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Environment, Climate Change and Land Reform Committee

Comataidh Atharrachadh Clìomaid is Ath-leasachaidh Fearann

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



Ecclr.committee@parliament.scot



0131 348 5240

Committee Membership



Convener
Gillian Martin
Scottish National Party



Deputy Convener
Finlay Carson
Scottish Conservative
and Unionist Party



Claudia Beamish
Scottish Labour



Angus MacDonald
Scottish National Party



Mark Ruskell
Scottish Green Party



Liz Smith
Scottish Conservative
and Unionist Party



Stewart Stevenson
Scottish National Party

Introduction

1. [The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Regulations 2021 \[draft\]](#) were laid on 15 January 2021 and referred to the Environment, Climate Change and Land Reform Committee. The Committee must report by 23 February 2021.

Background

2. [Section 39](#) of the [Land Reform \(Scotland\) Act 2016](#) requires Scottish Ministers to make regulations requiring information to be provided about persons holding a controlled interest in owners and tenants of land, and for that information to be recorded in a public register, kept by the [Keeper of the Registers of Scotland](#).
3. The proposed Regulations are subject to an enhanced affirmative procedure. This requires a ‘pre-legislative scrutiny’ period, involving formal consultation on a draft, followed by approval by a vote in the Chamber of the Scottish Parliament.

Purpose of the Regulations

4. 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. The Regulations also aid policy making by enabling a fuller picture of those individuals who have control over decisions about land in Scotland.
5. These regulations bring into force Part 3 of the [Land Reform \(Scotland\) Act 2016](#), which creates a legislative framework a new register of Persons Holding a Controlled Interest in Land.
6. The draft Regulations create the register, makes provision about the making of entries in the register, the amendment of entries and the protection of, and access to the information in it. They also provide for duties to provide information; and for appeals against a decision of the Keeper in respect of a security declaration.
7. The register will be built and maintained by the Keeper of The Registers of Scotland and will become operational on 1 April 2022.
8. Once fully operational, access to the information within the register will be free to access. Non-compliance 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.

Parliamentary procedure

9. The procedure for laying the Regulations before Parliament is set out in [Section 40](#) of the [Land Reform \(Scotland\) Act 2016](#). 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.
10. 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.
11. 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.

Previous Parliamentary Consideration of the draft Regulations

12. The Cabinet Secretary [wrote to the Committee](#) on 20 June 2018 to inform the Parliament that proposed Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) [draft] Regulations had been laid.
13. The Environment, Climate Change and Land Reform Committee considered draft regulations at meetings on [26 June 2018](#), [25 September 2018](#) and [2 October 2018](#). The Committee also heard evidence from the Cabinet Secretary for the Environment, Climate Change and Land Reform at its meeting on [23 October 2018](#).
14. The Committee [reported](#) on The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] in November 2018.
15. The Scottish Government published revised draft regulations, alongside an explanatory document (including a Business and Regulatory Impact Assessment (BRIA) and Equalities Impact Assessment (EQA)) on 23 January 2020.
16. Further evidence from stakeholders and officials was heard by the Committee at meetings on [4 February 2020](#) and [3 March 2020](#). The Committee then wrote to the Scottish Government on [19 March 2020](#) to highlight issues it wished the Scottish Government to take into account in finalising the regulations. A copy of the letter can be found in the annexe at the end of the report.

Consideration by the Delegated Powers and Law Reform Committee

17. At its meeting on [19 January 2021](#), the Committee considered the above instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Consideration of the final draft Regulations by the Environment, Climate Change and Land Reform Committee

18. At its meeting on [25 January 2020](#), the Environment, Climate Change and Land Reform Committee considered the final draft regulations and took evidence from-
- Ben Macpherson MSP, Minister for Rural Affairs and the Natural Environment
 - Robin Cornwall, Senior Policy Officer; Fiona Taylor, Head of Land Use and Land Reform; and Kirsty Slee, Lawyer, Scottish Government.
19. The Committee's questioning focused on the establishment of the new register and its integration with the existing ScotLIS register. The Minister confirmed that the register will be integrated with the other registers at the Registers of Scotland and will be accessible as part of the ScotLIS system. The Minister also confirmed that the register will be fully available to members of the public in the same way as it currently is.
- In relation to when the register would become available, the Minister noted that the Committee had previously agreed to delay the integration of these registers as a result of the Cabinet Secretary's recommendation to do so due to the pandemic. The Minister also confirmed that if agreed to, the regulations would come into force from 1 April 2022.
- The Committee raised further questions in relation to accessing the register and whether there would be a cost implication. The Minister confirmed that the information on the new register would be available to all members of the public free of charge, however there would continue to be a small charge on searches on Land Register Data.
20. The Committee also questioned the Minister in relation to penalties for non-compliance with these regulations and whether these regulations align with already existing EU directives. The Minister confirmed that he and his officials were content with the penalties laid out in the regulations and confirmed that the regulations do align pre-existing EU directives.
21. Following the evidence, the Minister moved Motion [S5M-23896](#) that the Environment, Climate Change and Land Reform Committee recommends that The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 [draft] be approved
22. The Committee agreed to the motion.

The Environment, Climate Change and Land Reform Committee recommends that The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 [draft] be approved.

Annexe

Correspondence to the Cabinet Secretary - 19 March 2020

Dear Roseanna,

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

The Committee heard from stakeholders on the revised Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 (the Regulations) on 3 March. This followed an [evidence session with Scottish Government officials on 4 February](#).

