



**Delivering improved transparency of land ownership in Scotland: Consultation on draft regulations**  
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- Individual  
 Organisation

Full name or organisation's name

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- Yes  
 No

## CONSULTATION QUESTIONS

### Questions on Policy Proposals

#### Question 1

**Do you have any comments on our proposals for the form of the Register?**

The SPF recognises that the Scottish and UK governments are working together on measures to improve transparency in property ownership. Both governments have established land registration systems and there is a commitment in Scotland to complete the Land Register. We believe that improving the transparency of property ownership in Scotland is best done by completing, and as necessary enhancing, the land register to include 'controlling interests'. The government is already taking steps to consolidate its land registration data and we believe that moves to improve the transparency of property ownership should be aligned with this existing agenda.

Our members have also pointed out that cognisance should be taken of the different laws in England, Wales and Scotland in relation to persons with legal interests and beneficial interests in land. In England and Wales there can be two separate interests in land (equitable and legal), but the existence of equitable interests in the land may not be apparent in the land registry records of the legal owner. In Scotland there is only one interest in land – the legal interest, though there can also be non-registrable contractual interests as between individual parties.

#### Question 2

**Do you have any comments on our proposals for the role of the Keeper in relation to information in the Register?**

Our members believe that in terms of transparency of land interests the Government is right to focus on the completion of the Land Register (and the entry / closure of the General Register of Sasines (GRS)). We do not see the purpose of having a separate Land Register and a separate Register of Controlled Interests (RCI).

We understand that this may require some amendment of existing legislation, for example the requirement on the Keeper to keep the Land Register up to date at all times. We believe that this process of identifying controlling interests should not be bureaucratic and should not prevent land registration, but we also recognise there must be a means of ensuring compliance within an appropriate time-frame.

It should be relatively easy to access information in the RCI about property which is already land registered as the user will be able to search using the title number. Difficulties may arise accessing information held in the RCI about property

recorded in the GRS because the description of land in GRS is not in a standardised format.

For properties that are registered in the Land Register, it should be comparatively simple for this information to be accessed, with just the requirement for a title number to be given in the RCI submission. The process would be even simpler if the RCI requirements were added as an additional part of the Land Register title sheet. The Land Registration etc. (Scotland) Act 2012 gives the Keeper discretion to subdivide sections of a title sheet (section 5(2) of the 2012 Act) which would allow for the creation of a sub-section of the proprietorship section for particulars of persons with a controlling interest. Our members are of the view that adopting this approach would produce a simpler more streamlined system, which is easier to access, clearer to understand and likely to improve compliance rates.

We agree with the notion in Chapter 3 of the consultation document that ScotLIS is the best forum for making relevant information available. However, it is vital that the Keeper has the necessary resources to avoid delays in registering.

### **Question 3**

**Do you consider the information that we are requiring to be provided for inclusion in the Register sufficient and proportionate?**

A key concern of our members is that the Regulations are practical and do not make it harder or less attractive for overseas investment in Scottish real estate. If the new register is implemented without due consideration to unitised investments or the relationship between pension funds and their asset managers, then the implication could be very negative. Likewise, if Scotland creates an unwieldy system of regulation compared to other parts of the UK, then we risk the outcome of making it more difficult for Scottish companies to raise capital internationally for the benefit of development and investment of Scottish real estate.

Members have also noted that, in the case of a listed entity with public shareholders, keeping the detail up-to-date is unrealistic. The Scottish Government's proposals accept that entities such as UK companies and listed overseas companies do not require to report further, and we consider this to be important and right.

### **Question 4**

**Are our proposals for the duties people will be under to provide information sufficient and proportionate?**

Please comment below:

Please see our response to Question 3 above.

## Question 5

### Is our proposed process for security declarations reasonable?

Please comment below:

Our members think that the process is **not** fit for purpose and that some information should not be disclosed on a public register. For example, if a controlling interest is how much of an asset is owned by a particular person, then it will be necessary to avoid issues of commercial confidentiality because disclosure of a corporate interest at a certain time may influence the outcome of a commercial transaction. Similarly, there must be a concern over security and identity theft.

Whilst we appreciate that the rationale for the Regulations is to improve the transparency of land ownership in Scotland, this also needs to be balanced against the security of the data of associates. We agree with the provisions allowing a security declaration to be made by certain individuals who may be put at risk by publishing their required details. We note the discussion about making the RCI information available through ScotLIS, which would streamline information access for business users. However, we do not think that the information should be available on the public access version of ScotLIS, without the person requesting the information being required to register to use the system, so that there is this minimal level of security.

## Question 6

### Are there people who you think should be able to apply for their information not to be disclosed in the Register, who may not be able to under our current proposals?

