

These draft Regulations supersede the draft of the same title which was laid before the Scottish Parliament on 17th December 2020 and published on 18th December 2020 (ISBN 978-0-11-104814-6). It is being issued free of charge to all known recipients of those draft Regulations.

Draft Regulations laid before the Scottish Parliament under section 126(3)(b) of the Land Reform Scotland Act 2016 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

LAND REFORM

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

Made - - - - 2021
Coming into force - - 1st April 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 39(1) to (4) of the Land Reform (Scotland) Act 2016⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 41(1) of that Act, they have consulted the Keeper and such other persons as they consider appropriate.

In accordance with section 41(2) of that Act, a copy of the proposed draft Regulations and a copy of the proposed explanatory document referred to in section 40(b)(ii) (except the details required by section 42(1)(b)) have been laid before the Scottish Parliament for the purposes of the consultation required by section 41(1).

In accordance with section 40(b)(i) and (ii) of that Act, proposed draft Regulations and an explanatory document have been laid before the Scottish Parliament.

In accordance with section 126(3)(b) of that Act, a draft of this instrument has been laid before, and approved by resolution of the Scottish Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 and come into force on 1 April 2022.

Interpretation

- 2.—(1) In these Regulations, unless the context requires otherwise—
- “associate” is to be construed in accordance with regulation 3,
 - “the Companies Acts” has the meaning given by section 2 of the Companies Act 2006⁽²⁾,
 - “Keeper” means the Keeper of the Registers of Scotland,
 - “land”—
 - (a) generally, has the same meaning as in section 113 of the Land Registration etc. (Scotland) Act 2012⁽³⁾, and
 - (b) in relation to a recorded person, means the land described in an entry in the RCI as being owned or leased by that person,
 - “Land Register” means the Land Register of Scotland,
 - “lease” includes sub-lease,
 - “proprietor” is to be construed in accordance with section 113 of the Land Registration etc. (Scotland) Act 2012,
 - “recorded person” is to be construed in accordance with regulation 3(3),
 - “registered number” means any unique number allocated to a non-natural person for the purposes of identifying them,
 - “required details” is to be construed in accordance with regulation 11,
 - “the RCI” has the meaning given by regulation 3(1),
 - “security declaration” means a declaration made in accordance with regulation 16, and references to a security declaration having effect are to be construed in accordance with regulation 16(12),
 - “specified form” has the meaning given by regulation 24,
 - “unique reference number” is to be construed in accordance with regulation 7.
- (2) 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.
- (3) For the purposes of these Regulations, a reference to—
- (a) a person being the owner of land is a reference to a person—
 - (i) who is entered in the Land Register as the proprietor of the land, or

(2) 2006 c.46.
(3) 2012 asp 5.

- (ii) whose title to the land is recorded in the Register of Sasines,
- (b) a person being the tenant of land is a reference to a person who is the tenant of—
 - (i) a lease registered in the property section of a lease title sheet in accordance with section 6(1)(e) of the Land Registration etc. (Scotland) Act 2012,
 - (ii) a lease entered, in accordance with section 9(1)(b) or (c) of that Act, in the burdens section of a title sheet,
 - (iii) a lease that would, but for section 18(4) or paragraph 9 of schedule 1 of that Act, be entered in the burdens section of a title sheet,
 - (iv) a lease recorded in the Register of Sasines.
- (4) For the purposes of section 39 of the Land Reform (Scotland) Act 2016, a person has a controlling interest in an owner or tenant of land if the person is an associate of the owner or tenant.

PART 2

Register of persons holding a controlled interest in land

Establishment and contents

Register of persons holding a controlled interest in land

3.—(1) The Keeper of the Registers of Scotland must establish and maintain a public register known as the Register of Persons holding a controlled interest in land (which register is referred to in these Regulations as “the RCI”).

- (2) The RCI is a record of persons who—
 - (a) are the owners or tenants of land, and
 - (b) in relation to that land, are associated with a person to whom a Part of schedule 1 applies (such person being referred in these Regulations to as an “associate”).
- (3) The RCI is to contain, in relation to each person recorded in the RCI (“the recorded person”)—
 - (a) the recorded person’s name, address and, if applicable, registered number,
 - (b) in relation to the land owned or tenanted by the recorded person—
 - (i) if the land is registered in the Land Register, the title number of the land,
 - (ii) if the land is not registered in the Land Register, a description of the land that is sufficient for it to be identified,
 - (c) details of the capacity in which the recorded person owns or tenants the land (for example as an individual, partner or trustee),
 - (d) in relation to each associate of the recorded person—
 - (i) where no security declaration has effect in respect of the associate—
 - (aa) the required details, with the exception of the information required by regulation 11(2)(a)(iii),
 - (bb) the associate’s unique reference number,
 - (ii) where a security declaration has effect in respect of the associate—
 - (aa) a statement that a security declaration has been made and has effect in respect of that person,
 - (bb) where applicable, a note of an appeal under regulation 18(4)), and

(e) the date of any notice given to the Keeper under these Regulations in respect of the entry.

(4) The RCI is to be in such form (which may be, or be in part, an electronic form) as the Keeper considers appropriate.

Making of entries in the RCI

4.—(1) The Keeper must make an entry in the RCI, in accordance with regulation 3, following receipt of information provided under regulation 10(3) by a person to whom that regulation applies.

(2) An entry required by paragraph (1) may not be made during the period of 30 days beginning on the day on which the Keeper received the information.

Amendment of the RCI

5.—(1) The Keeper must remove an entry for a recorded person from the RCI if the Keeper is given notice under regulation 12 to the effect that—

- (a) the person has ceased to be an owner or the tenant of the land, or
- (b) the recorded person has no associates.

(2) The Keeper must make such other amendments to entries in the RCI as are necessary in consequence of—

- (a) the Keeper being given any of the following documents—
 - (i) a notice under regulation 12 of an event affecting the RCI,
 - (ii) a security declaration,
 - (iii) a notice under regulation 17 revoking a security declaration,
 - (iv) a notice under regulation 23 of the death, winding-up or dissolution of a person,
- (b) a security declaration ceasing to have effect in accordance with regulation 16,
- (c) the Keeper otherwise becoming aware of an inaccuracy in the RCI.

(3) An entry as amended by the Keeper must comply with regulation 3.

(4) Where the Keeper becomes aware of an inaccuracy under paragraph 2(c), the Keeper may request—

- (a) the person providing any of the documents listed in paragraph 2(a)(i)-(iv), or
- (b) any other person the Keeper considers may have relevant information about the inaccuracy,

to provide the Keeper, within such period as the Keeper may specify, with such further information or documents relevant to the correction of the inaccuracy as the Keeper may specify.

(5) For the purposes of paragraph 2(c), an inaccuracy includes the omission of information which is required to be recorded by these Regulations.

Timing of amending an entry

6. Where the Keeper is required to amend an entry in the RCI, the Keeper must do so as soon as reasonably practicable after receiving the documents or, as the case may be, the information specified in regulation 5(2) or (4).

Associates – unique reference numbers

7.—(1) The Keeper must allocate a unique reference number in respect of each associate whose information is to be entered on the RCI.

(2) The unique reference number must appear in each entry in the RCI in respect of that associate (whether or not the associate's information is being entered in relation to the same recorded person).

