

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

Explanatory Document prepared in accordance with section 41(2)(a)(ii) of the Land Reform (Scotland) Act 2016

Introduction

1. This document has been prepared under sections 40 to 42 of the Land Reform (Scotland) Act 2016 in respect of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 (“the Regulations”).
2. It has been prepared by the Scottish Government in order to assist the reader of the Regulations. It should be read in conjunction with the Regulations and where a regulation does not appear to require an explanation or comment, none is given.

Purpose of the Regulations

3. The overarching purpose of the Regulations is to increase public transparency in relation to individuals who have control over decision-making in relation to land. They are intended to ensure there can no longer be categories of land owner or tenant where, intentionally or otherwise, control of decision-making is obscured. In conjunction with other transparency regimes, this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land. We do not require double reporting for entities subject to other regimes as we do not want to duplicate existing publicly available information. The Regulations will also aid policy making by enabling a fuller picture of those individuals who have control over decisions about land in Scotland.
4. A consultation on the policy proposals for a new register was carried out from September – December 2016. Responses and an analysis of the response were subsequently published online¹. A further consultation on the policy proposals for a new register was carried out from June – November 2018.

¹ Where consent has been given to publish responses they can be accessed here: <https://consult.gov.scot/land-reform-and-tenancy-unit/controlling-interests/>. An analysis of the responses can be accessed here: <https://beta.gov.scot/publications/improving-transparency-land-ownership-scotland-consultation-analysis/>.

Responses and an analysis of the responses were subsequently published online².

5. The consultation document explained at paragraph 18:

“The Scottish Government is keen to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. Improved information about who controls land owners and tenants in Scotland will therefore help empower people, including community groups, and give them the opportunity to understand who is in control of land owners and tenants. This transparency should also allow people to engage constructively with any person with a controlling interest who makes decisions in relation to land that might have an impact on sustainable development.”

6. The Register of Persons Holding a Controlled Interest in Land will require categories of entities who may own land in Scotland and where the controlling interests in the entities is not currently transparent, to make details of their controlling interests publicly available.

Contents

7. This Explanatory Document is divided into 2 Chapters.
8. Chapter 1 explains Parts 1-5 of the Regulations, which concern: the functioning of the Register, the duties on persons to provide information for entry onto the Register, the role of the Keeper as registrar, how information in the Register will be maintained, and the non-disclosure of information in the Register in exceptional circumstances. This Document sets out how these proposals will work and the policy rationale behind them.
9. Chapter 2 explains Schedules 1, 2 and 3 of the Regulations. These concern who is to be registered in relation to each category of owner or tenant and which categories of owner or tenant will be excluded from the draft regulations as proposed. It also sets out details of the evidence required to support a security declaration.

Summary of the Regulations

10. The Regulations require that a new Register be created – the Register of Persons Holding a Controlled Interest in Land. This is referred to throughout as ‘the Register’ (although in the Regulations themselves, it is referred to as the “RCI”).
11. The Register will contain information about the persons who can influence or control owners and tenants of land. As such, there will be an entry for each controlled person detailing who is in a position to influence or control them.

² Where consent has been given to publish responses, both the responses and the independent analysis can be accessed here:

<https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/>.

12. Duties will be placed on owners and tenants of land, and persons who can influence or control them, to provide information for inclusion in the Register. This information will enable members of the public to engage with the respective parties. It will be a criminal offence not to comply with the duties, punishable by a fine.
13. The Register will be created and held by the Keeper of the Registers of Scotland who will be under duties to enter the relevant information onto the Register, and to act on any notices provided to her if there are changes in the relevant information.
14. The Keeper will have the power to amend the Register should the information in it be inaccurate, and questions about the accuracy of information in the Register can be referred to the Lands Tribunal.
15. Individuals whose information is to be included in the Register as a person with influence or control over another may make a “security declaration”. This would be made on the basis that inclusion in the Register of one or more of the individual’s required details would put them, or another person connected to them, at risk of violence, abuse, threat of violence or abuse, or intimidation. While a security declaration is in force no information about that individual will be disclosed in the Register.
16. The Regulations apply to owners of land and tenants of registrable leases (that is, leases of over 20 years). The Regulations primarily seek to address two particular scenarios in which there is currently a lack of transparency as to the control or influence of the decision-making of an owner or tenant of land. Firstly, where the legal owner or tenant of the land is an opaque legal entity, such as an overseas company, or secondly, where they hold the title or lease in an arrangement which is not necessarily discernible from the Land Register itself, such as a trust arrangement.
17. Accordingly, the Regulations will result in the disclosure of information about persons who have influence or control over the person listed as the owner or tenant of the land by means of the existence of one of the following types of association:
 - a contractual or other arrangement with a person to give that person influence or control over significant decisions in relation to the land;
 - a partnership, including any Scottish partnership where at least one partner is an individual;
 - a trust;
 - an unincorporated association; or
 - an overseas legal entity.
18. Where information similar to that which is required for the Register is already reported and publicly available, the information is not duplicated in the Register. This prevents the same information being gathered, recorded and held in different places, and minimises the administrative burden on public services and those who are already under requirements to report this information elsewhere. Categories of entities who are an owner or a tenant of

land and who meet this condition are therefore not required to provide information for inclusion in the Register as an owner or tenant of land. They may, however, still be recorded as an associate of another owner or tenant of land.

CHAPTER 1

How the Register will work – Parts 1-5 of the Regulations

19. Parts 1-5 of the Regulations explain the functioning of the Register, the duties on persons to provide information for entry onto the Register, the role of the Keeper as registrar, how information in the Register will be maintained, and the non-disclosure of information in the Register in exceptional circumstances.

Part 1 – Introduction

20. Regulation 1 sets out that the Regulations will come into force on 1 April 2022. This will enable the Register to be operational from 1 April 2022.
21. Regulation 2 explains the meanings of terms used in the Regulations.

Part 2 – Register of persons holding a controlled interest in land

22. This Part sets out what information the Register is to contain, how and when entries should be amended or removed, and how people can search the Register for information.

The establishment and contents of the Register

23. Regulation 3 (Register of persons holding a controlled interest in land) provides that the Keeper must establish and maintain a Register known as the Register of Persons holding a Controlled Interest in Land (“the Register”). This regulation also sets out the information that the Register is to contain. Regulation 3(2) sets out that the Register will be a record of persons who own or are tenants of land and, in relation to that land, are associated with a person to whom Schedule 1 applies. Persons to whom Schedule 1 applies are referred to as ‘associates’. Owners or tenants who have associates (with the result that there is an entry in the Register in relation to them) are referred to as ‘recorded persons’.
24. Regulation 3(3) sets out that an entry in the Register is to contain:
 - The name and address of a recorded person;
 - The title number of the land or, where the land is not in the Land Register, a description of the land sufficient to allow it to be identified;
 - Details of the capacity in which the recorded person owns or leases the land. (This would include, for example, where an individual owns the land in their capacity as a trustee);
 - The required details in relation to each associate (these details are set out at regulation 10) or, where a security declaration has been made, a statement of that instead; and
 - The date of any notice given to the Keeper in respect of the entry.

25. Paragraph (4) of regulation 3 sets out that the Register will be in a form considered appropriate by the Keeper, which may be electronic. This gives the Keeper latitude as to the form of the Register and ensures that an electronic system, like the existing Land Register, can be used.
26. In practice, regulation 3 therefore requires that each entry in the Register will be specific to a piece of land in respect of which there is some sort of controlling interest over the owner or tenant of that land. An entry will have an identifier relating to the land by which it can be searched. This identifier may be the Land Register title number (where there is one) or alternatively an address or other description of the land sufficient for it to be identified. It is also possible that the Keeper may elect to give a unique identifier in respect of each entry.
27. Entries in the Register will be in relation to land owned (i.e. where title to land is held) or a lease which can be registered in the Land Register (i.e. a lease of 20 years or more).
28. An entry will contain information about the owner or tenant of the piece of land (referred to as the 'recorded person') as well as information about the persons who are associated with the 'recorded person'. 'Associate' is the term used in the Regulations for the persons who hold a controlling interest in relation to a recorded person. The definition of an 'associate' is contained in regulation 3 and whether a particular person is an associate is determined by reference to the categories of persons described in Schedule 1 of the Regulations.

Making of Entries in the RCI

29. Regulation 4(1) requires the Keeper to make an entry in the register in accordance with regulation 3, following receipt of information provided under regulation 10(3) by a person to whom that regulation applies.
30. Regulation 4(2) requires the Keeper to make an entry no sooner than 30 days after receipt of the information in regulation 4(1). This will allow a standstill period for associates to be able to apply for a security declaration and for the Keeper to make a decision prior to any information appearing on the register.

Amendment of the Register

31. Regulation 5 requires the Keeper to amend the Register in certain circumstances. This is to ensure that the information in the Register be kept as accurate as possible.
32. Regulation 5(1) sets out that the Keeper must remove an entry from the Register if the previously recorded person is no longer the owner or tenant of the land, or if the recorded person no longer has any associates.
33. Regulation 5(2)(a) and (b) sets out that the Keeper must amend entries in the Register as they consider necessary if they receive: a notice under regulation

12 (relating to the updating of information in the Register), a security declaration, a notice under regulation 16 (relating to revocation of a security declaration), a notice under regulation 23 (relating to the death of an individual or winding up of a legal entity), or a security declaration ceases to have effect under regulation 17.

34. Regulation 5(2)(c) requires the Keeper to make such amendments to the Register as they considers appropriate if they “become aware of an inaccuracy” in the Register.
35. This is intended to enable the Keeper to amend the Register where there are clear errors in the material provided. This may be particularly helpful where a clear error has been made such as a foreign limited partner being registered as an associate when they cannot be so under paragraph 26 of Schedule 1 of the Regulations.
36. Regulation 5 does not prescribe how the Keeper may become aware of an inaccuracy but this could be as a result of being notified of an inaccuracy by a third party. The Keeper may correspond with persons to help her reach a conclusion. It is not, however, envisaged that the Keeper would investigate suggestions that there was or might be an inaccuracy in the register if the information provided to her did not disclose one.
37. It is recognised that there will be situations in which the Keeper is unable to conclude whether the Register is accurate or not on the basis of the information available to her, and there is therefore the need for other means of resolution.
38. Regulation 5(2)(c) does not give the Keeper power, or place a duty on her, to amend the Register to create an entry. There may be cases where there is not an entry in the Register in respect of a piece of land where it is believed that there should be one. Regulation 5(4) provides that the Keeper may request information that is relevant to any potential inaccuracy. It is not, however, intended that it should be the Keeper’s role or duty in such cases to investigate or to create a new entry in the Register.
39. Where the Keeper is unable to reach a conclusion on the basis of the evidence presented to them, or where a question relates to whether an entry in the Register should be created, the Keeper or a third party can refer a question about the accuracy of, or lack of entry in, the Register to the Lands Tribunal. The Lands Tribunal has investigatory powers which enable them to consider complex cases, and to hold hearings into them, making them an appropriate body to determine issues that arise in relation to this part of the Regulations.
40. The process for referring a question to the Lands Tribunal is set out at Regulation 19.

Timing of making an entry or amendment

41. Regulation 6 requires the Keeper to amend an entry in the Register as soon as is practicable. These provisions are designed to ensure that the Register is as accurate as possible. In particular it means that when third parties alert the Keeper to any perceived inaccuracies in entries to the Register (section 5(2)(c)), they are under a duty to amend as they consider appropriate.
42. Regulation 7(1) requires the Keeper to allocate a unique reference number for each associate whose information is entered onto the Register. Regulation 7(2) provides that the unique reference number must appear in each entry in respect of that associate. For example, where one individual has been entered onto the register as being an associate of two different recorded persons, the same unique reference number would appear in each entry.

Protection of the Register

43. Regulation 8 provides for the Keeper to be responsible for ensuring the security of the Register and protecting it from interference, unauthorised access or damage.

Access to the Register

44. Regulation 9 sets out how people can access the Register and are able to search for information using certain criteria, namely, name and address of owner or tenant, title number of land or details of the associate, including the unique reference number.
45. This regulation sets out the means for persons to have access to the Register and the information it contains. It is intended that searching the Register is as easy as possible, and that only one of the criteria needs to be known to enable someone to search the register to find details of controlling interests in the owner or tenant of the land.

