ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

4th Meeting, 2020 (Session 5)

Tuesday 4 February 2020

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

2. **Register of Persons Holding a Controlled Interest in Land:** The Committee will take evidence from—
   
   Robin Cornwall, Senior Policy Officer, Land Reform Policy and Legislation Team, Andrew Ruxton, Solicitor, Head of Land and Crown Estate Branch, and Dr Simon Cuthbert-Kerr, Head of Land Reform Unit, Scottish Government.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

   Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020.

4. **Register of Persons Holding a Controlled Interest in Land:** The Committee will consider the evidence heard earlier in the meeting.

5. **Climate Change Plan (in private):** The Committee will consider its Climate Change Plan approach.

6. **Work programme (in private):** The Committee will consider its work programme.
The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk  
ECCLR/S5/20/4/1

**Agenda item 3**

SSI 2020-4  
ECCLR/S5/20/4/2

**Agenda item 5**

PRIVATE PAPER  
ECCLR/S5/20/4/3 (P)

**Agenda item 6**

PRIVATE PAPER  
ECCLR/S5/20/4/4 (P)
Introduction

1. On 4 February the Committee will hear from Scottish Government officials on the revised Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 (the Regulations). This follows the Committee's report on the first draft Regulations, published in November 2018.

2. The Committee plans to hear from stakeholders at a future meeting before taking evidence from the Cabinet Secretary for Environment, Climate Change and Land Reform. The Committee will then publish a further report on the Regulations.

3. The proposed draft Regulations are accompanied by a letter from the Cabinet Secretary for Environment, Climate Change and Land Reform and a proposed Explanatory Document (which includes a Business and Regulatory Impact Assessment (BRIA), a Data and Privacy Impact Assessment and an Equalities Impact Assessment (EQA)).

Background

4. Section 39 of the Land Reform (Scotland) Act 2016 requires Scottish Ministers to make regulations requiring information to be provided about persons holding a controlled interest in owners and tenants of land, and for that information to be recorded in a public register, kept by the Keeper of the Registers of Scotland.

5. In September 2016, in order to inform the creation of the draft proposed Regulations, the Scottish Government published a consultation on Improving Transparency in Land Ownership in Scotland. An analysis of responses received is available here.

6. The proposed Regulations are subject to an enhanced affirmative procedure, under Section 41 of the Land Reform (Scotland) Act 2016. The first proposed draft Regulations and a related Explanatory Note were laid in Parliament on 20 June 2018. The Scottish Government carried out a consultation on the draft regulations, with a closing date of 8 November 2018.

7. The Scottish Parliament considered the regulations between June and November 2018, took evidence over three meetings and reported on 8 November. A summary of the conclusions and recommendations and a note identifying the extent to which these have been addressed is included in Annexe 1.

8. The Scottish Government published revised draft regulations, alongside an explanatory document (including a Business and Regulatory Impact Assessment (BRIA) and Equalities Impact Assessment (EQA)) on 23 January 2020. An extract from
the documents summarising the substantive changes to the regulations as a result of the consultation is included as Annexe 2.

9. The Scottish Government will lay the final proposed Regulations following later in 2020. The Committee will consider the final draft Regulations, once laid. If the final proposed Regulations are passed by the Scottish Parliament, it is anticipated they will come into force on 1 April 2021.

**Timetable**

10. The timetable for consideration of the revised draft Regulations is set out below.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 February 2020</td>
<td>Evidence session with Scottish Government Officials</td>
</tr>
<tr>
<td>3 March 2020</td>
<td>Stakeholder Evidence Session</td>
</tr>
<tr>
<td>24 March 2020</td>
<td>Evidence Session with the Cabinet Secretary</td>
</tr>
<tr>
<td>21 April 2020</td>
<td>Consideration of Draft Report</td>
</tr>
</tbody>
</table>

**Issues/Themes for discussion**

1. Consultation process, key changes since the first draft of the Regulations and outstanding concerns

2. Definitions: significant influence, controlled interest, associate

3. Inclusions and exclusions:
   - number of titles, bodies, entities and individuals subject to the new Register (and number contained elsewhere)
   - interaction with other registers,
   - key differences in information held across registers
   - exclusions and potential loopholes (inc. changes in Trustees, financial beneficiaries)
   - compliance with the requirements of other registers – risk of incomplete coverage