Protection of the RCI

- 8.** The Keeper must take such steps as appear reasonable to the Keeper to protect the RCI from—
- (a) interference,
 - (b) unauthorised access, and
 - (c) damage.

Access to the RCI

Access to the RCI

9.—(1) The Keeper must make the information contained in the RCI available by such means as the Keeper considers appropriate.

(2) The Keeper must ensure that a person is able to search the RCI for data by reference to the following criteria—

- (a) in relation to the land, its title number, or a description that is sufficient for it to be identified,
- (b) in relation to the recorded person, the person's name or, if applicable, registered number,
- (c) in relation to the associate, the associate's name, registered number or unique reference number.

PART 3

Duties to provide information

Information to be provided by persons who own or tenant land subject to the control of another

Duty to notify of controlled interest and associates

10.—(1) This regulation applies to a person who is a recorded person.

(2) This regulation does not apply to any person of a type listed in schedule 2 (list of persons subject to other transparency regimes).

(3) A person to whom this regulation applies must provide the Keeper with—

- (a) the person's name, address and, if applicable, registered number,
- (b) in relation to the land—
 - (i) if the land is registered in the Land Register, the title number of the land,
 - (ii) if the land is not registered in the Land Register, a description of the land which is sufficient for it to be identified,
- (c) details of the capacity in which the person owns or tenants the land (for example as an individual, partner or trustee), and
- (d) in relation to each associate—
 - (i) the required details, and

(ii) if a security declaration has effect in respect of an associate, a copy of that declaration.

(4) For the purposes of paragraph 3(d), where an associate has more than one association with a person to whom this regulation applies in relation to the land, a person to whom this regulation applies is only required to provide the Keeper with the information mentioned in paragraph 3(d) once.

(5) Before providing any information under paragraph (3), the person must—

- (a) take reasonable steps to verify the accuracy of the associate’s required details with the associate, and
- (b) inform the associate about—
 - (i) the timescales for responding (see regulation 15(2)),
 - (ii) the offences in this regulation for failure to comply,
 - (iii) the right to make a security declaration, and
 - (iv) the duty of an associate to notify the person about changes to the associate’s required details.

(6) Information provided under paragraph (3) must be in a notice in the specified form.

(7) The notice must be given within the period of 60 days beginning with the day on which the associate becomes an associate of the person.

(8) A person who, without reasonable excuse, fails to comply with this regulation commits an offence.

(9) Without limiting paragraph (8), a person has a reasonable excuse in respect of a particular associate if—

- (a) the person, having taken reasonable steps to do so, is unable—
 - (i) to establish that there any associates for the person, or
 - (ii) to obtain, or verify the accuracy of, the required details of the associate, and
- (b) the person has given notice to that effect to the Keeper in the specified form.

(10) A person who commits an offence under paragraph (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Required details of an associate

11.—(1) For the purposes of these Regulations, the “required details” of an associate are—

- (a) the information about the associate specified in paragraph (2), and
- (b) in every case—
 - (i) the date on which the associate’s association with the person who owns or tenants the land was formed, or
 - (ii) a statement that such date is not known.

(2) The information referred to in paragraph (1)(a) is—

- (a) in a case where the associate is an individual, the associate’s—
 - (i) name,
 - (ii) contact address, and
 - (iii) day, month and year of birth,
 - (iv) if applicable, any unique reference number allocated to the associate by the Keeper under regulation 7,

- (b) in a case where the associate is a non-natural person, other than a person of a type listed in schedule 2, the associate’s—
 - (i) name,
 - (ii) if applicable, registered number,
 - (iii) the address of its registered office or, where it does not have such an office, an address at which it may be contacted,
 - (iv) if applicable, any unique reference number allocated to the associate by the Keeper under regulation 7, or
- (c) in a case where the associate is a person of a type listed in schedule 2 (list of persons subject to other transparency regimes), the associate’s—
 - (i) name,
 - (ii) if applicable, registered number,
 - (iii) the address of its registered office or, where it does not have such an office, an address at which it may be contacted,
 - (iv) if applicable, any unique reference number allocated to the associate by the Keeper under regulation 7,
 - (v) the paragraph of schedule 2 that applies to the associate.

Information about events affecting the RCI

12.—(1) If an event mentioned in column 1 of the following table occurs, the person mentioned in column 2 of that table for the event must give the Keeper notice, in the specified form, of—

- (a) the event, and
- (b) the information specified in column 3 in relation to the event.

<i>Event</i> <i>(Column 1)</i>	<i>Person</i> <i>(Column 2)</i>	<i>Information to be given</i> <i>(Column 3)</i>
a recorded person becoming aware that a person notified under regulation 10(3) as being an associate ceases to be an associate	the recorded person	<ul style="list-style-type: none"> (a) the recorded person’s name and address, (b) the title number of the land, or where there is no title number, a description of the land that the recorded person owns or tenants which is sufficient for it to be identified, (c) the former associate’s required details, and (d) the date (if known) on which the former associate ceased to be an associate
a recorded person ceasing to be a person to whom regulation 10 applies	the recorded person	<ul style="list-style-type: none"> (a) the person’s name and address, (b) the title number of the land, or where there is no title number, a description of the land that the person owns or tenants

<i>Event</i> <i>(Column 1)</i>	<i>Person</i> <i>(Column 2)</i>	<i>Information to be given</i> <i>(Column 3)</i>
		which is sufficient for it to be identified, (c) the date on which regulation 10 ceased to apply to the person,
a recorded person becoming aware that any other information notified by the person under regulation 10(3) has changed	the recorded person	(a) the recorded person's name and address, (b) the title number of the land, or where there is no title number, a description of the land that the recorded person owns or tenants which is sufficient for it to be identified, (c) the change to the information, and (d) the date (if known) on which the change occurred.

(2) The notice must be given—

- (a) in a case where the associate has notified the recorded person of the event, as soon as practicable after receipt of the notification, or
- (b) in any other case, within 60 days beginning with the date on which the event occurred.

(3) Before giving notice under paragraph (2) the recorded person must take reasonable steps to verify the accuracy of the information to be given in the notice with the associate.

(4) A person who is subject to a duty under this regulation commits an offence if the person, without reasonable excuse, fails to comply with this regulation.

(5) Without limiting paragraph (4), a recorded person has a reasonable excuse in respect of a particular associate if—

- (a) the recorded person, having taken reasonable steps to do so, is unable to verify the accuracy of the information to be given in the notice, and
- (b) the recorded person has given notice to that effect to the Keeper in the specified form.

(6) A person who commits an offence under paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Notification of associates about registration

13.—(1) This regulation applies if a person gives the Keeper a notice about an associate under regulation 10(3).

(2) The person must give notice of that fact to the associate in the specified form.

(3) The notice must be given within the period of 7 days beginning on the day on which the notice was given under regulation 10(3).

(4) For the purpose of this regulation, the form of notice specified by the Keeper under regulation 24(3) must—

- (a) require the date that the notice under regulation 10(3) was given to be specified, and

- (b) inform the associate about the effect of the following provisions—
 - (i) regulation 15(3) and (5) (the duty of associates to provide information upon request),
 - (ii) regulation 16 (the right to make a security declaration).

