to rely on Freedom of Information legislation to do so. The Committee recommends the Scottish Government provides assurance that all information will be accessed via a single point.
115. The Committee understands it is the intention to combine access to all the registers through the gateway of the ScotLIS system. This must ensure they are integrated, with a single point of access and the Committee seeks re-assurance from the Scottish Government that ScotLIS will be able to act as a portal to provide a single point of access to all information required and this information will be complete and access seamless from the public perspective. It is vitally important that the Register is clear and transparent, easily accessible, straightforward to navigate and free to use. The Committee also considers that the RCI should make clear on which register an individual entry is held. Where this information is held should be recorded and publicised.
116. The Committee understands ScotLIS currently has two tiers of access "open public access" and "registered user access". The Committee would welcome further information from the Scottish Government on what information it is proposed to be included in each tier of access.

## Part 1 - Commencement and Interpretation etc.

117. Part 1 sets out that the Regulations<sup>lxxix</sup> will come into force on 1 April 2021, and explains the meanings of terms used in the Regulations.

118. Regulation 2 states—

For the purposes of these Regulations, a reference to:

” (a) control is a reference to where a person can direct the activities of another;

(b) dealings with the land is a reference to disposing, creating real rights over, leasing or changing the use of the land;

(c) significant influence is a reference to where a person is able to ensure that another person will typically adopt the approach that the person desires.

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<sup>lxxix</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

## Part 2 - Register of Controlling Interests

119. Part 2<sup>lxxx</sup> sets out what information the Register is to contain, how and when entries should be amended or removed, and how people can search the Register for information.
120. Regulation 3 states—
- ” The Keeper of the Registers of Scotland must establish and maintain a register known as the Register of Persons holding a controlled interest in land (which register is referred to in these Regulations as the RCI).

## Language and Interpretation

121. The Law Society of Scotland<sup>lxxxii</sup> raised concerns in written and oral evidence over the use of some language, including—
- Direct the activities of another;
  - Controlled; and
  - Significant influence.
122. In oral evidence, the Law Society of Scotland<sup>lxxxii</sup> stated that this language was "nebulous in concept and hard to demonstrate", however when pressed, agreed that they were unable to provide a more suitable alternative.
123. The Law Society of Scotland<sup>lxxxiii</sup> and Shepherd and Wedderburn<sup>lxxxiv</sup> are of the view that the expression in 2(a) "direct the activities of another" is open to wide interpretation, and could easily apply to situations which are not intended to be caught by the Regulations. Similarly, 2(c) is considered "open to uncertainty, and could potentially extend to the role of "trusted adviser" often held by professional advisers". Both believe that adopting much of the language and terminology of the PSC regime may be misguided. They highlight that the purpose of the Regulations is considered to quite different from that of the PSC Register, and the terminology should therefore reflect that, and take account of the principal objective of the Regulations. Statutory guidance should make clear what situations are envisaged by the terminology in this section.
124. The Law Society of Scotland<sup>lxxxv</sup> and Malcolm Combe<sup>lxxxvi</sup> highlight that the use of "controlled" here, and elsewhere in the Regulations needs clarified, as it is "open to different interpretation".

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<sup>lxxx</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>lxxxii</sup> The Law Society of Scotland. Written submission.

<sup>lxxxiii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 11.

<sup>lxxxiv</sup> The Law Society of Scotland. Written submission.

<sup>lxxxv</sup> Shepherd and Wedderburn. Written submission.

125. The Law Society of Scotland<sup>lxxxvii</sup> states—

” We understand the purpose of the Register is to seek to identify those who have control over decision making in land and therefore use of the expression "controlling" may be most appropriate as being the correct characterisation of the interest of an associate. "Controlled" means someone who is under the control or influence of another, or is supervised or governed by them; "controlling" means the person who supervises, governs or regulates. The Register is of persons who can supervise, govern or regulate.

We recommend further thought be given to the definitions of "control" and "significant influence". We consider that there would be merit in the explanatory document being expanded in relation to the types of circumstances in which there is to be considered that "control" or "significant influence" exists or will arise.

126. The Committee explored these concerns in the oral evidence session and asked if the wording in Part 1, Regulation 2 could be open to wide interpretation and as drafted is sufficiently clear to avoid uncertainty. The Committee also explored In Part 2, Regulation 3 how the terms "controlled" and "significant influence" might be misinterpreted and asked if there is a need for further definition or explanation, if there are other problems resulting from the use of terminology from the PSC Register and how these concerns should be addressed.

127. The Committee asked the Keeper, when developing the Register, what discussions the Registers of Scotland had with the Scottish Government in relation to the language used, and what alternatives were considered. The Committee asked how much reliance was placed on the drafting already done by the UK Government for the PSC Register and what work has been done to develop guidelines that might address the concerns of the Law Society of Scotland and others.

128. In oral evidence the Keeper<sup>lxxxviii</sup> suggested that, as many registers will be accessed, consistency in the use of language in the registers will be helpful. She also stated—

” At the moment, the scope has deliberately been left quite broad. The idea of the register is to ensure that anyone who may be considered to have a controlling interest over someone who owns land is in scope, subject to the fact that some types of organisation are out of scope because they are already covered by other types of register.

129. The Committee would welcome further explanation from the Scottish Government as to why the scope of the regulations has been left broad in statute, to be more closely defined by guidance.

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<sup>lxxxv</sup> The Law Society of Scotland. Written submission.

<sup>lxxxvi</sup> Malcolm Combe. Written submission.

<sup>lxxxvii</sup> The Law Society of Scotland. Written submission.

<sup>lxxxviii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 4.

130. The Committee agrees that further consideration of the definitions of control and significant influence is required and recommends the Scottish Government provide greater clarity on what the terms "significant influence" and "controlled interest" mean in both the Regulations and explanatory document. The Committee recommends the explanatory document and guidance set out detail on the types of circumstances in which control and significant interest exist.
131. The Committee recommends specific examples demonstrating situations that would and would not fall under the intentions of the regulations should be included in the explanatory document and in guidance.