Part 3 – Duties to provide information

46. This Part of the Regulations sets out the duties on persons to provide information for publication in the Register, the information that they are required to provide and the offences that are committed in the case of non-compliance.

Duty to notify of controlled interest and associates

47. Regulation 10 sets out the duties which apply to persons who (a) own or tenant land and, (b) in relation to that land, are associated with a person to whom a Part of Schedule 1 applies.
48. Regulation 10(3) sets out that such a person must provide the Keeper with a title number or description of land sufficient for it to be identified, and the required details of the associate or a copy of a security declaration.

49. Regulation 10(4) sets out that where a person has more than one association to a recorded person in relation to the same piece of land, for example as a trustee and as holding an office or position in an unincorporated body, that they only need to provide their details once. This will remove unnecessary duplication and potential confusion.
50. Regulation 10(5) sets out that the person is required to take reasonable steps to verify the accuracy of the associate's required details with the associate, and to inform the associate about their duties and rights under the Regulations. These are:
 - the timescales for responding;
 - the offences for failure to comply;
 - the right to make a security declaration; and
 - the duty to inform the recorded person about any changes to their details.
51. Regulation 10(7) requires the person to provide the information to the Keeper within 60 days of the associate becoming an associate.
52. Regulation 10(8) provides that it is a criminal offence to fail to do this, unless the person has a reasonable excuse for not doing so.
53. Regulation 10(9) sets out that a person has a reasonable excuse if they have taken reasonable steps to establish whether they have associates or to verify details of the associate but have been unable to do so. They must also have given notice to that effect to the Keeper.
54. The references to 'persons' in Regulation 10 refer to the person who owns or tenants the land. This label applies until the information required by Regulation 10 is notified to the Keeper. Thereafter the owner or tenant is referred to as the 'recorded person', for example in Regulation 10 and elsewhere. These terms differentiate between the point before and the point after the required details have been notified to and are recorded by the Keeper in the Register.
55. A person will not become a recorded person if they consider under Regulation 10 whether they have an associate, and conclude that they do not in fact have one. In that case they would not notify information to the Keeper and would not become a recorded person.

Required details of an associate

56. Regulation 11 sets out that the 'required details' of an associate that must be provided by the owner or tenant (under regulation 10) must include the date when the association with the person who owns or tenants land began or a statement that such a date is not known.
57. Where the associate is an individual, the required information also includes:
 - Their name;
 - A contact address;

- Their date of birth (this will not be publicly available); and
 - If applicable, the unique reference number previously allocated by the Keeper in terms of regulation 7.
58. Where the associate is a non-natural person,(i.e. an organisation or entity) other than a person of a type listed in schedule 2, the required details also include:
- Its name;
 - Its registered number (if applicable);
 - The address of its registered office or its contact details; and
 - If applicable, the unique reference number previously allocated by the Keeper in terms of regulation 7.
59. Where the associate is a person of a type listed in schedule 2, the required details are:
- Its name;
 - Its registered number (if applicable);
 - The address of its registered office or its contact details;
 - The paragraph of schedule 2 that applies to it; and
 - If applicable, the unique reference number previously allocated by the Keeper in terms of regulation 7.
60. The intention of this regulation is that information suitable for the associate to be identified and engaged with is available in the Register. Where the person is subject to another transparency regime, their required details ensure that there is sufficient information to enable those registers to be searched to disclose the ownership and control structures for those persons.

Information about events affecting the Register

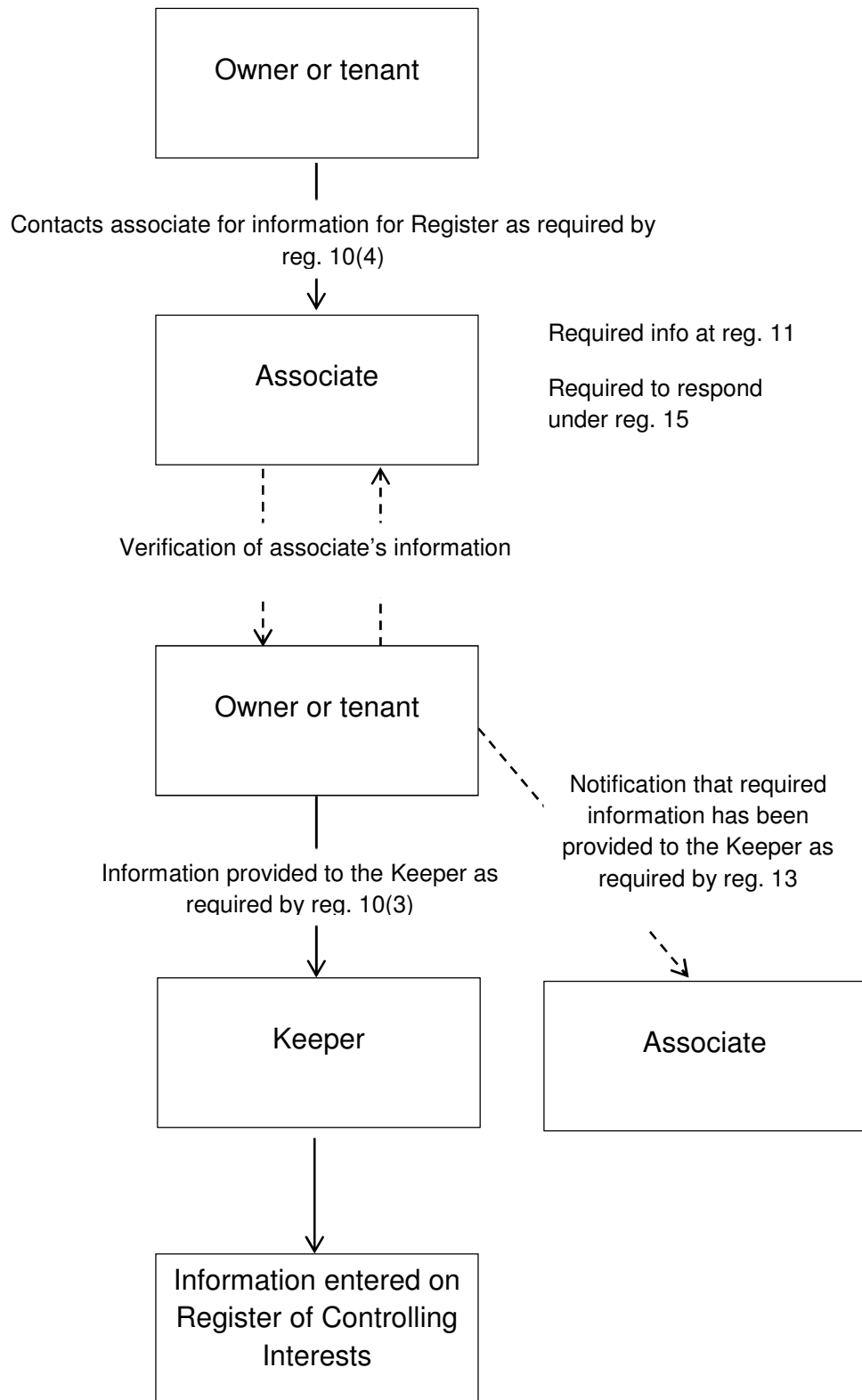
61. Regulation 12 sets out in a table who should do what when certain changes about information in the Register become known. Regulation 12(2) sets out timescales for the Keeper to be notified of changes and regulation 12(3) requires the recorded person to take reasonable steps to ensure the accuracy of the information.
62. The latter requirement to take reasonable steps reflects requirements of regulation 10(8)(a)(ii) and 10(8)(b) in respect of original notification to the Keeper about an associate. The offences and penalties for failure to comply also replicate those in regulation 10.

Notification of associates about registration

63. Regulation 13 sets out that, when information about an associate is provided to the Keeper for inclusion in the Register, the relevant owner or tenant must notify the associate this has been done. Regulation 13(4) sets out that a failure to comply with this regulation without reasonable excuse is an offence.

64. This regulation ensures that an associate is aware that the process of supplying information to the Keeper has been completed. This is important given that the associate is under a duty to provide information to the owner or tenant of the association (see regulation 14). Where the associate does not have notification under this section with 60 days of becoming an associate, the associate will want to take steps to ensure that the information is provided.
65. Failure to provide such a notice constitutes an offence.
66. The following diagram sets out the process of verification and notification.

Diagram 1 – Duties to Provide Information



Associate's duty to notify of association

67. Regulation 14 requires that where a person knows they are an associate of a person but have not received notification of this from the person (as required by regulation 13) within 67 days, then they must notify the person that they are an associate and provide their required details (the required details are set out in regulation 11). Regulations 14(3) and (4) set out the offences and penalty for not complying with this duty, which replicate those in Regulations 10 and 12.
68. This is intended to ensure that even when the person is not aware that they have an associate or are otherwise unable to identify an associate, then information about the associate will still be provided for inclusion in the Register.

Duty of associate to provide information on request

69. Regulation 15 sets out that a person (referred to as "A" in the regulation) who is contacted by a person under regulation 10(4) (that is, a person who may become a recorded person) must either confirm that they are an associate and that their details are correct, make a security declaration or inform the person that they are not an associate.
70. Regulation 15(3) and (4) sets out that if the details of an associate as recorded in the Register require to be changed, or if a person ceases to be an associate of a recorded person, then the associate or former associate must inform the recorded person of the change as soon as reasonably practicable.
71. Regulation 15(5) and (6) sets out that if a person receives a request under regulation 12(3) they must confirm the accuracy of their required information or provide the correct information if necessary. This will usually apply to existing or former associates. An offence is committed if these requirements are not complied with and the penalty is the same as that imposed under Regulations 10 and 12 (i.e. a fine not exceed level 5 on the standard scale (currently £5000)).

Security Declarations

72. Regulations 16 to 18 set out details for the making and revocation of security declaration, and for appeals against decisions about security declarations. The right to make a security declaration contained in these Regulations is intended to ensure that no-one is put at serious risk of violence, abuse, threat of violence or abuse or intimidation through the inclusion of their information in the Register. For example, this would be a mechanism by which victims of domestic abuse can prevent their information being disclosed in the Register. This mechanism is also intended to be suitable for use by persons who are at risk in relation to a position they hold which is relevant to the Register. This may be a refuge worker who would be registered as an associate as result of their position within the unincorporated association which runs the refuge.

Regulation 4(2) provides for a 30 day standstill period before the Keeper enters information onto the public facing register. This allows additional time and safeguarding for an associate to apply for a security declaration.

73. Suitable evidence is required in support of any declaration to ensure that only legitimate declarations are accepted. Suitable evidence is set out in Schedule 3 of the Regulations. Schedule 3 lists a number of orders, interdicts, injunctions and measures that can support a security declaration. It also lists persons who can sign an attestation which can support a security declaration. The evidence listed in Schedule 3 reflects that used to determine whether a person is eligible for anonymous voter registration. That process is similarly focussed on individuals subject to risk.
74. In certain limited circumstances the evidence listed in Schedule 3 may not be reasonably obtainable. For example, where persons who are subject to risk as a result of another person being registered as an associate, such as a refuge worker in the example above, the evidence at Schedule 3 may not be suitable because of its emphasis on personal risk. In such circumstances regulation 16(4)(b) provides that the Keeper may consider such other evidence as they consider appropriate.
75. Regulation 16 sets out that an associate who is an individual can make a security declaration if they, or someone connected with them, would be put in danger if any or all of their required details were made publicly available in the Register. Regulation 16(2), (3) and (4) set out what must be provided in the declaration and that the declaration must be provided to the Keeper and to the recorded person. The evidence required to support the declaration is set out in Schedule 3. Regulation 16(6) sets out that the security declaration ceases to have effect if evidence is not supplied to the Keeper within 60 days of the notification.
76. The purpose of 16(5) and (6) is to allow sufficient time for individuals to obtain and provide the required evidence, while not providing an open ended time period for doing so.
77. Regulation 17(12) sets out that a security declaration takes effect on the day on which the declaration is received by the Keeper. They cease to take effect on the day that the declaration is revoked (under regulation 15) or 30 days after a decision of the Keeper that the security declaration should not apply. Where the Keeper has decided that a security declaration should not apply, regulation 16 provides that an applicant may appeal that decision to the Lands Tribunal. If the decision is upheld the declaration would cease to have effect 30 days after the determination of the appeal.
78. The process for making a security declaration is set out in the diagram below.