(5) A person who, without reasonable excuse, fails to comply with this regulation commits an offence.

(6) A person who commits an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Information associates must provide

Associate's duty to notify of association

14.—(1) This regulation applies if—(1)

- (a) a person (“A”) knows, or reasonably ought to know, that A is an associate of a person (“B”) who owns or tenants land, and
- (b) A has not received a notice under regulation 13 within 67 days of becoming such an associate.

(2) A must, as soon as reasonably practicable, give notice to B of—

- (a) the fact that A is an associate of B in respect of the land, and
- (b) A's required details as an associate.

(3) A person who, without reasonable excuse, fails to comply with paragraph (2) commits an offence.

(4) A person who commits an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Duty of associate to provide information upon request

15.—(1) Paragraph (2) applies if a person (“A”) receives a request for verification of A's required details from a person under regulation 10(5).

(2) A must, as soon as reasonably practicable—

- (a) confirm that A is an associate and—
 - (i) indicate whether the details are correct (and if not, provide the correct details),
 - (ii) if applicable, state that A intends to make or has made a security declaration, or
- (b) inform the person who made the request that A is not an associate.

(3) Paragraph (4) applies if—

- (a) either of the following changes occurs—
 - (i) a change to the required details of an associate of a recorded person,
 - (ii) a person ceases to be an associate of a recorded person, and
- (b) the change has not been reflected in the RCI or the associate has made a security declaration which remains in effect.

(4) The associate or, as the case may be, the former associate must, as soon as reasonably practicable, give notice to the recorded person of the change and the date of the change (if known).

(5) Paragraph (6) applies if a person (“A”) receives a request for verification of the accuracy of information under regulation 12(3).

(6) A must indicate whether the information is correct (and if not, provide the correct information).

(7) A person who, without reasonable excuse, fails to comply with paragraph (2), (4) or (6) commits an offence.

(8) A person who commits an offence under paragraph (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Security declaration

Security declaration

16.—(1) An associate who is an individual may, at any time, make a declaration that the inclusion in the RCI of one or more of the associate’s required details would put the associate or an individual connected with the associate at risk of violence, abuse, threat of violence or abuse, or intimidation (a “security declaration”).

(2) A security declaration must—

- (a) be accompanied by suitable evidence to support the making of the declaration or state that the associate is taking reasonable steps to obtain such evidence,
- (b) include the required details of the associate,
- (c) state the date on which the security declaration is made,
- (d) be signed by the associate, and
- (e) be given to the Keeper.

(3) An associate must also send a copy of the security declaration to the recorded person.

(4) For the purpose of paragraph (2)(a), suitable evidence is—

- (a) evidence that meets the requirements for evidence in paragraph 1 or 2 of schedule 3, or
- (b) where such evidence is not reasonably obtainable, such other evidence as the Keeper considers appropriate in the circumstances.

(5) Where a declaration is not accompanied by evidence, the evidence must be produced within the period of 60 days beginning with the date on which the security declaration was made.

(6) If the associate does not produce the evidence, the security declaration ceases to have effect at the end of that period.

(7) The Keeper must decide, on the basis of the evidence produced, whether or not it was reasonable for the security declaration to have been made.

(8) For the purposes of making a decision under paragraph (7), the Keeper may request—

- (a) the associate, or
- (b) any other person who the Keeper considers may have information or documents relevant to the making of the decision,

to provide the Keeper, within such period as the Keeper may specify, with such further information or documents relevant to the making of the decision as the Keeper may specify.

(9) The Keeper must notify the associate, and any recorded person of the associate, of the Keeper’s decision as soon as reasonably practicable after making the decision.

(10) A notification under paragraph (9) must—

- (a) set out the Keeper’s decision,
- (b) include the reasons for the decision, and

- (c) if the decision is that it was not reasonable for the security declaration to have been made, include information about—
 - (i) the effect of paragraph (11),
 - (ii) the right of appeal under regulation 18.
- (11) Where the Keeper decides that it was not reasonable for the security declaration to have been made, the declaration ceases to have effect—
 - (a) at the end of the period of 30 days beginning with the date on which notification under paragraph (10) was given, or
 - (b) if the associate appeals against the decision and the decision is upheld, at the end of the period of 30 days beginning on the date on which the appeal was finally determined.
- (12) A security declaration has effect during the period—
 - (a) beginning with the day on which the declaration is received by the Keeper, and
 - (b) ending on the day on which the declaration—
 - (i) is revoked under regulation 17, or
 - (ii) ceases to have effect in accordance with paragraph (6) or (11).

Revocation of security declarations

- 17.**—(1) An associate who has made a security declaration may revoke it at any time.
- (2) An associate who has made a security declaration must revoke it as soon as reasonably practicable if—
 - (a) the declaration made in accordance with regulation 16(1) is no longer valid, or
 - (b) the associate is unable to obtain, or ceases to have, evidence of a kind referred to in regulation 16(2)(a) to support the grounds for making the declaration.
- (3) A security declaration is revoked by giving notice to the Keeper in the specified form.
- (4) The revocation has effect on the day on which the notice is received by the Keeper.
- (5) A person commits an offence if the person, without reasonable excuse, fails to comply with paragraph (2).
- (6) A person who commits an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Appeals against decisions about security declarations

- 18.**—(1) An associate may appeal to the Lands Tribunal for Scotland, on a question of fact or on a point of law, against a decision made under regulation 16(7).
- (2) The appeal must—
 - (a) be lodged within the period of 30 days beginning on the date on which the notice under regulation 16(9) was received, and
 - (b) state the grounds on which it is being made.
- (3) The associate must, within the period of 7 days beginning on the date on which the appeal is made, give the Keeper a copy of the grounds of appeal.
- (4) On receipt of the grounds of appeal, the Keeper must amend the RCI to enter a note of the appeal wherever the security declaration is recorded in the RCI.
- (5) The Keeper must remove the note when the appeal is finally determined.

(6) The Keeper must give effect to the Lands Tribunal for Scotland's determination of an appeal under this regulation.

PART 4

Miscellaneous

Referrals

Referrals

- 19.**—(1) A person may refer to the Lands Tribunal for Scotland a question relating to—
- (a) the accuracy of the RCI (including where there may be inaccuracy due to the omission of information which is required to be recorded by these Regulations), or
 - (b) what is needed to rectify an inaccuracy in the RCI.
- (2) The person making the referral must, at the same time as making it, give notice to—
- (a) in a case where the alleged inaccuracy relates to an entry in the RCI—
 - (i) the recorded person, and
 - (ii) each associate of the recorded person, so far as known to the person making the referral,
 - (b) in a case where the alleged inaccuracy relates to the omission of information—
 - (i) the recorded person or, as the case may be, the owner or tenant of the land,
 - (ii) each associate of the recorded person (if any), so far as known to the person making the referral,
 - (iii) any person who is alleged to be an associate of the recorded person or, as the case may be, the owner or tenant of the land, and
 - (c) in every case, the Keeper,
- except where that would involve the person giving notice to themselves.
- (3) The Lands Tribunal for Scotland must, on determining the question, give notice to—
- (a) the person who made the referral,
 - (b) the Keeper, and
 - (c) any other person appearing to the Lands Tribunal for Scotland to have an interest.
- (4) This regulation is without prejudice to any other right of recourse, whether under an enactment or under a rule of law.

