

Improving transparency in land ownership in Scotland: a consultation on controlling interests in land

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Ministerial foreword

Improving transparency of land ownership in Scotland is an issue that is at the very heart of progressing land reform in Scotland. The regulations that we will take forward under section 39 of the Land Reform (Scotland) Act 2016 following this public consultation will help communities, tenants and land owners to know and understand more about the people who control land owners and tenants of land in Scotland, and, ultimately, this will help ensure that all of the people of Scotland can benefit from our land, one of our most vital assets.

This consultation is the next step in our policy development in this complex and technical area. There are policy, practical, and legal issues relating to the transparency of land ownership which will need to be resolved. We want these regulations to result in greater transparency in relation to the individuals who control owners or tenants of land, but we also want to ensure that the requirements that will emerge from these regulations are proportionate and not unduly onerous on those who transact with land in Scotland.

We also want to ensure that our proposals complement recent changes made to company law at Westminster in respect of people with significant control of UK companies. We want our regulations under the Land Reform (Scotland) Act 2016 to deliver transparency about controlling interests in land owners and tenants— and that means that we intend that they will apply to parties from outside the United Kingdom that have controlling interests in land owners and tenants of landholdings in Scotland. In that context, our intention is that our legislation should also complement the UK Government’s proposal to create a public register of company beneficial ownership information for foreign companies who already own or wish to buy property in the UK (or wish to bid on UK central government contract).

This consultation will help us to shape the regulations. We are keen to involve all interested parties in our work to ensure we get the details right. We have identified three workstreams, namely:

- I. Defining “controlling interest”;
- II. Practical aspects including scope, where the information should be held, and what information should be disclosed; and
- III. The duty to provide the information and sanctions for non-compliance.

I encourage you to get involved in this consultation – please see the information on how to respond at chapter 7.

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Introduction

The introduction of the Land Reform (Scotland) Bill to the Scottish Parliament in June 2015 and the subsequent Parliamentary and public scrutiny of the Scottish Government's proposals generated a sustained and serious debate about the future of land reform in Scotland. The Land Reform (Scotland) Bill was developed and strengthened as it progressed through its Parliamentary stages, particularly in relation to the sections dealing with transparency of land ownership. This subject had attracted significant attention inside and outside Parliament and there was a consensus that more needed to be done to ensure greater transparency of who owns and controls Scotland's land. The Scottish Government brought forward amendments at Stage 3 of the Bill to give Scottish Ministers new powers to provide for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland. The proposals were widely welcomed and the Scottish Parliament voted unanimously to support the amendments, which now form part of the Land Reform (Scotland) Act 2016 which received Royal Assent on 22 April 2016.

In introducing the amendments on transparency of ownership, Ministers undertook to issue a public consultation as part of the process of developing the necessary policy and practical arrangements to give effect to the will of Parliament in this area. This consultation is being published to seek public views on policy proposals for taking this work forward. The Scottish Government identified a number of issues that are being considered and need to be resolved in developing the regulations to deliver a register of controlling interests, these include:

- The definition of a "controlling interest" in relation to a controlling interest in a land owner or tenant;
- The scope of the regulations, the type of land they will apply to and the persons to whom the regulations will apply;
- Where the information about persons with controlling interests in land owners and tenants should be held;
- The information to be disclosed about persons with controlling interests in land owners and tenants;
- The duty to provide the information, and the associated sanctions and enforcement arrangements;
- The process for challenging the information that ultimately appears on the register, or any refusal to disclose information; and
- Any (limited) exemptions from disclosure that should be provided for under the regulations.

Each of these issues is covered within this consultation document and we would welcome your views on all or any of them and the questions we have posed to help

us capture views. As this consultation is lengthy and technical in nature we have divided it into three separate workstreams of two chapters each.

- Workstream I provides full background and context for our proposals and transparency of land ownership issues by setting out an explanation of the information that is already available about land ownership in Scotland, and focuses on defining a controlling interest.
- Workstream II is concerned with the practical aspects of the regulations including the intended scope, where the information should be held, and what information should be publicly available.
- Workstream III seeks respondents' views on who should be required to provide information and in what circumstances, and whether, and to what extent, sanctions may be appropriate and proportionate in the case of non-compliance. It also includes questions as to the assessment of the impact of the proposals in relation to equality, business and regulation, privacy, and the environment.

Chapter 7 contains information on how to respond. Responses should be submitted by 5pm on 5 December 2016.

WORKSTREAM I: DEFINING CONTROLLING INTEREST

This workstream relates to the approach to be taken in the regulations to defining a “controlling interest”. It sets out the current position on transparency of land ownership in Scotland, the purpose of the regulations, and the types of companies, individuals and other bodies who can be considered to have controlling interests in land owners and tenants in Scotland.

It seeks views on the key considerations which Scottish Ministers and the Scottish Parliament should take into account in defining a “controlling interest”.

Chapter 1 – Transparency of land ownership and controlling interests in Scotland

Information currently available in the property registers

1. Secure, reliable and accessible information about who owns land is held to be fundamental to the operation of modern market economies across the world. In Scotland, we have a long history of public registration of rights in land. The General Register of Sasines,¹ Scotland’s original national register of property deeds, dates back to 1617. In 1981, the map-based Land Register of Scotland (“the Land Register”)² began to be rolled out across Scotland. These registers have ensured that information about the owner of a right in land is publicly available. Registration is a means of publicising a sale but is also the final and essential part of the transaction ensuring the purchaser’s right of ownership is made real and enforceable against third parties.

2. As a result of the current arrangements, all but a very small number of properties – typically those which have not changed hands in over 400 years³ - will appear in one of the two property registers maintained by the Keeper of the Registers for Scotland. An example of a Land Register Title Sheet and a Register of Sasines search sheet are included in annexes A and B respectively. These examples show that the Land Register contains a map of the property and other

¹ The Registration Act 1617 formed the basis for the General Register of Sasines, a register forming the chief security in Scotland of rights in land and other heritable property

² The Land Registration (Scotland) Act 1979 introduced the move to a map based register in 1981 and has since been largely replaced by the Land Registration etc. (Scotland) Act 2012

³ For instance, the Universities at St Andrews, Glasgow and Aberdeen all pre-date the Register of Sasines and some of their land may not be recorded or registered. Edinburgh, founded in 1583, also predates the Register of Sasines, but the land it acquired then (Old College) was to begin with held in the name of the City Council. Please see the Scottish Law Commission, Report 222, Land Registration, at page 322

<http://www.scotlawcom.gov.uk/files/1112/7979/8376/rep222v1.pdf>)

information including details of the registered proprietor. In the Register of Sasines, the search sheet for each property provides details about recorded deeds, including the grantee, but anyone looking for further information would need to look at the deeds themselves to understand the extent of the landholding.

3. The registered proprietor in a Land Register title, or the named grantee in a recorded deed, is the “legal owner” of the property in question. The legal owner can either be a natural person (i.e. a private individual who owns property in his or her own name) or a legal person (for instance a legal entity such as a company which owns the property in its own name).

4. There are currently some 1.6 million property titles on the Land Register, which represents about 60% of all the potential property titles in Scotland (or approximately 29% of the Scottish land mass). A further 1.1 million property titles (accounting for approximately 71 % of land mass) remain in the Register of Sasines. Information about accessing these property registers can be found on the Registers of Scotland website.⁴

Completion of the Land Register

5. In May 2014 Scottish Ministers invited the Keeper to complete the Land Register by 2024, with all publicly owned land to be on the Land Register by 2019. Registers of Scotland are currently working on a number of fronts to enable these targets to be met. There are now three routes for properties to move from the Register of Sasines to the Land Register. These are:

- i. “triggers” following market activity such as sales and re-mortgages,
- ii. voluntary requests for registration; and
- iii. the Keeper’s statutory power to move property titles from the Register of Sasines to the Land Register (known as Keeper-induced registration).

6. We expect that a large proportion of Scotland’s land mass will be registered through voluntary registration by private and public sector owners. Initial work using Keeper-induced registration will focus on registering residential properties where Registers of Scotland has already undertaken background work (c. 700,000 titles). Over the next few years, this will increase title coverage significantly. Further information on this is available on the Registers of Scotland website⁵.

⁴ <https://www.ros.gov.uk/services/customer-services>

⁵ <https://www.ros.gov.uk/about-us/land-register-completion>

ScotLIS

7. In October 2015, the then Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy asked the Keeper to take forward the ScotLIS project to enable quick and easy access to information about any piece of land or property in Scotland through a single online source. The need to increase transparency about land ownership is a key driver for the ScotLIS project, which will also support and improve the efficiency of property market transactions.

8. Registers of Scotland is working with stakeholders to undertake scoping and development work on ScotLIS and the first phase of this work is due to be launched in October 2017. This will focus on data from Registers of Scotland and other public authorities that identify title to property and supports property market transactions. Subsequent phases will enable the sharing and linking of further layers of data from a wide range of public sources. Further information about ScotLIS is available on the Registers of Scotland website⁶.

The additional information that these regulations should disclose

9. The calls for greater transparency of land ownership in Scotland have increased in recent years. The provisions in the Land Reform (Scotland) Act 2016 and the debate on transparency had their origins in the report in 2014 of the Land Reform Review Group “*The Land of Scotland and the Common Good*”⁷. The recommendations on transparency from the Land Reform Review Group and the development of policy on transparency of land ownership to date have been driven by concern over the potential for legal entities, such as companies, and arrangements such as the creation of trusts that - in some circumstances - may be used to obscure or hide the identity of persons with controlling interests in land owners and tenants.

10. In response to this concern section 39(1) of the Land Reform (Scotland) Act 2016 provides for regulations to make provision requiring information to be provided about persons with controlling interests in land owners and tenants.

11. The Land Register and the Register of Sasines, already contain details about the legal owners of land in Scotland. The legal owner’s name and designation is set out in the title sheet or in the relevant search sheet in the Register of Sasines. Under present arrangements it is often the case that the legal owner of the land who may also control the decision-making in relation to the land, or indeed any other person who may have a form of controlling interest in that land owner, is willing to

⁶ <https://www.ros.gov.uk/about-us/scotlis>.

