



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 26 June 2018

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
21st Meeting 2018, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Donald Cameron (Highlands and Islands) (Con)
*Finlay Carson (Galloway and West Dumfries) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Angus MacDonald (Falkirk East) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Connal (Scottish Government)
Pauline Davidson (Scottish Government)
Andrew Ruxton (Scottish Government)
Graham Watson (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 26 June 2018

[The Convener opened the meeting at 09:33]

Decision on Taking Business in Private

The Convener (Graeme Dey): Good morning, and welcome to the 21st meeting in 2018 of the Environment, Climate Change and Land Reform Committee. I remind everyone present to switch off mobile phones and other electronic devices, as they might affect the broadcasting system.

Agenda item 1 is to decide whether to take items 4, 5, 6 and 7 in private. Do members agree to do so?

Members indicated agreement.

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

09:34

The Convener: Item 2 is to hear evidence from Scottish Government officials on proposed draft regulations to establish a register of persons holding a controlled interest in land. I welcome Keith Connal, Pauline Davidson, Andrew Ruxton and Graham Watson. Good morning to you all. We will go straight to questions.

Finlay Carson (Galloway and West Dumfries) (Con): My first questions are fairly straightforward and based on what information is contained in the register. What process was followed to decide what information to include in the register? What information was considered but then discounted? An example might be the nationality of the recorded person.

Graham Watson (Scottish Government): Regulation 3 of the proposed draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 provides that we register the name and address of an owner or tenant and the capacity in which they own or tenant the land. The register should also disclose information about the relevant pieces of land, such as a land register title number or, when there is not such a number, a description that is sufficient for the land to be identified. The intention behind the inclusion of the information about the owner or tenant and the land is to provide a link back to the land register, which is the chief source of information about the legal owners of land in Scotland. It is to provide reassurance to people who will use the register that the information that it contains is relevant to the piece of land that they are interested in.

The Convener: Is the address that is included the person's address, or is there a risk of it being the address of a solicitor's office or a holding company?

Graham Watson: The address will usually be the address of the recorded person. If the person uses a solicitor's office address, it should be one at which they are contactable, so that the correspondence can reach them.

Finlay Carson: Was there any information that you looked at including in the register before discounting it?

Graham Watson: We think that the information that we have proposed to be included is sufficient to give the link. We considered whether including

someone's nationality would be necessary to support that, but we felt that that additional information was not required. The land register will include some information on nationality. For example, it will show the country of origin of overseas legal entities that own land in Scotland.

Pauline Davidson (Scottish Government):

The key focus is to enable people in communities to contact individuals who might have control over decision making for a piece of land. We considered what information was required to be registered to enable that to happen. That was the rationale for including the information.

Finlay Carson: Nowadays, snail mail—or whatever we call it—is not used particularly often. Why is information such as email address, web address or telephone number not included in the register?

Graham Watson: We have proposed that an address be provided rather than an email address or phone number because we consider that that will give more reassurance to a person who is looking to engage with, in this case, the owner or tenant. However, the same rationale applies to people who hold a controlling interest. A person will know that it is a physical address, and it is provided to be an address at which the owner or tenant can be contacted, so they will know that it is in use and not subject to spam filters or anything like that that could apply to an email address.

Finlay Carson: Surely that will slow down the ability of someone to contact a landowner. Emails are now the default method of communication in many cases. Could an email address not have been included along with a geographical address?

Graham Watson: We have prioritised providing that level of reassurance. However, we will look closely at what comes out of the consultation. It is very important to the policy goal that the information is usable and supports engagement. We will pick up on such points if they are raised in the consultation.

Finlay Carson: You have suggested that the register is a way to link back to the land records. In practice, how will the relationship between the keeper of the registers of Scotland and the Lands Tribunal for Scotland operate?

Graham Watson: There are two main areas of involvement for the Lands Tribunal in the proposed register. It will consider appeals that are made against the decision of the keeper to reject a security declaration, and it will consider questions that have been referred to the Lands Tribunal about the accuracy of the register. That potential for questions on the accuracy of the register to be referred is intended to provide a backstop when the question is too complex to otherwise be

resolved, or when it would require the creation of an entirely new entry in the register.

We have discussed with the keeper the role that she will play. We have heard her views and we will continue those discussions in order to support the functioning and the operation of the register.

Finlay Carson: During the discussions, have you estimated how many cases might go between the keeper and the Lands Tribunal? Do you have any idea of the timetable for dealing with those inquiries?

Graham Watson: The Lands Tribunal considers questions about the accuracy of the existing land register. That gives us something of a baseline, although the drivers for referring questions would be quite different. Since 2015, the tribunal has given opinions on about 10 referrals questioning the accuracy of the register. We would expect a similar, relatively low, level of referrals. As I have said, the tribunal should be a backstop, rather than the first recourse in ensuring the accuracy of the register.

