

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Information about Control of Land Etc.

Information about persons with controlling interests in relation to land

Section 39 - Information about persons with controlling interests in owners and tenants of land

115. Subsection (1) puts a duty on the Scottish Ministers to make regulations which make provision for the matters set out in paragraphs (a) and (b). Paragraph (a) provides that the regulations must make provision requiring information to be provided about persons who have controlling interests in owners and tenants of land and paragraph (b) provides that the regulations must make provision about the publication of that information in a public register kept by the Keeper of the Registers of Scotland.
116. Subsection (2) sets out matters that the regulations made under subsection (1) may include. This list is not exhaustive.
117. Subsection (2)(a) provides that the regulations may set out which owners and tenants of land the regulations will apply to.
118. Subsection (2)(b) provides that the regulations may define what constitutes a controlling interest in an owner or tenant of land. For example, a controlling interest in an owner or tenant of land could be defined as a specified level of shareholding in a company that owns or leases land, where that shareholding would give an individual a control over the landowner or tenant.
119. Subsection (2)(c) provides that the regulations may set out which persons are to be treated as having a controlling interest in an owner or tenant. Subsection (2)(d) provides that the regulations may provide what information must be disclosed under the regulations and the manner in which it is to be disclosed. For example, the regulations may provide the information must be provided on a specified form and the information which must be disclosed is the name and contact details of an individual that has a controlling interest in an owner or tenant of land.
120. Subsection (2)(e) provides that the regulations may set out circumstances in which the information about persons with a controlling interest must be provided. For example, information may have to be disclosed within a certain time of a person acquiring a controlling interest in an owner or tenant of land.
121. Subsection (2)(f) provides that the regulations can make provision for the publication of the information that is required. As well as publication in a register this could be publication by other means. The regulations may also set out the form the register, how the register is made up, how the information will be held and the entry of the information in it. For example this section could provide that the register will be electronic and it will be made available on the internet.

*These notes relate to the Land Reform (Scotland) Act 2016
(asp 18) which received Royal Assent on 22 April 2016*

122. Subsection (2)(g) provides that the regulations may set out the circumstances when the information entered in the register may be corrected or updated. For example, the regulations could provide that if there is an inaccuracy in the register the information may be corrected by the Keeper.
123. Subsection (2)(h) provides that the regulations can set out circumstances where a person that has a controlling interest in an owner or tenant of land can make a request that the information is not published. In particular it provides that the regulations may provide that such circumstances include where the person with a controlling interest may be at serious risk of violence or abuse, threat of violence or abuse, or intimidation.
124. Subsection (2)(i) provides that the regulations may set out the effect of providing, or failing to provide, the information required under the regulations.
125. Subsection (2)(j) provides that the regulations may set out sanctions that could be applied for failure to comply with a requirement imposed under the regulations. For example, the regulations could provide that a failure to provide information about a person with a controlling interest in a landowner or tenant, where the information was required, is a criminal offence and the penalty for this could be a fine.
126. Subsection (2)(k) provides that the regulations may make provision for the delegation of functions under the regulations.
127. Subsection (2)(l) provides that the regulations may make provision for the fees that may be payable for providing the information, for publication or accessing the information. There is no requirement for the regulations to make provision about fees.
128. Subsection (2)(m) provides that the regulations may set out when a person may appeal against a decision made under the regulations. For example, where a person has made a request for information not to be published and this request has been refused, the regulations may provide a right of appeal against that decision and set out who will hear the appeal.
129. Subsection (3) provides that the regulations under subsection (1) may provide that a failure to comply with a requirement imposed under the regulations may be a criminal offence or may result in the imposition of a civil penalty, including a fixed penalty. For example, the regulations could provide that a person may be liable for a civil penalty or commit an offence if that person fails, without good reason, to provide information about a person with a controlling interest where the regulations provide for this.
130. Subsection (4) provides that if the regulations made under subsection (1) make a provision imposing a criminal offence then the regulations must provide that the offence is triable summarily only and the maximum penalty that can be imposed is a fine, that must not exceed level 5 on the standard scale.
131. Subsection (5) provides that where regulations made under subsection (1) make provision for the imposition of civil penalties or an offence they must also include provision about appeals against a decision to impose those penalties.
132. Subsection (6) provides that regulations made under subsection (1) may modify any enactment (including this Act).
133. Subsection (7) places a duty on the Scottish Ministers to consult before laying draft regulations before the Scottish Parliament. This consultation must include the Keeper of the Registers of Scotland.
134. Subsection (8) provides that the duty to consult set in subsection (7) does not apply for the first regulations made under subsection (1). A separate procedure applies to the first regulations made under subsection (1). The affirmative procedure will apply to regulations under subsection (1) (but see sections 40 to 42 regarding the first regulations under section 39).