4. Recorded persons name and address - consistency across registers, service or home address, address in Scotland, email address (not required), unique reference number (introduced)

5. Security declaration:
   - protection of vulnerable individuals and requirements to prove vulnerability
   - process and fees to appeal decision
   - annual reporting on security declarations
6. Criminal offences

- similar fines for similar offences across the registers - plans to amend the Land Reform (Scotland) Act 2016
- inadvertent failure to comply and an ongoing grace period before a criminal offence is deemed to have been committed

7. Completion of the Register as a pre-condition for undertaking other administrative and financial changes and / or transactions relating to the land

8. Access to the Register:

- single point of access – one portal (ScotLIS) for all land based registers?
- information available via "open public access" and "registered user access"
- cost to access information on the Register (and related registers)

9. Establishing and managing the Register

- Transitional arrangements
- User testing and enhanced guidance
- Plans to publicise the RCI and the means of access to it
- Role of the Keeper to ensure accuracy - validation and verification, monitoring, proactive identification and addressing of gaps

10. Costs and capacity - initial registration, running costs, monitoring and enforcement, development of the Register (Registers of Scotland, Lands Tribunal, Police Scotland)

Clerks/SPICe
Environment, Climate Change and Land Reform Committee.
Extract from the ECCLR Committee report on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft]. Published 8 November 2018

Summary of conclusions and recommendations and note on action in response.

1. Annexe 1 is an extract from the ECCLR Committee report on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft]. Published 8 November 2018.

2. This provides a summary of conclusions and recommendations. Where the Committee has sought a view or made a recommendation a brief note on the extent to which this has been addressed the Regulations and supporting documents is indicated in italics and highlighted in blue.

3. Changes made to the Regulations are set out on pages 105-121 of the Explanatory document.

Partial BRIA

4. The Committee understands the cost of accessing the Register will be free. However, relevant information on many entities will be held on other registers to avoid duplication. The Committee understands that accessing many of these registers incurs a cost. The Committee is unclear if accessing information in relation to ownership, controlling and beneficial interest will then incur a cost if that information is held on another register. The cost of accessing land-based information across the registers remains unclear.

5. The Committee considers accessing relevant information on different entities should not incur a cost if, to avoid duplication, this information is held in different registers. The Committee recommends the Scottish Government provide clarity on this and on the potential cost implications to the Registers of Scotland if accessing relevant information (potentially via a portal) is to be free for users. This remains unclear.

6. The Committee recognises there may be wider implications for the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland. The Committee recommends the Scottish Government give further consideration to the potential impacts and costs of establishing and managing the Register and enforcing the related requirements. The BRIA provides further information on this (pages 69 – 77).

Those affected by the Register

7. The Committee is of the view that we should know who owns the land and who benefits from that ownership. While the Committee recognises the desire to ensure duplication is minimised the Committee is concerned that there are a large number of proposed exclusions from the Register. The Committee understands that similar
information may be captured in a number of other registers, however, it is unclear to the Committee whether the required information is sufficiently mirrored across all of these registers. The Explanatory document confirms that similar information is held. The extent of the similarity or divergence across the registers is unclear.

8. The Committee is not convinced that the public interest purpose of the Register is appropriately balanced against the desire to avoid double reporting. The Committee is concerned that as drafted there is potential for loopholes and it is unclear whether the regulations and related registers will always enable identification of who owns the land (the natural person). From the information provided this remains unclear.

9. The Committee is also concerned that information on many excluded organisations will not be captured in any register and the rationale for exclusion for some of these is that the required information is publicly available and/or can be accessed via a request under Freedom of Information legislation. While this may be technically possible the Committee is concerned that the level of fragmentation of information will not enable a member of the public or interested stakeholder to access the required information at a single point. The Committee discusses these concerns later in the report.