Offences

Offence of giving false or misleading information

- 20.**—(1) A person commits an offence if the person—
- (a) makes a materially false or misleading statement—
 - (i) in any of the documents listed in paragraph (4),
 - (ii) in a response to a request to verify the accuracy of any information in such a document, or

- (iii) in a response to a request made by the Keeper under regulation 23(2) or (5), and
 - (b) knows, or is reckless as to whether, the statement is false or misleading.
- (2) A person commits an offence if the person—
- (a) intentionally fails to disclose material information—
 - (i) required in any of the documents listed in paragraph (4), or
 - (ii) in a response to a request made by the Keeper under regulation 23(2) or (5), or
 - (b) is reckless as to whether all material information is so disclosed.
- (3) A person who commits an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The documents are—
- (a) a notice to the Keeper under regulation 10 or 12,
 - (b) a notice to an associate under regulation 13,
 - (c) a notice to a recorded person under regulation 14,
 - (d) a security declaration,
 - (e) a notice revoking a security declaration,
 - (f) a response to a request of the Keeper under regulation 16(8),
 - (g) a notice to the Keeper under regulation 23(1) or (4).

Defence to false or misleading information offences

- 21.**—(1) Regulation 20(1) or (2) does not apply if the person (the “accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The defence described in paragraph (1) is established if the accused—
- (a) acted in reliance on information supplied by another person, and
 - (b) did not know and had no reason to suppose that—
 - (i) for an offence under regulation 20(1), the information was false or misleading, or
 - (ii) for an offence under regulation 20(2), all material information had not been disclosed.
- (3) Paragraph (2) does not limit paragraph (1).
- (4) An accused may not rely on paragraph (2)(a) unless—
- (a) the accused serves on the prosecutor a notice giving such information identifying or assisting in the identification of the person referred to in that paragraph as is in the accused’s possession,
 - (b) the notice is served—
 - (i) where an intermediate diet is held, at or before that diet, or
 - (ii) where no such diet is held, at least 10 days before the trial diet, and
 - (c) the court grants leave to do so.
- (5) Paragraph (4) does not apply if—
- (a) the accused lodges a defence statement under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010(4) in accordance with the time limits mentioned in paragraph (4)(b), and

- (b) the accused's defence involves an allegation that the commission of the offence was due to reliance on information supplied by another person.

Individual culpability where organisation commits offence

22.—(1) This regulation applies if—

- (a) an offence under these Regulations is committed by an organisation of a type specified in column 1 of the table in paragraph (3), and
- (b) the commission of the offence—
- (i) involves consent or connivance on the part of an individual holding a position in the organisation that is specified in column 2 of that table for that type of organisation or purports to act in that capacity, or
- (ii) is attributable to neglect on the part of such an individual.

(2) The individual referred to in paragraph (b) (as well as the organisation) commits the offence and is liable to the same penalty as any other individual committing the offence.

(3) The table is as follows—

<i>Organisation</i> (Column 1)	<i>Individual</i> (Column 2)
company as mentioned in section 1 of the Companies Act 2006	director, manager, secretary or other similar officer member, where the company's affairs are managed by its members
limited liability partnership	member
other partnership	partner
any other body or association	individual who is concerned in the management or control of its affairs.

Other

Notification of Keeper on event of death, winding up or dissolution

23.—(1) In the event of the death of an individual who is a recorded person, the executor of the individual must, as soon as reasonably practicable—

- (a) notify the Keeper of the individual's death, and
- (b) provide the Keeper with the information mentioned in the second entry of column 3 of the table in regulation 12.

(2) Where paragraph (1) applies, the executor must also provide such further information in relation to the individual or the land as the Keeper may reasonably request.

(3) In the event of the death of an individual who is an associate, the executor of the individual must, as soon as reasonably practicable, notify the recorded person of the individual's death.

(4) In the event of the winding-up or dissolution of a non-natural person ("the entity") who is a recorded person, the person responsible for dealing with the assets or liabilities of the entity must, as soon as reasonably practicable,

- (a) notify the Keeper of the winding-up or dissolution, and

(b) provide the Keeper with the information mentioned in the second entry of column 3 of the table in regulation 12.

(5) Where paragraph (4) applies, the person must also provide such further information in relation to the entity or the land as the Keeper may reasonably request.

(6) In the event of the winding up or dissolution of a non-natural person (“the entity”) who is an associate, the person responsible for dealing with the assets or liabilities of the entity must, as soon as reasonably practicable, notify the recorded person of the winding up or dissolution.

Specified forms

24.—(1) This regulation applies if these Regulations require or authorise something to be in the specified form.

(2) To be in the “specified form”, the thing must—

(a) be in a form specified by the Keeper for the purposes of the provision in which the expression occurs,

(b) be given in accordance with any requirements specified by the Keeper for the purpose.

(3) The Keeper may specify a form for the purposes of paragraph (2)(a).

(4) A form of notice specified by the Keeper under paragraph (3) may provide for—

(a) a single form to be used to give notice by more than one person, or

(b) a single form to be used by a person to give notice relating to more than one other person or event.

(5) The Keeper must publish each form specified under paragraph (3) in such manner as the Keeper considers appropriate.

Provision of information by the Keeper to Scottish Ministers

25. The Keeper must provide to the Scottish Ministers any information that Scottish Ministers may require for the purposes of monitoring the operation and effectiveness of the RCI.

PART 5

Application and transitional provisions

Application of these Regulations

26.—(1) Subject to this regulation, these Regulations apply in relation to—

(a) a person (“RP”) who—

(i) owns or tenants land,

(ii) is not a person of a type listed in schedule 2, and

(iii) in relation to that land, is associated with a person to whom a Part of schedule 1 applies,

whether RP became such an owner or tenant, or the association with the person to whom a Part of schedule 1 applies was formed, before or after the commencement of these Regulations, and

(b) a person who is an associate of RP, whether the association was formed before or after the commencement of these Regulations.

(2) During the transitional period, the following regulations do not have effect—

- (a) regulation 10(8) (offence of failing to comply with duty to notify of controlled interest and association etc.),
 - (b) regulation 12(4) (offence of failing to comply with duty to notify events),
 - (c) regulation 13(5) (offence of failing to notify associate about recording of details),
 - (d) regulation 14(3) (offence of associate failing to notify of association),
 - (e) regulation 15(7) (offence of person failing to provide information on request),
 - (f) regulation 17(5) (offence of failing to comply with duties relating to security declarations),
 - (g) regulation 20(1) and (2) (offences for providing false or misleading information or failing to disclose information that should be provided),
 - (h) regulation 22 (offence by an organisation).
- (3) During the transitional period, a referral to the Lands Tribunal for Scotland under regulation 19 may be made in respect of entries which are in the RCI only (and not in respect of any omission to include an entry in the RCI).
- (4) For the purposes of this regulation, the “transitional period” is the period—
- (a) beginning on 1 April 2022, and
 - (b) ending on 1 April 2023.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE 1

Regulations 3(2) and 26(1)

Persons who have significant influence or control over another

PART 1

Contractual or other arrangements with an individual

Application

1. This Part applies to a person (the associate) where the person who owns or tenants the land (the recorded person) is an individual who has entered into a contract or other arrangement under which—

- (a) the recorded person owns or tenants the land for or on behalf of the associate, or
- (b) the associate has the right to exercise, or actually exercises, significant influence or control over the recorded person's dealings with the land.