Finlay Carson: How long has it taken to resolve those 10 referrals?

Graham Watson: The Lands Tribunal considers several cases at once, so we are mindful of the burden on the tribunal. We are still in the early stages of discussing the operation of the referral function with the tribunal. We are mindful that it should not be an overly long process.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The United Kingdom persons with significant control register requires a name, date of birth, nationality, country of residence, service address, usual residential address—it says in brackets that that is not displayed to the public—and one or two other things. In Scotland, we are not seeking to include some of the things on that list, such as the usual residential address. Why are those things included in the persons with significant control register, as is basically the case with the register at Companies House, but we have decided to exclude them?

Graham Watson: It comes back to the difference in purpose between the register that we are proposing in Scotland and the current PSC register. The PSC register is focused on countering money laundering and corruption and has very active law enforcement. That is why it requires extra information, such as the usual residential address and the full date of birth, even though those are not included on the published register.

The decision not to include other details—nationality and usual country of residence—goes back to the point that we were considering what information would be sufficient to enable people to

engage with those who have a controlling interest or who control decision making. We consider that we have achieved that by asking for the name, contact address and month and year of birth, to allow us to distinguish between individuals.

Stewart Stevenson: You are not making the distinction that is being made in the UK persons with significant control register, between the use that members of the public might make of the register and the use that enforcement agencies, such as those that have oversight of the financial services industry, make of it—the UK register retains information relating to those uses, but it is not published. Did you consider making that distinction?

Graham Watson: I will pass over to Andrew Ruxton in a moment, but it comes back to the different functions of the two systems.

Andrew Ruxton (Scottish Government): That is right. We are at an early stage with the regulations, but as Graham Watson said, it comes back to what these regulations are trying to do as opposed to what the persons with significant control regime is trying to do. Our regulations are focused on the ability to engage. At this stage, we are not focusing on the second purpose, which is the financial interests that you mentioned.

There is also a question of legislative competence. Our purpose is not to regulate the financial services industry or counter money laundering. We want to be clear about what we are trying to achieve with the register and what its purposes are.

Stewart Stevenson: Finally, you suggested that this is an early draft and you are still considering it. Will you consider making it possible—if not necessarily a requirement—to gather such information as part of the registration process, meaning that it would be available at a later date? We might return to the issue of things being voluntary in other questions.

09:45

Andrew Ruxton: We are certainly open to looking at those issues, but we have to bear in mind our legislative competence to do certain things.

The Convener: Just to be clear: what could you do and what cannot you do?

Andrew Ruxton: In terms of?

The Convener: Beyond what we have in front of us, what are you capable of doing but have chosen not to and what are you prevented from doing?

Andrew Ruxton: There is a question about whether the register could gather information for

the purposes of enforcing anti-money laundering legislation, for example. In essence, the purpose is to increase the transparency of land ownership to allow for better engagement with landowners in order to increase sustainable—

The Convener: I get that, but my question is that, given our legislative competence, what could you do that you have not done so far and what do you believe you are prevented from doing?

Keith Connal (Scottish Government): It is quite difficult to give you a hard and fast definition of where the line is on competence. What you are hearing is that we have been examining how far we can go, and we are open to what comes back from the consultation. Obviously, the discussions will continue on where that competence boundary lies. However, we have taken the view that, given the purpose of the register as set out in the legislation, if we go too far into the area of enforcing on money laundering, we are likely to hit a competence barrier. It is difficult to say where the line is and what we can and cannot do, but we hear the point that has been raised on that and we will obviously consider it further.

The Convener: That is useful to know. People might have unreasonable expectations of how far you could go, so it is just as well to try to get a clear indication of what is and is not possible.

Alex Neil (Airdrie and Shotts) (SNP): Can I probe a bit on overseas trusts and their quite significant involvement in the ownership of land in Scotland? We know that we have a significant number of rich individuals—dukes and earls and so on—who own land in Scotland but who, to avoid tax, set up an overseas trust that is registered in a place such as the Cayman Islands. I will not name anybody, but we could name some of those people. For the purposes of the controlled interest legislation, those are the people who really control the land. It is not about money laundering; there is a legal tax dodge under UK and international law that allows them to do that. Who in that situation is the controlling interest? Is it the person who has the trust set up and is benefiting from the tax dodge? Is it the overseas trust, which is usually just a name-plate somewhere in the Caymans? It is not a company and we would not walk into it and find an army of people managing the land over in Scotland, for example. Who is the controlling interest—or who are the controlling interests—for the purposes of these regulations?