Diagram 2 - Security declarations

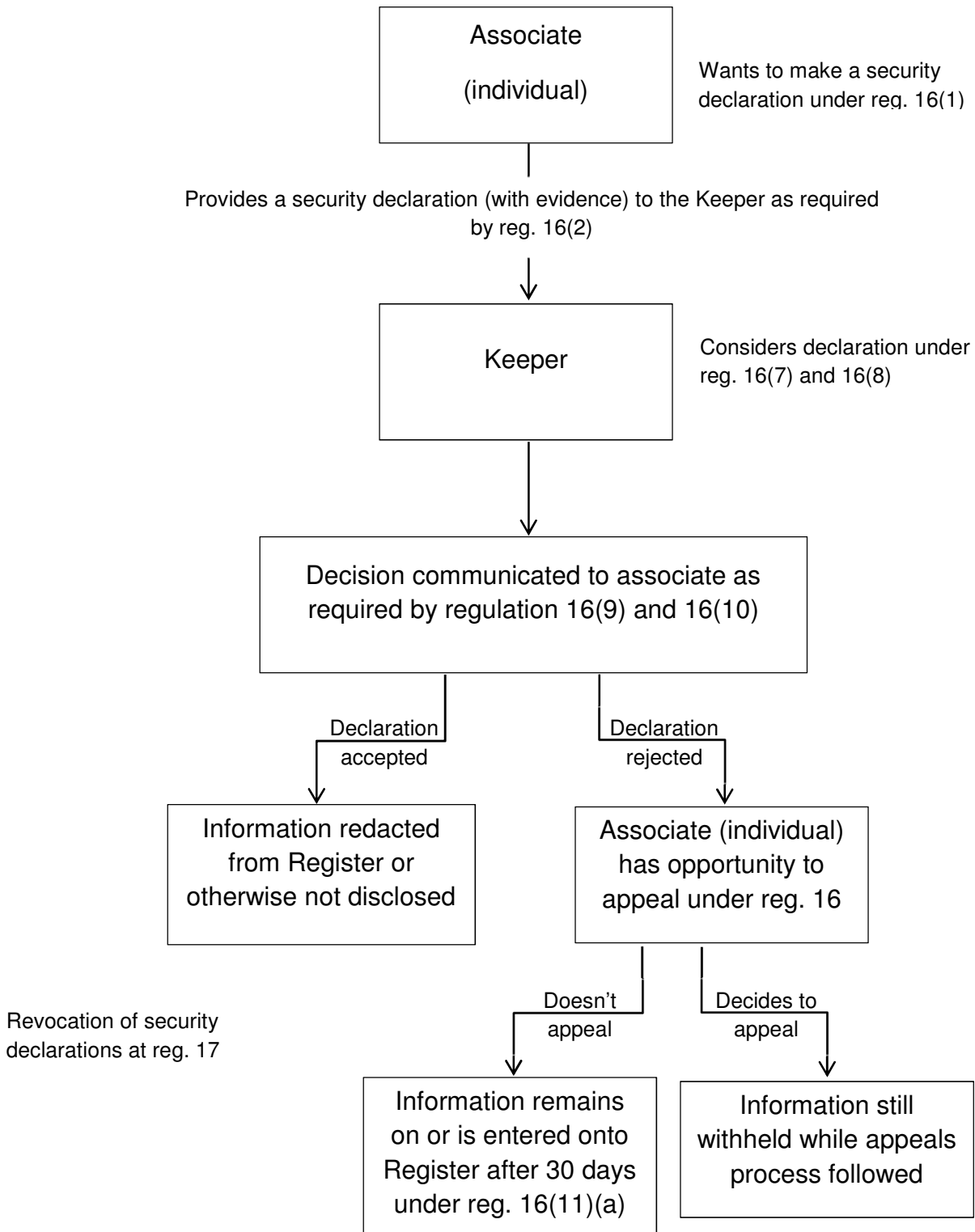
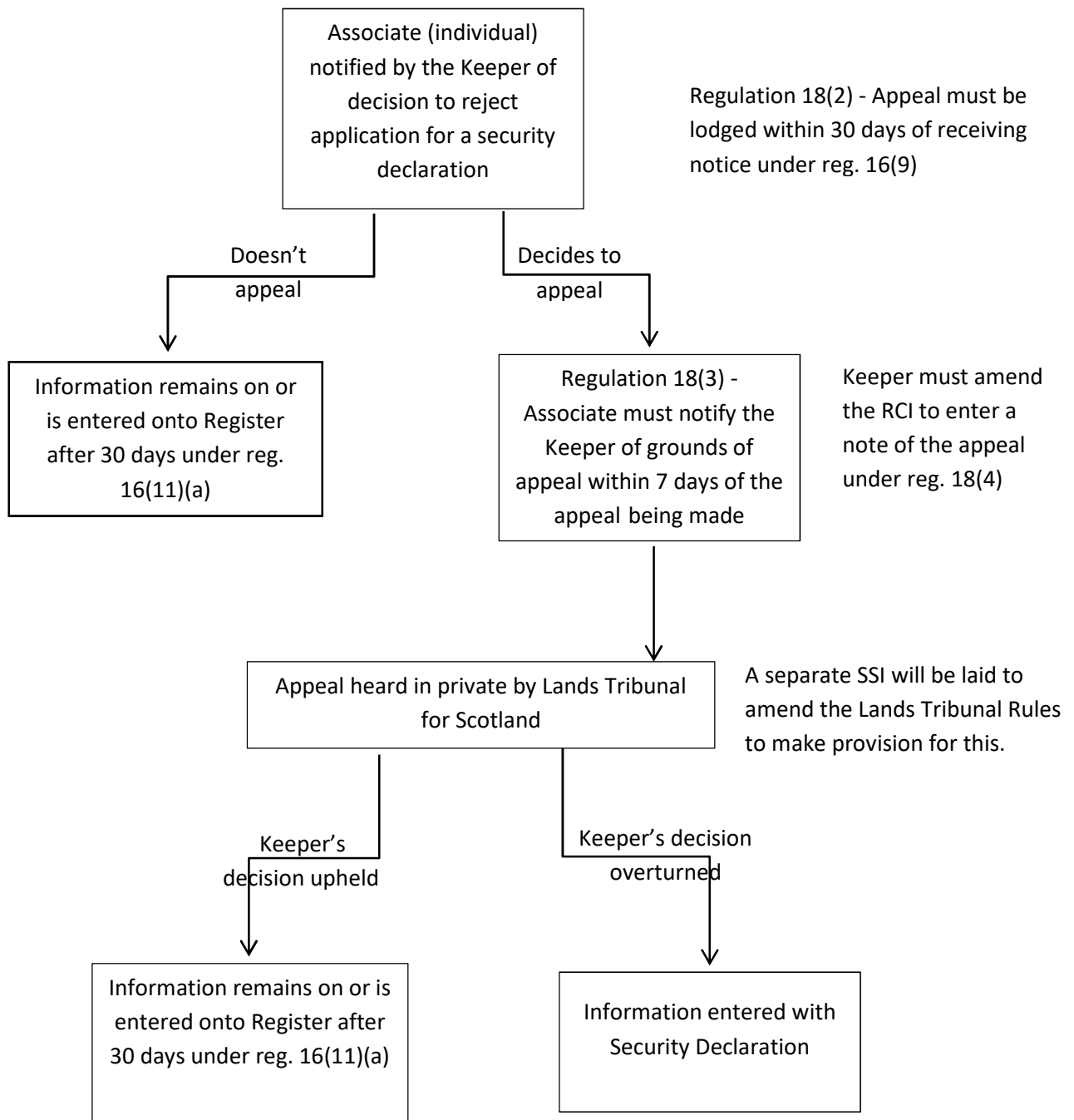


Diagram 3 - Security declarations – appeals process - regulations 16 and 18



CHAPTER 2

Who we are seeking to register – Schedules 1 and 2 of the Regulations

79. Schedules 1 and 2 of the Regulations set out the persons to be registered as ‘associates’ in the Register. Schedule 1 identifies who is an ‘associate’ for each category of in-scope entity to which the Regulations apply. Schedule 2 sets out the entities that are subject to other transparency regimes and to which the duty in regulation 10 to provide details of controlled interests and associates does not apply.
80. The Regulations take account of existing legislation around transparency of land ownership – including land registration in Scotland – and corporate transparency including, for example, the UK people with significant control register.

Corporate Transparency – People with Significant Control

81. As set out in the previous consultation on a Register of Controlling Interests of June 2016, the people with significant control (PSC) register established in June 2016 under Part 21A of the Companies Act 2006 provides a great deal of information about persons exercising control of entities which may own land in Scotland. The PSC register, which is held by Companies House, is a valuable resource when seeking information about control over decision-making in relation to land.
82. The PSC register covers:
 - UK companies;
 - Limited Liability Partnerships (LLPs);
 - Scottish Limited Partnerships (SLPs);
 - Societas Europaeae; and
 - Scottish general partnerships where all the general partners are limited companies.
83. Where one of these entities is the legal owner or tenant of land in Scotland, their legal form should be identifiable from the Land Register or Register of Sasines. Companies House maintain a register of company names so they cannot be duplicated. Searchers can use the information in the Land Register or Register of Sasines to access the information about that entity in the PSC register via the Companies House website.
84. The PSC regime was established by the UK Government to address the “problem of corporate opacity” and “tackle the misuse of companies”³.
85. The PSC regime means that:

³ <https://hansard.parliament.uk/Commons/2016-01-27/debates/16012748000006/RegisterOfPeopleWithSignificantControl?highlight=%22people%20with%20significant%20control%22#contribution-16012748000009>

- Entities within its scope must investigate their ownership chains to identify their PSCs;
 - A person can be registered as a PSC if they meet one or more of the five conditions in relation to the entity. The conditions are based on: shareholdings, holding voting rights, having the right to appoint or remove the persons in charge of the entity, or otherwise being able to exercise significant influence or control over the entity;
 - The entity should then contact these people, or others who might know them, to confirm whether they meet one or more of the conditions and, if they do, to provide the required information (the required information includes their name, month and year of birth, address) for inclusion in the entity's PSC register;
 - Prospective PSCs must respond to requests for information;
 - The information must then be added to the entity's own PSC register and filed at Companies House to be made available on the central public register; and
 - Where there are changes in the information to be registered the entity must update the register with Companies House within 28 days.
86. Since the PSC register was created in June 2016, more than 4.7 million PSCs have been entered onto the Register. Companies House statistics indicate that they currently have a compliance rate of 98% and they continue to work to improve this.
87. The PSC regime is a significant step forward in terms of corporate transparency in the UK. It is easy to use and free to access. The Regulations seek, to a large extent, to avoid duplicating the information already publicly available in the PSC register, and avoid replicating the work that has gone into creating and maintaining it. The Regulations require certain basic information to be provided about such entities if they are associates of an owner or tenant of land, but the Regulations generally do not require investigation of the ownership of the types of entity listed in Schedule 2.

Identifying an 'associate'

88. The ability or right of a person to control or direct the decision-making of an individual or entity which owns or tenants land determines whether they are an 'associate' for the purposes of the Regulations. This ability or right is set out in detail in the different parts of Schedule 1, and varies dependent on the nature of the entity.

