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By email: [ecclr.committee@parliament.scot](mailto:ecclr.committee@parliament.scot)

14 April 2020

Dear Gillian,

**Subordinate Legislation: Land Reform (Scotland) Act 2016 (Register of  
Persons Holding a Controlled Interest in Land Regulations 2021 [2021]**

Thank you for your letter of 19 March regarding the above regulations. While I have provided an initial response to each of the points raised in your letter in Annex A, in light of the current public health crisis we are facing, my main purpose in writing is to inform you that we have made the difficult but necessary decision to delay introduction of the register, and have not set a revised date for laying the regulations for their third (and final) reading at this time.

The introduction of the register was a key provision of the Land Reform (Scotland) Act 2016. I was pleased that stakeholders who provided evidence at your session of 3 March noted both the complexity and the importance of these regulations in increasing public transparency in relation to individuals who have control over decision-making in relation to land in Scotland. At the same time, however, you will be well aware of the ongoing situation in relation to COVID19 – with a critical need for Scottish Government resources to be diverted to responding to this crisis – and the impacts that will have on government and parliamentary business.

Internally, there is a need to free up staff capacity, and parliamentary time to accommodate emergency and business critical legislation.

Externally, and perhaps most critically in relation to these regulations, the development, build, and operation of the register will be done by Registers of Scotland– we are dependent on RoS being able to do this work, to have the register operational. Given the current situation, their existing resource is focused entirely on business continuity, and working on a digital solution that will enable them to allow digital applications to be submitted to their property registers. They are unclear what the longer term impacts will be – most recently, they have had to suspend the application record until further notice as they are unable to process any paper

applications– but as things stand the resourcing and recruitment they had planned for the initial build for the new register is not taking place. On that basis, it is becoming increasingly unlikely that they would be in a position to have the register built and operational by April 2021, regardless of government priorities.

It has become clear that these pressures necessitate delaying the introduction of the register, and it is most prudent to assume a delay of one year. On that basis, we would look to lay the regulations in 2021, with the register operational on 1 April 2022. Although I am disappointed by this delay, I consider it unavoidable, given the current situation – something I trust the Committee will recognise and support.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'R. Cunningham'. The signature is fluid and cursive, with a large initial 'R' and a long, sweeping underline.

**Roseanna Cunningham**

## **ANNEX A: SCOTTISH GOVERNMENT RESPONSE**

### **Language and Interpretation**

I recognise the need to ensure clarity around who falls within scope of the register, and will take all steps necessary to ensure we provide this in sufficient time, ahead of its introduction. Following the passage of the regulations through Parliament, my officials will work closely with the Keeper to develop operational guidance on this and other matters contained in the proposals to ensure that people who will be under duties as a result of the regulations are aware of their responsibilities and the relevant processes. This will be published by the Keeper prior to the commencement date of the register. We will also develop a strong communications strategy ahead of the register going live, targeting those who are likely to be captured by it.

### **The completeness of the Register and how it will interact with other registers.**

The Keeper currently maintains 20 public registers. Only two, however, are property registers: the Land Register and the General Register of Sasines, both of which require to be examined to access information in relation to land ownership. RCI differs from the property registers, which are land based, in that it is a register of persons. Its focus is on providing public transparency in relation to persons who control decisions in relation to land, and providing a member of the public with contact information. It will however, be searchable by land.

ScotLIS already provides a single point of access for information held on the two property registers. Of the Keeper's other registers, the Register of Inhibitions, Register of Deeds, and the Register of judgements are also available via ScotLIS. The Crofting Register has also been added to ScotLIS – unlike the other registers it is map based and is the first additional register dataset to appear on the interactive map augmenting the Land Register. RoS envisages that the information held in RCI will be held on a new layer in ScotLIS.

RoS envisages more and more of the information it holds being accessible via ScotLIS, working towards providing a 'one stop shop' giving access to the widest possible range of information about land. RoS is collaborating with its users to understand what additional data sources and registers would be most useful, and adding these to its roadmap of planned improvements when they identify it is something that will provide value to the public.