## Recorded Person's Name and Address

132. Part 2, Regulation 3<sup>lxxxix</sup> requires that the Register contains the recorded persons name and address.
133. The Committee explored if there is a risk that, by not recording the home or permanent address of the recorded person, it might be easier to avoid identification and asked how these concerns should be addressed.
134. The Law Society of Scotland<sup>xc</sup> considered it "should be sufficient that the recorded person's address be that of the property in question, or a contact address at which they are able to be reached, such as a business address. For privacy reasons, we do not consider it appropriate for a recorded person to be required to give their home address".
135. Other stakeholders were open as to whether the recorded address was a home or a service address. The Committee also explored the value of including an email address as a means of contact.
136. In oral evidence to the Committee the Keeper<sup>xcii</sup> stated—
- ” My understanding is that one of the things that this register is intended to do is to enable someone who is interested in finding the person who has a controlling interest in a property to get in touch with that person. For me, that clearly means that there must be contact details of some kind. An address is clearly a way of contacting someone. However, I do not have an opinion on whether that should be a residential address or some sort of service address.
137. The Committee sought the Cabinet Secretary's view on what a recorded person's name and address means in practice and whether she agrees with the Keeper that

<sup>lxxxix</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>xc</sup> The Law Society of Scotland. Written submission.

<sup>xcii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 17.



it does not matter if it is a service or residential address. The Committee asked if an email address would be appropriate.

138. The Cabinet Secretary<sup>xcii</sup> said there are pros and cons of a service versus a residential address and the conversation around how these forms of address might work was still to be had. She suggested there were still some issues that need to be "unpacked" and suggested there are issues in spreading a person's interest across numerous addresses. She said perhaps if a service address is used it is the same service address across different properties and a single service address used for a multiplicity of regulations.
139. The Cabinet Secretary<sup>xciii</sup> said she was unsure about the use of an email address as a sole means of contact and considered some form of physical address to be preferable.
140. The Committee also asked if there a risk that, by not recording their home or permanent address, it might be easier for a recorded person to avoid identification. The Cabinet Secretary<sup>xciv</sup> said a recorded person is required to provide a date of birth therefore that should enable identification. She said that as an owner a recorded person should be included in the Land Register.
141. The Committee asked if the use of a unique reference number for those with a security declaration could allow for a degree on anonymity and yet enable identification if necessary. The Cabinet Secretary<sup>xcv</sup> stated there are pros and cons of various approaches and this would be kept under consideration.

142. The Committee considered whether the regulations should be prescriptive with regard to whether the home or service address is provided. The Committee was of the view that it was more important that the contact address should be consistent across all the relevant registers. The Committee understands the PSC register requires the residential address to be provided but that information is not disclosed. The Committee understands the information that is disclosed on the PSC register is a service address. The Committee recommends the Scottish Government give further consideration to this, and the benefits of consistency of approach, in advance of finalising the draft regulations.

143. The Committee requests the Scottish Government provide a view as to whether there should be an address in Scotland where a recorded person can be contacted.

144. The Committee considers there is merit in including an email address in the Register, alongside a physical address, as this may aid communication with

<sup>xcii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 45.

<sup>xciii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 45.

<sup>xciv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 46.

<sup>xcv</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 47.



registered persons and entities. The Committee recommends the Scottish Government give further consideration to this.

145. The Committee considers there could be scope to create a unique identifying number for each individual and entity and asks the Scottish Government to give this further consideration. The Committee considers this could aid management of the information provided. The Committee comments on individual security later in the report.

## Making and Amending Entries

146. Regulation 4<sup>xcvi</sup> does not prescribe how the Keeper may become aware of an inaccuracy in an entry but this could be as a result of being notified of an inaccuracy by a third party. The Keeper may correspond with persons to help her reach a conclusion. The Committee understands it is not envisaged that the Keeper would investigate suggestions that there was or might be an inaccuracy in the register if the information provided to the Keeper did not disclose one. The explanatory document<sup>xcvii</sup> states it is recognised that there will be situations in which the Keeper is unable to conclude whether the Register is accurate or not on the basis of the information available and therefore there is a need for other means of resolution.
147. Regulation 4(2)(c) does not give the Keeper power, or place a duty on her, to amend the Register to create an entry. There may be cases where there is not an entry in the Register in respect of a piece of land where it is believed that there should be one. The Committee understands it is not intended that it should be the Keeper's role or duty in such cases to investigate or to create a new entry in the Register. The explanatory document states where the Keeper is unable to reach a conclusion on the basis of the evidence presented to her, or where a question relates to whether an entry in the Register should be created, the Keeper, or a third party, can refer a question about the accuracy of, or lack of entry in, the Register to the Lands Tribunal. The explanatory document indicates the Lands Tribunal has investigatory powers which enable them to consider complex cases, and to hold hearings into them, making them an appropriate body to determine issues that arise in relation to this part of the regulations.
148. The Land Registration etc. (Scotland) Act 2012, as amended<sup>xcviii</sup> makes provision for the Keeper to request or require information from specified categories of individuals and entities.
149. Both Shepherd and Wedderburn<sup>xcix</sup> and the Law Society of Scotland<sup>c</sup> are concerned about Regulation 5 relating to "timing of making or amending an entry",

<sup>xcvi</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>xcvii</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

<sup>xcviii</sup> The Land Registration etc. (Scotland) Act 2012, as amended.

and would like to ensure that a time limit applies as to when the Keeper must make or amend an entry in the Register, rather than "as soon as practicable", as currently stated to ensure the register is accurate and can be relied upon.

150. The Committee discusses the issues of verification and validation later in the report.

151. The Committee would welcome clarification from the Scottish Government as to the extent of the powers of the Keeper to make and amend entries in the Register. The Committee considers there would be benefit in the Keeper having the power to question the accuracy of, or lack of entry in, the Register. The Committee comments further on the issues of validation and verification later in the report.

152. The Committee also recommends the Scottish Government give consideration to an appropriate time limit for making and amending an entry to ensure the Register is accurate and can be relied upon.

## Security and Protection

153. Regulations 6 and 7<sup>ci</sup> relate to the protection of and security of the Register. The Law Society of Scotland<sup>cii</sup> states—

” Given the nature of the information that the Register will hold, it is essential that there are robust security and protection measures in place. We note that the standard referred to in the Regulation "[a]s appear reasonable to the Keeper" is not a recognisable independent standard. While the Keeper, as custodian of a number of public registers, exercises a high standard of security from interference and unauthorised access, we recommend that Regulation 6 should make it clear that the highest standards of security of the system are expected.

154. This view is supported by Shepherd and Wedderburn.<sup>ciii</sup>

155. The Committee is concerned to ensure the highest standards of security of the system are expected and recommends Regulation 6 should make this clear.

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xcix Shepherd and Wedderburn. Written submission.

c The Law Society of Scotland. Written submission.

ci Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

cii The Law Society of Scotland. Written submission.

ciii Shepherd and Wedderburn. Written submission.

## Part 3 - Duties to Provide Information

156. Part 3<sup>civ</sup> sets out the duties on persons to provide information for publication in the Register, the information that they are required to provide and the offences that are committed in the case of non-compliance.

