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

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.

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).

Section 40 - Procedure for first regulations under section 39

135. Section 40 provides that the Scottish Ministers may not lay before the Scottish Parliament a draft of the first regulations that must be made under section 39(1) unless they have consulted in accordance with the provisions set out in section 41 and following the consultation they have laid before the Scottish Parliament a copy of proposed draft regulations and a copy of the explanatory document that has been prepared in accordance with section 42.

Section 41 - Procedure for first regulations under section 39: consultation

136. Subsection (1) provides that before laying a draft of the first regulations under section 39(1) before the Scottish Parliament the Scottish Ministers must consult the Keeper of the Registers of Scotland and such other persons as they consider appropriate.

137. The Scottish Ministers must lay before the Scottish Parliament a copy of the proposed draft regulations and a copy of the proposed explanatory document that is required under the terms of section 40(b)(ii) (subsection (2)(a)) and send a copy of the proposed draft regulations and the proposed explanatory document to any person that is consulted under subsection (1) (subsection (2)(b)).

138. The Scottish Ministers must have regard to any representations made to them about the proposed draft regulations and proposed explanatory document if these representations are made within the period of 60 days from the date the proposed draft regulations are laid in the Scottish Parliament under subsection (2)(a) (subsection (2)(c)). When calculating the 60 day period provided for in subsection (2)(c) no account is to be taken of any time that the Parliament is dissolved or is in recess for more than 4 days (subsection (3)).

Section 42 - Procedure for first regulations under section 39; explanatory document

139. Subsection (1)(a) provides that the explanatory document referred to in section 40(b)(ii) must set out reasons for the provisions contained in the proposed draft regulations. Subsection (1)(b) provides that the explanatory document must include the details of any consultation undertaken under section 41, the details of any representations received by the Scottish Ministers as a result of the consultation and the details of any changes that may have been made to the proposed draft regulations as a result of the representation received by the Scottish Ministers during the consultation period.

140. Subsection (2) provides that where a person making a representation to the Scottish Ministers in response to the consultation under section 41 has not consented to the disclosure of their representation, the Scottish Ministers cannot disclose the representation in the explanatory document.

141. Subsection (3) provides that where a representation made by a person in response to the consultation includes information that relates to another person, the Scottish Ministers must not disclose that information in the explanatory document if, or to the extent that, it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person and the Scottish Ministers have not been able to obtain the consent of that other person.

142. Subsection (4) provides that if a committee of the Scottish Parliament charged with reporting on the proposed draft regulations requests copies of the representations that have been made to the Scottish Ministers, disclosure of the representations will not be subject to the provisions in subsections (2) and (3).

Information relating to proprietors of land etc.

Section 43 – Power of Keeper to request or require information relating to proprietors of land etc.

143. This section amends the Land Registration etc. (Scotland) Act 2012 to insert new sections 48A and 48B.

144. Inserted section 48A(1) provides a power for the Scottish Ministers to make regulations allowing the Keeper to request or require information relating to the category of person or body into which a relevant person falls. A relevant person is a person mentioned in inserted section 48A(2) falls.

145. Inserted section 48A(2) provides that the relevant persons are (a) the owners of plots of land, (b) proprietors of registered plots of land and registered leases and (c) tenants of leases which are registered or registrable.

146. Inserted section 48A(3) sets out matters that regulations made under section 48A(1) may include. This is not an exhaustive list.

147. Inserted section 48A(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (1). For example, the regulations may set out the persons about whom information may be requested or required will be proprietors of registered plots or tenants of registered leases.

148. Inserted section 48A(3)(b) provides that regulations may make provision about the information relating to the category of person or body into which the relevant person falls. For example, provision may be made for the Keeper to require information from proprietors which states whether they are a community body or charity (or equivalent).Inserted section 48A(3)(c) provides that regulations may make provision about the form in which information is to be provided to the Keeper. For example, regulations may provide that the information be provided as part of an application form to register a deed in the Land Register. In addition this subsection provides that the information may be provided by the proprietor or on behalf of a proprietor, for example by their legal representative.

149. Inserted section 48A(3)(d) provides that regulations may specify the circumstances where information may be requested by the Keeper. Where information is requested from a person there will be no obligation on that person to provide this information, and no sanction for not providing the information.

150. Inserted section 48A(3)(e) provides that regulations may specify circumstances where the Keeper may require information to be provided, and circumstances where information is not required. Where information is required there may be a sanction for failure to provide the information.

151. Inserted section 48A(3)(f) provides that the regulations may specify if providing information under the regulations will have any effect or will not have any effect.

152. Inserted section 48A(3)(g) provides that the regulations may set out how the information provided under the regulations, whether requested or required, will be entered on the Land Register.

153. Inserted section 48A(3)(h) provides that regulations may provide if the information obtained under the regulations will, or will not, be subject to the Keeper's warranty under Part 7 of the Land Registration etc. (Scotland) Act 2012.

154. Inserted section 48A(3)(i) provides that regulations may set out when information that has been disclosed under regulations made under section 48A(1) can be corrected or updated. For example, where a proprietor provides information that it is a community

body and then it ceases to be so, the regulations may set out how the proprietor can notify the Keeper of this change.