Graham Watson: The provisions apply equally to trusts across whatever jurisdiction the trust has been constituted under and we have tried to cast the net fairly widely to catch different forms of control. We would look to register the trustees and people who can direct the trustees' decisions; and we might look at those who can remove or appoint trustees or otherwise revoke the trust. We set out

in paragraph 8 of schedule 1 a number of different forms of control that we would look to catch. There is a catch-all provision there regarding a person who

“otherwise has significant influence or control over the decision-making of a trustee or trust”.

That is designed to catch the many variations in how people might use those structures in a way that suited them and allowed them to influence the control. That point will be further elucidated in guidance. We will take people’s views and look for examples of that to make sure that we catch control however it is constituted.

Alex Neil: In that situation, could both the person or persons who have inherited land and handed it over to the trust that they have set up and the trust be registered as the controlling interest?

Graham Watson: That would depend a little on the formulation but, yes, in theory they could.

Alex Neil: In theory, they could. Once the register is complete, we should have a fair idea by proxy of who is dodging their land taxes.

Graham Watson: That may be a conclusion that is drawn. The register will be a significant step forward in the transparency of who controls decision making.

Alex Neil: It is important, because such trusts avoid paying taxes and now we have control of income tax, they should perhaps be liable for income tax. Are you linking up with, for example, Revenue Scotland and taking cognisance of its requirements as you draw up the legislation?

Graham Watson: We will certainly have conversations with Revenue Scotland to see whether there are links that we should be making and to support the on-going work there.

Alex Neil: The register should make it easier for Revenue Scotland to identify tax dodgers.

Graham Watson: It may well do. As those conversations develop, we will get a better sense of how it will all fit together.

The Convener: You recognise people’s hopes and expectations for this piece of work and the opportunities that it opens up not just for transparency.

Graham Watson: Yes. Our core purpose is to deliver transparency in order to support engagement with people who are controlling decision making in relation to land. It is a significant piece of legislation, and it is important that we support Government policy across the board as best as we can.

Claudia Beamish (South Scotland) (Lab): Along with fellow members of the then Rural

Affairs, Climate Change and Environment Committee—including Graeme Dey, Angus MacDonald and Richard Lyle—I looked with interest at the issue of verification when we scrutinised the Land Reform (Scotland) Bill. Community Land Scotland has taken an interest in the matter, too, and members received a briefing from it before the meeting. It asks a question about verification with which I agree—I would not ask it otherwise. What is the verification process? It could be quite onerous. On the other hand, somebody could simply say who should be contacted if there were any issues about compliance with an aspect of the register. It would be concerning if a community group tried to approach that person and it was found that a trust was not in existence or was not easily accessible.

Graham Watson: It is important to the policy goal of the legislation that the information on the register is robust, reliable and usable. We are not proposing a verification process that would begin at the point at which information was received. However, within the legislation there are a number of measures through which we are looking to drive compliance with the register, including the duties to provide information being accompanied by criminal offences and non-compliance possibly being punishable by a fine. The keeper would also have the power to amend the register to correct inaccuracies, perhaps as a result of people drawing to her attention the fact that the information does not appear to be accurate or some other issue. We have discussed the use of referrals to the Lands Tribunal for Scotland as a backstop if that has not taken place.

Through those combined measures, we aim to deliver significant robustness in the accuracy of the information, as far as possible.

Claudia Beamish: With respect, that suggests that a weighty verification process would be embarked on only if things went wrong. Is that your thinking?

Graham Watson: Are you asking whether we would focus on issues that had arisen in the register?

Claudia Beamish: When the regulations go through—we hope that they will—what will be the process of checking that the information is valid at the point at which it is added?

Graham Watson: The keeper of the registers of Scotland will not be verifying the information as it is received. We have put the onus on the owner or tenant and their accompanying controlling interests to provide accurate information on the timed basis in the draft regulations. As I mentioned, those are backed up by criminal offences, as we have taken a serious approach to

underlining the importance and necessity of complying.

Donald Cameron (Highlands and Islands)

(Con): I refer to my entry in the register of members' interests, as being neither a duke nor an earl—yet—but someone who owns land in his own name. I would like to ask some questions about part 3. By what process did you decide which details of an associate should be required?

Graham Watson: That goes back to points that we have already discussed a little today. In proposing the information that should be included, we have prioritised supporting the engagement between a user of the register—whether that is an individual, a community or another landowner—and the people holding the controlled interest. We have proposed the person's month and year of birth so as to distinguish between various earls, if need be, as well as their name and an address at which they can be contacted.

Donald Cameron: Is that their residential address? What is in mind there? In many instances, a trustee of a trust that owns land or the director of a company that owns land could just give the registered address of the trust or the company. Do you have something more specific in mind?