In relation to overseas legal entities, the 25 per cent voting threshold is the trigger above which a person would become a controlling interest of an overseas entity. This means that, for example, if there were five individuals each with 20 per cent voting rights in a company, there would be no controlling interest. The 25 per cent threshold is also used in the UK's Persons of Significant Control regime and the EU 4<sup>th</sup> Anti-Money Laundering Directive. It is at this level that people can veto certain things and there is a clear link to decision making. It follows the formulation developed by the Financial Action Task Force of which the UK is a member.

Whilst it will be challenging to identify individuals in these complex structures, I believe that controlling interests in most chains of overseas entities will be in scope of the draft regulations under the provisions at Schedule 1, Part 5, paragraph 12(b)(iv), which requires individuals who otherwise have significant influence or control over decision making to be recorded as associates. The proposed definitions of an 'associate' in relation to an overseas legal entity draw on international best practice for identifying control of corporate entities. They are the conditions used in EU legislation. As we made clear in the Explanatory Document that accompanies the draft regulations, it is recognised that there will not always be a single individual behind an overseas legal entity which owns land in Scotland.

### **Recorded Person's Name and Address**

I have carefully considered the merits of including an email address and have concluded that the disadvantages outweigh the practical benefits. For example, people often have multiple email accounts for different functions and may not necessarily check the accounts frequently. Another risk is that an email could end up in junk mail and the recipient may not be aware of any communication. Both examples would result in frustration from a member of the public who is trying to engage in meaningful discussion. This would be avoided by a letter being sent to a postal address via recorded delivery, which would provide certainty of delivery.

I also note that during the stakeholder evidence session on 3 March 2020, the panel unanimously agreed that postal addresses were preferable to emails. The Scottish Property Federation and the Law Society of Scotland noted that emails were not useful forms of contact to have as they can change quite easily and quite regularly.

My officials have, however, discussed with RoS whether there is an operational benefit in collecting email addresses, for example, when notifying someone of a decision in relation to a security declaration. This could be done as a matter of practice without being specified in the regulations. RoS will consider the merit of this during the system build and whether to request an email address as a matter of practice. If this was implemented, the email address would be an optional field and would be used only for operational purposes and would not be publicly available.

### **Security Declaration**

My officials will work with the Keeper to scrutinise and analyse the data from the register in a robust fashion to ensure that the policy aims are being met and that the right outcomes are being delivered. I intend to include a provision in the final draft providing that the Keeper must provide the Scottish Ministers with such information as Ministers may require in order to monitor the efficacy of the register. While the exact formulation of this provision is to be finalised, I anticipate, this information will include data on security declarations to ensure that they are being used appropriately.

My officials will work with the Keeper to publish pertinent annual statistics from the register, whilst ensuring that people's privacy is protected.

## **Criminal offences**

The criminal penalties I have proposed are the maximum permitted under the 2016 Act. This maximum could, however, be amended through secondary legislation under section 39(6) of the 2016 Act, to enable an increase in penalties. These penalties are primarily directed at persons who are seeking to evade their duties. They are not aimed at those who simply make an error in their entry. We will continue to consider whether there is a need for any further provision in the regulations to protect against inadvertent criminalisation.

Regulation 10(8) sets out when a person has a reasonable excuse for the committal of an offence in certain cases. The proposals in Regulation 10(8) are intended to avoid situations where the owner or tenant may be considered to have committed an offence, despite having taken action to avoid committing the offence or as a result of the actions of another person.

I consider that a criminal penalty is a significant deterrent towards non-compliance, and that this size of fine is appropriate and proportionate. This is because the penalty has to be commensurate to the crime not to the offender. I cannot therefore raise the penalty just because certain offenders may be wealthy or to increase its deterrent value.

I note and agree with the view of stakeholders during their evidence session that the implications of having a criminal record go beyond any financial penalty and should act as a strong deterrent.

## **Making and amending entries - the accuracy of the Register**

It is important that the information in the register is as accurate and up to date as possible and criminal penalties are a significant deterrent to non-compliance. The register is being designed with built-in features such as drop down menus to minimise inadvertent mistakes. It will also verify that the address given is a real one, although it cannot verify that it is the correct one for that particular associate.