It would be helpful for the Regulations to make it clear who is exempt from the Regulations in addition to the entities set out in Schedule 2. The explanatory notes make it clear that "the Regulations are not intended to impact upon owner-occupier situations in which only one party is registered as the legal owner of the land, e.g. a couple where only one party is the legal owner etc." On the face of the Regulations a cohabiting partner or spouse could fall within the Regulations and this needs to be made clear within the Regulations. Similarly, it is unhelpful to state that Part 2 of Schedule 1 "does not apply where the recorded person who owns or tenants the land is a Scottish qualifying partnership within the meaning of regulation 3(2)(b) of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017". This requires the owner to consult the PSC regulations to establish if they are required to comply or not.

Only corporate contact details should be required. There are existing corporate arrangements for disclosure of a commercial interests in companies – these should

be followed for recording and disclosing a person's interests in property.

We are not clear why an individual's month and year of birth should be required. A contact address will be supplied and that should suffice. Requiring unnecessary information to be supplied runs counter to principles of data protection and adds to the risks for individuals' data security in the event of any misuse of data. Some of our members have suggested that a unique identifying number could be issued to registrants, to avoid any confusion between people who have the same name.

### Question 7

**Do you have any comments on our proposals for referral of questions about the accuracy of the Register to the Lands Tribunal?**

No comments

### Question 8

**Do you have any comments on our proposals for criminal offences?**

The SPF does **not** support criminal sanctions for non-compliance with the regulations. It is our understanding that the purpose of the Regulations is to increase public transparency, and since the Regulations are not targeted at criminal activity, to introduce a criminal sanction seems disproportionate.

Our members are concerned that without sufficiently rigorous promotion of the new Regulations, there may be many owners and associates who inadvertently fail to comply with the Regulations and will find themselves committing a criminal offence. An increased transitional period will assist with this, giving the government, professional bodies and the Registers of Scotland time to advise landowners about the new Regulations. In addition, we consider that there should be a notification requirement. An owner should be served notice that they must provide the required information within a given a period of time and only if they fail to respond within that time period will they be guilty of an offence.

If regulations are introduced and not adhered to our members are of the view that reasonable civil penalties could be more appropriate. However, there may be a significant programme of compliance awareness required and we would hope to see a positive engagement process, to raise awareness with those who advise, and are controlling interests in land in Scotland.

It can be anticipated that the scale of inadvertent non-compliance will be significant. Immediate criminalisation of persons due to their lack of awareness of the requirements is entirely inappropriate and disproportionate. At the very least, there should be a mechanism for identified instances of non-compliance to be subject to formal notice requiring compliance within a reasonable period, with

penalties only kicking in if there is still no compliance following that.

It is proposed to have a six-month transitional period during which time the criminal penalty will not apply for failing to register the appropriate information in the new RCI. Our members note that the proposed transitional period under the UK Registration of Overseas Entities Bill is 18 months. While we **disagree** that criminal penalties should apply to the Regulations it is important that if they are introduced, the transitional period must be the same for both. The proposed transitional period of six months is not long enough given the number of people likely to be affected by the Regulations; the difficulty in ensuring that everyone who needs to register is aware of the new Regulations; the need for the people affected to gather the information they need to submit an application to the RCI; and the potential of technical issues given that this will be a new register.

### Question 9

**Are there alternative or additional means of enforcement that we should be considering?**

We consider that civil penalties would be more appropriate than criminal penalties. We also note that compliance has not been made a precondition of land registration and we support this approach.

### Question 10

**Do you have any comments on our proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution?**

No comments

### Question 11

**Do you have any comments on our proposals for a transitional implementation?**

As already stated at Question 8, it is proposed to have a six-month transitional period during which time the criminal penalty will not apply for failing to register the appropriate information in the new RCI. Our members note that the proposed transitional period under the UK Registration of Overseas Entities Bill is 18 months. While we **disagree** that criminal penalties should apply to the Regulations it is important that if they are introduced that the transitional period must be the same for both.

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The draft Registration of Overseas Entities Bill is intended to come into force on 1 April 2021, at the same time as the Scottish Regulations. Our members are therefore of the view that Part 5 of Schedule 1 should be deleted and overseas entities should be included in Schedule 2 (list of persons subject to other transparency regimes) to avoid double reporting requirements.

#### **Question 12**

**Can you provide examples where land is owned or leased by individuals subject to contractual arrangements such as those described in the explanatory document?**

Landowners can enter into contracts for the future sale of land, either by way of conditional sale agreement or option agreement, which include controls for the benefit of the option holder as to how the land is dealt with prior to completion. The prospective purchaser/option holder should not be treated as having a controlling interest in the land.

