

SCHEDULE 1

Persons who have significant influence or control over another

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 23(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—

- (a) administration within the meaning of the Insolvency Act 1986(1), or

(1) 1986 c.45.

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 978-0-11-104875-7

- (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.