10. The Committee considers foreign entities need to be covered by the RCI until a review of the UK Register can be undertaken to determine overlap and identify what to exclude from the RCI. The Committee therefore recommends the final Register include foreign entities, as is currently proposed. The Register includes foreign entities (paragraphs 142–153).

11. The Committee recommends the Scottish Government review the arrangements that have been identified as not being included (e.g. the tenancies identified by Scottish Land and Estates) to ensure all omissions are addressed and exclude those entities that are exempt from the Regulations. The Scottish Government has reviewed this and is satisfied that all relevant arrangements are included. Sectors and groups affected are outlined on pages 70-71 of the BRIA. Specific exemptions have been added to part 1 schedule 1.

12. The Committee would welcome further information from the Scottish Government on the process of monitoring the completion of the Register and the ability of the Keeper to assess the extent to which the Register is complete and identify gaps in the Register. Further information has been provided (paragraphs 33–42 and page 16 of the Explanatory document).

13. The Committee recommends the guidance on those to whom the Regulations do not apply should be enhanced and this should be clear in the body of the Regulations. The intention to provide enhanced guidance is set out in the Explanatory document.

14. The Committee recommends the Scottish Government address these concerns in finalising the draft Regulations.

15. The Committee comments on the use of the ScotLIS portal later in the report.
Creation of a Separate Register

16. The Committee agrees that ensuring all information about all land, ownership and interest is transparent and accessible via a single point is vitally important. The Committee considers this to be more important than whether the information is held on one or more registers. However, as the Regulations are currently constructed, the Committee is concerned and remains unconvinced that reliance on multiple registers (with varying information requirements and potential associated costs of access) and excluding information that is in the public domain, it is uncertain to deliver the intention of the Land Reform (Scotland) Act to know who owns land, who has the power to make decisions on how the land is managed and who is benefiting from the land, as set out in the Policy Memorandum to the Bill.

17. The Committee considers the process of accessing information to be critical to meeting the policy objectives. The Committee asks the Scottish Government to provide clarification on the registers that will be accessible via ScotLIS and provide an indication of any land based or land related registers that will be excluded from ScotLIS. If land based registers are to be excluded the Committee asks the Scottish Government to provide an explanation of the rationale for this. This information has not been provided.

The Committee would welcome further detail on the plans to publicise the RCI and the means of access to it when the plans have been fully developed. The Committee encourages the Scottish Government to continue to work with stakeholders on this as a rigorous publicity campaign will be required to ensure all those who may be affected by the requirements of the Register are made aware of their duties to comply. The Committee looks forward to receiving further information on the plans of the Scottish Government for publicising the Register. The need for a rigorous publicity campaign is noted but no detail on this has been provided.

Process of Accessing Information

18. The Committee believes that the proposed process and mechanism of accessing information must meet the aspirations expressed in the Policy Memorandum to the Land Reform (Scotland) Act 2016 - that it is of fundamental importance to know who owns land, who has the power to make decisions on how the land is managed and who is benefiting from the land.

19. The Committee considers there should be an open data approach to enable the public and relevant stakeholders to have access to as much of the data as possible. The Committee agrees it is important to keep the reasons for excluding information or access to information to a minimum.

20. The Committee considers the Scottish Government needs to give more thought to the purposes of accessing the register (both top down and bottom up) and the type of information people will be looking for. The Committee was re-assured by the commitment of the Registers of Scotland to undertake user testing and to consider what kind of searches people will want to do to ensure that it is designed into the
system from the beginning and that the underlying data is structured to support all those kinds of queries. The Committee looks forward to receiving an update on this and further information on the guidance to be provided to the public. User testing is ongoing. No further information on the guidance is provided.

21. However, the Committee remains concerned that much of Scotland's land will remain out-with this system and urges the Scottish Government to re-think this approach. If the Register is to meet the aspirations of a transparent and accessible system all of this information should be accessible in a simple and straightforward way. People should not be required to go out-with the system to seek the information they need and they should not be required to rely on Freedom of Information legislation to do so. The Committee recommends the Scottish Government provides assurance that all information will be accessed via a single point. It is not clear if all information will be accessed via a single point.