### Application of the Regulations and Exemptions

157. Regulation 8<sup>cv</sup> sets out who must "notify of controlled interests and associates", i.e. to whom the regulations apply. Shepherd and Wedderburn<sup>cvi</sup> and the Law Society of Scotland<sup>cvi</sup> expressed concerns, including the need for clarification (on the face of the Regulation and in the explanatory document), as to the types of owner or tenant who are exempt from the Regulations, in addition to those subject to other transparency regimes.
158. Concern was also expressed as to the potential difficulties in identifying associates in unincorporated bodies, such as sports clubs or local community groups. These may not have any formal constitution and the "general control and management of administration of the body" may not vest in the same person or people all of the time. The Law Society of Scotland noted there "appears to be no differentiation between for example, a local sports club and a large commercial organisation or between small family partnerships and major pension fund trusts".
159. The Scottish Property Federation<sup>cvi</sup> questioned the benefit of including investors or beneficiaries (including pension funds) on the register stating they may be somewhat removed from controlling the fund. They raise multiple concerns about who controlling interests are, given that "day to day property management decisions are likely to be taken for or on behalf of asset managers". Noting—
- ” An overseas trust company operated by a professional trustee services company may nominally (and for legal and tax purposes) exercise control, but in practice they exercise their discretion based on non-mandatory recommendations from a pension fund. Clarity is required as to how the regulations would apply in this sort of scenario, which is common among offshore fund structures.
160. The Committee explored who should be caught by the regulations and who should be exempt, the application of the regulations to all those with a "controlling interest" e.g. small family partnerships as well as major pension fund trusts and the implications of including investors or beneficiaries on the Register and how this

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<sup>civ</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>cv</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>cvi</sup> Shepherd and Wedderburn. Written submission.

<sup>cvi</sup> The Law Society of Scotland. Written submission.

<sup>cvi</sup> The Scottish Property Federation. Written submission.

might impact inward investment or business. The Committee was interested if other stakeholders share the concerns of the Law Society or Property Federation in relation to the extent of the regulations and how these concerns could be addressed.

161. The Committee also explored this with the Keeper<sup>cix</sup> who stated—

” in order to achieve the policy intent of the regulations, it is right that they capture everything from a small sports club to a large pension fund. One of the things that people would wish to do with the information on the register is to get in touch with the person who has the controlling interest. It makes no difference whether that is a sports club that owns a piece of land or a pension fund that is investing through a company in a piece of land. It is important that all controlling interests in all pieces of land are appropriately recorded in the register.

162. The Committee is concerned to ensure the Register (and associated registers) provide a complete base of information on those holding a controlling (and beneficial) interest in land in Scotland. As stated earlier in the report, at the point in time the Register is established it should provide this information (in combination with associated registers).

163. The Committee recognises that other UK registers may not be fully effective or operational at this time. As stated earlier in the report the Committee is of the view that while it is important to avoid unnecessary duplication, beneficial owners of overseas companies and other legal entities should be included in the Register at the outset, but there should be provision that they may no longer be subject to the requirements of the Register when the Register of Beneficial Owners of Overseas Companies comes into effect (subject to consideration of the information held on that register).

164. The Committee considers in order to achieve the policy intent of the regulations, it is right that they capture everything from a small sports club to a large pension fund. The Committee agrees with the Registers of Scotland that it is important that all controlling interests in all pieces of land are appropriately recorded in the Register.

## Details of an Associate

165. Regulation 9<sup>cx</sup> relates to the required details of an associate. Both the Law Society of Scotland,<sup>cx<sup>i</sup></sup> and Shepherd and Wedderburn<sup>cx<sup>ii</sup></sup> consider that it should be sufficient that the associate's address be that of a contact address at which they are able to be reached, such as a business address. They are of the view that for privacy reasons, a recorded person should not be required to give their home address but see merit in requiring an email address or contact telephone number to be provided.

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<sup>cix</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 13.

166. The Committee considers the required details of an associate should mirror that required by all of those registering as set out in the earlier recommendation.
167. The Committee recommends further clarity of when advisors are and are not exempt should be provided in the explanatory document and, if necessary, included in the list in schedule 2

## Security Declaration

168. Part 3<sup>cxiii</sup> introduces provisions to allow for a "security declaration". The explanatory document<sup>cxiv</sup> states—

” Individuals whose information is to be included in the Register as a person with influence or control over another may make a security declaration. This would be made on the basis that inclusion in the Register of one or more of the individual's required details would put them, or another person connected to them, at risk of violence, abuse, threat of violence or abuse, or intimidation. While a security declaration is in force no information about that individual will be disclosed in the Register.

169. Pinsent Masons<sup>cxv</sup> support the provisions allowing a security declaration to be made by certain individuals who may be put at risk by publishing their required details, and the Law Society of Scotland<sup>cxvi</sup> (in relation to Regulations 8 and 14-16) states—

” Given the critical nature of the circumstances in which a person will need or want to make a security declaration, we consider that it is vital that the opportunities for making a security declaration are given the highest priority in the registration process. We are concerned that, as currently drafted, there are potential gaps in the process where a vulnerable individual's details may be publicly available on the Register, before that individual has had the opportunity to make a security declaration to the Keeper.

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cx Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

cxii The Law Society of Scotland. Written submission.

cxiii Shepherd and Wedderburn. Written submission.

cxiii Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

cxiv Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

cxv Pinsent Masons. Written submission.

cxvi The Law Society of Scotland. Written submission.

170. In oral evidence, Community Land Scotland<sup>cxvii</sup> stated that "exemptions should be kept to a bare minimum", and Global Witness suggested that a unique reference number might allow for a degree of anonymity, yet enable the identification of those with controlling interests. Concerns were also raised by the Law Society of Scotland and the Scottish Property Federation over commercial confidentiality.
171. Global Witness<sup>cxviii</sup> suggested in order to ensure abuse of the exemption is minimised, the Keeper should be:
- ” required to publish annual statistical data on the number of Security Declarations granted and the reasons stated, building on new requirements of the 5th EU Anti-Money Laundering Directive (2018)<sup>17</sup> and coming in to force in January 2020; and the Keeper is required to forward any requests for anonymity to relevant law enforcement bodies, including the National Crime Agency and Police Scotland.
172. Shepherd and Wedderburn<sup>cxix</sup> suggest given the critical nature of the circumstances in which a person will need or want to make a security declaration it is vital that the opportunities for making a security declaration are given the highest priority in the registration process. They are concerned that, as currently drafted, there are potential gaps in the process where a vulnerable individual's details may be publicly available on the RCI, before that individual has had the opportunity to make a security declaration to the Keeper. They provided detailed suggestions on the process including the suggestion that the specified form for the information to be supplied must contain a declaration from the responsible person that it has taken the steps required to notify the associate of the requirements that the associate may make a security declaration. The information to be supplied to the associate must clearly inform them that their details will be made available in a public register, and that the security declaration, if appropriate, must be made within the 60-day timescale for submission. They propose time should be allowed for the associate to complete and submit the security declaration. They suggest there is a danger that if the vulnerable associate's details are exposed on the register for even a short period of time, they may be susceptible to risk of violence or abuse.
173. Pinsent Masons<sup>cxx</sup> also highlight that the decision as to acceptability of the security declaration appears to be at the discretion of the Keeper. They propose there must be clear and thorough guidelines for this process, and suggest the default position should be that the declaration is to apply, rather than not. They state that victims of abuse, intimidation, or threat may find it difficult to obtain sufficient evidence in a short period of time, and yet be no less at risk. They stress it is essential that the requirements of the Register must not cause harm to individuals at risk.
174. Global Witness<sup>cxxi</sup> stated it is very important that there is a specific and narrow reason, simply relating to what is described in the security declaration, for what information should not be disclosed. In their view, to expand any further the list of information that should not be disclosed would create loopholes that would result in