Exceptions

2. This Part does not apply where one or more of the following is, or are, the only contractual or other arrangements between the person and the individual—

- (a) the person's contract or arrangement with the individual is one to which another Part of this schedule applies,
- (b) the person's relationship to the individual is that of—
 - (i) a creditor of the individual (such as the holder of a standard security), or
 - (ii) a paid professional advisor to the individual (such as a solicitor or an accountant),
- (c) the person is the landlord of the individual,
- (d) the land is owned in common by the person and the individual,
- (e) the land is tenanted jointly by the person and the individual,
- (f) the person's contract or arrangement with the individual is in the form of concluded missives for the sale of the land by the individual to the person where the title to the land has not been transferred to the person,
- (g) the person has been appointed under a power of attorney granted by the individual in accordance with section 15 of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act")⁽⁵⁾
- (h) the person has been appointed as a guardian in respect of the individual under a guardianship order (within the meaning of section 58(4) of the 2000 Act),
- (i) the person's contract or arrangement with the individual is one to which the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010⁽⁶⁾ apply,
- (j) the person's contract or arrangement with the individual is that of a service agreement (that is, where the person is the employee of the individual and occupation or possession of the land is provided to the person by the individual in return or part return for the performance by the person of services under an employment agreement),

⁽⁵⁾ 2000 asp 4.

⁽⁶⁾ S.I. 2010/2960. Regulation 5 sets out the contracts to which these regulations apply.

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021* ISBN 978-0-11-104814-6

- (k) the person's contract or arrangement with the individual is as a liferenter under a proper liferent registered or recorded under section 51 of the Land Registration (Scotland) Act 2012⁽⁷⁾,
- (l) the person's contract or arrangement with the individual is an agreement as to the financial provision to be made on divorce or the dissolution of a civil partnership, between the person and the individual, as the case may be,
- (m) the person's contract or arrangement with the individual is a cohabitation agreement (that is, an agreement between two persons living together as if they are spouses),
- (n) the person has a personal real burden (within the meaning of section 122(1) of the Title Conditions (Scotland) Act 2003⁽⁸⁾) over the land that is owned or tenanted by the individual,
- (o) the person is the holder of a licence which grants the right to use or exploit land, or any part of land owned or tenanted by the individual,
- (p) the person possesses a right of occupation over land owned or tenanted by the individual without any form of payment or other consideration being required in return.

PART 2

Partnerships

Application

3. This Part applies to a person (the associate) where—
- (a) the person who owns or tenants the land (the recorded person)—
 - (i) does so as a partner in a partnership or on its behalf, or
 - (ii) is a partnership, and
 - (b) the associate—
 - (i) is a general partner of the recorded person, but is not registered as owning or leasing the land,
 - (ii) is a general partner of another partnership which is (of itself) a partner of the recorded person,
 - (iii) is an individual who has significant influence or control over a relevant entity which is a partner of the recorded person,
 - (iv) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or a partnership in which the recorded person is a partner.

Exceptions

4. This Part does not apply to a person where that person's relationship to the partnership is only that of—
- (a) a paid professional advisor to the partnership (such as a solicitor or an accountant),
 - (b) a creditor of the partnership (such as the holder of a standard security),
 - (c) an administrator of the partnership in insolvency proceedings, or

(7) 2012 asp 5.

(8) 2003 asp 9.

- (d) a member of the judiciary presiding over proceedings in connection with the partnership.

Interpretation of Part 2

- 5. For the purposes of this Part—
 - (a) “relevant entity” means any body corporate or other entity (whether incorporated or not) that is a legal person under the law by which it is governed, other than a person of a type listed in schedule 2,
 - (b) examples of significant influence and control include, in particular, where a person—
 - (i) has the right to unilaterally take or veto decisions about the governance and running of a partnership,
 - (ii) has the right to appoint or remove any partners of a partnership without application to a court, or
 - (iii) is able to influence the decision-making of a partnership without holding any formal governance position within the partnership, particularly in respect of the partnership’s dealings with land,
 - (c) for the purposes of paragraph (3)(b)(iv), a person (A) does not exercise significant influence and control over a recorded person or the partnership if A is also a recorded person under paragraph 3(a).

PART 3

Trusts

Application

- 6. This Part applies to a person (the associate) where—
 - (a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, a trust, and
 - (b) the associate—
 - (i) is a trustee of the trust, but is not registered as being the owner or tenant of the land,
 - (ii) is an individual who has significant influence or control over a relevant entity which is a trustee of the recorded person,
 - (iii) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or the trust.

Exceptions

- 7.—(1) This Part does not apply where—
 - (a) the recorded person owns or tenants the land as a trustee of a trust created for the purposes of insolvency or sequestration,
 - (b) the recorded person owns or tenants the land for or on behalf of a partnership to which Part 2 of this schedule applies,
 - (c) the recorded person owns or tenants the land for or on behalf of the members of an unincorporated body of persons to which Part 4 of this schedule applies.
- (2) This Part does not apply where a person’s relationship to the trust is only that of—
 - (a) a paid professional advisor to the trust (such as a solicitor or an accountant),

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- (b) a creditor of the trust (such as the holder of a standard security), or
- (c) a member of the judiciary presiding over proceedings in connection with the trust,
- (d) a member of a body which has the right to exercise, or actually exercises significant influence or control over the trust by virtue of a function conferred by an enactment.

Interpretation of this Part

8.—(1) For the purposes of this Part—

- (a) “relevant entity” means any body corporate or other entity (whether incorporated or not) that is a legal person under the law by which it is governed, other than a person of a type listed in schedule 2,
- (b) examples of significant influence and control include, in particular, where a person—
 - (i) has the right to appoint or remove a trustee of a trust (other than by application to a court),
 - (ii) has the right to direct the distribution of assets or funds of a trust,
 - (iii) has the right to direct investment decisions of a trust,
 - (iv) has the right to amend a trust deed,
 - (v) has the right to revoke a trust, or
 - (vi) otherwise has significant influence or control over the decision-making of a trustee or trust, particularly in respect of the trustee’s or trust’s dealings with the land.

(2) For the purposes of paragraph 6(b)(iii), a person (A) does not exercise significant influence and control over a recorded person or the trust if A is also a recorded person in accordance with paragraph 6(a).

PART 4

Unincorporated bodies

Application

9. This Part applies to a person (the associate) where—

- (a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, the members of an unincorporated body of persons, and
- (b) the associate—
 - (i) is responsible for the general control and management of the administration of the body, and
 - (ii) is not registered as owning or leasing the land.

Exceptions

10. This Part does not apply to a person where that person’s relationship to the body is only that of—

- (a) a paid professional advisor to the body (such as a solicitor or an accountant),
- (b) a creditor of the body (such as the holder of a standard security),
- (c) a member of the judiciary presiding over proceedings to remove a member of the body from any trust established to hold property on the body’s behalf.

Interpretation of Part 4

11. For the purposes of this Part a person is responsible for the general control and management of the administration of a body if they hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described).