22. The Committee understands it is the intention to combine access to all the registers through the gateway of the ScotLIS system. This must ensure they are integrated, with a single point of access and the Committee seeks re-assurance from the Scottish Government that ScotLIS will be able to act as a portal to provide a single point of access to all information required and this information will be complete and access seamless from the public perspective. It its vitally important that the Register is clear and transparent, easily accessible, straightforward to navigate and free to use. The Committee also considers that the RCI should make clear on which register an individual entry is held. Where this information is held should be recorded and publicised. How this will work in practice remains unclear.

23. The Committee understands ScotLIS currently has two tiers of access "open public access" and "registered user access". The Committee would welcome further information from the Scottish Government on what information it is proposed to be included in each tier of access. This information has not been provided.

Part 2 - Register of Controlling Interests

Language and Interpretation

24. The Committee would welcome further explanation from the Scottish Government as to why the scope of the regulations has been left broad in statute, to be more closely defined by guidance.

25. The Committee agrees that further consideration of the definitions of control and significant influence is required and recommends the Scottish Government provide greater clarity on what the terms "significant influence" and "controlled interest" mean in both the Regulations and explanatory document. The Committee recommends the explanatory document and guidance set out detail on the types of circumstances in which control and significant interest exist. Further definition has not been provided in the Regulations, but the Regulations have been changed to state that professional advisers do not need to register unless they exercise significant influence or control. Detail on the persons and entities exercising significant control is provided in paragraphs 81-167. Further guidance will be published prior to commencement of the Register (paragraphs 261-265)
26. The Committee recommends specific examples demonstrating situations that would and would not fall under the intentions of the regulations should be included in the explanatory document and in guidance. *Some examples and scenarios have been provided in the Explanatory document.*

**Recorded Person's Name and Address**

27. The Committee considered whether the regulations should be prescriptive with regard to whether the home or service address is provided. The Committee was of the view that it was more important that the contact address should be consistent across all the relevant registers. The Committee understands the PSC register requires the residential address to be provided but that information is not disclosed. The Committee understands the information that is disclosed on the PSC register is a service address. The Committee recommends the Scottish Government give further consideration to this, and the benefits of consistency of approach, in advance of finalising the draft Regulations. *Further clarification is required.*

28. The Committee requests the Scottish Government provide a view as to whether there should be an address in Scotland where a recorded person can be contacted. *A view on this has not been provided.*

29. The Committee considers there is merit in including an email address in the Register, alongside a physical address, as this may aid communication with registered persons and entities. The Committee recommends the Scottish Government give further consideration to this. *The use of a physical address is supported and there is no requirement to provide an email address. Email addresses could be collected for operational reasons but would not be made publicly available (paragraphs 197-199).*

30. The Committee considers there could be scope to create a unique identifying number for each individual and entity and asks the Scottish Government to give this further consideration. The Committee considers this could aid management of the information provided. The Committee comments on individual security later in the report. *The Regulations have been changed to provide a requirement for a unique identifying number (paragraphs 188-196)*

**Making and Amending Entries**

31. The Committee would welcome clarification from the Scottish Government as to the extent of the powers of the Keeper to make and amend entries in the Register. The Committee considers there would be benefit in the Keeper having the power to question the accuracy of, or lack of entry in, the Register. The Committee comments further on the issues of validation and verification later in the report. *Clarification on the extent of the powers has been provided. There is no power or duty for the Keeper to investigate or create a new entry in the Register. The Keeper can refer questions about inaccuracy to the Lands Tribunal. Paragraphs 31-42 and the diagram on page 19 of the explanatory document provide further detail. Regulation 19 sets out the process of referring a question to the Lands Tribunal.*
32. The Committee also recommends the Scottish Government give consideration to an appropriate time limit for making and amending an entry to ensure the Register is accurate and can be relied upon. When the requirement to register comes into force the transitional period in which no criminal penalties will apply has been increased from 6 to 12 months (paragraphs 178-187). No time limit has been identified for new registrations beyond that time.