#### **Question 13**

**Are there other contractual arrangements we should be looking to capture?**

Nothing further to add.

#### **Question 14**

**Do you have any comments on this proposal?**

Please see our response to question 12.

## Question 15

**Does this reflect how land is typically owned or leased by or on behalf of partnerships or, can you provide examples of other ways in which land is owned or leased by or on behalf of partnerships?**

Limited Partnerships (LPs) and Scottish Limited Partnerships (SLPs) are commonly used as legal structures for owning property either directly, or as part of collective investment vehicles. They are easy to operate and an essential onshore vehicle for property ownership.

Our members support the UK Government's aim to tackle criminal misuse of Limited Partnerships and the broader goal of increased transparency – with members working with the UK Government to implement measures such as the Register of Beneficial Owners of overseas companies owning UK property.

The proposed changes to the operation of LPs should be straightforward for our members to implement. However, in the context of wider tax changes around non-residents and a possible shift towards moving property owning structures onshore, members have cautioned against further changes that might add increased complexity to LP structures. Indeed, if the driver for the reforms is potential misuse of SLPs then the solution should also be focused on investigating and targeting those cases of criminal activity.

We are advised by members that the key attraction for SLPs is their legal personality as opposed to LPs in other UK jurisdictions. We would add that the growth in SLPs probably reflects a more sophisticated and more active real estate finance market whereby equity plays a much greater role relative to debt finance than it did a decade ago. The nature of private equity funds is that they are more globally focused and diverse in terms of their own investors. This leads to a requirement for structures such as SLPs, often linked to an underlying number of other UK LPs. Our members' view is therefore that the increasing numbers of registrations of SLPs over the last few years is, to an appreciable extent, due to their increased use within legitimate property investment fund structures, as a reflection of renewed property investment activity over the last few years.

Real estate investment funds are a major segment of our industry and this is the key area of activity for our members in relation to SLPs. Fund management is a successful part of the financial services industry in Scotland and supports the attractions of Edinburgh and other cities as a locus for this kind of economic activity, with its attendant benefits for legal, valuation and other services.

Our members report that there is an economic benefit from the activity drawn by SLPs in Scotland. For our sector, this is related most closely to the investment fund market, which is key to real estate investment. The tangible economic benefits would come not just from funds that may be directly located in Scotland or elsewhere in the UK but also from the advisory services, particularly legal, which support these fund structures.

## Question 16

**Do our proposals reflect sufficiently how control is exercised over partnerships?**

An issue identified by members relates to the role of Formation Agents and how they are supervised for the purposes of anti-money laundering rules or know your client requirements. The robustness of these systems could be examined as this would appear to be the crucial initial stage for SLPs. Professional firms within our membership have also said that they fear the perception of money laundering or other illegitimate activity may be wrong as there are strong requirements on establishing UK bank accounts as well as professional oversight by the regulators.

## Question 17

**Do our proposals reflect how land is typically held in trust? Can you provide examples of other ways in which land held in trust**

Our members are of the view that that this is an area where they see very little sense of clear Government objectives.

Our investment fund members explain that their real estate funds will be formed of a series of investors who may hold different levels of interest in a fund, possibly through units of investment. Clarification is required on how these interests should be addressed for the purposes of registration, or whether it is sufficient to know the identity of the fund manager or general partner depending on the type of investment fund structure. In most urban investments our members would argue that the owner is already known through the Land Register.

The investors, or beneficiaries of a collective investment fund, may be somewhat removed from controlling the fund and this begs the question of what the RCI will actually achieve. For example, where a Limited Partnership is formed as a collective investment scheme for property investment purposes, the individual investors and beneficiaries will have no controlling interest.

Pension funds are also major investors in real estate. This could be a corporate pension scheme or a local authority fund for example. This also raises the question of who the controlling interest is. Day-to-day property management decisions are likely to be taken for or on behalf of asset managers who have a contractual relationship with the property-owning fund for the provision of asset management services which may involved a significant degree of autonomy. It is therefore unclear who the correct persons to enter into a RCI would be, even if they are not the direct beneficiaries of income generated by the property. Equally, an overseas trust company operated by a professional trustee services company may nominally (and for legal and tax purposes) exercise control, but in practice they exercise their discretion based on non-mandatory recommendations from a

pension fund (which, contractually, would be fulfilling the role of asset manager as described above). Clarity is required as to how the regulations would apply in this sort of scenario, which is common among institutional/offshore fund structures.

#### **Question 18**

**Do our proposals sufficiently capture how control is exercised over trusts including through financial interests?**

Please see response to Question 17 above.

#### **Question 19**

**Do our proposals reflect how land is owned or leased on behalf of unincorporated associations? Can you provide examples of other ways in which land is owned or leased on their behalf?**

No comment.