The significant publicity campaign we will hold in conjunction with Registers of Scotland will help ensure that the number of people ignorant of their duties will be minimal. The draft regulations require the Keeper to rectify an inaccuracy when she becomes aware of it. I expect this to be the first step in correcting any inaccuracies, where these are straightforward. The person suggesting the inaccuracy would be required to provide supporting evidence. The Keeper advised the Committee that, for example, if she was informed of an omission, she would inform the recorded person or entity in question.

Guidance will make clear the appropriate escalation route to enforcement in the case of non-compliance.

I am aware of the 5<sup>th</sup> Anti-Money Laundering Directive and its requirements for the customer to complete due diligence. I do not feel it is necessary for the purpose of the RCI to complete the data verification and validation used in the Persons of Significant Control ("PSC") register, as the RCI's purpose is different to that of the

PSC's register. The RCI is concerned with transparency of control over land, while the PSC register is designed to combat illegal money laundering. The level of validation and verification required under the 5<sup>th</sup> Anti-Money Laundering Directive is, in my view, disproportionate for the purposes of the RCI.

### **Completion of the Register:**

I consider that the disadvantages of making compliance a pre-condition of land registration outweigh the advantages in compliance. Making compliance a pre-condition of land registration would require a new system of restrictions and processes governing transactions on the land, such as issuing registration numbers that would allow transactions to take place. Where these were being regularly reissued or restrictions were being lifted and restored, then there would be a risk of disruption to the property market in Scotland.

The purpose of the register is to look behind land ownership at who is controlling land in Scotland. Many of the arrangements of controlled interest that we are trying to shed light on will change without any change to who holds title to the land. There is thus limited scope for a link to land registration to contribute to our objective of ensuring the information in the register is accurate and up to date as possible.

It is clearly important to maximise compliance and we have proposed a range of measures to do so. These include publicity about the proposals, the criminal offences and the ability of third parties to notify of inaccuracies. We have also proposed duties on owners, tenants and associates to keep the RCI updated to reflect any changes in their arrangements.

### **Access to the Register**

The RCI will provide free information to the public about persons who have a controlling interest. RoS envisage that the information held in RCI will be held on a new layer in ScotLIS.

ScotLIS already provides a single point of access for information held on the Land and Sasine Registers. A certain amount of information from the Land Register including a snapshot of the cadastral map is available free. Last year also saw a 90% reduction in the fee for citizen access from £30 to £3. It is a widely recognised principle for RoS registers that the cost of provision should fall on those who access the data, through charging them a small fee.

The register will be built in line with Digital First principles and user testing will be carried out with stakeholders in the development of the system build. In terms of how the register will work in practice, full user and system testing will be required once the final detail of the regulations is known. The Keeper has been clear she will be happy to give committee members the opportunity to see the system as it develops and to offer feedback.

## **Establishing and managing the Register**

The Keeper would be delighted to demonstrate the register as the system is developed in an iterative manner, taking user feedback into account.

## **Monitoring and updating the Register**

Individuals are under duties to provide accurate information to the Keeper and are liable for criminal offences if they knowingly give false information, or fail to give information to the Keeper. If the Keeper becomes aware of an inaccuracy, including from a third party, she must correct the register.

I do not expect the Keeper to verify entries to the register when they are notified, as I consider that would be disproportionate and would involve providing for much wider investigatory powers, which would not necessarily be for the Keeper to take forward. Requiring the Keeper to proactively investigate disputes about information would involve significant cost and resource. The draft Regs provide a route for escalation if needed via referrals to the Lands Tribunal for complex cases about accuracy of information and possible omissions.

## **Promoting the Register**

My officials will hold discussions with RoS ahead of the launch of the register to develop a publicity campaign. Plans have not been fully developed at this stage, so as to respect the parliamentary process and to account for elements of the regulations changing as a result of that process. RoS are able to draw on a wide pool of relevant stakeholders and have experience of working with the conveyancing community to raise awareness of a broad range of topics including the launch of new registers and legislative changes impacting conveyancing and registration matters.

Where no entry exists on the RCI, the public should be assured that no associates exist. In order to obtain contact details, the person can find this information from one of the two property registers or the PSC register. In situations where a member of the public feels that there is an inaccuracy i.e. lack of an entry, they can contact the Keeper in the first instance. Subsequently, the concern could be escalated to Police Scotland.