Security and Protection

33. The Committee is concerned to ensure the highest standards of security of the system are expected and recommends Regulation 6 should make this clear. Regulations 16-18 regarding security declaration have not been amended.

Part 3 - Duties to Provide Information

Application of the Regulations and Exemptions

34. The Committee is concerned to ensure the Register (and associated registers) provide a complete base of information on those holding a controlling (and beneficial) interest in land in Scotland. As stated earlier in the report, at the point in time the Register is established it should provide this information (in combination with associated registers). It is not yet clear that a complete information base will be provided.

35. The Committee recognises that other UK registers may not be fully effective or operational at this time. As stated earlier in the report the Committee is of the view that while it is important to avoid unnecessary duplication, beneficial owners of overseas companies and other legal entities should be included in the Register at the outset, but there should be provision that they may no longer be subject to the requirements of the Register when the Register of Beneficial Owners of Overseas Companies comes into effect (subject to consideration of the information held on that Register). Clarification provided indicates that this is the case.

36. The Committee considers in order to achieve the policy intent of the regulations, it is right that they capture everything from a small sports club to a large pension fund. The Committee agrees with the Registers of Scotland that it is important that all controlling interests in all pieces of land are appropriately recorded in the Register. Clarification provided indicates that this is the case.

Details of an Associate

37. The Committee considers the required details of an associate should mirror that required by all of those registering as set out in the earlier recommendation.

38. The Committee recommends further clarity of when advisors are and are not exempt should be provided in the explanatory document and, if necessary, included in the list in schedule 2. Further detail on associates is provided (paragraphs 58-62). A specific exemption has been added to part 1 schedule 1 for professional advisers.
Security Declaration

39. The Committee considers the security of vulnerable individuals must be of primary concern in the process of registration and welcomes the view of the Keeper that information would not be published until all routes of appeal have concluded.

40. The Committee notes the information provided in schedule 3 outlining how the Registers of Scotland will interpret and verify those at risk of violence, abuse, threat of violence or abuse, or intimidation and how security will be prioritised in the registration process.

41. The Committee understands there is no recognised independent standard for the security registration process, therefore it would be helpful to be specific for each register about the circumstances under which someone can ask for their information not to be included, and to provide guidance on how the process would work for each register. Further information has been provided (paragraphs 74-80 and 200-211). Evidence required to support the security declaration is set out in schedule 3. No changes have been made to schedule 3. A fee of £150 will apply to appeals and the decision will be for the Lands Tribunal (subject to separate legislation). Guidance on how the process would work for each register has not been provided.

42. The Committee considers the use of a unique reference number for those with a security declaration should allow for an appropriate degree of anonymity and enable identification if necessary. However, the Committee seeks further information on this and how it would operate as those with a security declaration need to be assured that their identity will remain secure. Further information has been provided (paragraphs 74-80 and diagram on page 19).

43. The Committee does not consider commercial confidentiality to be a valid reason to with-hold publishing information.

44. The Committee considers there should be an annual reporting system on the number and nature of privacy and security declarations. The Committee would welcome further information on the form it will take, the information that might be included - how many were accepted and rejected, and the reasons for this. Further information has not been provided.

Part 4 - Miscellaneous

Accuracy of the Register

45. The Committee is concerned that the current proposal gives the Keeper limited powers to verify the information on the Register and investigate the extent to which it is correct.

46. The Committee encourages the Scottish Government to review the 5th EU Anti-Money Laundering Directive (2018) and the operation of the PSC register and the lessons to be learned about data validation and verification. The Committee welcomes a view from the Scottish Government on the benefits of aligning the RCI
with those verification processes. Further information has not been provided. The extent to which this is aligned is unclear.

47. The Committee shares the concerns expressed by some stakeholders that a lack of validation on receipt of information may result in the content of the Register being unreliable. The Committee considers this to be unacceptable. The public need to have confidence that the information held in this Register and related registers is accurate and the Registers are fit for purpose.

48. The Committee understands the regulations, as currently drafted, place the onus on the individual to provide accurate information and the Keeper would need evidence that what is in the register is incorrect. The Committee recognises the legal requirement upon individuals to ensure information is correct and complete, but the Committee was concerned to hear that the Keeper would find it "very difficult" to take responsibility for verification and checking whether information that had been submitted was true.