PART 5

Overseas entities

Application

12. This Part applies to a person (the associate) where—

- (a) the person which owns or tenants the land (the recorded person) is an overseas entity, and
- (b) the associate—
 - (i) directly or indirectly holds more than 25% of the voting rights in the recorded person,
 - (ii) directly or indirectly holds the power to appoint or remove a majority of the board of directors of the recorded person (or if it doesn't have a board, the equivalent management body),
 - (iii) has the right to exercise, or actually exercises, significant influence or control over a partnership or unincorporated body which is not a legal entity or a trust, but in respect of which head (i) or (ii) would apply if the partnership, body or trust were an individual, or
 - (iv) otherwise has the right to exercise, or actually exercises, significant influence or control over the decision-making of the recorded person, particularly in respect of its dealings with the land.

Exceptions

13.—(1) This Part does not apply to a person where the person's relationship to the overseas entity is only that of—

- (a) a director of the entity (who is not an employee of the entity),
- (b) an employee (other than a director) acting in the course of the person's employment or as a nominee for the entity,
- (c) a paid professional advisor to the entity (such as a solicitor or an accountant),
- (d) a person acting under a third party commercial or financial agreement (such as a customer or a supplier),
- (e) a creditor of the entity (such as the holder of a standard security),
- (f) a person exercising a function under an enactment (such as a regulator, liquidator or receiver).

(2) For the purpose of sub-paragraph (1)(a), a person whose responsibilities differ materially or in significant respects from those generally expected of a director of an entity which is comparable to the recorded person is not to be considered a director.

(3) This Part does not apply to a person ("O") where—

- (a) O is an overseas entity which is part of a chain of overseas entities (such as is described in paragraph 22(1)(b)) that includes the recorded person, and

- (b) a person, other than an overseas entity, holds the right, or power in, the recorded person through O or the chain of overseas entities of which O forms part.
- (4) For the purposes of sub-paragraph (3), a person holds a right or power in the recorded person through O by virtue of holding a majority stake—
 - (a) in O, or
 - (b) in each overseas entity that is part of the chain of overseas entities that includes O.

Interpretation of Part 5

14. Paragraphs 15 to 25 set out the meaning of certain expressions and the rules for the interpretation of this Part.

15. Examples of significant influence and control include, in particular, where—

- (a) a person has absolute rights to take or veto decisions related to the running of the business of the overseas entity,
- (b) a person’s recommendations are always or almost always followed by shareholders who hold the majority of the voting rights in the overseas entity, or
- (c) a person is significantly involved in the management and direction of the overseas entity.

16. “Legal entity” means a body corporate, partnership or an unincorporated body that is a legal person under the law by which it is governed.

17. “Overseas entity” means a legal entity, other than a person listed in schedule 2, which is incorporated or constituted under, and governed by, a law other than the law of the United Kingdom.

18.—(1) For the purposes of paragraphs 19 and 23, “arrangement” includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
- (b) any convention, custom or practice of any kind.

(2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

19.—(1) If rights held by a person or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Part as holding the combined rights of both of them.

(2) A “joint arrangement” is an arrangement between the holders of rights that they will exercise all or substantially all the rights conferred by their respective rights jointly in a way that is pre-determined by the arrangement.

20.—(1) A reference to the voting rights in an overseas entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters.

(2) In relation to an overseas entity that does not have general meetings at which matters are decided by the exercise of voting rights—

- (a) a reference to exercising voting rights in the entity is to be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company incorporated under the Companies Acts,
- (b) a reference to exercising more than 25% of the voting rights in the entity is to be read as a reference to exercising the right under the constitution of the entity to block changes to the overall policy of the entity or to the terms of its constitution.

(3) In applying this Part, the voting rights in an overseas entity are to be reduced by any rights held by the entity itself.

21.—(1) A reference to a power to appoint or remove a majority of the board of directors of an overseas entity is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

(2) References to a board of directors, in the case of an overseas entity that does not have such a board, are to be read as references to the equivalent management board of that entity.

22.—(1) A person holds a right “indirectly” if the person has a majority stake in an overseas entity and that entity—

- (a) holds that right, or
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
 - (ii) the last of which holds that right.

(2) For these purposes, a person (“A”) has a “majority stake” in a legal entity (“B”) if—

- (a) A holds a majority of the voting rights in B,
- (b) A is a member of B and has the power to appoint or remove a majority of the board of directors of B,
- (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
- (d) A has the right to exercise, or actually exercises, control over B.

(3) In the application of this paragraph to the power to appoint or remove a majority of the board of directors, a legal entity is to be treated as having the right to appoint a director if—

- (a) a person’s appointment as a director follows necessarily from that person’s appointment as director of the legal entity, or
- (b) the directorship is held by the legal entity itself.

23.—(1) Where a person controls a right, the right is to be treated for the purposes of this Part as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

(2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person, in accordance with that person’s directions or instructions, or
- (b) with that person’s consent or concurrence.

24.—(1) Rights that are exercisable only in certain circumstances are to be taken into account only—

- (a) when the circumstances have arisen, and for so long as they are extant, or
- (b) when whether the circumstances arise or not are within the control of the person having the rights.

(2) But rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings are not to be taken into account even while the entity is in those proceedings.

(3) “Relevant insolvency proceedings” means—

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- (a) administration within the meaning of the Insolvency Act 1986⁽⁹⁾, or
 - (b) proceedings under the insolvency law of another country or territory during which an entity's assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but which are temporarily incapable of exercise are to continue to be taken into account.

25.—(1) An individual does not meet a condition mentioned in paragraph 12 in relation to an overseas entity by virtue only of being a foreign limited partner.

(2) An individual does not meet a condition mentioned in paragraph 12 in relation to an overseas entity by virtue only of directly or indirectly holding a right in, or in relation to a foreign limited partner which (in its capacity as such) would meet the condition if it were an individual.

(3) Sub-paragraphs (1) and (2) do not apply for the purposes of determining whether the requirement set out in the condition mentioned in paragraph 12(b)(iii) is met.

(4) In this paragraph “foreign limited partner” means an individual who—

- (a) participates in a foreign limited partnership as a limited liability participant, or
- (b) directly or indirectly, holds shares or a right in or in relation to a legal entity which participates in a foreign limited partnership as a limited liability participant.

(5) For the purposes of sub-paragraph (4)—

- (a) a “foreign limited partnership” is an arrangement which—
 - (i) is established under the law of a country or territory outwith the United Kingdom,
 - (ii) consists of at least one person who has unlimited liability for the debts and obligations of the arrangement, and
 - (iii) consists of at least one person who has no, or limited, liability for the debts and obligations of the arrangement so long as that person does not take part in the management of the arrangement's business,
- (b) a “limited liability participant” is a person who—
 - (i) has no, or limited, liability for the debts and obligations of the foreign limited partnership for so long as that person does not take part in the management of the foreign limited partnership's business, and
 - (ii) does not take part in the management of the foreign limited partnership's business.

SCHEDULE 2

Regulations 10(2), 11(2) and 26(1)

List of persons subject to other transparency regimes

Charitable incorporated associations

1.—(1) A charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011⁽¹⁰⁾ or within the meaning of the Charities Act (Northern Ireland) 2008⁽¹¹⁾.