Contractual or other arrangements with an individual

89. Part 1 of Schedule 1 concerns persons with contractual or other arrangements with an individual.

90. In some cases individuals may own land as a result of a contractual arrangement in which they own it on behalf of another person. It is understood that this formulation is unlikely to be particularly common as such a relationship would more usually be subject to a trust agreement. This sort of contractual arrangement could be made on a nomination or on an agency basis.
91. The Regulations are not intended to impact upon owner-occupier situations in which only one party is registered as the legal owner of the land e.g. a couple where only one party is the legal owner etc. It is also not the intention to capture straightforward leasing arrangements or mortgaging practices.
92. Paragraph 1 of Schedule 1 sets out that this Part applies to situations where a person has entered into a contract or other arrangement with an individual who is the owner or tenant of the land, so that the land is owned or leased on the person's behalf or so that they have the right to exercise or actually exercise significant influence or control over the individual's dealings with the land.
93. Paragraph 2 sets out that this part does not apply where:
- The contract or arrangement between the individual (owner or tenant) and the person is one to which another Part of Schedule 1 applies. This would exclude, for example, trust arrangements as these are covered elsewhere;
 - The person's relationship to the individual (owner or tenant) is that of a creditor only. This would exclude banks or building societies from being registered as associates having granted a mortgage to an individual; or
 - The person is the landlord of the individual. In this situation the landlord will be registered as the legal owner of the land in the Land Register or Register of Sasines. Where the landlord is themselves subject to control, information about this will be available in the Register or elsewhere.
94. Paragraph 2 also sets out a number of scenarios whereby this part does not apply. The scenarios listed include information that is already available i.e. the existence of a proper liferent will be evident from the Land Register or the scenarios represent examples of where we do not consider that an associate would have significant influence or control over decision making in relation to land.

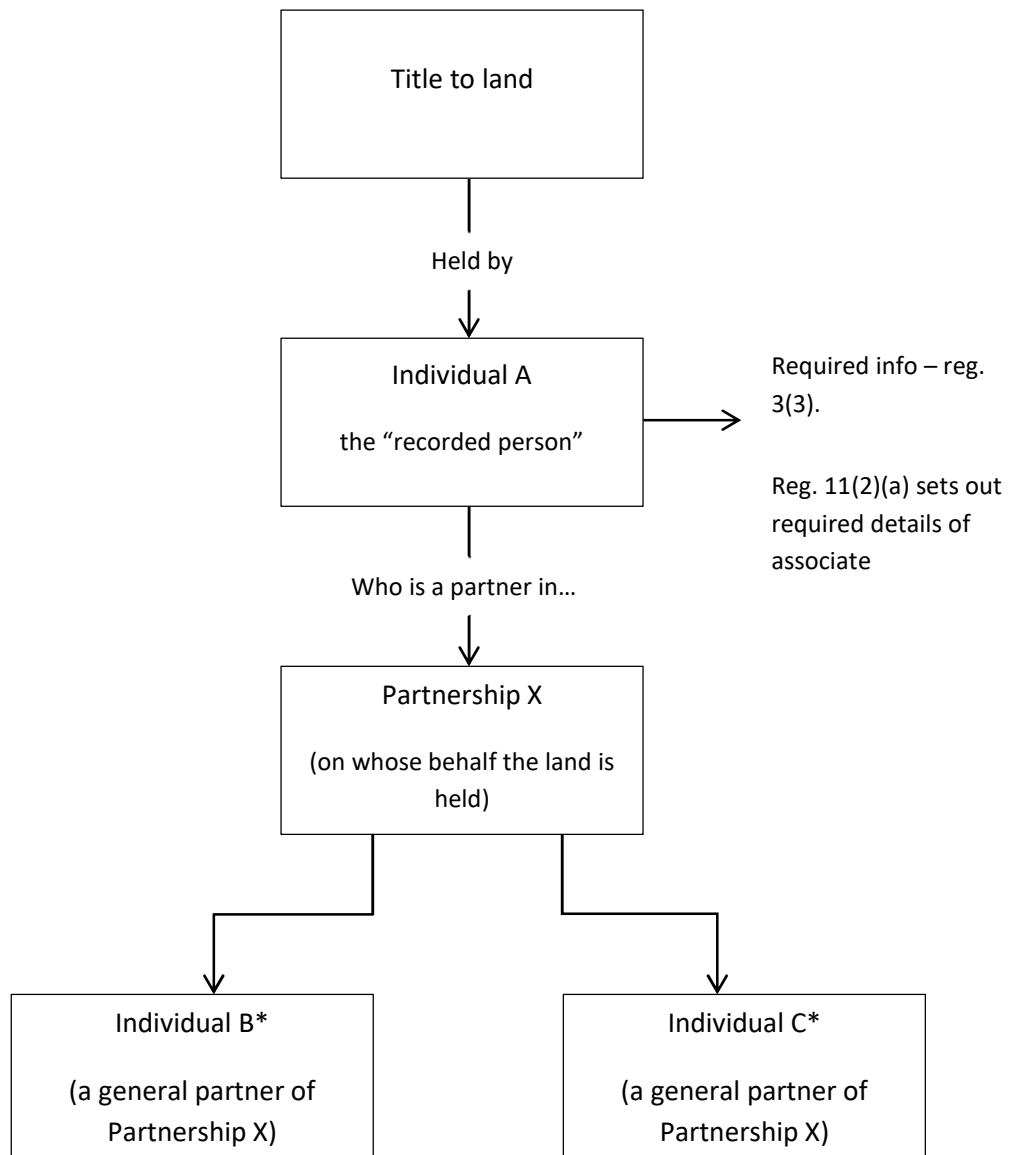
Partnerships

95. Part 2 of Schedule 1 concerns land held by, or on behalf of, partnerships.
96. Scottish partnerships where all the partners are limited companies, SLPs and LLPs are all required to report information to the people with significant control register (PSC). There are, however, no equivalent reporting requirements on Scottish partnerships where at least one partner is an individual or on general partnerships governed by English law.
97. Partnerships under English law do not have legal personality and therefore cannot be the legal owner of land or holder of a lease on their own behalf.

Scottish partnerships do have legal capacity and can own the land directly. It is understood that they usually do not hold title to land directly and instead one or more of the partners will typically hold the land in ‘trust’ for the partnership. English and Scottish partnerships are therefore treated in the same way in these Regulations.

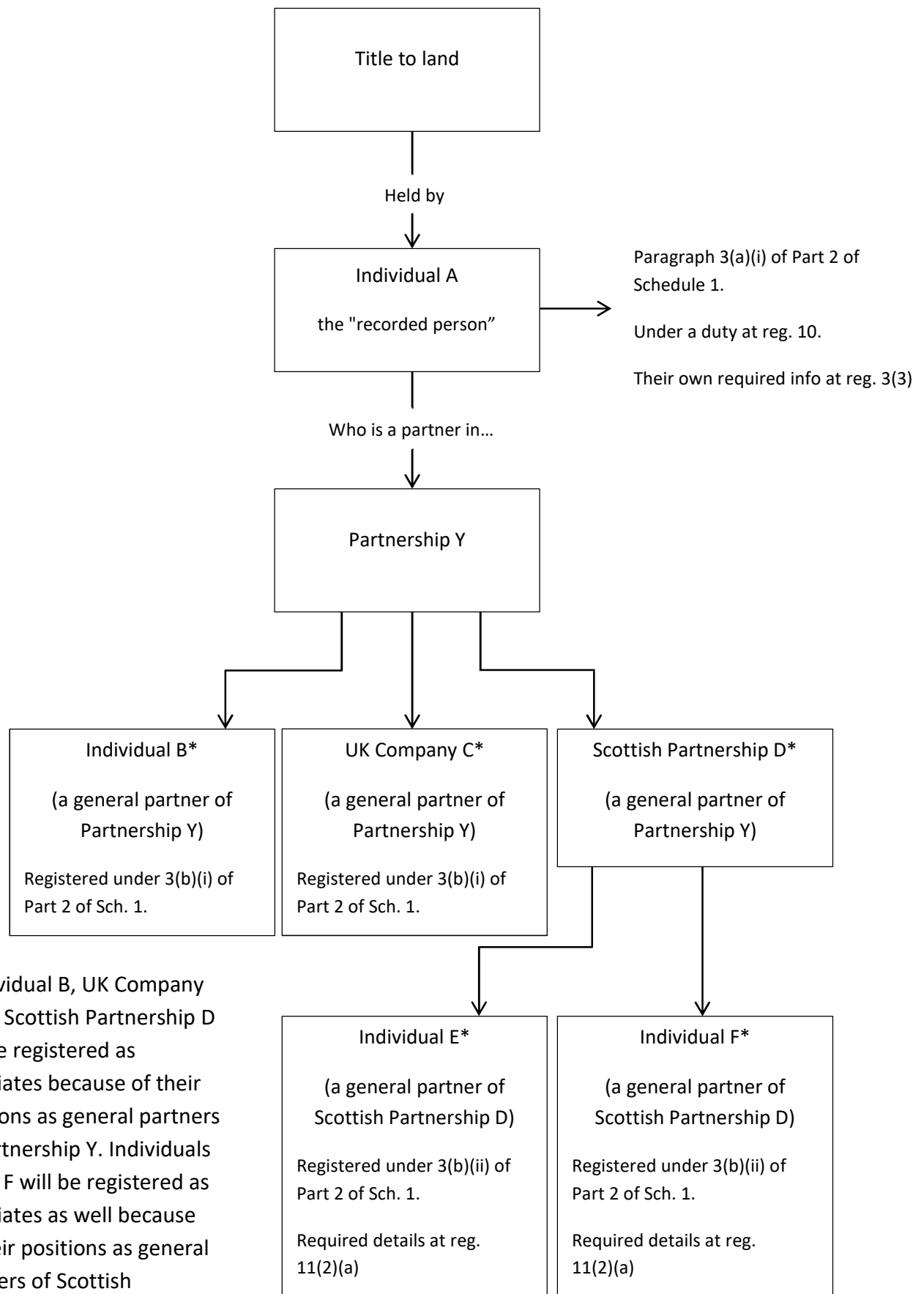
98. Where one or more of the partners holds the land in trust for the partnership, those partners will be recorded as the legal owner of the land. The trust relationship by which the land is held may not be apparent from the Land Register. The connection of the legal owner and the land in question to the partnership may not therefore be discernible from the Land Register either.
99. Although RoS systems allow partners to register their title as trustees on behalf of the Partnership, and include the name of the partners in the Land Register entry as trustees, this is not a requirement. It is also not required for such an entry to be updated to reflect changes in the makeup of the partners or trustees.
100. Paragraph 3(a) of Schedule 1 sets out that this Part applies where a person who owns or leases land does so as a partnership or on its behalf, or is a partnership. This only applies where the partnership in question is a Scottish partnership where at least one partner is an individual or a general partnership governed by English law.
101. Paragraph 3(b) sets out that an associate in respect of such an owner or tenant is a person who:
 - (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; or
 - (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. This is defined in greater detail below.
102. The following diagrams set out examples of how these proposals will apply where land is owned or leased by or on behalf of a partnership. They illustrate the relationship between the owner or the tenant of the land (who becomes the recorded person) and the persons who can exercise significant influence or control over them (the associates) as set out in Part 2, Paragraph 3(a)(i) of this Schedule. The diagrams also note the duties that apply to the owner or tenant as a recorded person and the associates.