49. As stated earlier in the report, the Committee is of the view that limiting the power of the Keeper to consider the accuracy of information provided only if prompted by a third party is unacceptable. Similarly, relying on the Lands Tribunal for Scotland to undertake investigations is over-burdensome and potentially unworkable. The Committee recommends that the final Regulation addresses these concerns and provides wide powers to the Keeper to validate information provided on receipt and undertake investigations, should it have any concerns. The Regulations and guidance should also indicate the action that should be taken if there is no response and should set out the responsibilities and arrangements for enforcement in the case of non-compliance. There has been no change to the Regulations

Offences and Defences

50. The Committee asked the Cabinet Secretary whether the Regulations would be amended to say on conviction that the interest is to be recorded on the Register. The Cabinet Secretary undertook to give this further consideration. A response to this has not been provided.

51. The Committee considers the sanctions are an important part of the Regulations. The Committee understands the Land Registration etc (Scotland) Act 2012, which is about the Land Register, sets a statutory maximum of £10,000 and the PSC register sets a threshold for fines of £10,000. The Committee considers the fines that the Regulations propose for non-compliance with the RCI, by providing false or misleading information, are not in line with those in relevant comparable legislation. The Committee believes that organisations and individuals should face similar sanctions for similar breaches, irrespective of which register their information is to be held on.

52. The Committee recommends the Scottish Government take action to address this anomaly by amendment to the Land Reform (Scotland) Act 2016. The Committee also recommends the Scottish Government give further consideration to other types of sanction, including civil sanctions, that could act as a deterrent. There is no indication of an intention to review the 2016 Act.
53. Notwithstanding the above recommendations the Committee remains doubtful as to whether the level of fine, set at a maximum of £5,000 will deter those who are determined to remain anonymous. However, the Committee welcomes the reassurance that the maximum sanction can be applied to each offence and can be re-applied after a period of time should there be a failure to comply.

54. The Committee cannot see any reason why completion of the RCI registration process for recorded persons and associates should not be introduced into the Regulations as a pre-condition for undertaking other administrative and financial changes and/or transactions relating to the land, for example: when entering a title into the Land Register; when mortgaging or re-mortgaging the property and; when any other changes are made to the title deeds of the property. The Committee recommends completion of the Register is a pre-condition for undertaking other administrative and financial changes and/or transactions relating to the land. This should ensure clarity of responsibility for registration where land transactions occur and at the point of sale. The Regulations have not changed in response to this recommendation.

55. The Committee shares the view of the Law Society of Scotland that before an offence is deemed to have been committed, the individual concerned is given a period of time, after receiving notification from the Keeper that they have failed to comply with any of the duties under the Regulations that attract a penalty, to comply with the duty, and only after failure to comply within a reasonable period after notification should it be possible for an offence to be committed. The Committee recognises the risk of inadvertent failure to comply and the recognition by the Keeper and the Cabinet Secretary, of the need for a grace period. However, the Committee is concerned that this period is not unduly long as it is important to have confidence that the information held on the Register is up-to-date. The Committee considers a six month period could be appropriate but encourages the Scottish Government to consider the transitional period in current and proposed relevant legislation. The Committee welcomes the view of the Scottish Government on the appropriate period of time before an offence has been deemed to have been committed.

Notification of Death, Winding Up or Dissolution

56. The Committee would welcome further information from the Scottish Government on the provisions and responsibilities for enforcement and the recovery of fines, particularly for those registered overseas. Further information has not been provided.

57. The Committee is concerned that executors of an estate may be unaware of their obligations under the Regulations. The Committee recommends the Scottish Government gives consideration to the terms of the Regulation in relation to executors and whether a relaxation is appropriate. Criminal offences have been removed from the relevant regulation (regulation 23 page 14).
Part 5 - Application and Transitional Provision

Schedule 1

58. The Committee recommends the Scottish Government provide further clarity over who is, and is not, to be considered an associate of a recorded person in the Regulation and/or guidance. The Committee considers that those providing professional advice should not be caught by the Regulations.