⁷ Land Reform Review Group, “The Land of Scotland and the Common Good” (Please see pages 34 -36, available on the following link:- <http://www.gov.scot/About/Review/land-reform/events/FinalReport23May2014>)

engage with communities and others who have an interest in the land or the activities conducted by the land owner. Where this is the case land owners and local communities work together in a collaborative manner with no further assistance required by legislation.

12. In other situations there may be persons who are not the legal owners of the land yet have controlling interests in land owners and tenants. This could be the case where the legal owner is either a legal person or a natural person. For instance, the land may be owned by a natural person and that person may not have control of decisions taken relating to the land. Alternatively, the land could be owned by a legal person and it could be unclear from information currently available as to the identity of the persons with control of the owner or tenant.

13. An example could be where the land owner is a natural person who is a partner in a partnership, and the land in question is an asset within the partnership, or indeed is an asset of a company. It is also possible that land could be owned in the name of a natural person, but that person is a trustee in a trust arrangement and is bound to control the land in accordance with the terms of a trust agreement.

14. Some titles are held by a legal person, such as by a company. It may be possible to obtain more information about who is in control of a UK company by looking at the Companies Register⁸. This Register will reveal the identity of the director, or directors of the company. It is usually the case that it is the directors who would be making the decisions in relation to land. However in some instances shareholders can indirectly influence decision-making within companies given that if they have sufficient voting rights they can change the directors.

15. To ensure greater transparency about the underlying beneficial owners of UK companies that own land in the UK or into public procurement contracts the Small Business, Enterprise and Employment Act 2015⁹ amends the Companies Act 2006 to place a new duty on UK companies to hold a register of people with significant control (PSC). From 6 April 2016, UK companies have been required to keep their own register of PSCs. Since 30 June 2016, UK companies have been required to supply this new information to Companies House alongside the annual confirmation statement of the company's records. By June 2017, Companies House will hold PSC information for most UK incorporated companies and this information will be made available in a public register. There are also obligations placed upon companies to make this information available on request.

16. However, it is more difficult to obtain this information for companies incorporated outside the UK. To address these difficulties, the then UK Government Department for Business, Innovation and Skills published a discussion document

⁸ Available at:- <https://beta.companieshouse.gov.uk/>

⁹ Available at:- <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

“Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the United Kingdom” in March 2016¹⁰. The Department for Business, Energy and Industrial Strategy is currently analysing responses and intends to publish a further call for evidence in the near future.

17. It can also be difficult to discover who controls land held by trustees in a trust arrangement or by trustees on behalf of a partnership because this information is contained in trust deeds or a partnership agreement that may not be in the public domain. Moreover, they are not caught by PSC requirements. Such partnerships and trusts could be formed and governed by Scots Law. However, land in Scotland could be held by a partnership, trust or similar legal mechanism constituted in another jurisdiction.

What information about persons with significant control in land owners and tenants may deliver

18. The main reason for seeking to obtain more information about persons with controlling interests in land owners and tenants is to improve transparency about the identity of the individuals who are taking decisions in matters relating to land in Scotland. 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.

19. There are a number of other reasons why individuals or groups might wish to improve the transparency of land ownership in Scotland. The ability to trace a person with a controlling interest will potentially be helpful in situations where there have been difficulties in tracing the legal owner of the land. The potential benefits here could include assisting in identifying the perpetrators of wildlife crime, identifying land owners to ask them to cut down trees where they are reducing a line of sight and causing danger at the side of a road, or in an action seeking damages after an injury is suffered by an individual on an area of land. Access to this information could also assist local authorities where they wish to exercise their compulsory purchase powers or in exercising enforcement action, for example in relation to a dangerous building. This information may also help other public bodies,

¹⁰Available at:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf

such as the Scottish Environment Protection Agency, in carrying out enforcement functions, for instance in relation to taking action on unlicensed landfill sites.

20. It has also been suggested that improving the transparency of land ownership in Scotland could help to address tax fraud and evasion. The Scottish and UK Governments share a common interest in increasing the transparency of land ownership. However the regulations laid before the Scottish Parliament and their underpinning rationale must be within the devolved competence of Scottish Ministers. The proposed regulations cannot therefore have a taxation purpose which is reserved to the UK Parliament, such as capital gains tax, inheritance tax and corporation tax. Nor can the purpose relate to a reserved matter such as money laundering regulation .

21. The Scottish Parliament has legislative competence (and Scottish Ministers devolved competence) in relation to certain taxes, some of which are relevant to land. In particular, land is liable for non-domestic rates (subject to statutory exemptions such as for agriculture) collected by local authorities and Scottish Ministers introduced a Land and Buildings Transaction Tax (LBTT) in Scotland on 1 April 2015 that replaced Stamp Duty Land Tax. Increased transparency regarding land ownership may assist Revenue Scotland, the tax authority responsible for the administration and collection of Scotland's devolved taxes, in carrying out its compliance function with regard to LBTT. Looking ahead the availability of more comprehensive information in this area could also assist the development of new policies and reform in areas of devolved responsibility, including further land reform.

22. The regulation making power in section 39 of the Land Reform (Scotland) Act 2016 enables Scottish Ministers to make provision to increase the transparency of land owners and tenants and, as a result, improve the accountability of land owners to the people of Scotland.

QUESTION 1 – Do you have any comments about making information about persons with controlling interests in owners and tenants of land available?

Chapter 2 – Defining “controlling interest” and who is a person with a controlling interest in a land owner or tenant

1. The definition of “controlling interest” in a land owner or tenant will be one of the key provisions set out in the regulations. Getting the definition right will help to ensure that the objective of increasing transparency in relation to the individuals who are taking decisions in matters relating to land in Scotland can be achieved. The regulations will set out what constitutes a controlling interest in a land owner or tenant, or which persons are to be treated as person with a controlling interest, or both. The scope of the regulations will be another key consideration in defining “controlling interest” or who is a person with a controlling interest in a land owner or tenant, please see Chapter 3 “Scope”. The Scottish Government was clear throughout the Parliamentary passage of the Land Reform (Scotland) Bill that the meaning of the term “controlling interest” in the proposed regulations would not be constrained by how the term may have been used previously or the definition of similar concepts in other legislation. It is crucial that the definition of “controlling interest” enables the purpose underlying these regulations to be achieved.

2. From the various representations that have been made so far about the issues relating to transparency of land ownership in Scotland, the Scottish Government considers that there are two main questions that underlie the notion of “controlling interest” in land owners and tenants. These are:

- i. Who is in control of the decision-making in relation to the land in question; and
- ii. Who benefits financially from, and takes financial risks, in relation to the land in question.

3. In some instances it may be the same person who both has decision-making power and benefits financially from, and takes financial risks in relation to, the land in question. However, depending on the legal entity or form used, and the terms of any relevant underlying legislation or contractual agreement, these parties could be different.

4. For example, in a situation in which land is owned by a trust, control of the decision-making in relation to the land may be exercised by the trustee(s) in accordance with a trust agreement rather than the individuals who ultimately stand to benefit financially from the land. However, in some instances, the beneficiaries in a trust may be considered to have exercised an element of control over land under the terms of a trust agreement.

5. It is also possible that in some cases there may be more than one interest in a single area of land, and the persons with those interests could have different decision-making powers in relation to the land. In a life rent or fee arrangement, for example, a person may be entitled to occupy a house for the duration of his or her

life, but will not be the legal owner. The legal owner themselves will not be able to occupy the house. The person with the life rent may be able to make decisions in relation to the house, for example decisions relating to maintenance, but only the legal owner can make the decision to re-mortgage the house. It may be the case that a person benefits financially from a decision made by a land owner or tenant but has no control over it, for instance if a person's parents sell the parent's house and give the person the proceeds from the sale.

6. As we have set out in chapter 1 the primary purpose of the regulations is improving transparency in relation to the individuals who are taking decisions in matters relating to land. This in turn will help to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. In that chapter, we also state that the purpose of the regulations must be a devolved one, and acknowledge that matters relating to money laundering and reserved taxes are reserved to the UK Parliament.

7. In light of this, it might be that the first of the two questions at paragraph 2 of this chapter is of more relevance to defining a controlling interest for these regulations in the Scottish context.

8. However, to help define a controlling interest for our purposes, it is helpful to consider existing definitions in relation to the people with significant control (PSC) framework for UK companies and beneficial ownership as defined in the Money Laundering Regulations 2007, irrespective of the purpose of the legislation in which the definition is contained¹¹.

9. Later in this chapter, we will also refer to the various legal entities and forms that may hold land in Scotland and consider who may have decision-making control and who may benefit financially from the land in question.

Existing definitions relating to control of companies and beneficial owners

10. There are existing definitions in relation to PSCs in UK companies and definitions used in money laundering legislation for persons that have a beneficial interest in legal entities.

People with significant control in UK companies

11. The Scottish Government and United Kingdom Governments share a common desire to increase the transparency of land ownership and have agreed to work together in this complex area as we develop the policy for these regulations and as the United Kingdom Government take forward its proposals to enhance the

¹¹ Schedule 3 of the Small Business, Enterprise and Employment Act 2005 (c.26) inserted Part 21A of the Companies Act 2006 to make provision for a requirement on companies to keep a register of people with a significant control over the company.

transparency of beneficial ownership information of foreign companies who own or want to buy property in the UK, or bid for government contracts.

12. The principal purpose behind the information that is disclosed under the PSC framework is to improve transparency surrounding the ownership of companies and Limited Liability Partnerships. The purpose behind the regulations to be made under section 39 of the Land Reform (Scotland) must relate to matters that are within the devolved competence of Scottish Ministers.