⁽⁹⁾ 1986 c.45.

⁽¹⁰⁾ 2011 c.25.

⁽¹¹⁾ 2008 c.12.

(2) A Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005(12).

Companies and other bodies corporate

2.—(1) A company incorporated under the Companies Acts (as defined in section 2(1) of the Companies Act 2006(13)).

(2) A European public limited-liability company (Societas Europaea) within the meaning of Council Regulation (EC) No. 2157/2001(14) on the Statute for a European company (SE).

(3) A body corporate incorporated in, and having a principal place of business in, the United Kingdom, other than—

- (a) a body incorporated by, or registered under, a public general enactment,
- (b) a body not formed for the purposes of carrying on a business that has as an object the acquisition of gain by the body or its individual members,
- (c) a body for the time being exempted from section 1043 of the Companies Act 2006(15) by a direction of the Secretary of State under subsection (1)(c) of that section.

(4) A building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(16).

(5) A co-operative or community benefit society within the meaning of section 2 of the Co-operative and Community Benefit Societies Act 2014(17).

(6) A collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000(18) including, in particular—

- (a) an authorised unit trust scheme within the meaning of section 237(3) of that Act,
- (b) an authorised contractual scheme within the meaning of that section(19),
- (c) an authorised open-ended investment company within the meaning of that section.

(7) A credit union within the meaning of section 31 of the Credit Unions Act 1979(20).

(8) A friendly society within the meaning of section 116 of the Friendly Societies Act 1992(21).

(9) A legal entity (within the meaning of Part 5 of schedule 1)—

- (a) which is incorporated or constituted under, and governed by, a law other than the law of the United Kingdom, and
- (b) which has shares admitted to trading on—
 - (i) a regulated market which is situated in an EEA state, or
 - (ii) a market listed in schedule 1 of the Register of People with Significant Control Regulations 2016(22).

(10) For the purpose of sub-paragraph (9)—

(12) 2005 asp 10.

(13) 2006 c.46

(14) OJ L 294, 10.11.2001, p.1, as last amended by Council Regulation (EU) No 517/2013 (OJ L 158, 10.6.2013, p.1).

(15) 2006 c.46.

(16) 1986 c.53.

(17) 2014 c.14.

(18) 2000 c.8.

(19) The definition of “authorised contractual scheme” was inserted into section 237 by regulation 3(6)(c)(i) of Part 2 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388).

(20) 1979 c.34. The definition of “credit union” in section 31 was amended by paragraph 16(2)(b) of schedule 4 of the Co-operative and Community Benefit Societies Act 2014 (c.14). Other amendments were made to that section which are not relevant to these regulations.

(21) 1992 c.40.

(22) S.I. 2016/339.

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- (a) “regulated market” has the same meaning as that in [Directive 2014/65/EU\(23\)](#) of the European Parliament and of the Council on markets in financial instruments and amending [Directive 2002/92/EC](#) and [Directive 2001/61/EU\(24\)](#) (see Article 4.1.21), and
- (b) “EEA state” has the meaning given by schedule 1 of the Interpretation Act 1978(25).

Public authorities

3. A public authority to which the Freedom of Information (Scotland) Act 2002(26) or the Freedom of Information Act 2000(27) applies.

Partnerships other than general partnerships

4.—(1) An eligible Scottish partnership within the meaning of regulation 3(2) of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017(28).

(2) A limited liability partnership registered under the Limited Liability Partnerships Act 2000(29).

SCHEDULE 3

Regulation 16(4)

Evidence to support security declarations

Orders and interdicts

1.—(1) Evidence to support a security declaration by an associate of a recorded person meets the requirements of this paragraph if—

- (a) the evidence is an order, interdict, injunction or measure of a kind referred to in subparagraph (2), or a copy of such an order, interdict, injunction or measure,
 - (b) the order, interdict, injunction or measure is made for the protection, or otherwise for the benefit, of the associate or an individual connected with the associate, and
 - (c) the order, interdict, injunction or measure is in force.
- (2) The orders, interdicts, injunctions or measures referred to are—
- (a) a non-harassment order, interdict or interim interdict made under section 8 or 8A of the Protection from Harassment Act 1997(30),
 - (b) a non-harassment order made under section 234A(2) of the Criminal Procedure (Scotland) Act 1995(31),
 - (c) a matrimonial interdict within the meaning of section 14 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(32),

(23) OJ L 173, 12.6.2014, p.349, as last amended by Directive (EU) 2016/1034 (OJ L 175, 30.06.2016, p.8).

(24) See, in particular, Article 4.1.21.

(25) 1978 c.30. The definition of “EEA State” in schedule 1 was inserted by section 26(1) of the Legislative Reform Act 2006 (c.51).

(26) 2002 asp 13.

(27) 2000 c.36.

(28) S.I. 2017/694.

(29) 2000 c.12.

(30) 1997 c.40. Section 8 was amended by section 1(1) of the Domestic Abuse (Scotland) Act 2011 (asp 13) and section 16 and schedule 2 of the Damages (Scotland) Act 2011 (asp 7). Section 8A was inserted by section 1(2) of the Domestic Abuse (Scotland) Act 2011.

(31) 1995 c.46. Section 234A was inserted by section 11 of the Protection from Harassment Act 1997 (c.40).

(32) 1981 c.59. Section 14 was amended by section 10 and schedule 3 of the Family Law (Scotland) Act 2006 (asp 2) and by article 6 of the Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384).

- (d) a domestic interdict within the meaning of section 18A of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**(33)**,
- (e) a relevant interdict within the meaning of section 113 of the Civil Partnership Act 2004**(34)**,
- (f) an interdict that has been determined to be a domestic abuse interdict within the meaning of section 3 of the Domestic Abuse (Scotland) Act 2011**(35)**,
- (g) any interdict with an attached power of arrest made under section 1 of the Protection from Abuse (Scotland) Act 2001**(36)**,
- (h) a forced marriage protection order or interim forced marriage protection order made under any of the following provisions—
 - (i) Part 4A of the Family Law Act 1996**(37)**,
 - (ii) section 2 and paragraph 1 of schedule 1 of the Forced Marriage (Civil Protection) Act 2007**(38)**,
 - (iii) section 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011**(39)**, or
 - (iv) section 5 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011,
- (i) an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under section 3 of the Protection from Harassment Act 1997**(40)**,
- (j) an injunction granted under section 3A(2) of the Protection from Harassment Act 1997**(41)**,
- (k) a restraining order made under section 5(1) of the Protection from Harassment Act 1997**(42)**,
- (l) a restraining order on acquittal made under section 5A(1) of the Protection from Harassment Act 1997**(43)**,
- (m) a non-molestation order made under section 42(2) of the Family Law Act 1996**(44)**,
- (n) an injunction for the purpose of restraining a person from pursuing any conduct which amounts to harassment granted in proceedings under article 5 of the Protection from Harassment (Northern Ireland) Order 1997**(45)**,
- (o) a restraining order made under article 7 of the Protection from Harassment (Northern Ireland) Order 1997**(46)**,

(33) Section 18A was inserted by section 31(3) of the Family Law (Scotland) Act 2006.