59. The Committee recommends that the Scottish Government provide further clarity of the scope of Schedule 1 in the Regulation and, if necessary, in guidance.

Capacity of the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland.

60. The Committee encourages the Scottish Government to give further consideration to the impact of the RCI on the capacity and resourcing of the Registers of Scotland, the Lands Tribunal for Scotland and Police Scotland, to ensure they are sufficiently resourced to manage the work in relation to the establishment and ongoing management of the RCI, including the management of omissions, inaccuracies and breaches of information and the work involved in enforcement and recovery of fines. The Scottish Government states that there are no concerns (paragraph 266).

Consideration by the Delegated Powers and Law Reform Committee

61. In its report the Delegated Powers and Law Reform (DPLR) Committee drew the proposed draft Regulations to the attention of the Parliament on the following reporting grounds: On ground (h), as the meaning of paragraph 15(a) to (c) of schedule 1 could be clearer. The effect of those sub-paragraphs is to provide examples to explain the type of situation where significant influence or control may exist in respect of an overseas entity. Reference is made to “company”. This could be clearer as the provision is not intended to refer to U.K. companies.

62. On the general ground, there is an instance of drafting which is not gender neutral. Draft regulation 7(1) refers to the Keeper of the Registers of Scotland as “she”.

63. The DPLR Committee noted that the Scottish Government has undertaken to correct these matters in the next version of the draft Regulations.

The Scottish Government states that both points have been addressed in the re-worked Regulations (paragraphs 270-272)

### Extract from Explanatory Notes: Table summarising substantive changes to the regulations

<table>
<thead>
<tr>
<th>ISSUE RAISED</th>
<th>HOW WE RESPONDED</th>
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<tbody>
<tr>
<td>It is not clear whether Professional advisors are obliged to register by virtue of Part 1 Schedule 1 of the draft regulations.</td>
<td>A specific exemption has been added to Part 1 Schedule 1 for Professional advisors.</td>
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<td>The transitional period of 6 months is too short.</td>
<td>Transitional period has been increased to 12 months.</td>
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<tr>
<td>Associates to provide email addresses.</td>
<td>Provision added to the draft regulations for associates to be allocated unique reference numbers. This change also means that the date of birth will still be captured, but not made publicly available.</td>
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<tr>
<td>More clarity is required about who is and who is not in scope of Part 1 Schedule 1 of the draft regulations.</td>
<td>Specific exemptions have been added to Part 1 Schedule 1, whilst retaining the general provision.</td>
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<tr>
<td>Where a security declaration is refused by the Keeper and the individual wishes to appeal the decision, no personal details should be made public until the appeal process has concluded.</td>
<td>We have drafted a separate SSI to alter the Lands Tribunal for Scotland’s rules to allow them to hear appeals in private. Decisions will be published as normal, but personal details will be anonymised. The SSI also allows the Tribunal to charge a fee of £150 – this is in line with the cost of appeals in relation to other Land matter. We have also included a new provision (regulation 4(2) that states that the Keeper shall make an entry no sooner than 30 days after receiving the required information.</td>
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<tr>
<td>Concern from stakeholders and committee around the executors being inadvertently criminalised.</td>
<td>We have removed the criminal offences from regulation 23.</td>
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<tr>
<td>The Delegated Powers and Law Reform Committee raised some minor points.</td>
<td>Both points have been addressed in the re-worked draft regulations.</td>
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<tr>
<td>Offences</td>
<td>Offences have been removed from regulation 23 in relation to death, winding up or dissolution. The criminal penalty we have proposed – a fine up to £5,000 - is the maximum permitted under the 2016 Act and applies to most of the offences and remains in place.</td>
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SSI 2020/4: Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020

Type of Instrument: Negative

Laid Date: 9 January 2020

Meeting Date: 4 February 2020

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 17 February 2020

Background

1. SSI (2020/4): Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 were laid in the Scottish Parliament on 9 January 2020 and referred to the Environment, Climate Change and Land Reform Committee for consideration under the negative procedure. This SSI was laid before the Scottish Parliament under section 68(4) of the Water Industry (Scotland) Act 2002 and is subject to annulment within 40 days of it being laid.