13. As a result of this consultation, and given that the Scottish and UK Governments share the same overall aim of increasing transparency in this area, it may be that the information the Scottish Government would want to see disclosed under these regulations is the same, or similar, as that which is currently disclosed in respect of PSCs. In any event, given that companies incorporated in the UK are already under requirements to disclose PSCs, it would be undesirable to require “double reporting” of information by companies that own land in Scotland to both Companies House and to the register that is to be created under these regulations. Therefore, as we develop our proposals, we will want to ensure that the approach taken by the Scottish Government in the regulations to be made under section 39 of the Land Reform (Scotland) Act 2016 complements that taken by the UK Government in respect of UK companies, and any further requirements that the UK Parliament may legislate for in respect of foreign companies. We will also need to ensure that our work takes account of any further development of the UK PSC regime in the light of the 4th EU Money Laundering Directive’s provisions in this area.

14. Part 1 of Schedule 1A of the Companies Act 2006 sets out conditions as to who constitutes a PSC within UK companies, Limited Liability Partnerships (LLPs) and Societates Europaeae (SE)¹². In summary, at least one of the following conditions must be met by an individual (“X”) in relation to a company (“company Y”) for the individual to be a person with “significant control” over the company:

- I. X holds, directly or indirectly, more than 25% of the shares in company Y.
- II. X holds, directly or indirectly, more than 25% of the voting rights in company Y.
- III. X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y.
- IV. X has the right to exercise, or actually exercises, significant influence or control over company Y.
- V. In respect of trusts and partnerships etc., that

¹² See paragraphs 1 – 6 of inserted schedule 1A to the Companies Act 2006 (<http://www.legislation.gov.uk/ukpga/2015/26/schedule/3/paragraph/2>)

- (a) the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to company Y, or would do so if they were individuals; and
- (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

Money laundering and beneficial owner

15. The UK Money Laundering Regulations 2007 set out a number of requirements that “relevant persons” must adhere to. A “relevant person” is a body such as a financial institution that has to meet the criteria in the regulations. Regulation 6 sets out the meaning of “beneficial owner” as follows:-

1) In the case of a body corporate, “beneficial owner” means any individual who—

- a) as respects a body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
- b) as respects a body corporate, otherwise exercises control over the management of the body.

(2) In the case of a partnership (other than a limited liability partnership), “beneficial owner” means any individual who—

- a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
- b) otherwise exercises control over the management of the partnership.

3) In the case of a trust, “beneficial owner” means—

- (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
- (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
- (c) any individual who has control over the trust.

16. There is some commonality between the definitions of people with significant control of UK companies and beneficial owner in money laundering regulations. For instance both refer to 25% of shareholdings and both refer to control, with the PSC provisions also referring to “influence”. It is worth noting that the purpose of Part 21A of the Companies Act 2006 is to increase the transparency of ownership and control of companies and the purpose of the UK Money Laundering Regulations 2007 is to

tackle money laundering and terrorist financing, and as such both relate to reserved matters. It is also worth noting that in addition to these definitions that are set out in legislation there is also guidance relating to the PSC requirements¹³, and the money laundering regulations¹⁴.

17. The Scottish Government considers that they are helpful precedents and invites views as to how useful these definitions are for achieving the purposes we have set out. As noted above, our intention will be to ensure our approach complements that taken by the UK Government in these areas and we are keen to avoid any “double reporting” of similar information by companies.

The legal entities and trusts which hold title to land and buildings in Scotland

18. It is possible that land in Scotland could be owned by a number of different legal entities and other ownership structures, such as trusts. Annex C provides some detail about the legal entities and other ownership structures that can hold title to land and buildings in Scotland. While extensive, it is not an exhaustive list and it is important to also note aspects of public sector land ownership, charity and third sector land ownership and other ownership vehicles such as investment funds too. It is also possible that land in Scotland could be held by a legal entity incorporated in accordance with the legal system in another jurisdiction, and it is the intention that the regulations taken forward will apply to these too.

Companies

19. It is often the case that land is held by companies or other forms of body corporate. There are different types of company that can be constituted in the UK. All types have their own legal personality and can hold title to land in the name of the company. If a company owns land in Scotland the information that will typically appear on the face of the Land Register (or the search sheet if the property is still in the Register of Sasines) is the name of the company, the registered address of the company, the country of origin and possibly the registered company number. For UK companies, it is possible to use the company number to find more detail about the company on the Companies Register.¹⁵

¹³Guidance – PSC requirements for companies and limited liability partnerships, available at :- <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

¹⁴ Guidance – Money Laundering Regulations, available at:- <https://www.gov.uk/topic/business-tax/money-laundering-regulations>

¹⁵ Companies Register available at:- <https://beta.companieshouse.gov.uk/>

Partnerships and trusts

20. Where land is owned in trust, or by a partnership, it is usually the case that the legal title will be held by the name of a firm or by natural persons in their capacity as trustee. From this, it is not necessarily apparent from the legal title who the person or persons with a controlling interest in the land owner or tenants are. Typically, the arrangements that govern a partnership or trust are in private agreements that may be available publicly.

Public sector bodies

21. It will also be important to consider the situation relating to land owned by all types of government bodies and local authorities. In Scotland, public sector land is held by Scottish Ministers, UK Government Ministers, local authorities and local health boards. Land and buildings may also be held by Non-Departmental Public Bodies, such as Scottish Natural Heritage. Land and buildings in Scotland may also be owned by foreign governments.

22. Companies or other legal entities are sometimes set up by local authorities and other public bodies. This arrangement includes what are known as “arms’ length external organisations” (ALEOs) and it is possible that other such mechanisms may exist. While it is unlikely that there are individuals with any form of “controlling interest” (in the terms set out in chapter 2) in government bodies and local authorities, the Scottish Government intends to address this question specifically with public bodies and local authorities during the consultation phase to develop our understanding of how titles to land and buildings are held.

Charities

23. Charities may hold land and buildings in Scotland to allow them to fulfil their charitable purposes and for investment purposes. Often, charities hold title to land as either a company or in the form of a trust. The Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) created a new legal form for registered Scottish Charities, the Scottish Charitable Incorporated Organisation (SCIO). A SCIO is a form of corporate body which can enter into the same types of transaction as a natural person, such as entering into contracts, employing staff, incurring debts, owning property and suing and being sued. A SCIO is incorporated by application to the Office of the Scottish Charity Regulator (OSCR).

24. The application to incorporate a SCIO must be made by two or more natural persons who will become the first members of the SCIO if the application is successful. The SCIO must always have at least two members, who may also be charity trustees but do not need to be. SCIOs are required to have at least three charity trustees who have general control of the administration of the SCIO and for

the SCIO to keep a register of charity trustees.¹⁶ A person is entitled to request that a SCIO provides them with a copy of its register of charity trustees and if the request is reasonable they are entitled to be given a copy within 28 days.¹⁷ If that person is not a charity trustee of a SCIO, the SCIO may redact the name and address of any of its charity trustees if and only if it is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

25. Members of SCIO have statutory duties under the 2005 Act which mean that both the SCIO and OSCR must be clear about who the members are at all times. The members also have duties to fulfil under the 2005 Act. A SCIO must maintain an up to date register of its members so that they are clearly identifiable and therefore their decision-making powers can be seen to have been properly exercised. The register must include the name and address of the members and, if the member is a corporate body, the name of the principal contact. This register is open to members and trustees of the charity but is not publicly available.

Investment funds

26. The Scottish Government considers that Scotland is an attractive location for investment and land in Scotland can be acquired and held by investment funds. It is imperative that there is transparency in relation to the persons with controlling interests in investment funds that holds title to land in Scotland.

27. There are a variety of ways in which investment funds may structure themselves. The most common structures used are Open Ended Investment Companies (OEICs), Authorised Unit Trusts (AUTs) and Authorised Contractual Schemes (ACSs). It is likely to be the case that where such bodies own land and buildings, they will do so in the name of the investment fund.

28. Currently, within a form of investment fund, it may be the case that a fund manager, who is charged with the management of the fund, could be a PSC under the conditions set out in the Companies Act 2006.¹⁸

29. We invite views from the investment fund industry as to who they consider would be the person with a controlling interest in decision-making in relation to land and buildings in Scotland held by investment funds, irrespective of where the investment fund is based.

¹⁶ See regulation 3, Scottish Charitable Incorporated Organisations Regulations 2011, available at <http://www.legislation.gov.uk/ssi/2011/44/regulation/3/made>

¹⁷ See regulation 4, Scottish Charitable Incorporated Organisations Regulations 2011, available at <http://www.legislation.gov.uk/ssi/2011/44/regulation/4/made>

¹⁸ Part 21A of the Companies Act 2006, as inserted by the Small Business, Enterprise and Employment Act 2015 available at:-
<http://www.legislation.gov.uk/ukpga/2015/26/schedule/3/paragraph/1>

Other legal entities

30. There are other forms of legal entities and ownership that we have not mentioned here and we invite comments on any that are not mentioned in this part of the consultation. We also invite comments from sectors that own land in Scotland, and any particular considerations that there may be in respect of their landholdings.

QUESTION 2: In your view, taking in to consideration the contents of this chapter and the associated annex C, what are the key considerations that Scottish Ministers should take in to account in defining a “controlling interest” or “persons with controlling interests in land owners and tenants” for the purposes of these regulations?

WORKSTREAM II: PRACTICAL ASPECTS

This workstream is concerned with the practical aspects of the regulations including the intended scope, where the information should be held, and what information should be publicly available.

The key factors which are likely to have an impact on decisions in this area are set out below and, where appropriate, several options may be suggested. For some of these questions, the Scottish Government has suggested a way forward and is seeking comments.

Chapter 3 – Scope

1. This consultation seeks views on the scope of the regulations. There are two main questions to consider:

1. what type of land the regulations should apply to; and
2. who the regulations should apply to.

2. The answers to these questions are likely to be dependent on the agreed definitions of “controlling interests” and “person with a controlling interest in a land owner or tenant”.