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cxvii Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 20.

cxviii Global Witness. Written submission.

cxix Shepherd and Wedderburn. Written submission.

cxx Pinsent Masons. Written submission.



the regulations not having the desired effect. They recommend that to match the PSC register's operations the Keeper should be required to report annually the statistics on the number of exemption requests that they have received and how many have been accepted.

175. The Committee explored the issues of security with the Keeper and asked how the Registers of Scotland intend to balance the security of individuals, including their personal data, and the ability for individuals and communities to effectively identify and contact a person with a controlling interest. The Committee asked how the Registers of Scotland will interpret and verify those at risk of violence, abuse, threat of violence or abuse, or intimidation; how security will be prioritised in the registration process - what standard of security will be employed and why there is not a recognised independent standard. The Committee also asked what the potential gaps are that might make a vulnerable individual's details publicly available and how the Keeper should prioritise security in the registration process.
176. The Committee questioned whether commercial confidentiality is a valid reason for not publishing some information.
177. The Committee also asked what a recorded person's name and address means in practice and will all information held by the Registers of Scotland need to be on the face of the RCI.
178. The Committee asked if the Registers of Scotland will report annually on the number and nature of security declarations made, what form this will take and what information should be included.
179. In responding to the Committee the Keeper<sup>cxxii</sup> did not think that commercial confidentiality was a justification for exemption. She suggested there may need to be clarity that, until that commercial transaction has gone through, the organisation that might be buying the company is not considered to be an associate and therefore does not have to register. When questioned on the issue, the Cabinet Secretary<sup>cxxiii</sup> stated commercial confidentiality was not considered to be a justification and she tended to agree with the Keeper on this.
180. The Registers of Scotland<sup>cxxiv</sup> stated they are committed to set up internal processes to think about how exemptions will go through and they indicate the prudent view would be that the information should not be published until all routes of appeal have failed. They also indicated they expect to see very small numbers of exemptions.

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<sup>cxxi</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 25 September 2018, Col 10.

<sup>cxxii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 2 October 2018, Col 8.

<sup>cxxiii</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 23 October 2018, Col 47.

<sup>cxxiv</sup> Environment, Climate Change and Land Reform Committee. *Official Report*, 2 October 2018, Col 9.

181. The Committee considers the security of vulnerable individuals must be of primary concern in the process of registration and welcomes the view of the Keeper that information would not be published until all routes of appeal have concluded.
182. The Committee notes the information provided in schedule 3 outlining how the Registers of Scotland will interpret and verify those at risk of violence, abuse, threat of violence or abuse, or intimidation and how security will be prioritised in the registration process.
183. The Committee understands there is no recognised independent standard for the security registration process, therefore it would be helpful to be specific for each register about the circumstances under which someone can ask for their information not to be included, and to provide guidance on how the process would work for each register.
184. The Committee considers the use of a unique reference number for those with a security declaration should allow for an appropriate degree of anonymity and enable identification if necessary. However the Committee seeks further information on this and how it would operate as those with a security declaration need to be assured that their identity will remain secure.
185. The Committee does not consider commercial confidentiality to be a valid reason to with-hold publishing information.
186. The Committee considers there should be an annual reporting system on the number and nature of privacy and security declarations. The Committee would welcome further information on the form it will take, the information that might be included - how many were accepted and rejected, and the reasons for this.



## Part 4 - Miscellaneous

187. Part 4<sup>cxxv</sup> contains miscellaneous provisions, including in relation to making referrals to the new register in case of inaccuracy, offences, defences, and individual culpability.

### Accuracy of the Register

188. Regulation 17<sup>cxxvi</sup> relates to referring questions about the accuracy of the Register to the Lands Tribunal for Scotland. It provides that a person who believes that there is an inaccuracy in the Register may refer it to the Lands Tribunal for Scotland for determination. A person may also refer questions of what is needed to rectify an inaccuracy in the Register.
189. The Committee asked stakeholders how the process of registration could be changed to improve accuracy and ensure that information is correct at the point of registration. The Committee also asked if the Lands Tribunal is adequately structured and resourced to investigate the accuracy of information held on the Register.
190. One of the key areas where Global Witness<sup>cxxvii</sup> believes the regulations could be strengthened is around data validation and verification and how the Keeper and the general public can have assurance that the information accessible through the Register is correct. Global Witness said the accuracy of the information provided to the Register will depend on the recorded persons and / or the associates providing correct and complete information. Although draft Regulation 4 (Amendment of the RCI) empowers the Keeper to amend the Register in certain circumstances, these do not include powers to validate the accuracy of the information provided, on the point of receipt. Regulation 4(2)(c) only enables the Keeper to make such amendments to the Register as she considers appropriate if she becomes aware of an inaccuracy in the Register. The Committee understands if questions arise about the need to create a new entry in the Register or in the case that the Keeper is unable to conclude if amendments are required, the case can be referred to the Land Tribunal, which has investigatory powers.
191. In both written and oral evidence, Global Witness<sup>cxxviii</sup> highlight their research into the functioning of the UK's PSC Register, to illustrate some of the problems which have resulted from that Register's lack of data validation on the point of receipt. In terms of data verification, Global Witness suggest the RCI regulations could be strengthened by: alignment with the 5th EU Anti-Money Laundering Directive (2018) which require EU Member States to ensure that beneficial ownership data is adequate, accurate and current; requiring entities conducting customer due diligence, such as accountants, real estate agents and banks, to file reports with national authorities if they find discrepancies between the information they have and

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<sup>cxxv</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>cxxvi</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

<sup>cxxvii</sup> Global Witness. Written submission.

information in public registers, and; cross-checking data submitted against other Government datasets. In addition they recommend all the accessible data within the RCI is publicly available as open data following the format of the PSC Register.