Diagram 4 – Partnerships 1



* Both Individual B and Individual C will be registered as associates under paragraph 3(b)(i) of Part 2 of Schedule 1 because of their positions as general partners

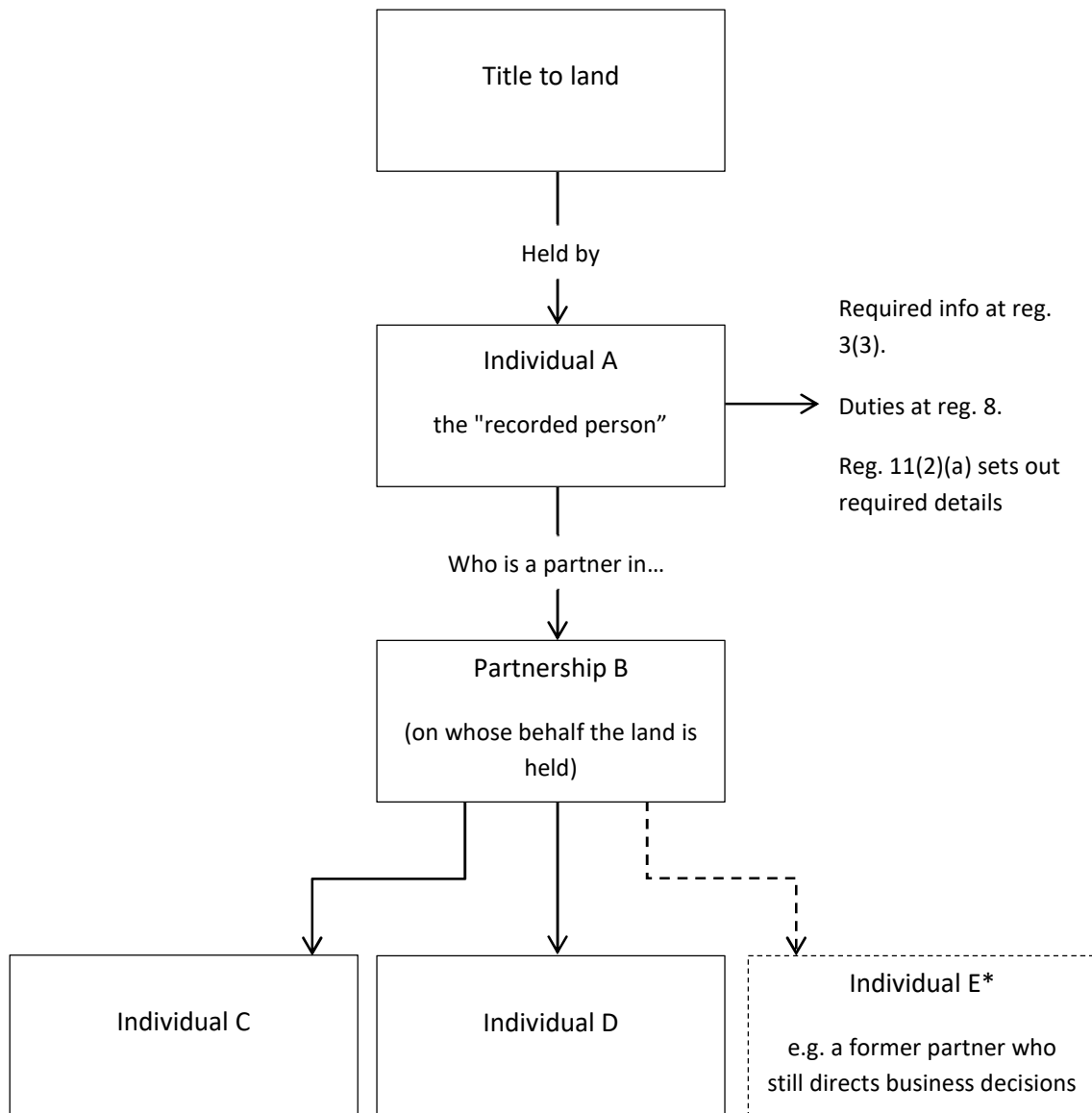
Diagram 5 – Partnerships 2



* Individual B, UK Company C and Scottish Partnership D will be registered as associates because of their positions as general partners of Partnership Y. Individuals E and F will be registered as associates as well because of their positions as general partners of Scottish Partnership D.

103. Paragraph 4 of Schedule 1 sets out cases in which this Part does not apply.
104. The diagram below illustrates how these proposals will capture relationships of significant influence or control not based on a position e.g. as a general partner. This diagram is an extension of diagram 3. As per diagram 3 Individuals C and D would be registered as associates by virtue of their position as general partners.

Diagram 6 – Partnerships 3



* Registered as associate under 3(b)(iv) of Part 2 of Sch. 1.

Required details at reg. 11(2)(a)

105. Paragraph 4 sets out the relationships which a person may have to a partnership, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases control remains with the partners and persons identified above. This is because the inclusion of such persons in the Register would blur users' understanding of the situation whilst placing an additional burden of reporting on persons not considered to have a controlling interest. It may be possible for such people to nonetheless meet the conditions to be considered an associate should they meet other conditions in addition to the role defined in 4(2).
106. Paragraph 5 sets out the definition of 'general partner' and 'relevant entity' for the purposes of this Part. Paragraph 5(c) sets out that examples of significant influence or control include persons who:
- (i) Have the right to unilaterally take or veto decisions about the governance or running of the partnership.
 - (ii) Have the right to appoint or remove any of the partners of the partnership.
 - (iii) Are able to influence the decision-making of the partnership without holding a formal governance position within the partnership.
107. Paragraph 5 proposes that general partners should be registered as associates as they can unilaterally contractually bind the partnership, and they typically can take a significant role in the management of the partnership, decisions about the disposal of its assets and any eventual winding up of the partnership. These activities can all impact upon how the partnership engages with the use or disposal of its assets including land. There is therefore a clear imperative for individuals or communities who wish to engage with a partnership about land to know who the general partners are.
108. The Regulations do not provide for limited partners to be registered as associates, as their status as limited partners is contingent on not being involved in the management of the partnership. Should they involve themselves in management decisions they will lose their status as limited partners. They will therefore not be able to influence how the partnership engages with its assets including land.

Trusts

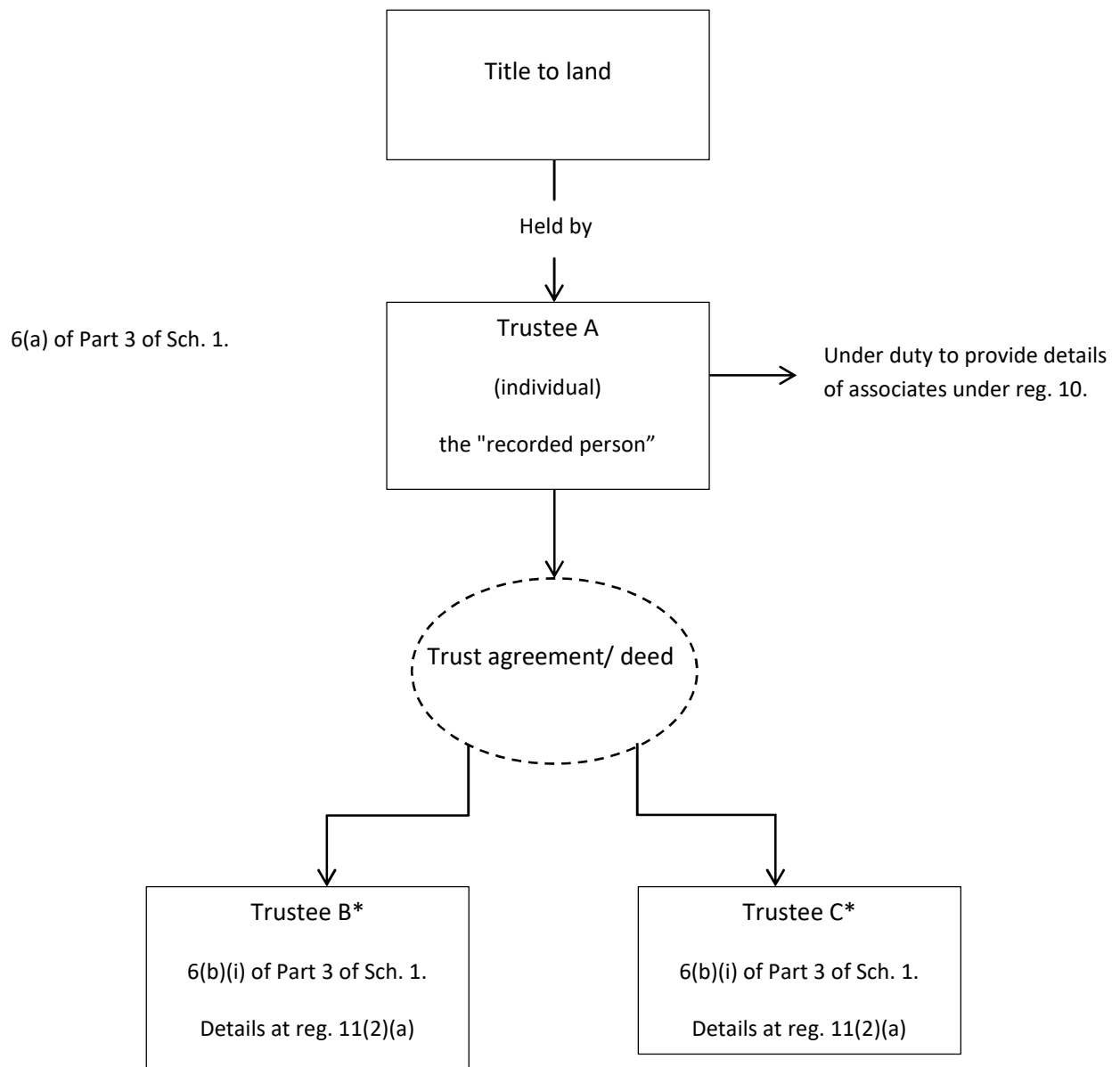
109. Part 3 of Schedule 1 concerns land held by a person as a trustee of, or otherwise on behalf of, a trust.
110. Land in Scotland may be held in trust for a variety of reasons. It may be placed in trust to deliver benefits to family members and ultimately to be inherited by a later generation. It may be placed in trust on behalf of a number of investors and to support a commercial venture. Land may also be placed in trust to deliver charitable benefits to a specific group or to the population at large.

111. Where land is placed in trust in Scotland there are typically several elements present:
- The *truster* who is placing the assets (in this case the land) into trust;
 - The *trustees* who become the legal owners of the assets;
 - The *trust deed* which sets out the assets to be placed in trust and makes any additional specification about the powers of the trustees or governance of the trust etc;
 - The *beneficiaries* who receive certain benefits as set out in the trust deed. This may include a wide group of people (such as a local community) who are to benefit from a charitable trust, or a family member who is to benefit from land placed in trust by a relative.
112. In the Land Registers of Scotland, land that is held in trust will record the trustees as the legal owners of the land as a result of their position as a trustee. Where this is recorded, the Land Register title may not be updated to reflect changes in the trustees. For example, title may be recorded in the name of “The trustees of Mr Smith and their successors in office”. Where the trustees are named, the Land Register will show their names and addresses and the title may be updated to reflect changes in the trustees. A Land Register title may also show the individual or entity on whose behalf they hold the land. This is not, however, a legal requirement and it is not clear how common this is.
113. The Land Register may also not be updated to reflect changes in the trustees. For example, if Ms Smith is the legal owner of a piece of land as a result of their position as a trustee, the Land Register may show the legal owner as ‘Ms Smith and her successors in office’. If Ms Smith is no longer a trustee having been replaced by Mr McDonald, that will not be apparent from the Land Register unless an update is requested.
114. Trustees are under fiduciary duties to act in the interests of the beneficiaries. These duties will guide and influence their decision making. The trust deed may also make requirements of the trustees and thereby influence their decision making. For example, it may specify that a certain piece of land is to be kept as a garden in perpetuity, or that a building must continue to fulfil a certain role.
115. The trust deed will also not generally be publically available.
116. Once the trust is constituted, there may be no further engagement between the truster and the trustees, and the truster is not normally one of the beneficiaries.
117. This is the typical arrangement used for trusts constituted under Scots law and, it is understood, for trusts constituted under English law as well, although there are differences between Scots law and English law in relation to trusts. There may be some variation in these arrangements across trusts constituted in other jurisdictions and the proposed Regulations are accordingly designed to be able to address a range of potential formulations. There are concerns that trusts can be subject to very unusual structures including truster-as-

beneficiary trusts, or that nominee trustees can be put in place to obscure the retention of control by the truster.