Type of land

3. The Scottish Government considers that to achieve the desired level of transparency, the regulations should apply to all types of land irrespective of whether the land is urban or rural, built on or not, or what the land is used for. We invite views on whether particular categories of land should be exempt – though at this stage we do not consider there to be any policy rationale for any type of exemption in respect of the type of land and what it is used for.

4. We consider that the definition of “land” for the purposes of the new register of “persons with controlling interests in land owners and tenants” in Scotland should be the same as that used for the purposes of the Land Register. Our rationale here is that the information about persons with controlling interests in land owners and tenants will primarily relate to land transactions that will be registered, or are capable of being registered, within the Land Register. For the purposes of the Land Register, “land” is denoted as follows:-

5. “Land” includes –
 - a. buildings and other structures;

- b. the seabed of the territorial sea of the United Kingdom adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides); and
- c. other land covered with water¹⁹.

QUESTION 3: In your opinion, should the regulations apply to all types and uses of land? YES/NO. Please give details.

QUESTION 4: Do you think that particular categories of land should be exempt? YES/ NO

QUESTION 5: If YES, please give details.

QUESTION 6: In your view, for the purposes of these regulations, should “land” have the same meaning used for Land Registration purposes (outlined above)? YES/NO. Please give details.

Type of proprietor and interests in land

6. As previously stated to the Scottish Parliament, the Scottish Government considers that the regulations should apply to all land owners and tenants who have titles in the Land Register or Register of Sasines where there is a person with a controlling interest in a land owner or tenant.

7. Since the Parliamentary stages of the Bill, further consideration has been given to the types of proprietor, and the interests in land, which the regulations should apply to. We also consider that the regulations should apply to owners of land who do not have a registered or recorded title either because they hold land that pre-dates the Register of Sasines coming into being, or because they have acquired a personal right to property but have not yet registered the deed in their favour in the Land Register.

8. There are leases of 20 years or less that are not in the Register of Sasines or the Land Register because they are not long leases and therefore cannot be registered. However, these leases may potentially be of high value. The Scottish Government invites views as to whether such unrecorded or unregistered interests should also fall within the scope of the legislation where there is a person with a controlling interest in a tenant of land.

¹⁹ The definition of “land” for the purposes of the Land Register is contained in section 113(1) of the Land Registration etc. (Scotland) Act 2012 available at :- <http://www.legislation.gov.uk/asp/2012/5/section/113/enacted>.

9. As we have set out in chapter 2 land can be owned by either natural persons in their own name, or by legal persons, or by individuals in their capacity as trustee. Land in Scotland can also be held by a legal entity incorporated in accordance with the legal system in another jurisdiction. It is also possible that a legal title could be held by a natural person but the title is in the name of the person who is, for example, a partner of a partnership and as such is acting as a trustee for the partnership or otherwise the person is acting as a trustee on behalf of a trust.

10. The concerns expressed during the consideration of the Land Reform (Scotland) Bill in Parliament and elsewhere have focused on the perceived lack of transparency of land ownership in situations where legal entities are alleged to be used to conceal the identity of the individuals who have control of land. To address these concerns we propose that the regulations should provide greater transparency where the legal owner of land is a legal body or an individual owning land in a special capacity such as a trustee.

11. Since the passage of the Land Reform (Scotland) 2016 Act, the Scottish Government has given further consideration to the scope of the regulations and we invite views on the application of these regulations to natural persons. It is possible that a land owner who is a natural person could be subject to a person with controlling interest. For instance, it is possible that a person could own land or buildings in his or her own name and bring that property in to a partnership as an asset for the partnership without transferring the legal title to the partnership.

12. We welcome views on the extent to which persons own land but do so by virtue of an undisclosed relationship of trust for the benefit of others and whether this is a legitimate concern that the regulations should provide for. It is also theoretically possible that natural persons who own land could have some form of “secret” contractual or hidden trust relationship with another party, which would mean that the other party can exercise control over the natural person and in turn the land. In considering the scope of the regulations and the types of proprietor that the regulations should apply to, we also invite respondents to consider whether there is any way of avoiding the requirements/obligations of the regulations. We invite views and comments on how the Scottish Government could draft the regulations to combat such activity.

QUESTION 7: In your opinion, should the regulations also apply where the proprietor of land that is not recorded in the Register of Sasines or registered in the Land Register because either:

- I. The property was acquired prior to the Register of Sasines commencing in 1617; or
- II. They have acquired a personal right to property but have not yet registered the deed in their favour in the Land Register?

QUESTION 8: In your opinion, should the regulations apply where a tenant in a high value lease that is not a long lease (a lease of 20 years or fewer) falls within the definition of persons with controlling interests in land owners and tenants?

QUESTION 9: In your opinion, are there instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land? For instance if the land in question is an asset of a partnership or trust, or part of a trust arrangement?

QUESTION 10: In light of the contents of this consultation, and this chapter in particular, can you foresee any ways in which the obligations under these regulations could be avoided, and, if so, what could the Scottish Government do to combat this?

Chapter 4 – Where the information should be held and what information should be disclosed

Where the information should be held

1. The Land Reform (Scotland) Act 2016 provides that the information is to be published in a public register maintained by the Keeper. The main options are to publish the information as part of the existing Land Register or to hold the information as a free-standing public register.
2. A key factor in determining the most practical and cost effective option is that the Land Register currently discloses information on the legal titles for properties that cover approximately 29% of the land mass of Scotland. The remaining legal titles are recorded in the Register of Sasines or not recorded or registered at all, as we have set out in chapter 1.
3. We also stated in chapter 1 that Registers of Scotland are currently working to complete the Land Register by 2024. By that date the legal titles for all properties in Scotland should be registered in the Land Register. In providing for the disclosure of information on a controlling interest in a land owner or tenant we have to consider what the best solution would be to achieve the maximum level of transparency and ensure information about controlling interests can be obtained for legal titles that may not be in the Land Register before 2024.
4. Another factor to consider is the scope of these regulations. As we have stated in chapter 3, we are considering whether regulations should apply where a person with a controlling interest in a land owner or tenant and that land owner or tenant has done any of the following:
 - I. acquired the property prior to the Register of Sasines commencing in 1617;
 - II. acquired a personal right to property but have not yet registered the deed in their favour in the Land Register; or
 - III. entered into a high value lease that is not a long lease (i.e. a lease which is 20 years or less).

Should the assessment of responses to these questions in the consultation suggest that the regulations should apply in each of these circumstances, then it might be the case that adding the information acquired under these regulations to the Register of Sasines or Land Register will not be sufficient.

5. At this stage, to ensure that information about persons with controlling interests in land owners and tenants is readily accessible and available, the Scottish Government considers that a new register will need to be created.

QUESTION 11: In your opinion, should a new register of persons with controlling interests in land owners and tenants be created? YES/NO

QUESTION 12: What would the advantages be?

QUESTION 13: What would the disadvantages be?

The information to be disclosed

6. The Scottish Government intends that the name of any person having a controlling interest in a land owner or tenant should be disclosed. However, disclosure of the name of a person alone may not be sufficient to enable a community body or other interested party to identify “a person with a controlling interest in a land owner or tenant” and this chapter explores the options to ensure that persons with controlling interests in land owners or tenants can be identified.

7. Personal details could include a person’s postal address, service address (for serving documents), email address or contact telephone number. There are several issues to consider when disclosing personal information of any sort, for instance whether disclosure is permissible under data protection legislation, or whether it would be more proportionate for certain details to be made available only on application in certain circumstances.

8. It is useful to consider what information must be kept in the PSC Register held by UK companies that need to disclose details about people with significant control. This information includes²⁰:-

- Name
- Date of birth
- Nationality
- Country, state or part of UK where the PSC lives
- Service address
- Usual residential address
- The date he or she became a PSC in relation to the Company
- Which of the conditions they meet for being a PSC
- Whether an application has been made for the individual’s information to be protected from disclosure

²⁰For more detail, please see pages 3 and 4 of the summary guidance:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496738/PSC_register_summary_guidance.pdf)

However, when a company submits its PSC register to Companies House, or is required to disclose the details set out above the usual residential address should not be disclosed.

9. Another key consideration is how to keep the information on the register up to date. Under PSC legislation, the information must be kept up to date. Given that, in the Scottish context, the purpose of making information about persons with controlling interests in land owners and tenants available is to enable people and communities to engage more effectively with those who are making decisions about land, and to ensure maximum transparency in terms of the information that is to be made available, we consider that there should be a duty to keep the relevant information up to date.

10. For the purposes of our regulations we also invite views as to whether information about the extent of the controlling interest is necessary. For example, if it is determined that a person has a controlling interest in a land owner or tenant because they hold a certain percentage of the shares in a company it may be considered appropriate to disclose percentage shareholding in the register. Alternatively, it may be considered that the percentage shareholding is not relevant, and all that is needed is knowledge that person is a person with a controlling interest in a land owner or tenant.

11. The Scottish Government acknowledges that there may be commercial sensitivities relating to this information and invites views as to whether information about the nature and extent of the controlling interest should be required; whether it should be disclosed or not; and whether holding information about the nature and extent of the controlling interest would assist in improving transparency of land ownership for the purposes of the regulations.

QUESTION 14: In your view, in addition to the names of “persons with controlling interests in land owners and tenants” should other information about them be disclosed? YES/NO.

QUESTION 15: If YES, how would disclosure of that information fulfil the regulations’ aim(s) (as per chapter 1 and your answer to question 1)?

QUESTION 16: If NO, why not?

QUESTION 17: In your view, should information about the nature and extent of a person’s “controlling interest” be disclosed? YES/NO.

QUESTION 18: In your view, should the nature and extent of a person’s “controlling interest” be disclosed on a public register? YES/NO. Please give details.

QUESTION 19: If YES, how would this information fulfil the purpose of the regulations' aim(s)?

QUESTION 20: If NO – why not? Please give details.

QUESTION 21: Thinking about the information which in your view should be disclosed, are you aware of any potential sensitivities relating to this? YES/NO. Please give details.

QUESTION 22: If YES – in your view what are the advantages of keeping this information up to date?