192. Global Witness is concerned that the lack of validation on receipt of even the most basic information, will lead to the content of the RCI being unreliable. They are of the view that empowering the Keeper to only be able to consider the accuracy of the information provided, when prompted by a third party, and relying on the Lands Tribunal to undertake required investigations, may be complex, costly and time consuming. They set out some of the problems with the PSC Register resulting from that Register's lack of data validation on the point of receipt i.e due to free text boxes rather than multiple options in a drop down box and suggest key improvements that could be made.
193. Community Land Scotland<sup>cxxix</sup> also consider there is scope to enhance the regulations in relation to data validation and verification so that both the Keeper and general public can be assured that information on the Register is correct, noting that—
  - ” The envisaged validation process in the draft regulations appears relatively weak given that information supplied will not require validation on receipt, thereby potentially compromising the reliability of the RCI and by extension the policy intention underpinning it.
194. The Committee questioned the Keeper on the issue of validation. The Committee asked where the legal responsibility for ensuring the Register is up to date and contains the correct information lies. The Committee also asked if the Keeper considered the Registers of Scotland should have the ability to ask for further information and to investigate.
195. The Committee explored how the process of registration could be changed to improve accuracy and ensure that information is correct at the point of registration (e.g. when registering, will there be free, or closed text boxes).
196. The Keeper<sup>cxxx</sup> stated—

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cxxviii Global Witness. Written submission.

cxxix Community Land Scotland. Written submission.

cxxx Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 14.

” I will make a distinction between validation and verification. The way in which we design the collection mechanism for the registration information will allow us to do an awful lot to address some of the examples that Community Land Scotland and Global Witness cited around dates of birth that cannot be correct and validating whether addresses are real addresses. We can build the system to ensure that people cannot deliberately choose to put in a date of birth such as the year 9000. If, however, someone deliberately chooses to put in a false address that, although a real address, is not their address, we would have no way of knowing that that is what has happened. That would be a verification task.

At the moment, the regulations are clear that the legal responsibility to provide accurate information to the register rests with the recorded person and they are the person who would face the criminal sanction if they had deliberately not done so.

It would be very difficult for me as the keeper to take on a significant verification responsibility that would involve in some way checking whether information that has been submitted to me is true. I have no investigatory powers or ability to look behind the submission.

197. The Keeper<sup>cxxxix</sup> confirmed that the regulations are clear that the legal responsibility to provide accurate information to the register rests with the recorded person and they face the criminal sanction if they had deliberately not done so. The Registers of Scotland could go back to the recorded person to let them know there may be an error with their registration, but they do not have the power to investigate it in any more detail. She also confirmed<sup>cxxxix</sup> that it is the duty of person making the complaint to take the matter to the police.
198. The Committee also asked if an email address is used, could sending a hyperlink that needed validated help to verify a registration and would it be possible to also send a recorded letter to registered addresses, requiring a response within a set period to ensure that it was the correct address.
199. The Cabinet Secretary<sup>cxxxix</sup> recognised the legal responsibility of those registering to provide valid information. She confirmed she was not content that validation via an email would give sufficient confidence. She suggested recorded letters could require a response within a set period of time, but raised concerns about the validation of addresses. In her view, validating every address would be unwieldy. She stated<sup>cxxxix</sup> it was all about maintaining balance between what is appropriate, practical and effective.

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cxxxix Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 15.

cxxxix Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 16.

cxxxix Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 49.

cxxxix Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 50.

200. The Committee is concerned that the current proposal gives the Keeper limited powers to verify the information on the Register and investigate the extent to which it is correct.
201. The Committee encourages the Scottish Government to review the 5th EU Anti-Money Laundering Directive (2018) and the operation of the PSC register and the lessons to be learned about data validation and verification. The Committee welcomes a view from the Scottish Government on the benefits of aligning the RCI with those verification processes.
202. The Committee shares the concerns expressed by some stakeholders that a lack of validation on receipt of information may result in the content of the Register being unreliable. The Committee considers this to be unacceptable. The public need to have confidence that the information held in this Register and related registers is accurate and the Registers are fit for purpose.
203. The Committee understands the regulations, as currently drafted, place the onus on the individual to provide accurate information and the Keeper would need evidence that what is in the register is incorrect. The Committee recognises the legal requirement upon individuals to ensure information is correct and complete, but the Committee was concerned to hear that the Keeper would find it "very difficult" to take responsibility for verification and checking whether information that had been submitted was true.
204. As stated earlier in the report, the Committee is of the view that limiting the power of the Keeper to consider the accuracy of information provided only if prompted by a third party is unacceptable. Similarly, relying on the Lands Tribunal for Scotland to undertake investigations is over-burdensome and potentially unworkable. The Committee recommends that the final Regulation addresses these concerns and provides wide powers to the Keeper to validate information provided on receipt and undertake investigations, should it have any concerns. The Regulations and guidance should also indicate the action that should be taken if there is no response and should set out the responsibilities and arrangements for enforcement in the case of non-compliance.

## Offences and Defences

205. The evidence received by the Committee highlights a difference of opinion over whether the proposed offences and defences set out in Regulations 18 - 20<sup>cxxxv</sup> are appropriate.
206. The Regulations set out that knowingly or recklessly failing to comply with the information duties associated with the Register is a criminal offence. The explanatory document states this is intended to deter and counter persons who are deliberately evading disclosure of certain information in the Register. It is not intended to criminalise persons who have made genuine errors. Section 39(4)(b) of

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<sup>cxxxv</sup> Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