The Committee was interested to understand the extent to which the Regulations as drafted meet the intention to provide a comprehensive register of those with a controlling (and beneficial) interest in land, as envisaged by the Land Reform (Scotland) Act 2016, and meet the stated purpose of the Regulations:

“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”.^[1]

The main issues and views of the Committee are highlighted below. The Committee would welcome your consideration of these, when finalising the draft regulations.

Language and Interpretation

The Committee welcomes the intention to provide enhanced guidance in relation to who the Register does, and does not, apply to.

The completeness of the Register and how it will interact with other registers.

The Committee welcomes the inclusion of foreign entities in the Register. The Committee asks the Scottish Government to provide a note of 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 any land-based registers are to be excluded, the Committee asks the Scottish Government to provide an explanation of the rationale for this.

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. The Committee would welcome further information on the extent of the similarity or divergence of information held, and publicly accessible across the registers.

The Committee notes that there are a number of situations in which those holding controlled interests in land owned by overseas legal entities would not have to register as named associates, according to the Regulations - where the individuals and legal entities own less than 25% of the voting rights of an overseas legal entity owning land in Scotland. The Committee notes the concerns expressed by stakeholders that these loopholes could be exploited by those owning land who wish to remain anonymous. The Committee

welcomes your view on this and on the need for ongoing monitoring and possible future amendment to the Regulations.

Recorded Person's Name and Address

The Committee considers that a contact address should be consistent across all the relevant registers and previously recommended that the Scottish Government give further consideration to this. The Committee remains of the view that there is merit in including a publicly available email address in the Register, alongside a physical address, as this may aid communication with registered persons and entities.

The Committee welcomes the proposal to create a unique identifying number for each individual and entity. The Committee considers this could aid management of the information provided.

Security Declaration

The Committee welcomes the further consideration given to the protection of vulnerable individuals and notes that provision for appeal via the Scottish Lands Tribunal will require further regulation. The Committee considers that there should be an annual reporting system on the number and nature of privacy and security declarations. At the time the draft Regulations are finalised the Committee would welcome further information on the form the reporting system will take, the information that might be included (e.g. how many were accepted and rejected? and the reasons for this?).

Criminal offences

The view of the Committee in relation to criminal offences remains unchanged from its initial report. There should be a consistency in fines for similar offences across the registers. The Committee welcomes the removal of criminal offences in relation to executors of an estate, who may be unaware of their obligations under the Regulations. The Committee welcomes the introduction of an extended transitional period at the time the Regulations are introduced. The Committee remains concerned about the inadvertent criminalisation of individuals who may be unaware of their obligations. The Committee remains of the view that before an offence is deemed to have been committed, the individual concerned is given a period of time to comply with the duty, after receiving notification from the Keeper that they have failed to comply with any of the duties under the Regulations that attract a penalty. Only after failure to comply within a reasonable period after notification should it be possible for an offence to be committed.

Making and amending entries - the accuracy of the Register

The Committee continues to share 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. The Committee is of the view that limiting the power of the Keeper to consider the accuracy of information 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.

The Committee previously encouraged 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 would welcome a view from the Scottish Government on the benefits of aligning the RCI with those verification processes.

Completion of the Register:

The Committee previously recommended that completion of the Register is a pre-condition for undertaking other administrative and financial changes and / or transactions relating to the land. This was to ensure clarity of responsibility for registration where land transactions occur and at the point of sale. In taking further evidence the Committee heard concerns from the Law Society of Scotland and from the Scottish Property Federation that this would be difficult/complex. The Committee also heard from Global Witness suggesting the benefits would outweigh any administrative impacts. The Committee understands that this approach is proposed

by the UK's new Draft Registration of Overseas Entities Bill. The Committee notes the range of views on this issue and welcome a view from the Scottish Government on this, including the benefits of a consistency of approach across the related registers.

Access to the Register

The Committee continues to believe 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.

The Committee understands that all information will be accessed via ScotLIS and welcomes the provision of a single point of access. However, the Committee seeks further assurance that access will be complete and seamless from the public perspective. The Committee has stated previously that 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.

The Committee understands ScotLIS currently has two tiers of access "open public access" and "registered user access". 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. It is important to keep the reasons for excluding information or access to information to a minimum. In considering the final draft Regulations the Committee will look closely at this and the rationale for decisions to limit certain information to 'registered users'.

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.

Establishing and managing the Register

The Committee welcomes the focus on user testing and looks forward to receiving an update on this and further information on the guidance to be provided to the public at the time the draft Regulations are finalised. The Committee would welcome an opportunity to experience accessing the Register at first hand and intends to pursue this directly with the Keeper.

Monitoring and updating the Register

The revised Regulations do not include powers for the Keeper to systematically check the accuracy of the information provided, on the point of receipt and on an ongoing basis. The Committee restates its previous recommendation - that the

Keeper is further empowered to verify and validate the information within the Register.

Promoting the Register

The Committee welcomes the Scottish Government commitment to implement a wide-ranging publicity campaign to raise public awareness of the new Register.

The Committee is interested to understand how a member of the public will know (and can be assured) that there are no registered associates for a property or area of land where none is identified. The question being whether there is no associate, the associate has failed to register or is subject to a security declaration.

Yours sincerely,

Gillian Martin MSP

Convener Environment, Climate Change and Land Reform Committee

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i [1] Scottish Government (2020) The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021, Explanatory Document prepared in accordance with section 41(2)(a)(ii) of the Land Reform (Scotland) Act 2016, section 3, page 5: https://www.parliament.scot/S5_Environment/General%20Documents/A26039866ExplanatoryDoc.pdf