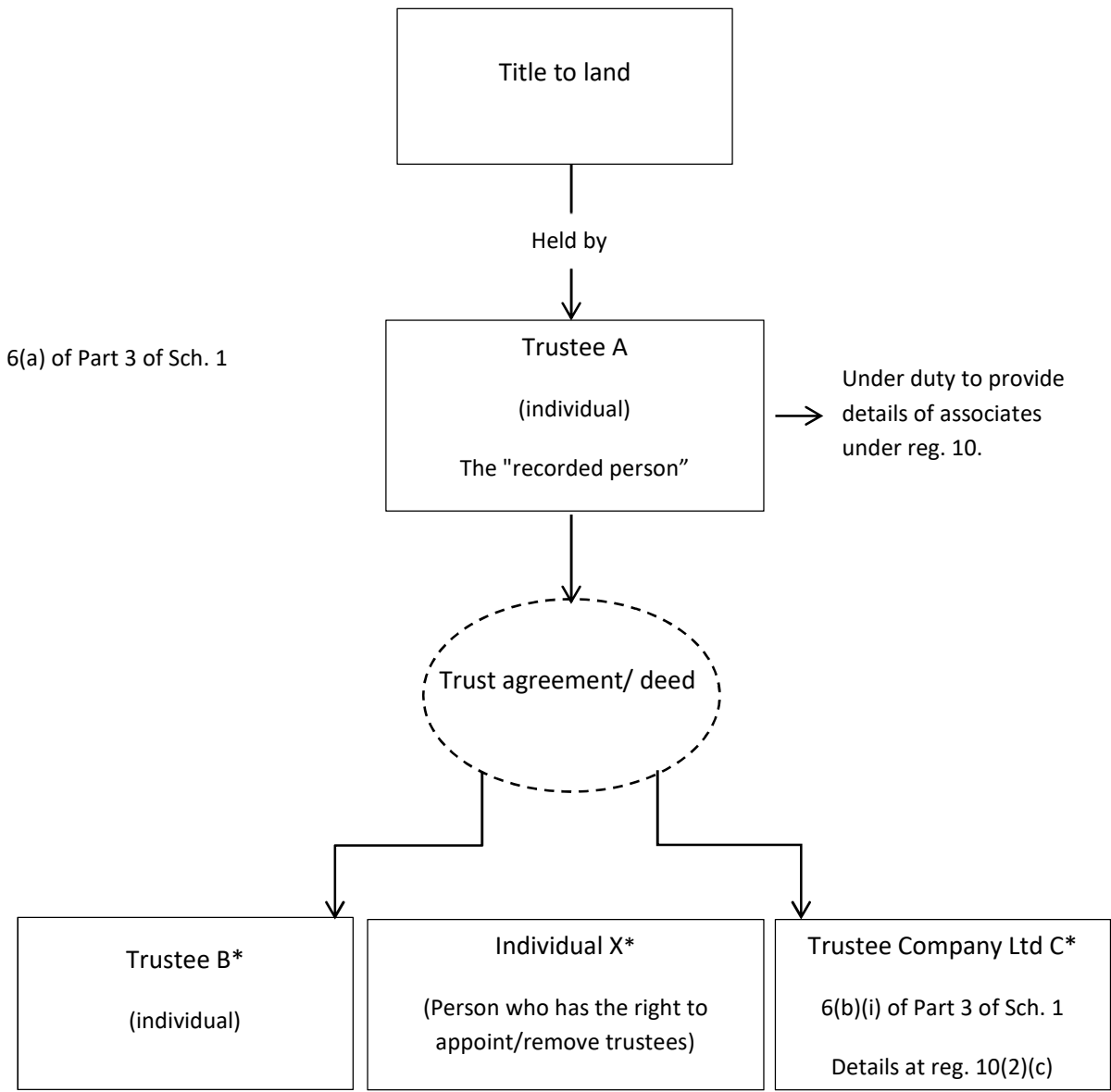
118. Part 3 of Schedule 1 is intended to be applicable to trusts constituted under Scots law, English law and the law of other jurisdictions. They are also intended to apply equally to public, private and charitable trusts.
119. Paragraph 6(a) of Schedule 1 sets out that this Part applies where a person owns or leases the land as a trustee of, or otherwise on behalf of, a trust. Paragraph 6(b) sets out that an associate in respect of a trustee is a person who:
 - (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. This is expanded on in paragraph 8.
120. The diagrams below illustrate the relationship between the owner or tenant of the land (who will be the recorded person) and their associates as apply to trusts.

Diagram 7 – Trusts 1



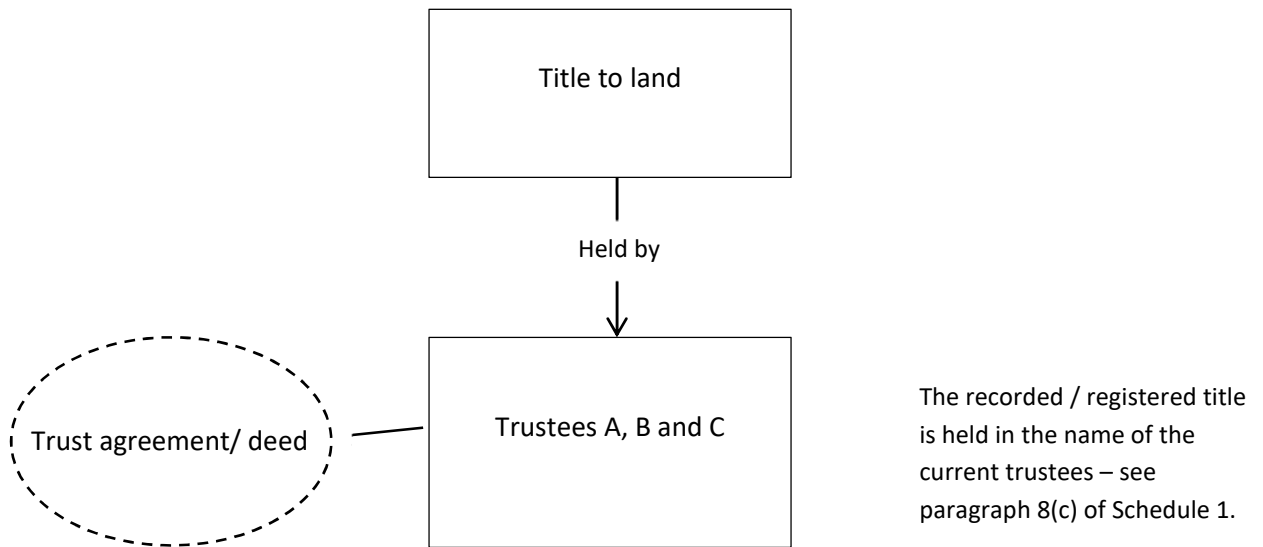
* Associates

Diagram 8 – Trusts 2



* Associates

Diagram 9 – Trusts 3



The current trustees hold title in the Land Register or the General Register of Sasines.

= no associates to be registered (see paragraph 8(c) of Schedule 1)

= no entry in the Register of Persons Holding a Controlled Interest in Land

121. Paragraph 7 sets out cases in which this Part does not apply. Paragraph 7(1)(a) excludes situations where the owner or tenant of the land owns or leases the land as a trustee of a trust created for the purposes of insolvency or sequestration. This is because the trust has been created for a specific, known purpose and the trustees will be subject to legally binding duties to take certain decisions. Such a situation will only persist for a limited time until the trustees have discharged their legal duties. Paragraph 7(1)(b) excludes situations where the owner or tenant of the land does so on behalf of a partnership. In that case Part 2 of Schedule 1 would apply. Paragraph 7(1)(c) excludes situations where the recorded person owns or tenants land on behalf of the members of an unincorporated body to which Part 4 of Schedule 1 applies.
122. Paragraph 7(2) sets out the relationships which a person may have to a trust and on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases control remains with the trustees and persons identified above. The inclusion of such persons in the Register would blur users' understanding of the situation, whilst placing an additional burden of reporting on persons not considered to have control over the owner or tenant. It may be possible for such people nonetheless to be considered an associate should they meet other conditions specified elsewhere in the Regulations in addition to the role defined in 7(2). Paragraph 7(2)(d) excludes bodies who exercise control by virtue of a statutory function conferred by enactment, as the control would be clear in terms of the legislation.
123. Paragraph 8(a) defines 'relevant entity' for the purposes of this Part. 8(b) sets out that examples of significant influence or control include:
- (i) Persons who have the right to appoint or remove a trustee (other than by application to the court). This power may typically be provided for in the trust agreements of commercial trusts;
 - (ii) Persons who have the right to direct the distribution of assets or funds, or to direct investment decisions of the trust. This may also be provided for in a trust agreement;
 - (iii) Persons who have the right to amend the trust deed. We are not aware that this is a common formulation of trust deeds made under Scots law. It may, however, be used in trust deeds made in another jurisdiction to reserve a role for the truster in the running of the trust;
 - (iv) Persons who have the right to revoke the trust. This may include of-age sole beneficiaries of a bare trust who can unilaterally revoke the trust.
 - (v) Persons who can influence the decision-making of the trust without holding a formal governance position within the trust.
124. Paragraph 8(c) deals with the situation where there are multiple recorded persons in relation to a piece of land. In such a situation, each recorded person could, by virtue of paragraph 6(b)(iii), exercise significant control over each other, and so should be registered as an associate. Paragraph 8(c) provides that in such a case, someone who is already a recorded person in respect of the land does not need to be registered as an associate in relation

to that land. This is to reduce unnecessary duplication where someone is already on the register.

125. There can be substantial variation in the powers of individual trustees, and in the governance of the trust, which may be determined by the truster and in the trust deed (as well as the typically variable influence of trustees depending on how many of them take part in a vote). However it is considered that typically all trustees are in a position to influence or control the decision making of the trust.
126. The roles set out in paragraph 8(a) are examples of persons who can influence or direct the conduct of the trust including in relation to land it may own. There is a clear imperative for communities or individuals who wish to engage with a trust in regard to land it owns or tenants to be able to engage with such persons.
127. The Regulations do not require registration of beneficiaries as a matter of course. This is because a purely financial interest does not equate to engagement in the governance of a landowning body or entity. Where the beneficiaries are engaged in the control or governance of the trust then it is expected they would be registered as associates on that basis.

Unincorporated Associations

128. Part 4 of Schedule 1 concerns land held as a trustee of, or otherwise on behalf of, the members of an unincorporated association.
129. Unincorporated associations do not have legal personality and therefore cannot own land in their own right. An unincorporated association is typically a small body that may be a charity or another voluntary or community group. Common examples include village hall associations, sports clubs and faith and belief groups.
130. The Office of the Scottish Charity Regulator, the Scottish Council for Voluntary Organisations, the Scottish Sports Association and other affected stakeholders have contributed to understanding of how unincorporated associations own land and govern themselves. As set out below, there are a number of complicating factors in this area.
131. As unincorporated associations cannot hold title to land in their own name, a trustee or trustees will typically hold the title to land in trust on behalf of an unincorporated association. The trustee(s) will be shown on the Land Register as the legal owners of the land, or as the tenants of a registrable lease. That they are doing so on behalf of the unincorporated association may not, however, be clear.
132. The trustee(s) recorded as the legal owner(s) of the land (the property trustees) may be the persons involved in the governance of the unincorporated association or a subset of them. In other cases the property trustees may be entirely unrelated. Control over the land may be exercised

day-to-day by the association itself, but decisions to dispose of the land, for example, would require the agreement of the property trustees. In some situations the property trustees and the management of the association can disagree about decisions relating to the land and the exercise of their respective functions.