Purpose of the instrument

2. The purpose of this instrument is to make each local authority (and not Scottish Water) responsible for the collection of the charges payable for water services and sewerage services which are provided by Scottish Water to dwellings within each financial year (“service year”) from 1 April 2020 to 31 March 2023.

3. The instrument also requires each authority to make payments to Scottish Water so as to account for this.

Policy Objectives

4. This Order was made in exercise of the powers conferred on the Scottish Ministers by section 37 of the Water Industry (Scotland) Act 2002 (“the Act”).

5. Section 29A of the Act requires Scottish Water to make a charges scheme which fixes the charges payable for water and sewerage services provided by it in the
exercise of its core functions. Section 37 of the Act separately empowers the Scottish Ministers to determine, by order, that for specified services provided by Scottish Water to dwellings in the area of a local authority, the authority (not Scottish Water) is to collect the charges payable.

6. There is an existing order -The Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2014 (as amended) – which makes local authorities responsible for the collection of charges for the period from 1 April 2014 to 31 March 2020. This Order effectively supersedes the previous order, with new agreed fees for local authorities for the upcoming period.

7. A copy of the Policy Note is included in Annexe A.

8. According to the Policy Note, “as there is no impact on business or the third sector, and no impact on the environment or on environmental issues, no Business and Regulatory Impact Assessment or Strategic Environmental Assessment is required.”

Delegated Powers and Law Reform Committee (DPLRC)

9. At its meeting on 28 January 2020, the DPLRC considered the instrument and had no comments to make.

Procedure for Negative Instruments

10. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

11. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks,
Environment, Climate Change and Land Reform Committee
POLICY NOTE
THE WATER AND SEWERAGE SERVICES TO DWELLINGS (COLLECTION OF UNMETERED CHARGES BY LOCAL AUTHORITY) (SCOTLAND) ORDER 2020
S.S.I. 2020/4

This Order was made in exercise of the powers conferred on the Scottish Ministers by section 37 of the Water Industry (Scotland) Act 2002 (“the Act”). The Order is subject to negative procedure.

Policy Objectives

Section 29A of the Act requires Scottish Water to make a charges scheme which fixes the charges payable for water and sewerage services provided by it in the exercise of its core functions. Section 37 of the Act separately empowers the Scottish Ministers to determine, by order, that for specified services provided by Scottish Water to dwellings in the area of a local authority, the authority (not Scottish Water) is to collect the charges payable.

The Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 (“the Order”) makes each local authority responsible for the collection of the charges payable for water services and sewerage services which are provided by Scottish Water to dwellings within each financial year from 1st April 2020 to 31st March 2023. It also requires each authority to make payments to Scottish Water so as to account for this.

Consultation

The Order was prepared in consultation with key stakeholders (including COSLA, Scottish Water (SW), Water Industry Commission for Scotland (WICS) and Citizens Advice Scotland (CAS); no issues were raised.

Impact Assessments

As there is no impact on business or the third sector, and no impact on the environment or on environmental issues, no Business and Regulatory Impact Assessment or Strategic Environmental Assessment is required.

Financial Effects

There is an existing order -The Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2014 (as amended) – which makes local authorities responsible for the collection of charges for the period from 1 April 2014 to 31 March 2020. The Order effectively supersedes the previous order, with new agreed fees for local authorities for the upcoming period. It fixes the amount to be deducted (for the cost of collection) from the sum each local authority must pay to Scottish Water as regards services provided in each of the financial years to which the Order applies. These amounts also take account of the cost of collecting...
charges for dwellings for which there is no council tax liability. The total amount deducted for the cost of collection in relation to services provided in each financial year is fixed at £18.25 million. This is seen by COSLA and Scottish Water to be a reasonable settlement in terms of recovering the cost of collecting charges for services. The total amount will be fixed at £18.25 million for each financial year until 31 March 2023.

Water Industry Division
January 2020