155. Inserted section 48A(3)(j) provides that regulations may set out when the Keeper could provide information obtained under regulations made under section 48(1) to other persons.

156. Inserted section 48A(3)(k) provides that regulations may set out when the information obtained under the regulations made under subsection (1) can be published.

157. Inserted section 48A(3)(l) provides that regulations may set out the fees to be payable to the Keeper for providing, correcting or updating the information that is requested or required under the regulations.

158. Inserted section 48A(4) provides that regulations may include provision for an offence for a failure to comply with the requirements imposed by the regulations. This only applies where the regulations require the provision of information.

159. Inserted section 48A(5) provides that where the regulations provide for an offence for failure to comply with the requirements of the regulations, the regulations must provide that the offence is triable summarily only and the maximum penalty that can be imposed is a fine that can be no more than level 3 on the standard scale.

160. Inserted section 48A(6) provides that, before regulations are laid in draft before the Scottish Parliament, the Scottish Ministers must consult the Keeper.

161. The inserted section 48B(1) provides a power for the Scottish Ministers to make regulations enabling the Keeper to enter information relating to the category of person or body into which a relevant person falls in the Land Register. Regulations made under this section would allow the Keeper to enter certain information in the Land Register on their own initiative without requesting or requiring the information from a relevant person.

162. The inserted section 48B(2) provides that the persons referred to in subsection (1) as "relevant persons" are (a) the owners of plots of land, (b) proprietors of registered plots of land and registered leases and (c) tenants of leases which are registered or registrable.

163. The inserted section 48B(3) sets out matters regulations made under section 48B(1) may include. This is not an exhaustive list.

164. The inserted section 48B(3)(a) provides that regulations may make provision about the persons who are owners, proprietors and tenants for the purposes of subsection (2). For example, the regulations may set out the proprietors of registered plots and tenants of registered leases are persons about whom the Keeper can enter certain information on the Land Register on her own initiative.

165. The inserted section 48B(3)(b) provides that regulations may set out details about notifications by the Keeper about the intention to enter in the Land Register information about the category of person. For example, regulations may provide for the notification to be sent to an owner of land about the Keeper's intention to enter information about the category of person on body that the proprietor falls into in a particular title sheet.

166. Inserted section 48B(3)(c) provides that regulations can set out the circumstances when the Keeper may enter information in the Land Register. For example, the regulations could set out that if the category of person or body that an owner of land falls into is clear the Keeper may update the Land Register to include information about the category of the owner of land.

167. Inserted section 48B(3)(d) provides that regulations may specify the information that may be entered in the Land Register and the form in which it is to be entered. This provides that the regulations can specify the categories of person or body that can be entered in the Land Register. For example, the categories may include Scottish

local authority, companies or community bodies. The regulations may specify how this information is to be entered in the Land Register, for example it may be entered as a note in the proprietorship section of the title sheet.

168. Inserted section 48B(3)(e) provides that the regulations may specify if the Keeper entering information in the Land Register, as permitted by the regulations under this section, will have any effect.

169. Inserted section 48B(3)(f) provides that the regulations may set out whether the warranty under Part 7 of the Land Registration etc. (Scotland) 2012 will, or will not, apply, to information about the category of person or body that has been entered in the Land Register by the Keeper.

170. Inserted section 48B(3)(g) provides that the regulations may set out how the information entered on the Land Register may be corrected or updated. For example, the regulations may provide that if the Keeper is satisfied that the information is inaccurate it should be corrected. The regulations may also provide that the person who the information relates to could apply to have the information the Keeper has entered in the register updated where the information has changed, for example where an owner of land has ceased to have charitable status they may wish the Land Register to be updated to reflect the change in category, if this is a category that is specified in the regulations.

171. Inserted section 48B(3)(h) provides that regulations may set out that the Keeper may provide information that she has entered on the Land Register under these regulations to another person in certain circumstances. For example the information about the category of owners and tenants of land may be useful to the Scottish Government to assist in monitoring the Scottish Government's stated policy aim of increasing the amount of land in community ownership to 1 million acres by 2020, the regulations may provide that the Keeper could provide information that she has entered on the Land Register under the regulations about the land owned by a community body to the Scottish Government.

172. Inserted section 48B(3)(i) provides that regulations may set out how the information entered under the regulations is published. That could include publication by entering the information in the Land Register or publication by other means, such as a report on land mass coverage.

173. Inserted section 48B(3)(j) provides that the regulations may set out fees for correcting or updating the information entered on the Land Register by the Keeper under the regulations. There is no requirement for a fee to be charged for correcting of updating the information.

174. Inserted section 48B(4) provides that before the regulations are laid in draft before the Scottish Parliament the Scottish Ministers must consult the Keeper.

175. Subsection (3) amends section 116 of the Land Registration etc. (Scotland) Act 2012. This provides that the affirmative procedure will apply to regulations under the new sections 48A(1) and 48B(1)

176. Subsection (4) amends section 121 of the Land Registration etc. (Scotland) Act 2012 to provide that the Crown cannot be criminally liable for any breaches of the requirements imposed by regulations made under section 48A(1).