- the Land Reform (Scotland) Act 2016<sup>cxxxvi</sup> provides that for any criminal offences proposed in the Regulations, the maximum penalty for those offences must be a fine, which must not exceed level 5 on the standard scale (£5,000). This is proposed to be the maximum penalty in the Regulations. The Regulations do not propose civil penalties or making compliance with the Regulations a pre-condition of land registration.
207. The Committee explored the sanctions and their application with stakeholders, including the Keeper.
208. The Committee asked if a £5,000 fine is insufficient to deter those seeking anonymity and explored how the Regulations should be proportionately applied to accommodate concerns relating to innocent and inadvertent failure to comply. The Committee asked if criminal sanctions are considered to be unnecessary, how should those who knowingly or intentionally fail to comply be dealt with and explored if a six-month transitional period before criminal penalties apply was considered to be adequate for failing to supply information to the Register.
209. Community Land Scotland<sup>cxxxvii</sup> and Global Witness<sup>cxxxviii</sup> are of the view that the proposals relating to offences and the wider compliance framework to ensure effective enforcement require to be significantly strengthened. Community Land Scotland considers that this should be in line with the PSC Register.
210. The offences as set out for the PSC Register in terms of failing to comply with the information duties are: imprisonment for up to two years or a fine (or both) for a conviction on indictment; and on summary conviction in Scotland, imprisonment for up to 12 months or a fine up to the statutory maximum (£10,000). Within the UK's new Draft Registration of Overseas Entities Bill<sup>cxxxix</sup> its' proposed amendments to the Land Registration etc. (Scotland) Act 2012<sup>cxl</sup> (outlined in Schedule 4) will require any foreign entity who wants to buy land in Scotland to have already registered their beneficial ownership with this new register at Companies House. Any subsequent changes to title (selling the land, mortgages, long leases etc) will also require this information to be registered with Companies House, before they are able to complete these procedures.
211. Global Witness<sup>cxli</sup> suggest this would provide greater assurance to the Scottish Government and general public that the regulations are being followed. However, they, and other stakeholders, do not believe that a £5,000 fine is sufficient "to deter those seeking anonymity".
212. In addition to strengthening the offences in the Regulation, Global Witness<sup>cxlii</sup> suggest completion of the RCI registration process for recorded persons and associates should be introduced as a pre-condition for undertaking other

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cxxxvi Land Reform (Scotland) Act 2016.

cxxxvii Community Land Scotland. Written submission.

cxxxviii Global Witness. Written submission.

cxxxix Draft Regulation of Overseas Entities Bill.

cxl Land Registration etc. (Scotland) Act 2012

cxli Global Witness. Written submission.

administrative and financial changes and / or transactions relating to the land, for example: when entering a title into the Land Register; when mortgaging or re-mortgaging the property and; when any other changes are made to the title deeds of the property.

213. The explanatory document<sup>cxliii</sup> says it is not proposed to make completion of the register a precondition of land registration but does not say why. The Committee understands the Draft Registration of Overseas Entities Bill, which is the UK's proposal for a new UK-wide register of foreign entities, will make having proof of registering in that register a precondition for foreign entities to make changes to their title in Scotland.
214. Shepherd and Wedderburn<sup>cxliv</sup> is concerned that many individuals will fail to comply with the various duties and requirements completely innocently and inadvertently. As this is a criminal offence they suggest that account needs to be taken of mitigating circumstances, such as ignorance of the existence of an associate, or of the requirement to register details of an associated person and they consider the Regulations and / or guidance should address this.
215. Scottish Land and Estates<sup>cxlv</sup> believe that compliance requires to be proportionate and that criminal sanctions are unnecessary, suggesting a civil penalty is more appropriate in the context of the regulations. The Scottish Property Federation<sup>cxlvi</sup> also does not support criminal sanctions for non-compliance. They raise issues of proportionality and highlight (alongside Shepherd and Wedderburn<sup>cxlvii</sup> and Pinsent Masons<sup>cxlviii</sup>) the need for rigorous promotion of the new Regulations, as well as calling for a transitional period to assist with this, giving the government, professional bodies and the Registers of Scotland time to advise owners of land about the new Regulations.
216. The Law Society of Scotland<sup>cxlix</sup> highlight many of the concerns about inadvertent failure to comply and proportionality. It suggests introducing a requirement that—
- ” before an offence is deemed to have been committed, the individual concerned is given a period of time, after receiving notification from the Keeper that they have failed to comply with any of the duties under the Regulations that attract a penalty, to comply with the duty, and only after failure to comply within a reasonable period after notification should it be possible for an offence to be committed.

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cxlii Global Witness. Written submission.

cxliii Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations) - Explanatory Document.

cxliv Shepherd and Wedderburn. Written submission.

cxlv Scottish Land and Estates. Written submission.

cxlvi The Scottish Property Federation. Written submission.

cxlvii Shepherd and Wedderburn. Written submission.

cxlviii Pinsent Masons. Written submission.

cxlix The Law Society of Scotland. Written submission.

217. A number of stakeholders propose an extended transition period and reference the transition period for the Draft Registration of Overseas Entities Bill as 18 months as opposed to the 6 month transition period proposed for the RCI.
218. The Committee was unclear as to the detail of how the sanctions would be applied, whether to each breach or offence and / or to repeated breaches or offences. The Committee questioned how repeat or consistent non-compliance should be dealt with. The Committee was also concerned to understand whether the price of anonymity was £5,000. Following the oral evidence session on 2 October the Keeper responded to the Committee with further detail<sup>cl</sup> which confirmed the maximum sanction could be applied to each offence and to each occasion an offence had been committed.
219. The Committee asked the Keeper how the process of identifying and reporting non-compliance will function. The Committee was keen to understand how the Regulations could be proportionately applied to accommodate concerns relating to innocent and inadvertent failure to comply and if those not complying should be given the opportunity to rectify this in the Register in the first instance.
220. The Keeper<sup>cli</sup> stated—

” If someone was found to have committed a criminal offence in that regard, I do not know whether we would have some extra process for trying to understand whether it had been made correct the next time they were recording information, or whether we would notify the police.

I have not thought through whether, if we knew that someone had been found guilty once of deliberately withholding information, we would have any way of looking more closely at any other entries that they made. We do not have a way of doing that at the moment, given how the regulations are written. As I said, I do not have investigatory powers, but we would have to think about what we could do to spot-check information if we knew that someone had committed an offence previously.

On the £5,000 fine, regulation 18 says that "A person commits an offence if they have not done certain things, and there is a long list of things that they might not have done. It is not clear to me whether the fine could be applied for each individual offence. If the person has committed a number of separate offences, can they face multiple fines? That is not something to which I know the answer".

221. The Keeper<sup>clii</sup> noted:

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<sup>cl</sup> The Registers of Scotland. Supplementary written submission.

<sup>cli</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 20.

<sup>clii</sup> Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 14.



” there was a helpful suggestion last week that if someone has failed to comply through ignorance of the rules, they get a chance to put that right before they are deemed to have committed a criminal offence". She stated<sup>cliii</sup> "Perhaps there should be a grace period so that, once someone has registered their ownership, if they are going to make an entry in the register of controlled interests, they have to do it within a certain period after submitting the documentation to register the property. We could clarify the process for that.