QUESTION 23: If NO – why not? Please give details.

QUESTION 24: In your view, are there instances in which the information about the nature and extent of a person's "controlling interest" is commercially sensitive and should not be revealed? YES/NO.

QUESTION 25: If YES, please explain why you think that this information should not be revealed?

QUESTION 26: If NO – why not? Please give details.

WORKSTREAM III: THE DUTY TO PROVIDE INFORMATION AND SANCTIONS FOR NON-COMPLIANCE

This workstream seeks respondents' views on who should be required to provide information and in what circumstances, and whether, and to what extent, sanctions may be appropriate and proportionate in the case of non-compliance.

Chapter 5– the duty to provide the information

Who should the duty apply to

1. The policy objective behind the new register is to provide people affected by decisions in relation to land, such as local communities, with greater information about the person, or persons, who have a controlling interest in the land owner or tenant. Currently, anyone who wishes to know more about who controls land can obtain information about the legal owner by searching for this information in the property registers. As explained in chapter 1, Registers of Scotland hold Scotland's property registers and in most cases it is possible to find the name of the legal owner in the Land Register or Register of Sasines.
2. However, it is often the case that having information about the legal owner will not assist in reaching the person, or persons, who controls the land owner or tenant of the land in question. This is precisely the type of scenario in which the additional information that will be disclosed in the proposed new register will be used. Scottish Ministers have previously stated to the Scottish Parliament that the duty should apply to land owners and tenants, who in most cases should know who the person with the controlling interest is. We recognise that where there are complex ownership structures lying behind a legal owner, such as a chain of companies owned in off-shore jurisdictions, it may not be possible for the registered proprietor to obtain information about persons with controlling interests. This would suggest that the duty on the legal owner should be to "take reasonable steps" to ascertain if there is a controlling interest.
3. It should also be highlighted that "legal owner" in this context includes a tenant in a long lease who could be a registered proprietor. Also, depending on the assessment of responses to the questions in chapter 3 it is possible that the duty will also apply to tenants in high value leases, and any proprietor of land that is not recorded in the Register of Sasines or registered in the Land Register because either the property was acquired prior to the Register of Sasines commencing in 1617 or they acquired a personal right to property, but have not yet registered the deed in their favour in the Land Register.

QUESTION 27: In your view, should a duty to provide information about persons with controlling interests in land owners and tenants apply to land owners and tenants with titles in the Land Register or Register of Sasines and:

- I. Land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617;
- II. Land owners or tenants who have acquired a personal right to property, but have not yet registered the deed in their favour in the Land Register; or
- III. Tenants in a high value lease that is not a long lease (a lease of 20 years or fewer)? YES/NO.

QUESTION 28: If NO, why not?

QUESTION 29: If YES, in your view what are the advantages of this arrangement?

QUESTION 30: If YES, in your view what are the disadvantages of this arrangement?

4. It may also be appropriate to place the duty on the person or persons with a controlling interest. However, the Scottish Government acknowledges that it may be difficult in practice to enforce these duties if it cannot be ascertained if such a person exists from available information or if these persons are established or resident outside the UK. Enforcing a duty in these circumstances may be challenging and, to the extent this is possible, could be expensive.

QUESTION 31: In your view, should a duty to provide information apply to the “person with the controlling interest”? YES/NO.

QUESTION 32: If NO, why not?

QUESTION 33: If YES, in your view what are the advantages of this arrangement?

QUESTION 34: If YES, in your view what are the disadvantages of this arrangement?

5. It is also possible that there may be intermediate persons who hold the information necessary to determine who has a controlling interest, such as solicitor in a law firm or an accountant who has been dealing with either the land owner or tenant, or the person with a controlling interest in a land owner or tenant. The Scottish Government invites views as to whether it is appropriate to place a duty on intermediate persons.

QUESTION 35: In your view or experience, are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land? YES/NO.

QUESTION 36: If YES to Q35, in what scenarios do you think that there are parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land?

QUESTION 37: If YES, in what capacity are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land?

QUESTION 38: In your view should a duty to provide information apply to such intermediaries? YES/NO.

QUESTION 39: If NO, why not?

QUESTION 40: If YES, in your view what are the advantages of this arrangement?

QUESTION 41: If YES, in your view what are the disadvantages of this arrangement?

When the duty should apply

6. The Scottish Government considers that the duty to supply the information should apply when a person becomes a person with a controlling interest in a land owner or tenant. In many cases, this will be when a natural or legal person is purchasing land or buildings and will be proceeding to register their title on the Land Register. However, it is also possible that a person could become a person with a controlling interest in a land owner or tenant when there is already a Land Register title to the land in question. This might be the case where there is a change in the structure of a company or partnership that means that a person becomes a person with controlling interest when they were not one before, or if a person holds title to land as a natural person but the land or buildings in question become an asset within a company, partnership or trust without any transfer of legal title.

7. The Scottish Government also considers that in order to ensure the maximum level of transparency in respect of persons with a controlling interest in land owners or tenants, the duty to supply information should apply when a person who was already a person with a controlling interest in a land owner or tenant when the regulations come in to force. The duty will apply from the date that the regulations come in to force.

8. The Scottish Government also considers that the duty should apply when a person becomes a person with controlling interest in a land owner or tenant over

land that is still recorded in the Register of Sasines, or indeed not recorded or registered at all. Depending on the assessment of responses to question 8 in chapter 3, the duty will also apply when there is a person with controlling interest in land owners or tenants and that person acquires a high value lease.

QUESTION 42: In your view, should the duty to disclose information about any person with a controlling interest in a land owner or tenant apply either when a person is a person with a controlling interest in a land owner or tenant when the regulations come into force, or becomes a person with a controlling interest in a land owner or tenant when the regulations are in force?

QUESTION 43: If NO, why not?

QUESTION 44: If YES, in your view what are the advantages of this arrangement?

Sanctions and enforcement

9. The duty that will apply will require to be underpinned by proportionate enforcement mechanisms to be effective. The Land Reform (Scotland) Act 2016 enables the regulations to include provision for criminal offences or civil penalties²¹. The regulations could also provide for the effect of providing, or failing to provide, information required under the regulations²². There are a range of possible enforcement mechanisms that could be deployed.

Civil penalties

10. The Scottish Government considers that a duty could be imposed to require that all reasonable care is taken to comply with the duty and to provide accurate information. The scope of this duty will be considered, among other things, in light of our assessment of the responses to the section of this consultation seeking views on who should be covered. For many matters dealt with by government bodies, it is appropriate to have civil penalties for non-compliance with a statutory duty, and for matters such as failing to fully disclose the information that is needed and for failing to keep information up to date.

11. For example, Revenue Scotland have a range of penalties that could apply if there is a failure to pay the relevant tax or make a tax return. There can also be penalties for any inaccuracy in a taxpayer document, for a failure to notify under assessment, for failure to comply or obstruction, for inaccurate information or

²¹ Section 39(3) available at <http://www.legislation.gov.uk/asp/2016/18/section/39/enacted>

²² Section 39(2)(i) available at <http://www.legislation.gov.uk/asp/2016/18/section/39/enacted>

documents, for concealing, destroying etc. documents following an information notice or notification, failure to comply with a time limit, and penalties for a range of administrative matters. There are different levels of penalty for different time periods and for the different circumstances in which penalties apply.

12. Should the assessment of responses to these questions in the consultation suggest that a civil penalty should apply, then consideration will be given to the appropriate level of civil penalty and to the appeal rights.

QUESTION 45: In your view, should a civil penalty be imposed for failure to comply with any of the duties contained in the regulations? YES/NO. Please give details.

Criminal Offences

13. It is possible to have both civil penalties and criminal offences in relation to any failure to comply with the duty to be included within the regulations. As with any civil penalty, we would anticipate that a criminal offence could be applicable to any person who fails to comply with the duty by not providing the information about any person with a controlling interest in a land owner or tenant, or who fails to provide accurate information. The 2016 Act limits the maximum penalty for any criminal offences created through the regulations to a fine not exceeding level 5 on the standard scale (currently £5,000). Imprisonment would not be an option for any criminal offences created in this way.

14. The Land Registration etc. (Scotland) Act 2012 Act has a criminal offence for making a false or misleading statement in relation to an application to the Land Register. A similar offence could be considered for inclusion in these regulations (and for failure to provide information at all), and further consideration will be given to how any offence would operate in practice as part of a separate workstream on sanctions and enforcement.

QUESTION 46: In your view, should failure to comply with any of the duties contained in the regulations be a criminal offence? YES/NO. Please give details.

Land Registration condition

15. One of the practical enforcement issues with both civil penalties and criminal offences will be the question of how to apply a penalty or how the Crown could prosecute for a criminal offence when the person to whom the duty applies to is not located in Scotland. It may be the case that the relevant person is simply willing to pay a civil penalty to preserve anonymity. Issues of enforcement, in the context of seeking to improve transparency of land ownership, are factors that have the potential to erode the effectiveness of the regulations Scottish Ministers take forward and introduce to Parliament.

16. A further option that the Scottish Government intends to explore in detail as part of the separate workstream on sanctions and enforcement is the possibility of making the provision of information a condition of registration in the Land Register. This option was set out in the letter of 3 March sent to the Rural Affairs, Climate Change and Environment Committee by Dr Aileen McLeod, the then Minister for Environment, Climate Change and Land Reform²³.

17. The Scottish Government recognises that this option may cause concern to parties who wish to acquire title to land in Scotland and there are a number of practical, policy and legal issues to work through with this proposal in particular. An alternative may be to enable land registration to proceed but to make provision for a form of charge or note to be placed on the relevant title sheet in the Land Register or on the search sheet of the Register of Sasines where it is found that the duty to provide information has not been complied with. A charge of this sort would be a charge over the property that would fall to be paid when the property is sold. The purpose and effect of any note on the title sheet could simply be for information purposes, to notify anybody interested in the title in question that there may be a person with a controlling interest in a land owner or tenant in respect of the title, but that they have not made the relevant entry on the new register. Alternatively, the note could have legal effect, for instance by preventing the legal owner selling on the land or lease in question, or alternatively to prevent a new owner from registering title to the land in question, as the property could perhaps be sold on the market but the purchaser could be prevented from registering title.