#### **Question 20**

**Are there other types of groups than those mentioned who may be affected by these proposals? If so, please can you provide examples.**

We note that Part 2, Part 3 and Part 4 of Schedule 1 do not apply where a person's relationship to the partnership, trust or unincorporated body is only that of a paid professional advisor to the partnership, trust or body (such as a solicitor or accountant). Our members are of the view that professional advisors should not be considered associates of recorded persons.

We also note in the explanatory notes that it may be possible for such people to nonetheless meet the conditions to be considered an associate should they meet other conditions, in addition to the role of paid professional advisor. We are concerned to ensure that it is clear that a solicitor/accountant who is acting for a client who is a recorded person where the solicitor or accountant is giving professional advice is not caught by the Regulations, even if the client follows the professional advice given. Solicitors are trusted advisors to clients and could be viewed as falling within the definition of significant influence over the decision making of the recorded person.

Our members would like the Regulations to make it clear when a solicitor or

accountant would be considered to have met the requirements of being an associate. We appreciate that there are some situations where solicitors and accountants act as trustees or executors when they will fall within the Regulations.

### **Question 21**

**Do our proposals sufficiently capture how control is exercised over unincorporated associations?**

In many cases unincorporated associations operate either without a formal constitution or, even if they have one, on a more informal basis in practice involving members/office holders on an ad hoc basis (and who could change annually/regularly). The Regulations will require to be clear about who is subject to them in these sorts of cases.

### **Question 22**

**Do our proposals reflect how land is typically owned or leased by overseas legal entities? Can you provide other ways in which land is owned or leased by overseas legal entities?**

Nothing further to add.

### **Question 23**

**Do our proposals sufficiently capture how control is exercised over overseas legal entities? Are there other examples that you are aware of where control is exercised over an overseas legal entity?**

The draft Registration of Overseas Entities Bill is intended to come into force on 1 April 2021, at the same time as the Scottish Regulations. Our members are therefore of the view that part 5 of Schedule 1 should be deleted and overseas entities should be included in Schedule 2 (list of persons subject to other transparency regimes) to avoid double reporting requirements.

Overseas investors are a crucial part of the UK real estate sector, owning around £140 billion of commercial property (PIA Property Data Report 2017). These investments are often long-term and critical to economic growth and urban regeneration. The UK must remain a destination of choice within the global investment market, and the impact of the Register should be seen in the context of the wider climate for non-residents, with the draft Finance Bill already taking forward significant changes for non-residents on the taxation of gains and property

income. Significant efforts are therefore needed to ensure a smooth transition to the new Register so that investors are aware of their obligations and there is no undue disruption to the transaction process.

We would urge the Scottish Government and the Registers of Scotland to continue to engage fully with the Department for Business, Energy and Industrial Strategy to ensure that the implementation of the UK Government's proposals is undertaken in a manner, which properly dovetails with the Scottish system and these Regulations. Our members wish to ensure that the separate UK and Scottish registration requirements do not impose any form of double reporting requirements.

#### **Question 24**

**Are there examples where transparency is lacking as to control over a legal owner or tenant of land that we have not taken account of in our proposals?**

Nothing to add.

#### **Question 25**

**Do you have any comments on the usefulness of the PSC regime in revealing control of corporate entities which own land in Scotland?**

As stated in our response to question 6, it would be helpful for the Regulations to make it clear who is exempt from the Regulations in addition to the entities set out in Schedule 2. The explanatory notes make it clear that "the Regulations are not intended to impact upon owner-occupier situations in which only one party is registered as the legal owner of the land, e.g. a couple where only one party is the legal owner etc." On the face of the Regulations, the cohabiting partner or spouse could fall within the Regulations and this needs to be made clear within the Regulations. Similarly, it is unhelpful to state that Part 2 of Schedule 1 "does not apply where the recorded person who owns or tenants the land is a Scottish qualifying partnership within the meaning of regulation 3(2)(b) of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017". This requires the owner to consult the PSC regulations to establish if they are required to comply or not.

**Question 26**

**Do you have any comments on our proposals to not require SCIOs, CIOs, mutuals or public authorities to provide information for inclusion in the Register?**

No comment.

**Question 27**

**Do you agree with the conclusions in the impact assessments?**

There will be a financial impact on recorded persons and potential associates in complying with the Regulations, including the costs of legal/professional advice in determining how the Regulations apply in specific cases. In more complex cases, these costs could be significant.

**Question 28**

**Are there potential impacts that we have not considered?**

No further comments.

**Question 29**

**What measures, if any, do you think we should take to inform and publicise information about land in Scotland.**

No comment.