222. The Committee asked the Cabinet Secretary: whether she considers £5,000 to be the price of anonymity and is this sufficient to ensure compliance. The Committee also asked the Cabinet Secretary if she agrees with the Keeper that there should be a grace period to allow for inadvertent non-compliance to be rectified and if so, how long this should be.
223. On the question of the level of the fine the Cabinet Secretary<sup>cliv</sup> said "it remains to be seen whether there are people that think that this is a price well worth paying".
224. On the question of inadvertent non-compliance the Cabinet Secretary<sup>clv</sup> said " We could not really argue against a grace period". The Cabinet Secretary recognised some people will make genuine mistakes and referred to the evidence from the Keeper on the scope to remind people of the requirement to register. She committed the Scottish Government to work closely with the Keeper on this, however she stated that the Scottish Government would not want an open-ended time limit and said "the current proposition of a grace period of six months feels about right to me".
225. The Committee asked the Cabinet Secretary what guidance and training will be given to Police Scotland in relation to enforcing the Regulations. The Cabinet Secretary<sup>clvi</sup> said Scottish Government officials were in contact with Police Scotland and the Crown Office to ensure they understand the process and will continue to work with them as the Regulations are developed.
226. The Committee explored the likelihood of publication of an address in the process of, or resulting from, a prosecution. The Committee asked the Cabinet Secretary whether the Regulations would be amended to say on conviction that the interest is to be recorded on the Register. The Cabinet Secretary undertook to give this further consideration.

227. The Committee considers the sanctions are an important part of the Regulations. The Committee understands the Land Registration etc (Scotland) Act 2012, which is about the Land Register, sets a statutory maximum of £10,000 and the

cliii Environment, Climate Change and Land Reform Committee. *Official Report, 2 October 2018*, Col 10.

cliv Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 50.

clv Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Col 48.

clvi Environment, Climate Change and Land Reform Committee. *Official Report, 23 October 2018*, Cols 48-49.



PSC register sets a threshold for fines of £10,000. The Committee considers the fines that the Regulations propose for non-compliance with the RCI, by providing false or misleading information, are not in line with those in relevant comparable legislation. The Committee believes that organisations and individuals should face similar sanctions for similar breaches, irrespective of which register their information is to be held on.

228. The Committee recommends the Scottish Government take action to address this anomaly by amendment to the Land Reform (Scotland) Act 2016. The Committee also recommends the Scottish Government give further consideration to other types of sanction, including civil sanctions, that could act as a deterrent.
229. Notwithstanding the above recommendations the Committee remains doubtful as to whether the level of fine, set at a maximum of £5,000 will deter those who are determined to remain anonymous. However, the Committee welcomes the re-assurance that the maximum sanction can be applied to each offence and can be re-applied after a period of time should there be a failure to comply.
230. The Committee cannot see any reason why completion of the RCI registration process for recorded persons and associates should not be introduced into the Regulations as a pre-condition for undertaking other administrative and financial changes and / or transactions relating to the land, for example: when entering a title into the Land Register; when mortgaging or re-mortgaging the property and; when any other changes are made to the title deeds of the property. The Committee recommends completion of the Register is a pre-condition for undertaking other administrative and financial changes and / or transactions relating to the land. This should ensure clarity of responsibility for registration where land transactions occur and at the point of sale.
231. The Committee shares the view of the Law Society of Scotland that before an offence is deemed to have been committed, the individual concerned is given a period of time, after receiving notification from the Keeper that they have failed to comply with any of the duties under the Regulations that attract a penalty, to comply with the duty, and only after failure to comply within a reasonable period after notification should it be possible for an offence to be committed. The Committee recognises the risk of inadvertent failure to comply and the recognition by the Keeper and the Cabinet Secretary, of the need for a grace period. However, the Committee is concerned that this period is not unduly long as it is important to have confidence that the information held on the Register is up-to-date. The Committee considers a six month period could be appropriate but encourages the Scottish Government to consider the transitional period in current and proposed relevant legislation. The Committee welcomes the view of the Scottish Government on the appropriate period of time before an offence has been deemed to have been committed.

## Notification of Death, Winding Up or Dissolution

232. Regulation 21<sup>clvii</sup> relates to notifying the Keeper on event of death, winding up or dissolution.

233. A number of stakeholders expressed concerns in relation to this provision. Shepherd and Wedderburn<sup>clviii</sup> and the Law Society of Scotland<sup>clix</sup> highlight that the entities affected by this provision are most likely to be overseas entities. They suggest this raises the question of enforceability of the sanctions for failure to disclose, and the difficulties of recovery of fines.

Some stakeholders expressed concerns about the executor of an estate possibly finding themselves in breach of the criminal law in terms of regulation 21. Malcolm Combe<sup>clx</sup> said—

” I would suggest that any mischief that seeks to be addressed by Part 3 of the Land Reform (Scotland) Act 2016 is not to do with the estates of late natural persons and also note that deaths of individuals tend to be more publicised than, for example, a change in control of a juristic persona. I would suggest ample relaxations and leeway for executors if this offence is to remain.

234. Scottish Land and Estates<sup>clxi</sup> is concerned that "It can take months to obtain confirmation and for the transfer of a property to take place. We feel that the obligation at regulation 21(1) as soon as reasonably practicable is inappropriate in the circumstances. This is especially the case in this instance given that the duty attracts a criminal penalty if it is not complied with".

235. The Law Society of Scotland<sup>clxii</sup> is concerned that—

” the failure of an executor to notify the Keeper of the death of an individual who is a recorded person or an associate is to be a criminal offence. The winding up of an individual's estate generally deals with the personal assets of that individual. The executor may have no knowledge of the deceased's business affairs. The existence of the deceased's details on the Register may be unknown to the executor. We consider that there would be merit in considering the terms of this Regulation, particularly in relation to the creation of an offence, in light of the likely circumstances that will apply in many cases.

236. The Committee would welcome further information from the Scottish Government on the provisions and responsibilities for enforcement and the recovery of fines, particularly for those registered overseas.

237. The Committee is concerned that executors of an estate may be unaware of their obligations under the Regulations. The Committee recommends the Scottish Government gives consideration to the terms of the Regulation in relation to executors and whether a relaxation is appropriate.

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clvii Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

clviii Shepherd and Wedderburn. Written submission.

clix The Law Society of Scotland. Written submission.

clx Malcolm Combe. Written submission.

clxi Scottish Land and Estates. Written submission.

clxii The Law Society of Scotland. Written submission.

## Part 5 - Application and Transitional Provision

238. The Committee's views in relation to the creation of a transitional period are set out earlier in the report.

### Schedule 1

239. Schedule 1<sup>clxiii</sup> identifies who is required to "notify of controlled interests and associates" as set out in Part 3.