18. Any such process will clearly be complex and we will need to give thorough consideration to the range of practical, policy and legal issues, in particular to any implications for the conveyancing and land registration processes. We invite views on this option, and would encourage anyone with a particular interest in this area to take part in the separate workstream on sanctions and enforcement.

QUESTION 47: In your view, should an application for land registration be rejected if the applicant fails to supply information about any “person with controlling interest”? YES/NO. Please give details.

QUESTION 48: In your view, should an application for land registration be rejected if the applicant fails to certify that no such “person with controlling interest” exists? YES/NO. Please give details.

QUESTION 49: In your view, taking in to consideration all of the sanctions and enforcement options set out in this chapter, what mechanisms would be most appropriate to enforce the duty to provide information? Please explain your answer.

²³ Available at:-

http://www.parliament.scot/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20160303_Part_3_Transparency_Amendments.pdf

Challenge and Exemptions

19. In relation to sanctions and enforcement, the Scottish Government will need to give consideration to the need for a right to challenge the information about persons with controlling interests in land owners and tenants that is disclosed and a right to challenge non-disclosure of the information.

20. While the overall policy imperative is to ensure the maximum disclosure of information about persons with controlling interests in land owners and tenants, the Scottish Government recognises that for some parties, in some limited circumstances, it may be undesirable for their details to be disclosed. Currently, this can be achieved by taking title on the Land Register in the name of a legal entity or appoint trustees to hold title to the land in question. It is worth noting in this context that the PSC register framework allows for application for protection, for instance if there is a serious risk of violence or intimidation.

21. The Scottish Government considers that privacy exemptions will be necessary in some limited circumstances such as where publication of information about persons will put them at serious risk of harm. It will be necessary to develop a mechanism and process to allow applications to be considered and decided. Again, we invite views on this issue, and would encourage all those with an interest in this to take part in the dedicated workstream on sanctions and enforcement.

QUESTION 50: In your view, are there instances in which there should be exemptions? YES/ NO.

QUESTION 51: If NO, why not?

QUESTION 52: If YES, in your view what is the justification for such exemptions?

Chapter 6 – Assessing impact

1. The Scottish Government believes that its land reform programme has an important part to play in realising our ambitions for a fairer Scotland. Throughout this consultation phase we will be considering the potential positive and negative effects of our proposals for these regulations. As part of the analysis of this consultation we will consider views from respondents on these issues. We invite respondents to answer the questions below.

Equality

2. The Scottish Government is committed to promoting equality and removing or minimising disadvantage which maybe experienced by different groups of people. We have a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

QUESTION 53: Please tell us about any potential impacts, either positive or negative, that you consider that the proposals in this consultation may have in respect of equality issues. Please be as specific as possible.

Business and regulation

3. A full Business and Regulatory Impact Assessment will be carried out to analyse whether these regulations are likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary or community organisations.

QUESTION 54: Please tell us about any potential costs and burdens that may arise as a result of the proposals within this consultation, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Privacy

4. The Scottish Government is mindful that proposals that require people to disclose information are likely to have impacts in respect of privacy. As we have noted in chapter 4 in relation to the information to be disclosed as a result of these regulations, we invite views on the information that it is appropriate to disclose and we will of course consider relevant data protection legislation as we develop our proposals. A full Privacy Impact Assessment will be conducted to ascertain whether

any of the proposals in this consultation will have an impact on the privacy of individuals.

QUESTION 55: Please tell us about any potential impacts, either positive or negative, upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

Environmental

5. The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse impacts are sought, where possible, prior to a consultation or implementation of the plan in question.

6. At this early stage in policy development for these regulations it is not possible to assess whether environmental impacts will arise. Following this consultation, an assessment will be made as to whether we have complied with our obligations under the 2005 Act.

QUESTION 56: Please tell us about any potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment. Please be as specific as possible.

Chapter 7 – How to respond

We would like to hear your views on proposals to provide for the disclosure and publication of information on the controlling interests in land owners and tenants across Scotland.

This paper covers a wide range of complex issues and we appreciate there is a lot to consider. However, we still want to make it as accessible as possible. That is why we have placed this consultation onto our consultation platform, Citizen Space, to allow for swift navigation and ease of use. We use Citizen Space because we believe that responding online represents the best opportunity for respondents to give a full account of their views and opinions.

Handling your response

There are a number of ways that you can respond. If you respond using Citizen Space (<http://consult.scotland.gov.uk/>) you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form.

You can respond by email by sending your response to: LandReform@scotland.gsi.gov.uk. You can also respond in writing, by sending your responses to the address below. Please do not forget to include your Respondent Information Form as your response cannot be accepted without it.

Land Reform Team
Area 1C North
Victoria Quay
Edinburgh
EH6 6QQ

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

Other formats of this consultation can be made available on request – please contact the Land Reform Team.

If you ask for your response not to be published, we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next Steps

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

The consultation runs until 5 pm on 5 December 2016. A 12 week consultation will allow us to ensure your views are taken into account in order to introduce regulations providing for a register of controlling interests in this Parliamentary year.

Abbreviations

ALEO -	Arms' length external organisation
ACS -	Authorised Contractual Scheme
AUT -	Authorised Unit Trust
LBTT -	Land and Buildings Transaction Tax
LLP -	Limited Liability Partnership
OEIC -	Open Ended Investment Company
OSCR-	Office of the Scottish Charity Regulator
PLC -	Public Limited Company
PSC -	Person of Significant Control as defined in the Companies Act 2006
SCIO -	Scottish Charitable Incorporated Organisation
SE -	Societates Europaeae

Glossary of Terms

- Companies House

Is an executive agency, sponsored by the UK Government Department for Business, Energy & Industrial Strategy. Their main responsibilities relate to the incorporation and dissolution of limited companies, registration of the information companies are legally required to supply, and making that information available to the public. In this consultation Companies House is mentioned in the context of the latter two responsibilities.

- Companies Register

Is a publically searchable register held by Companies House. The information it contains currently includes: company overviews and officers; document images; disqualified directors; previous and dissolved names; UK establishments and registered office addresses.

- Deed(s) or title deed(s)

Are the legal documents which show who owns a property or piece of land. A deed may also give details of any access or other rights that come with, or are excluded from, the property or land.

- Land and Buildings Transaction Tax (LBTT)

Replaced UK Stamp Duty Land Tax in Scotland from 1 April 2015. It is a tax applied to residential and commercial land and buildings transactions (including commercial purchases and commercial leases) where a chargeable interest is acquired. Revenue Scotland administers LBTT with support from Registers of Scotland.

- Land Register of Scotland/Land Register

Began to be rolled out across Scotland in 1981 – it is maintained by Registers of Scotland. Each entry in the Land Register contains a map of the property and other information including details of the registered proprietor. There are currently some 1.6 million property titles on the Land Register, which represents about 60 % of all the potential property titles in Scotland (or approximately 29 % of the Scottish land

mass). In May 2014, Scottish Ministers invited the Keeper of the Registers of Scotland to complete the Land Register by 2024, with all publicly owned land to be on the Land Register by 2019.

- Legal person

Is one of the two categories of person who can be a recognised legal owner or registered proprietor of land or property (see ‘natural person’ below). A ‘legal person’ is a created legal entity; for example, a company which has been registered as a general partnership in Scotland. Such an entity can hold land or property in its own name. Further information on the legal entities and trusts which can hold land in Scotland is available within this consultation in chapter 2 and at Annex C.

- Life rent

Can be granted to a third party – ‘the life renter’ – by the proprietor. ‘Life rent’ is a right to enjoy the use and benefit of the property for the lifetime of the life renter (it is possible to have specified another time period at the point of the creation of the life rent). On termination of the life rent, title will revert to the proprietor who is known as the ‘fiar’ in this context.

- Natural person

Is the other of the two categories of person who can be a recognised legal owner or registered proprietor of land or property (see ‘legal person’ above). A natural person is a private individual who owns property in his or her own name. Further information on the legal entities and trusts which can hold land in Scotland is available within this consultation in chapter 2 and at Annex C.

- General Register of Sasines

Is Scotland’s original national register of property deeds. The search sheet for each property provides details about recorded deeds, including the grantee, but does not contain a map of the plot as the Land Register does.

- Revenue Scotland

Is the tax authority responsible for the administration of Scotland’s devolved taxes.

Relevant Legislation

The following acts are referenced in this consultation. In addition to the references within the consultation they can be accessed at the links below:

Charities and Trustee Investment (Scotland) Act 2005

- <http://www.legislation.gov.uk/asp/2005/10/contents>

Companies Act 2006

- <http://www.legislation.gov.uk/ukpga/2006/46/contents>

Land Reform (Scotland) Act 2016

- <http://www.legislation.gov.uk/asp/2016/18/contents>

Land Registration etc. (Scotland) Act 2012

- <http://www.legislation.gov.uk/asp/2012/5/contents/enacted>

Money Laundering Regulations 2007

- <http://www.legislation.gov.uk/uksi/2007/2157/made>

Small Business, Enterprise and Employment Act 2015

- <http://www.legislation.gov.uk/ukpga/2015/26>

Annex A – An example Land Certificate from the Land Register

Example of a land register title

Annex A





TITLE NUMBER PTH621342

A 1

A. PROPERTY SECTION

DATE OF FIRST REGISTRATION
15 SEP 2015

DATE TITLE SHEET UPDATED TO
15 SEP 2015

REAL RIGHT
OWNERSHIP

DESCRIPTION

Subjects cadastral unit PTH621342 5 ACACIA AVENUE, PERTH PH1 4BL edged red on the cadastral map. Together with a common or mutual right of property in the mutual boundary fences or walls, gables, drains, pipes, chimneys and chimney heads serving the subjects in this title and any adjoining subjects.