(34) [2004 c.33](#). Section 113 was amended by sections 33 and 45(2) and paragraph 8 of schedule 1 and schedule 3 of the Family Law (Scotland) Act 2006 and by article 10 of the Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384).

(35) [2011 asp 13](#).

(36) [2001 asp 14](#). Section 1 was amended by sections 32 and 45(2) and schedule 3 of the Family Law (Scotland) Act 2006 ([asp 2](#)).

(37) [1996 c.27](#). Part 4A was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 ([c.20](#)).

(38) [2007 c.20](#).

(39) [2011 asp 15](#).

(40) [1997 c.40](#). Section 3(1) was amended by section 125(4) of the Serious Organised Crime and Police Act 2005 ([c.15](#)).

(41) Section 3A was inserted by section 125(5) of the Serious Organised Crime and Police Act 2005 ([c.15](#)).

(42) Section 5 was amended by section 125(6) of the Serious Organised Crime and Police Act 2005 ([c.15](#)), and section 12(1) to (4), paragraph 43 of schedule 10 and paragraph 1 of schedule 11 of the Domestic Violence, Crime and Victims Act 2004 ([c.28](#)).

(43) Section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 ([c.28](#)).

(44) [1996 c.27](#).

(45) [S.I. 1997/1180 \(N.I.9\)](#).

(46) Article 7 was amended by sections 13 and 58 and paragraph 47 of schedule 10 and paragraph 1 of schedule 11 of the Domestic Violence, Crime and Victims Act 2004 ([c.28](#)).

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021* ISBN 978-0-11-104814-6

- (p) a restraining order on acquittal made under article 7A(1) of the Protection from Harassment (Northern Ireland) Order 1997(47),
- (q) a non-molestation order made under article 20(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(48),
- (r) a domestic violence protection order made under section 28 of the Crime and Security Act 2010(49) or section 97 and paragraph 5 of schedule 7 of the Justice Act (Northern Ireland) 2015(50),
- (s) a female genital mutilation protection order made under section 5A and paragraphs 1 or 18 of schedule 2 of the Female Genital Mutilation Act 2003(51),
- (t) any relevant protection measure ordered in another EU member state and entitled to be recognised in Scotland under Regulation (EU) 606/2013 of the European Parliament and of the Council on mutual recognition of protection measures in civil matters(52).

Attestations

2.—(1) Evidence to support a security declaration by an associate meets the requirements in this regulation if the evidence is an attestation that certifies that the inclusion of one or more required details of the associate in the RCI would put the associate, or an individual connected with the associate, at risk of violence, abuse, threat of violence or abuse, or intimidation.

(2) The attestation must—

- (a) state the date on which the attestation is made,
- (b) state the period for which it has effect (being a period of not less than 1 year, and not more than 5 years, beginning with the day on which the attestation is made), and
- (c) be signed by a person referred to in sub-paragraph (3).

(3) For the purposes of sub-paragraph (2)(c), the persons are—

- (a) a police officer holding the rank of inspector or above in—
 - (i) the Police Service of Scotland,
 - (ii) any police force in England and Wales,
 - (iii) the Police Service of Northern Ireland,
- (b) the Director General of the Security Service,
- (c) the Director General of the National Crime Agency,
- (d) any chief social work officer in Scotland within the meaning of section 3 of the Social Work (Scotland) Act 1968(53),
- (e) any director of adult social services in England within the meaning of section 6(A1) of the Local Authority Social Services Act 1970(54),
- (f) any director of children’s services in England within the meaning of section 18 of the Children Act 2004(55),

(47) Article 7A was inserted by section 13(5) of the Domestic Violence, Crime and Victims Act 2004.

(48) S.I. 1998/1071 (N.I.6).

(49) 2010 c.17.

(50) 2015 c.9. Section 97 and paragraph 5 of schedule 7 are not yet in force.

(51) 2003 c.31. Section 5A and schedule 2 were inserted by section 73(1) and (2) of the Serious Crime Act 2015 (c.9).

(52) OJ L 181, 29.6.2013, p.4.

(53) 1968 c.49. Section 3 was substituted by section 45 of the Local Government etc. (Scotland) Act 1994 (c.39).

(54) 1970 c.42. Subsection A1 was inserted by paragraph 2(2)(a) of schedule 2 of the Children Act 2004 (c.31).

(55) 2004 c.31. Section 18 was amended by paragraph 55 of schedule 2 of the Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order (S.I. 2010/1158).

- (g) any director of social services in Wales within the meaning of section 6(A1) of the Local Authority Social Services Act 1970,
- (h) any director of social services of a Health and Social Services Board established under article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁵⁶⁾,
- (i) any executive director of social work of a Health and Social Services trust established under article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁵⁷⁾,
- (j) any registered medical practitioner,
- (k) any registered nurse or midwife,
- (l) any person who manages a refuge.

(4) For the purposes of sub-paragraph (3)(l), “refuge” means accommodation together with a planned programme of therapeutic and practical support for victims of, or those at risk of, domestic abuse or violence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 39 of the Land Reform (Scotland) Act 2016 and create a Register of Persons holding a controlled interest in land, which register is referred to in these Regulations as “the RCI”.

Part 1 of the Regulations contains general provision, including interpretation of the terms used in the Regulations.

Part 2 creates the RCI, and makes provision about the making of entries in the RCI, amendment of entries in the RCI and the protection of, and access to the RCI.

Part 3 sets out duties to provide information. There is a duty on the person who owns or tenants land (the recorded person) to provide information about the persons who exercise significant influence or control over them (the associate). The recorded person must provide information about any changes in the information on the RCI and must notify any associates of the intention to include information about them on the register.

Associates are under a duty to notify the recorded person of their association. They are also under a duty to provide information to the recorded person on request.

Under regulation 16, it is possible for an associate to make a security declaration, which is a declaration that the inclusion of their details on the RCI would put the associate or an individual connected to the associate at risk of violence, abuse, threat of violence or abuse, or intimidation.

Regulation 18 makes provision for the appeal against a decision of the Keeper in respect of a security declaration.

Part 4 makes various miscellaneous provisions.

⁽⁵⁶⁾ S.I. 1972/1265 (N.I.14).

⁽⁵⁷⁾ S.I. 1991/191 (N.I. 1). Article 10 was amended by section 32 and paragraph 1 of schedule 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1).

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 ISBN 978-0-11-104814-6

Schedule 1 sets out the definitions of persons who have significant influence and control over another.

Part 1 of Schedule 1 relates to contractual or other arrangements with an individual.

Part 2 of Schedule 1 relates to partnerships.

Part 3 of Schedule relates to trusts.

Part 4 of Schedule 1 relates to unincorporated bodies.

Part 5 of Schedule 1 relates to overseas entities.

Schedule 2 sets out the lists of persons who are subject to other transparency regimes. Persons listed in schedule 2 are not required to provide information under regulation 10 of these Regulations.

Schedule 3 sets out the list of evidence that may be provided in order to support a security declaration made under regulation 16(1).

The following assessments were prepared in relation to these Regulations—

- A Business and Regulatory Impact Assessment
- A Data Privacy Impact Assessment
- An Equalities Impact Assessment

A full Strategic Environmental Assessment or Children’s Rights and Wellbeing Impact Assessment were not considered to be necessary in relation to these Regulations.