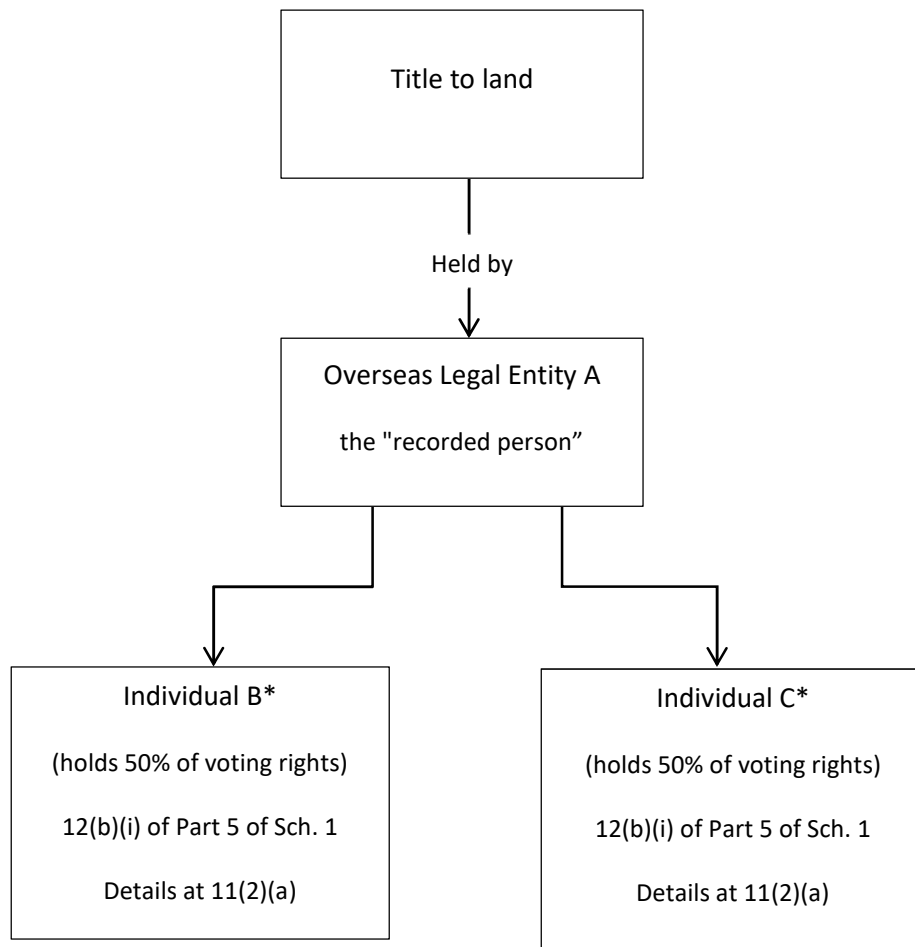
133. There are, however, additional complicating factors. In many cases the arrangement itself may not be known by the persons involved in it. For example, some associations have previously understood themselves to be the legal owners of the land. In other cases the original trustees may have historically been appointed *ex officio* i.e. based on their position as the local bank manager or parish priest. The current officeholders may not be aware of their position as a property trustee, or the position itself may have been abolished. There is not currently complete data on the number of unincorporated associations who are active or who are landowners.
134. Paragraph 9(a) of Schedule 1 sets out that this Part applies when a person owns or leases land as a trustee of, or otherwise on behalf of, the members of an unincorporated association.
135. Paragraph 9(b) sets out that an associate in respect of such a person would be a person who:
 - (i) Is responsible for the general control and management of the administration of the body, and
 - (ii) Is not recorded as the legal owner of the land.
136. Paragraph 10 sets out the relationships which a person may have to a body, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases it is considered that control remains with the persons identified as a result of paragraph 9(b). The inclusion of such persons in the Register would blur users' understanding of the situation whilst placing an additional burden of reporting on persons who do not have a controlling interest in the land owner or tenant.
137. Paragraph 11 sets out that a person is responsible for the general control and management of the administration of a body if they hold an office or position (such as chair or treasurer etc.).
138. The effect of these proposals is intended to be that the office holders within the management committee be registered as associates in respect of the unincorporated association. The property trustees would be registered as the recorded person(s).
139. These proposals reflect current understanding of the way in which unincorporated associations function. They are frequently informal and dependant on certain key individuals within it. Unincorporated associations can also be reliant on volunteers and may be subject to regular changes of personnel within management committees or bodies of trustees –this is less likely to be the case within the individuals engaged in the management of the

body. These proposals are therefore intended to both deliver increased information but also to be manageable for associations to implement.

Overseas Legal Entities

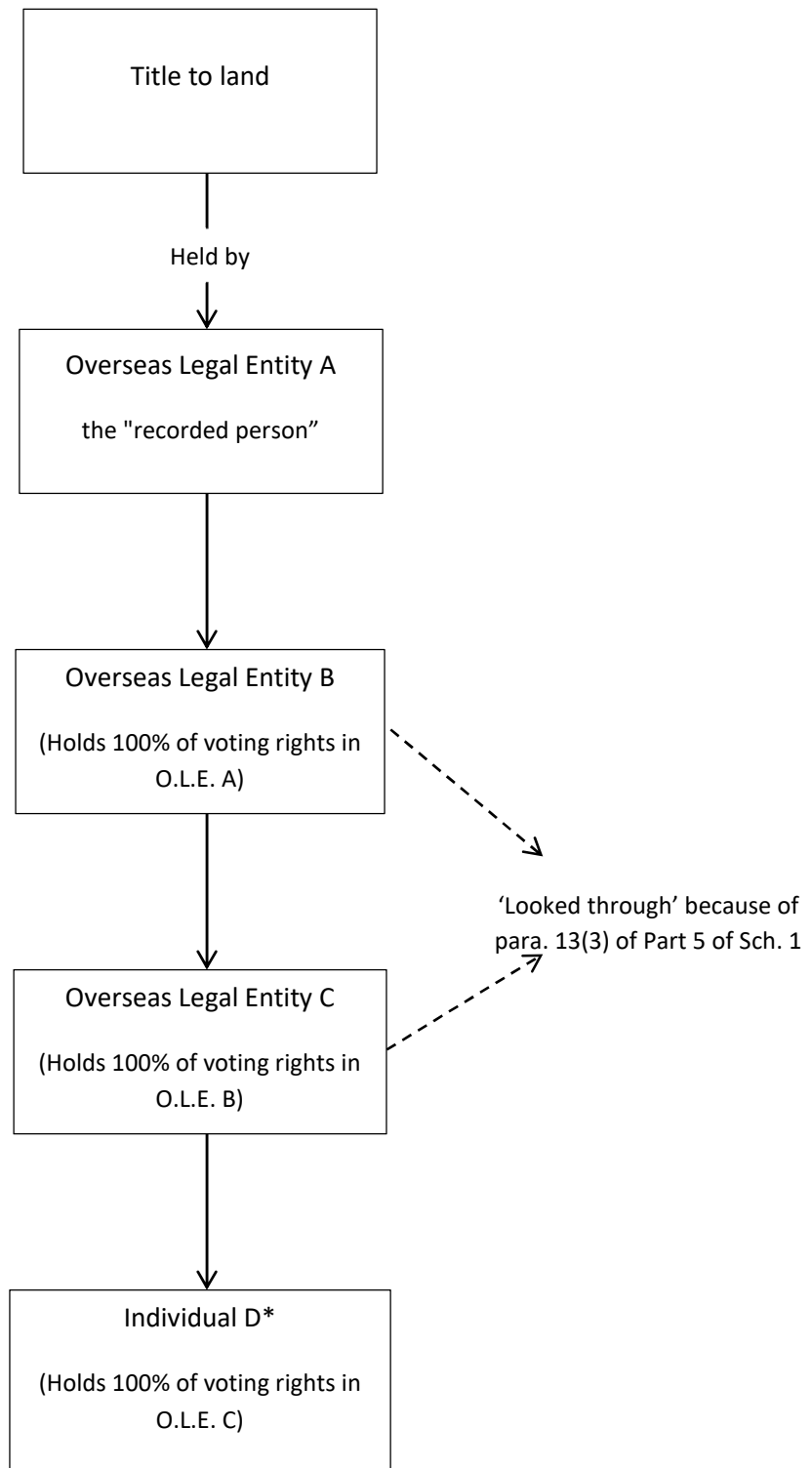
140. Part 5 of Schedule 1 concerns land in Scotland owned or leased by overseas entities.
141. Overseas entities which own land in Scotland will be recorded as the legal owner of the land or tenant of a lease and their name and registered address will be recorded in the Land Register. This is different to the other situations, such as with trusts, where it is not always clear who is the owner of the land.
142. Where they are not subject to reporting requirements elsewhere however, that entity may be opaque with no opportunity to identify persons involved in its governance or decision making.
143. Paragraph 12 of Schedule 1 sets out that an associate in respect of an overseas legal entity be a person who:
 - (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 paragraphs (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. This is defined in more detail below.
144. These conditions have been previously used in the EU 4th Anti-Money Laundering Directive, and in the subsequent development of the UK Government's PSC register. They follow the formulation developed by the Financial Action Task Force, of which the UK is a member. This is the internationally accepted best practice for identifying control of corporate entities.
145. The following diagrams illustrate the relationship between an overseas entity who is an owner or tenant of land (who will be the recorded person) and their associates. Diagram 10 shows how the Regulations will apply to straightforward corporate structures. Diagrams 11 and 12 show how the Regulations will apply to 'chains' of corporate ownership.

Diagram 10 – Overseas Legal Entities 1



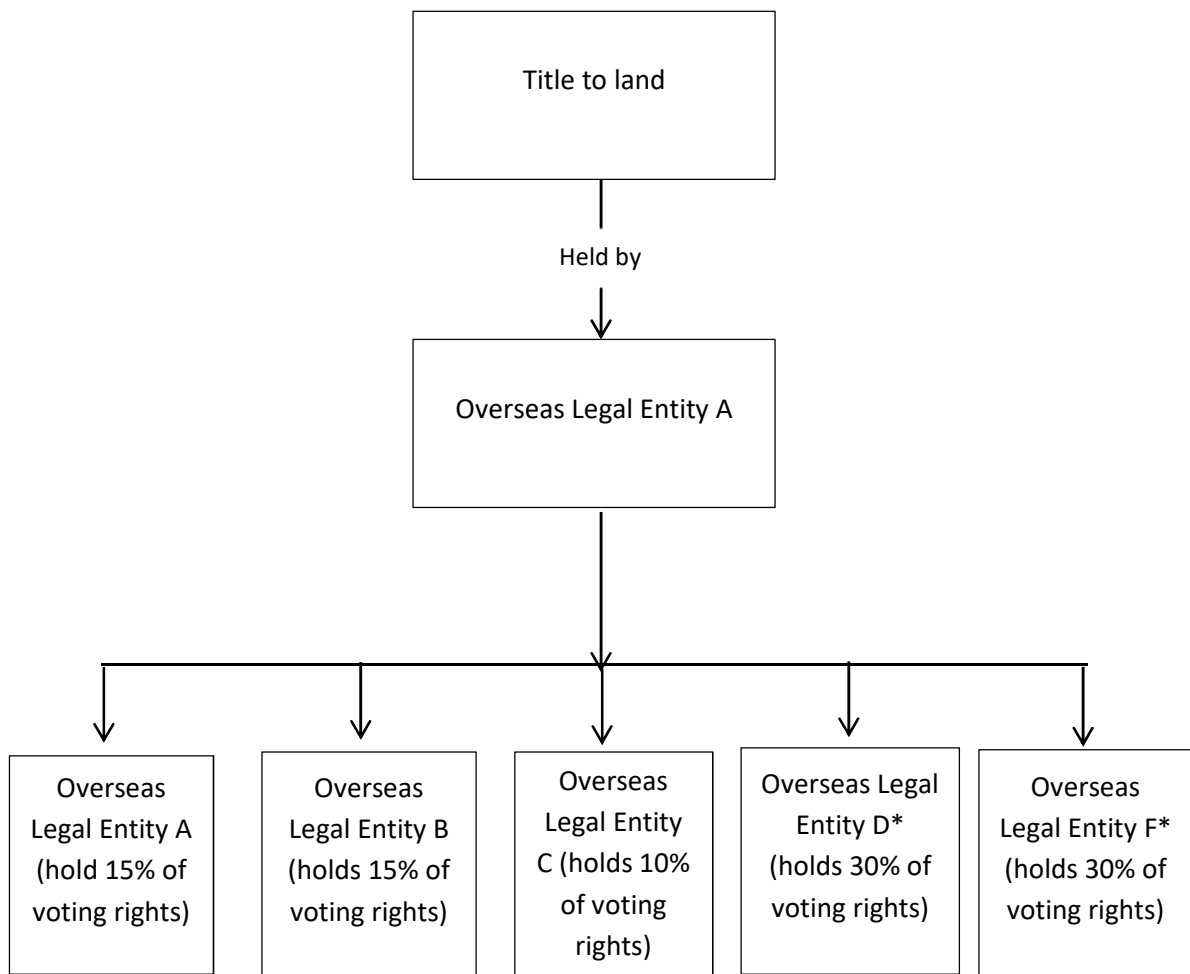
* An associate

Diagram 11 – Overseas Legal Entities 2



* An associate

Diagram 12 – Overseas Legal Entities 3



Overseas Legal Entities B, C, D, E and F all hold voting rights in Overseas legal Entity A

