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## **Net Zero, Energy and Transport Committee**

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



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# Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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# Committee Membership



**Convener**  
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Scottish Conservative  
and Unionist Party



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**Natalie Don**  
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**Jackie Dunbar**  
Scottish National Party



**Liam Kerr**  
Scottish Conservative  
and Unionist Party



**Monica Lennon**  
Scottish Labour



**Mark Ruskell**  
Scottish Green Party

# Introduction

1. The Net Zero, Energy and Transport Committee reports to the Parliament as follows-
2. The [Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Amendment Regulations 2021](#) were laid before the Parliament on 2 November 2021 and are subject to the affirmative procedure. The draft instrument was referred to the Net Zero, Energy and Transport Committee for consideration as lead committee.
3. [The Policy Note](#) accompanying this Order explains that this instrument amends the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021. Those regulations set out extensive provision for the establishment of a Register of Controlled Interests in Land. It is to register both the owners of land, known as “recorded persons”, and also persons or entities which have control over how the recorded person uses the land, known as “associates”. The overall intention is to achieve greater transparency as to who actually has a controlling interest in land in Scotland.
4. Once fully operational, access to the information within the register will be free to access. Non-compliance with the Register carries criminal penalties, although a one year transitional period will be in force until 1 April 2023, at which point the criminal penalties will come fully into force.
5. The amending Regulations add Regulation 23A:Provision, where titles refer to former owner or tenant: trusts and unincorporated associations, to the Regulations agreed to by the Parliament earlier this year. They make further consequential amendments to other parts of the Regulations to take account of this new provision.

# Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [16 November 2021](#) and determined that [it did not need to draw the attention of Parliament to the instrument on any grounds within its remit.](#)

## Consideration by the Committee

7. At its meeting on [30 November 2021](#), the Net Zero, Energy and Transport Committee took evidence on the instrument from Màiri McAllan, Minister for Environment and Land Reform.
8. In her opening statement, the Minister reminded the Committee of the overall purpose of the new Register:
  - ” ...it will complement information that is already available in the Land Register and the Sasines Register about the owner of land with information about associates—that is, those who have an influence on the owner and are taking decisions about how the land is used. It will create greater transparency in Scotland than there is in any other part of the United Kingdom and take us to the forefront of Europe in that regard.<sup>i</sup>
9. The Minister added that a technical flaw had, however, been discovered in the course of preparing for implementation of the new Register. If left unaddressed, this flaw would undermine the Register's effectiveness. She explained that:
  - ” It concerns the situation in which trustees resign or die. In as simple terms as it is possible to use ... the flaw means that, when a trustee who is named on the trust documentation and registered in the Land Register or the Sasines Register as the owner either dies or resigns, there will be no registrable recorded person for the purposes of the new register. That is largely because, for the purposes of the regulations, the recorded person flows from the Land Register, and the responsibility to identify the associates flows from the recorded person. Those who know trust law will understand that the problem is that a person automatically ceases to be an owner or a trustee on their death or resignation, but that does not correlate with the land register, which requires a conveyance.<sup>ii</sup>
10. The Minister explained that a number of stakeholders had been consulted about the proposed correction, as set out in the instrument. These included the Law Society of Scotland, the Scottish Property Federation, the Scottish Land Commission, Community Land Scotland, and Scottish Land & Estates. None had raised concerns with the manner in which the Scottish Government proposed to address the flaw.
11. After making her statement, the Minister was asked whether having to address the error would have any knock-on consequences for the introduction of the Register. She confirmed that the Register was still on course to come into operation in April 2022, as previously planned. She said she did not consider that rectifying the error in this way would have any adverse consequences on the public's ability to access and use the new Register.<sup>iii</sup>
12. There being no further questions, the Minister then moved motion S6M-02176: That the Net Zero, Energy and Transport Committee recommends that the Land Reform

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i [Official Report of 30 November meeting](#), col. 30

ii [Official Report of 30 November meeting](#), col. 31

iii [Official Report of 30 November meeting](#), cols. 31-32



(Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land)  
Amendment Regulations 2021 [draft] be approved.

13. There was no debate on the motion and it was agreed to without division.

# Conclusion

14. **The Net Zero, Energy and Transport Committee recommends that the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021 [draft] be approved.**