TITLE NUMBER PTH621342

B 1

B. PROPRIETORSHIP SECTION

ENTRY NO	PROPRIETOR	DATE OF REGISTRATION	CONSIDERATION	DATE OF ENTRY
1	GILLIAN STUART 16 Baird Street, Perth, PH1 4BL.	15 SEP 2015	£48650	11 SEP 2015

MOCK-UP



TITLE NUMBER PTH621342

C 1

C. SECURITIES SECTION

ENTRY NO	SPECIFICATION	DATE OF REGISTRATION
1	Standard Security for £38650 and further sums by said GILLIAN STUART to ABBEY NATIONAL PLC Incorporated under the Companies Acts, Registered Office Abbey National House, 2 Triton Square, Regent's Place, London NW1 3AN.	15 SEP 2015

MOCK-UP



TITLE NUMBER PTH621342

D 1

D. BURDENS SECTION

ENTRY
NO

SPECIFICATION

- 1 Disposition by Perth and Kinross Council (hereinafter referred to as "the Council") to Gillian Stuart and her executors and assignees (hereinafter referred to as "the Disponees"), registered 15 Sep. 2015, of the subjects in this Title, contains the following burdens:

Real Burdens

1. The dwellinghouse 5 Acadia Avenue, Perth forming part of the subjects hereby disposed shall be used in all time coming as a private dwellinghouse only.
2. The subjects hereby disposed shall not be used for the purposes of any trade, business, profession or manufacture.
3. Neither the subjects hereby disposed, nor any part thereof, shall be used in such a way as to constitute a nuisance or annoyance to any tenant or proprietor in the neighbourhood.
4. No board, sign or other advertising notice of any description shall be erected or displayed on the subjects hereby disposed.
5. No caravan or any vehicle other than two private motor cars or motor cycles shall be parked on or adjacent to the subjects hereby disposed.
6. No animals or birds, apart from ordinary domestic pets, may be kept on the subjects hereby disposed.
7. The subjects hereby disposed shall be maintained in a neat and tidy condition and in a reasonable state of repair and the Disponees shall be granted all necessary rights of access over the adjoining subjects belonging or formerly belonging to the Council for the purposes of any maintenance, repair or replacement of any part of the subjects hereby disposed including such common or mutual parts subject to the Disponees restoring all damage caused in the exercise of the said right of access.
8. Except with the prior written approval of the owners of the adjacent units, as defined in Section 32 of the Title Conditions (Scotland) Act 2003 (the subjects

hereby disposed being the affected unit as defined in the said Section 32), in addition to any statutory consents which may be required, the Donees shall not (a) make any alterations or additions to the exterior of the dwellinghouse forming part of the subjects hereby disposed, or (b) erect any additional buildings on the subjects hereby disposed apart from any garden shed or greenhouse, or (c) replace any existing boundary enclosure with another of a different construction or type, or erect enclosures where none exist at present.

9. In the event of the dwellinghouse erected on the subjects hereby disposed being destroyed or damaged by fire or otherwise, the Donees shall rebuild or restore the same within two years from the date of such loss or damage.

10. The Donees shall be required to keep the said dwellinghouse hereby disposed constantly insured against destruction or damage by fire and such other risks as are appropriate to residential property with a reputable insurance company for the full reinstatement value from time to time applicable by means of an index-linked insurance policy; And in the event of the said dwellinghouse being destroyed or damaged all sums received by the Donees in respect of such insurance shall be applied towards rebuilding or restoring the same.

11. There shall be reserved,

(i) in favour of

(a) all statutory undertakers including for the avoidance of doubt and without prejudice to the foregoing generally all public gas and electricity suppliers, the Post Office and the operator of any telecommunications system and

(b) all adjoining proprietors a right of access over, under or through the subjects hereby disposed for any existing drains, gas or water pipes, electricity, telephone or television cables, communal aerial and ancillary equipment, electricity pylons, telephone poles, street lamps and all other equipment belonging to all such statutory undertakers and adjoining proprietors together with, where appropriate, a right of property in such drains and others and also with a right of access thereto for the purpose of maintenance, repair and renewal thereof and

(ii) in favour of any adjoining proprietors, a right of access over the subjects hereby disposed for the purpose of the maintenance, repair and renewal of any parts of the said adjoining subjects, including those parts common to or mutual with the subjects hereby disposed; but any such rights exercised in terms hereof shall be exercised subject to the obligation to make good any damage occasioned to the subjects hereby disposed by the exercise of such right.

12. In the event of the roadway and/or the footpath ex adverso the subjects hereby disposed not having been taken over by the Roads Authority and added to the statutory

Council, the Disponees will pay to the Council a proportionate share of the costs of the maintenance, repair and renewal of the aerial and ancillary wiring and equipment based on the number of houses served by the system.

16. (a) where the subjects hereby disposed adjoin a road, the footpavement of a road or a footpath or an area of amenity ground or grassed area belonging to the Council the Disponees shall be solely responsible for the maintenance, repair or renewal of the relative boundary enclosure; (b) where the subjects hereby disposed adjoin subjects not now or formerly belonging to the Council the Disponees shall free and relieve the Council of all responsibility for such boundary enclosure; (c) unless otherwise referred to herein, any boundary enclosures or gable walls in so far as mutual separating the subjects hereby disposed from subjects belonging or formerly belonging to the Council shall be maintained, repaired or renewed mutually by the Disponees and the respective adjoining proprietors except where (1) the boundary enclosure is retaining either the subjects hereby disposed or the adjoining subjects in which case the proprietors of the ground being retained shall be responsible for the maintenance, repair and renewal of that boundary enclosure; or (2) the subjects hereby disposed adjoin a building of any kind in which case the wall of the said building adjoining the subjects hereby disposed shall not form part of the subjects hereby disposed and shall not be maintained by the Disponees, similarly any building on the subjects hereby disposed forming a boundary of the subjects hereby disposed shall be maintained exclusively by the Disponees; for the purposes of this Clause where the subjects hereby disposed includes areas, buildings or others held in common or jointly with another or other proprietor(s), the obligation to maintain, repair or renew the relative boundaries of such areas, buildings or others will be shared equally between or amongst the Disponees and the said joint or common proprietor(s).

17 The drains, pipes, chimneys and chimneyheads and others common or mutual to the said dwellinghouse hereby disposed and any adjoining dwellinghouse shall be maintained mutually by the Disponees and the respective adjoining proprietors.

18. In the event of the Council having right in terms of these presents to recover from the Disponees the cost or a proportion of the cost of any works or services carried out by or provided by or on behalf of the Council, including without prejudice to the foregoing generally any common works or services, there is included right to recover from the Disponees a reasonable proportion of any fees and costs, whether professional, administrative, clerical or otherwise and whether such fees and costs are those of the Council or a third party, incurred in negotiating, instructing, contracting, supervising, carrying out or providing the works or services and the invoicing and recovery of said fees and costs or a proportion thereof from the Disponees.

list of roads then the Disponees will be responsible for the cost of the maintenance, repair or renewal of any footpaths ex adverso the subjects hereby disposed and for the cost of the maintenance, repair or renewal of any roadway ex adverso the subjects hereby disposed from the boundary of the subjects hereby disposed to the centre line of the roadway where there are dwellinghouses on the opposite side of the roadway and for the whole width of the roadway where there are no dwellinghouses on the opposite side of the roadway; In the event of the Council as proprietor of a roadway and/or footpath desiring to carry out any such maintenance, repair or renewal of such footpath or roadway or being required by the proprietor of a footpath and/or roadway or by the Roads Authority to contribute towards the maintenance, repair or renewal of such footpath or roadway

(a) which leads to the subjects hereby disposed from a public roadway and the costs of which the Council are not legally entitled to recover from the proprietors of subjects ex adverso such footpath or roadway or

(b) part of which is ex adverso the subjects hereby disposed the Disponees shall be required to pay to the Council an appropriate share of the costs incurred by the Council in such maintenance, repair or renewal; The Disponees will not at any time be entitled to require the Council as owners of adjacent subjects or otherwise to carry out any maintenance work to the roadway or footpaths or to require them to be made up to an adoptable standard.

13. Where a roadway serving inter alia the subjects hereby disposed which has not been taken over by the Roads Authority incorporates one or more car parking areas, or where a piece of ground belonging to the Council is or becomes designated a car parking area, and in either case any such car parking area provides facilities for the benefit of a group of houses including the subjects hereby disposed, then the Disponees shall be required to pay to the Council as proprietor of such car parking area an appropriate share of the costs incurred by the Council in maintaining, repairing or renewing such car parking area.

14. In the event of the proprietors of a dwellinghouse which

(a) adjoins the dwellinghouse hereby disposed or

(b) forms part of a terrace of dwellinghouses of which the dwellinghouse hereby disposed forms part desiring to maintain, repair or replace the gutters pertaining to said dwellinghouse then the said proprietor will be entitled to maintain, repair or replace the whole length of gutter including the section pertaining to the dwellinghouse hereby disposed and the Disponees shall be liable to repay to the said proprietor an appropriate proportion of the total cost.