* An associate

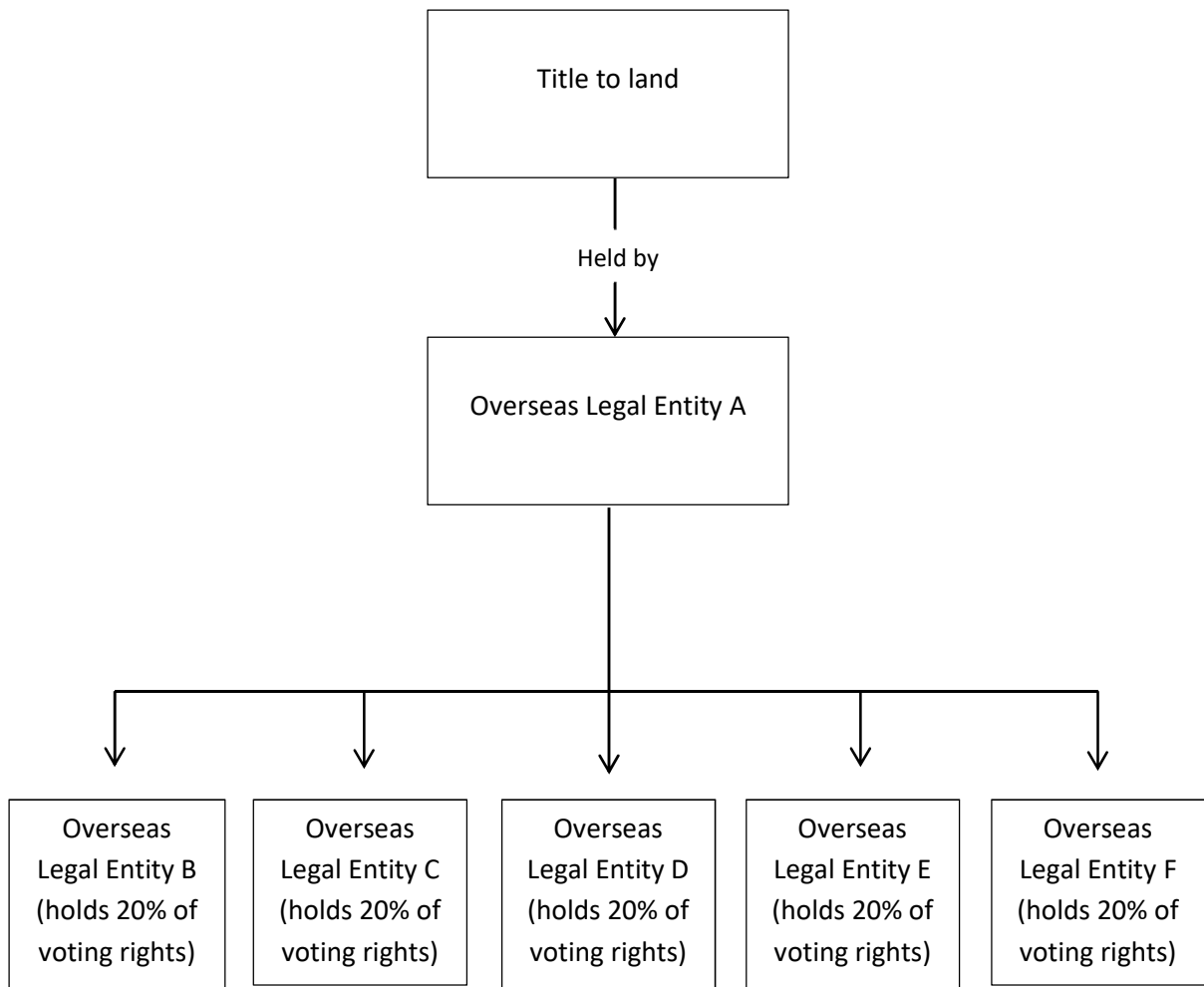
= Overseas Legal Entity A is a recorded person.

= Overseas Legal Entities E and F are entered as associates in the Register of Persons Holding a Controlled Interest in Land.

= No entry for Overseas Legal Entities B, C and D as they do not hold 20% of the voting rights.

146. The Regulations do not propose that persons be registered as associates in respect of their shareholdings for the same reason that it is not proposed to register beneficiaries of a trust. Holding a purely financial interest in land does not in itself equate to control over the land owner or tenant.
147. Paragraph 13(1) of Schedule 1 sets out the relationships which a person may have to an overseas legal entity, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors, employees of the entity or creditors. In these cases it is considered that control remains with the persons identified above and the inclusion of such persons in the Register would blur users' understanding of the situation whilst placing an additional burden of reporting on persons not considered relevant. It may be possible for such people to nonetheless be considered an associate should they meet the other conditions in paragraph 12(b).
148. Paragraphs 13(3) and 13(4) set out how the regime will deal with ownership 'chains' – where title to land is held by an overseas entity which in turn is owned by another overseas entity and so on. In this situation 13(3) sets out that where an overseas entity is part of a majority-ownership chain which includes the recorded person, and there is a person other than an overseas entity which would meet a condition in paragraph 12(b) through the overseas entity or the chain, then this Part does not apply to the overseas entity in question. This means that the Regulations would result in the registration of, for example, an individual who owns a succession of overseas companies which ends with the recorded person, rather than the registration of all the engaged overseas companies themselves. It is considered that this better meets the policy goal of increasing transparency as to the persons controlling decision making in relation to land, rather than registering potentially opaque entities without requiring that they disclose the persons controlling their decision making.
149. Paragraph 15 sets out that examples of significant influence or control include in particular where:
- (i) A person has absolute decision rights or absolute veto rights over decisions related to the running of the business of the company;
 - (ii) A person's recommendations are always or almost always followed by shareholders who hold the majority of the voting rights in the company;
or
 - (iii) A person is significantly involved in the management and direction of the company.
150. Paragraphs 16 to 26 define terms in relation to this Part.
151. It is recognised that there will not always be an individual behind an overseas legal entity which owns land in Scotland. Diagram 13 sets out a structure which may have this result.

Diagram 13 – Overseas Legal Entities 4



Each has 20% voting rights in Overseas Legal Entity A

= no associates to be registered

= no entry in the Register of Controlling Interests

i.e. Overseas Legal Entity A is not a recorded person with no duties under reg. 8.

Schedule 2

152. Schedule 2 lists persons subject to other transparency regimes who, as set out in regulation 10(2), do not have to double report similar information in the Register of Controlling Interests. This will apply where they are the owner or tenant of land. Entities listed in Schedule 2 may still be recorded as associates in respect of a legal owner or tenant of land.

Charitable incorporated associations

153. Paragraph 1 of Schedule 2 sets out that charitable incorporated organisations (CIOs) and Scottish charitable incorporated organisations (SCIOs) are not subject to the Regulations. CIOs are active in England and Wales – SCIOs are their Scottish equivalent. There is no equivalent body provided for in Northern Irish legislation.
154. Scottish Ministers introduced the SCIO legal form in 2011 to allow charities to be incorporated but to be administered and regulated by a single body, OSCR. The Executive Note for the Scottish Charitable Incorporated Organisations Regulations 2011 sets this out: *The SCIO will allow Scottish charities to enjoy the benefits of incorporation, notably limited liability for members and legal personality for the charity, without requiring them to become companies or industrial and provident societies. SCIOs will be registered with and regulated by the Office of the Scottish Charity Regulator (OSCR).*⁴
155. SCIOs are legal entities and so can hold title to land in their own name. Where a SCIO owns land in Scotland the Land Register will show the name of the SCIO and its registered office address. Additionally, it is expected that SCIO names will soon be registered with Companies House which will offer assurance that the proprietor recorded on the Land Register is the same as that entered onto OSCR's register.
156. It is considered that control of SCIOs is generally exercised by the charity trustees. Even in a two-tier structure, where some decision making resides with the members, the trustees still play the key role in governance of the SCIO. Any person can request that the SCIOs provide them with the names and addresses of its trustees. The SCIO then has to do so within 28 days of a request by a third party – this duty is advertised on the SCIOs page on the OSCR website. That list should be updated by the SCIO within 28 days of a change and anyone requesting a copy should be notified of any changes that are still to be made.
157. On that basis that the information is already publicly available, the Regulations do not require SCIOs to report in the Register. CIOs follow similar structures and accordingly are also not required to report to the new Register.

Companies and other bodies corporate

⁴ http://www.legislation.gov.uk/ssi/2011/44/pdfs/ssien_20110044_en.pdf

158. Paragraphs 2(1), 2(2), and 2(3) do not require entities who have to report information to the PSC register to also report to the Register of Controlling Interests
159. As described above, the PSC register applies to: UK companies, Limited Liability Partnerships (LLPs), Scottish Limited Partnerships (SLPs), Societas Europaeae and Scottish partnerships where all the partners are limited companies.
160. The definition of a person with significant control in relation to each category of entity is listed below.

Category of Entity	Definition
UK companies	<ul style="list-style-type: none"> (i) Directly or indirectly holding more than 25% of the shares, (ii) Directly or indirectly holding more than 25% of the voting rights, (iii) Directly or indirectly holding the right to appoint or remove a majority of directors, (iv) Otherwise having the right to exercise, or actually exercising, significant influence or control, (v) Having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.
LLPs	<ul style="list-style-type: none"> (i) Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up, (ii) Directly or indirectly holding more than 25% of the voting rights, (iii) Directly or indirectly holding the right to appoint or remove the majority of those involved in management, (iv) Otherwise having the right to exercise, or actually exercising, significant influence or control, (v) Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity,

	but would itself satisfy any of the first four conditions if it were an individual.
Eligible Scottish partnerships	<p>(i) Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up,</p> <p>(ii) Directly or indirectly holding more than 25% of the voting rights,</p> <p>(iii) Directly or indirectly holding the right to appoint or remove the majority of those involved in management,</p> <p>(iv) Otherwise having the right to exercise, or actually exercising, significant influence or control,</p> <p>(v) Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.</p>
Societas Europaeae	<p>(i) Directly or indirectly holding more than 25% of the shares,</p> <p>(ii) Directly or indirectly holding more than 25% of the voting rights,</p> <p>(iii) Directly or indirectly holding the right to appoint or remove a majority of directors,</p> <p>(iv) Otherwise having the right to exercise, or actually exercising, significant influence or control,</p> <p>(v) Having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.</p>

161. The PSC register is intended to reveal ownership and control of corporate entities and has based the above conditions on international best standards in order to do so.
162. Further to this, paragraph 2(9) of Schedule 2 does not require an overseas entity to report if that entity has shares admitted to trading on a regulated market in an EEA state or other markets listed in legislation. Having shares admitted for trading on these markets requires the entity to meet a number of

reporting requirements. These requirements are considered equivalent to those set out by the PSC regime. It is therefore considered that the transparency requirements in relation to these entities are already met and there is no policy gain in requiring them to also provide information for our Register.

163. Paragraphs 2(4), 2(5), 2(7) and 2(8) of Schedule 2 set out that mutual societies including cooperatives and community benefit societies will not be required to report where they own land or are a tenant of a registrable lease. This is on the basis of the similar reporting they are required to do to the Financial Conduct Authority for publication in their Mutuals Public Register⁵.

Public authorities

164. Paragraph 3 of Schedule 2 sets out that public authorities to which the Freedom of Information (Scotland) Act 2002 or the Freedom of Information Act 2000 apply will not be required to report. These Acts apply widely to public sector bodies including Ministers, non-departmental public bodies, local authorities and health boards etc. In each of these cases, the control of the organisation will already be transparent through legislation. It is also not clear how, for example, one could usefully define control of land held by a local authority. Additionally, third parties may make use of the Acts to inquire into the activities etc. of these bodies. We would consider that there would accordingly be no policy gain in requiring such persons to register in the Register.

Partnerships other than general partnerships

165. Paragraph 4 of Schedule 2 sets out that an eligible Scottish partnership and a limited liability partnership are not required to report. The rationale for this is noted in the table above.

⁵ <https://www.fca.org.uk/firms/mutuals-public-register>