240. The Law Society of Scotland<sup>clxiv</sup>, Shepherd and Wedderburn<sup>clxv</sup>, the Scottish Property Federation<sup>clxvi</sup> and Pinsent Masons<sup>clxvii</sup> share similar concerns. Pinsent Masons agree that professional advisors should not be considered associates of recorded persons and are concerned to ensure that it is clear that a solicitor/ accountant who is acting for a client who is a recorded person where the solicitor or accountant is giving professional advice is not caught by the Regulations even if the client follows the professional advice given. They suggest solicitors are trusted advisors to clients and could be seen as falling within the definition of significant influence over the decision making of the recorded person.

241. The Committee asked if professional advisors should be explicitly excluded from Schedule 1.

242. Scottish Land and Estates<sup>clxviii</sup> consider that Schedule 1 "is incredibly wide in scope as currently drafted", and could "conceivably include pre or post-nuptial contractual arrangements; or purchase with extended date of entry meaning the purchaser would be included in the provisions. We presume this is not the intention. Furthermore, this could encompass clients with powers of attorney; a factor holding considerable autonomy; option agreement holders etc".

243. The Committee recommends the Scottish Government provide further clarity over who is, and is not, to be considered an associate of a recorded person in the Regulation and/or guidance. The Committee considers that those providing professional advice should not be caught by the Regulations.

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clxiii Draft Land Reform Act 2016 (Register of Persons Holding a Controlling Interest in Land) (Scotland) (Regulations).

clxiv The Law Society of Scotland. Written submission.

clxv Shepherd and Wedderburn. Written submission.

clxvi The Scottish Property Federation. Written submission.

clxvii Pinsent Masons. Written submission.

clxviii Scottish Land and Estates. Written submission.

244. The Committee recommends that the Scottish Government provide further clarity of the scope of Schedule 1 in the Regulation and, if necessary, in guidance.

# Capacity of the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland

245. When questioned, the Keeper<sup>clxix</sup> confirmed that managing the work on the RCI (as set out in the proposed draft regulations) is within the capacity of the Registers of Scotland. The Committee received no further information on the capacity of the Registers of Scotland. The Committee received no information on the impact of the proposed provisions on the Lands Tribunal for Scotland or on Police Scotland.

246. The Committee encourages the Scottish Government to give further consideration to the impact of the RCI on the capacity and resourcing of the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland, to ensure they are sufficiently resourced to manage the work in relation to the establishment and on-going management of the RCI, including the management of omissions, inaccuracies and breaches of information and the work involved in enforcement and recovery of fines.

# Annex A: Extract of Minutes

## 247. **21st Meeting, 2018 (Session 5), Tuesday 26 June**

**2. Register of Controlling Interests in Land:** The Committee took evidence from— Keith Connal, Deputy Director, Natural Resources, Pauline Davidson, Head of Land Reform Policy Team, Andrew Ruxton, Solicitor, Head of Land and Crown Estate Branch, and Graham Watson, Senior Policy Officer, Land Reform Policy Team, Scottish Government.

Donald Cameron, John Scott and Stewart Stevenson declared interests as land owners.

**4. Register of Controlling Interests in Land (in private):** The Committee considered its approach to the inquiry and agreed— the approach to the inquiry, key questions and timetable; the proposed evidence sessions; the call for views; to delegate authority to the Convener to agree the final list of stakeholders to contact with details of the call for views; to delegate media engagement to the Convener; to delegate authority for approval of witness expenses to the Convener; to consider related evidence, the approach to the inquiry and any draft reports at future meetings in private; and to invite additional witnesses to give evidence as agreed by the Committee.

## **23rd Meeting, 2018 (Session 5), Tuesday 4 September 2018**

**4. Subordinate legislation:** The Committee considered evidence received on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 and agreed witnesses for the relevant meetings on 25 September and 2 October.

## **26th Meeting, 2018 (Session 5), Tuesday 25 September 2018**

**2. Subordinate legislation:** The Committee took evidence on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] from— Megan MacInnes, Adviser - Land, Global Witness; Dr Calum MacLeod, Policy Director, Community Land Scotland; Jason Rust, Legal Adviser, Scottish Land and Estates; John Sinclair, Property Law Committee and Property and Land Law Reform Sub-Committee, Law Society of Scotland; Ann Stewart, Commercial Real Estate Committee Member, Scottish Property Federation.

**4. Subordinate legislation (in private):** The Committee considered evidence heard on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] earlier in the meeting.

## **27th Meeting, 2018 (Session 5), Tuesday 2 October 2018**

**2. Subordinate legislation:** The Committee took evidence on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] from— Jennifer Henderson, Keeper of the Registers of Scotland.

**3. Subordinate legislation:** The Committee considered evidence heard earlier in the meeting on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft].

### **28th Meeting, 2018 (Session 5), Tuesday 23 October 2018**

**2. Subordinate legislation:** The Committee took evidence on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] from— Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, Pauline Davidson, Head of Land Reform Policy Team, Andrew Ruxton, Scottish Government Legal Directorate, and Dr Simon Cuthbert-Kerr, Head of Land Reform Unit, Scottish Government.

**4. Subordinate legislation (in private):** The Committee considered evidence heard earlier in the meeting on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft].

### **30th Meeting, 2018 (Session 5), Tuesday 30 October 2018**

**4. Subordinate legislation (in private):** The Committee considered a draft report on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft]. Various changes were agreed to. The Committee delegated to the Convener responsibility for finalising the draft report for publication.

## Annex B: Written Evidence

248. Written evidence was received from the following individuals and organisations.

- [001 Simon Brooke \(108KB pdf\)](#)
- [002 Registers of Scotland \(110KB pdf\)](#)
- [003 Shepherd and Wedderburn \(138KB pdf\)](#)
- [004 Global Witness \(487KB pdf\)](#)
- [005 Pinsent Masons \(18KB pdf\)](#)
- [006 Gordon Hay \(10KB pdf\)](#)
- [007 Malcolm Combe \(197KB pdf\)](#)
- [008 Community Land Scotland \(302KB pdf\)](#)
- [009 Scottish Land and Estates \(230KB pdf\)](#)
- [010 Scottish Property Federation \(240KB pdf\)](#)
- [011 Andy Wightman MSP \(130KB pdf\)](#)
- [012 Law Society of Scotland \(158KB pdf\)](#)
- [013 Scottish Land and Estates Supplementary Evidence following session on 25 September 2018 \(239KB pdf\)](#)
- [014 Law Society of Scotland Supplementary Evidence following session on 25 September 2018 \(200KB pdf\)](#)
- [015 Register of Scotland Supplementary Evidence following session on 2 October 2018 \(85KB pdf\)](#)