15. Where the dwellinghouse erected on the subjects hereby disposed and other dwellinghouses are served by a communal television aerial provided by or owned by the

Annex B – An example search sheet from the Register of Sasines

537-377	
Search Sheet, County of Glasgow.	
92161	
	(I.)
upper Floor House 768 KINGSACRE ROAD, of Building 766 and 768 Kingsacre Road; and (II.)	
155 square Yards of ground, bounded on north-east by said Road, parts of 9 ⁸⁵ / ₁₀₀₀ Acres of	
ground, in Parish of Cathcart, described in Feu Con. to which said Granter was a party,	
recorded 12th Jul. 1929, with right in Path &c., with Teinds.	
(From S.S. 35727)	J.D.L.
4895 (No.4) May 16, 1962. 10-10.30 (By Post)	8738. 16.
FEU DISP. by WESTERN HERITABLE INVESTMENT COMPANY LIMITED, with consent of John Carrick	
1960 Whitson, 768 Kingsacre Road, Glasgow - TO Abbey National Building Society, - of	de
Dated Mar. 9 and 16, 1962;	
with Warrant for preservation as well as for publication on behalf of said Grantee.	
9258 (No.43) Sept. 5, 1963. 10-10.30 (By Post)	9003. 218.
DISP. by ABBEY NATIONAL BUILDING SOCIETY, with consent of John Carrick Whitson, sometime	
1850 768 now 38 Kingsacre Road, Glasgow and Peter Williamson, 14 Scarrell Road, Glasgow - TO	
Corporation of City of Glasgow, - of the S. of S. Dated Aug. 2, 1963	
19. 1963	
08354 (No.8) 28 Feb. 1983	13,627.97.
DISCH. by CITY OF GLASGOW DISTRICT COUNCIL -- ACKNOWLEDGING that Disp.	
(recorded 5 Sep. 1963), with consent of PETER WILLIAMSON, formerly 14 Scarrell Road, now 768	
Kingsacre Road, Glasgow to Glasgow Corporation [of upper floor house 768 KINGSACRE ROAD	
and 155 square yards, in Parish of Cathcart] was in security and that all monies intended to be secured	
thereby have been paid: the subjects conveyed by said Disp. were last vested in CORPORATION OF	
CITY OF GLASGOW, from whom said Granter acquired right by Order. Dated 17 Feb. 1983.	
01370 (No.138) 18 Feb. 1985	14,854.202.
NOTICE OF PAYMENT OF REPAIRS GRANT of £2622.26 by CITY OF GLASGOW DISTRICT	
COUNCIL to PETER WILLIAMSON, 768 Kingsacre Road, Glasgow, in respect of upper cottage flat	
768 KINGSACRE ROAD, GLASGOW, containing conditions to be observed for 5 years from 11 Feb.	
1985. Dated 7 Oct. 1985.	

Annex C

There are a number of different types of companies that can be set up in the UK in accordance with the Companies Act 2006. The table below summarises these different types of companies and explains some of the key factors for each including who makes day to day decisions and who benefits financially, and takes financial risks.

UK companies limited by shares	
<i>Relevant legislation</i>	Companies Act 2006.
<i>Main governing documentation</i>	Memorandum of Association, Articles of Association.
<i>Who benefits financially or takes financial risks?</i>	Shareholders.
<i>Who controls day to day decision-making?</i>	Director/directors (who could also be shareholders).
<i>Types of property likely to be held</i>	Business premises of all scales.
<p><i>Other considerations</i></p> <ul style="list-style-type: none"> • Shareholders may be able to influence directors, depending on how many voting rights a shareholder, or group of shareholders, have. For example, to pass a special resolution to change the name of a company or to alter the articles of association that set out the rules that company officers must adhere to, 75% of the votes in favour of the change. • Directors have a duty to promote the success of a company for the benefit of all the members of the company. • Employees may have an element of control over day to day decision-making on behalf of the company, but, ultimately, they are responsible to the director or directors. 	
UK companies limited by guarantee	
<i>Relevant legislation</i>	Companies Act 2006.
<i>Main governing documentation</i>	Memorandum of Association, Articles of Association.
<i>Who benefits financially or takes financial risks?</i>	Members who act as guarantors, up to a limited amount guaranteed for paying company debts.

<i>Who controls day to day decision-making?</i>	Director/directors.
<i>Types of property likely to be held</i>	Land or buildings held by non-profit organisations such as sport, community or social clubs.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • An individual can be both a director and a member. • Any profits can get paid to guarantors but usually get paid back in to the company for future investment as companies limited by guarantee are usually non-profit organisations. 	
Unlimited companies	
<i>Relevant legislation</i>	Companies Act 2006.
<i>Main governing documentation</i>	Memorandum of Association, Articles of Association.
<i>Who benefits financially or takes financial risks?</i>	Members (and possibly shareholders) who would have an obligation to meet any liability if the company's assets were not sufficient if the company was to be wound up.
<i>Who controls day to day decision-making?</i>	Director/directors (who could also be members/shareholders).
<i>Types of property likely to be held</i>	Business premises of all scales, however we understand that these are less common than limited companies and it is unlikely that a limited company would hold premises where trade is being carried out.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • An unlimited company is not regulated to the same extent as a limited company. Therefore, this method of incorporation may be desirable if there are commercial sensitivities involved. • However, certain UK companies are required to maintain a register of persons with significant control of the company under changes made to the Companies Act 2006 by the Small Business, Enterprise and Employment Act 2015. 	

UK public limited companies (PLCs)	
<i>Relevant legislation</i>	Companies Act 2006.
<i>Relevant governing documentation</i>	Memorandum of Association, Articles of Association.
<i>Who benefits financially or takes financial risks?</i>	Shareholders.
<i>Who controls day to day decision-making?</i>	Director/directors (who could also be shareholders).
<i>Types of property likely to be held</i>	Larger commercial premises in urban areas. It is unlikely that rural estates and farms would be held by PLCs.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • Shares can be freely and readily obtained by and sold by the general public. Therefore, in terms of those who benefit financially or take financial risks, it is a great deal more likely that there will be a high number of shareholders who may change more frequently than shareholders in other types of companies. • PLCs will have to comply with the PSC regime unless they are subject to part 5 of the Financial Conduct Authority's Disclosure and Transparency Rules (in which case a transparency regime applies by virtue of EU law) or where the shares are admitted on another regulated market. 	

It is also possible for companies themselves to be shareholders within another company, and for a company to be established to bring together a group of companies (commonly known as "holding companies"). It may be difficult to understand who the director or directors are, or who any shareholders or members may be in relation to any land or buildings held within a complex company structure. It is also possible that a company owning land in Scotland could be formed in accordance with a legal system outside the UK, which may also lead to difficulties in understanding who the director or directors are, or who any shareholders or members may be too.

Where land is owned in trust, or by a partnership, it is usually the case that the legal title will be held by the name of a firm or by natural persons, in their capacity as trustee. From this, it is not necessarily apparent from the legal title who the person or persons with a controlling interest in the land owner or tenant is. Therefore, the regulations brought forward should enable any person with a controlling interest in the party who is named as the legal proprietor to be revealed.

The table below sets out some detail as to who controls day to day decision-making and who benefits financially or takes financial risks in a number of different types of partnership that can exist in Scotland. It also includes some detail about trusts.

Limited liability partnerships (LLPs)	
<i>Relevant legislation</i>	Limited Liability Partnerships Act 2000 Limited Liability Partnerships Regulations 2001 – contains implied terms for partnership agreements.
<i>Main governing documentation</i>	Partnership agreements.
<i>Who benefits financially or takes financial risks?</i>	Members – default status is that each member has equal stake in business and equal voting rights.
<i>Who controls day to day decision-making?</i>	Members.
<i>Types of property likely to be held</i>	Business premises, in particular professional service organisations.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • All changes to membership in an LLP must be notified to Companies House. • LLPs generally have to comply with the PSC regime. 	
General partnerships	
<i>Relevant legislation</i>	Partnerships Act 1890.
<i>Main governing documentation</i>	Partnership agreement.
<i>Who benefits financially or takes financial risks?</i>	Partners.
<i>Who controls day to day decision-making?</i>	Partners.
<i>Types of property likely to be held</i>	Business premises of all scales.

<i>Other considerations</i>	
<ul style="list-style-type: none"> • In Scots Law, partnerships have their own legal personality and can take title to land in name of firm but, typically, title is taken in the names of trustees for the general partnership. • Partnerships formed in other parts of the UK do not have their own legal personality. • Usually there is a partnership agreement in place to govern the responsibilities of each partner, the management of the business and share of the profits. • It is likely that this document that will ultimately reveal who has benefits financially and who has decision-making control. 	
Limited partnership	
<i>Relevant legislation</i>	Limited Partnerships Act 1907.
<i>Main governing documentation</i>	Partnership agreement.
<i>Who benefits financially or takes financial risks?</i>	Limited partner whose liability is limited to their capital contribution to the partnership. They cannot control decision-making, otherwise the partnership loses its status as a Limited Partnership. General partner whose liability is unlimited.
<i>Who controls day to day decision-making?</i>	General partner has full management power over the business, as well as unlimited personal liability.
<i>Types of property likely to be held</i>	Business premises of all scales.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • A limited partnership must be registered at Companies House. 	
Trusts	
<i>Relevant legislation</i>	Trusts (Scotland) Act 1921.
<i>Relevant governing documentation</i>	Trust deed.

<i>Who benefits financially or takes financial risks?</i>	Dependent on the terms of the trust deed, but typically the beneficiaries in a trust arrangement will financially benefit and decision-making and financial risks are taken by trustees in accordance with the terms of the trust deed.
<i>Who controls day to day decision-making?</i>	The extent to which trustees have decision-making power in relation to land assets held by the trust will be determined in the trust deed.
<i>Types of property likely to be held</i>	Business premises of all scales, and possibly residential property too.
<i>Other considerations</i>	
<ul style="list-style-type: none"> • There are different types of trust but, typically, a title will be taken in the name of the trustees on behalf of a beneficiary as a trust is not a legal entity in itself and does not have its own legal personality. 	

It can be seen that with partnerships, the terms of any partnership agreement will reveal who has decision-making control in relation to land assets. Moreover, depending on the type of partnership in question, it may be the case that a partner, or member in the case of a Limited Liability Partnership, will benefit financially, take financial risks as well as having control of decision-making in relation to the assets of the partnership.

Trusts differ, as generally it will be the trustees who have control of decision-making in relation to the assets of a trust, but it will be the beneficiaries, in accordance with the terms of the trust deed, who will benefit financially from the assets of the trusts. Beneficiaries may not have any power to make decisions, for instance they may be a minor or lack legal capacity to make decisions.

Please note that documentation in relation to partnerships and trusts including partnership agreements and trust deeds are often private documents and may not be publicly available.



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OGL

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