Graham Watson: No, we have proposed that it should be a contact address. The important thing is that the person can be contacted at that address. It may be the address of a company or a care-of address. It must be a genuine point of contact, but it does not have to be a residential address.

Donald Cameron: Regulation 13(7) contains a defence in relation to the non-provision of information that uses the phrase "without reasonable excuse". What do you envisage "reasonable excuse" including?

Graham Watson: The "reasonable excuse" provisions are designed to avoid situations in which a person is still on the hook after having done their best to comply with the duties or having been exposed by another person not complying with the duties on them. For example, an owner or tenant may have investigated their own controlled interests and corresponded with those people to verify the information but received no response, through no fault of their own, and they may be seen as not providing accurate information. That is where the "reasonable excuse" kicks in. It may also be that the owner takes reasonable steps to identify controlling interests but is not able to do so. Those steps might include contacting persons who may be aware of the controlling interest or otherwise looking for joint interests that might cumulatively amount to a controlling interest. It should be a relatively high bar; it should not be a

get-out clause. It is designed purely to avoid situations in which someone has tried but is unable to provide the information.

Andrew Ruxton: Although the regulations set out one example of what a "reasonable excuse" might be, they do not limit it to that specific example. It would depend on particular cases, and it may be that a court would think that, in a particular set of circumstances, a person had a "reasonable excuse". In that sense, it is flexible.

The Convener: There were, as I recall, substantial discussions about legitimate exemptions during scrutiny of the bill. The example that was given involved victims of domestic abuse, so that situation is covered in the regulations. Have any other exemptions been identified?

Graham Watson: As you say, we have an exemption for people who are at personal risk, and victims of domestic abuse are probably the clearest example of that. We have drawn the regulation a little wider, to cover people who may not want to be registered because putting them on the register might endanger other people. An example would be a worker in a refuge that was run by an unincorporated association. If the person could be linked to the refuge, the information might give away its location.

The exemption should be relatively narrow, and we do not anticipate a lot of cases. We will look closely at the consultation responses on that point.

10:00

Pauline Davidson: The regulations require evidence to be provided in order that a security declaration can be made. The keeper will verify that at the point of receipt.

The Convener: Is there a role for Police Scotland in assisting in that process?

Graham Watson: There is a potential role in the provision of the evidence. Attestations might be accepted as evidence and would be the clearest link to the police.

The Convener: It is good to get that point on the record.

Stewart Stevenson: I referred to the UK persons with significant control register. The indication is that around 130,000 companies are not yet complying.

You have made the point that you will not verify the information. However, even among those who comply in that they provide information, there will be a proportion whose information is accidentally or deliberately incorrect, and that information will not be checked.

The committee has heard from Pauline Davidson that the keeper will be expected to verify certain things in relation to the exemptions, which sounds perfectly fair. Given that there is no verification regime, and looking at the significant—I regard 3 per cent as significant—default in relation to the similar UK register, how well will the register actually work and how are the regulators and the courts going to deal with non-compliance?

Graham Watson: I understand that the current rate of compliance with the PSC is about 98 per cent. Nevertheless, as Mr Stevenson has said, there is room for improvement, and Companies House is taking the matter seriously.

A number of things can be done to support information going on the register accurately. Global Witness has worked with Companies House, looking at how its processes have evolved. Lessons can be learned from the use of drop-down menus rather than free text entry, with which there can be unintended mistakes that nonetheless lead to inaccurate information being on the register.

Mr Stevenson may be getting at the situation whereby someone, either intentionally or unintentionally, does not take the necessary steps to put information on the register. We would refer to the penalties for non-compliance. A criminal offence is a significant penalty, and we have provided for the maximum penalty that is permitted by the Land Reform (Scotland) Act 2016.

We are speaking to the Lands Tribunal about how it will engage with the process of referrals and to the Crown Office about the process of prosecution.

Stewart Stevenson: Addresses can be verified straightforwardly by automated means—for example, by using the Royal Mail register of all UK postal addresses. However, for a period of two years our house was not on the register. It had disappeared for some reason, and we only discovered that when NHS24 denied that we existed. We are now back. That register seems to be the definitive way of checking addresses. Would you expect the keeper to use it?

Graham Watson: Registers of Scotland will lead on the implementation of the register of persons holding a controlled interest in land. There are a number of possibilities for its processes, and we continue to speak to Registers of Scotland about that. We could certainly look at using the Royal Mail register.

Stewart Stevenson: The determinations will be made by the Lands Tribunal. Is the tribunal being resourced sufficiently for that?

Graham Watson: We are still having conversations with the Lands Tribunal about the

process, and we will discuss that point. We are conscious of the need not to place additional work on the tribunal, thereby slowing down the important work that it does in other areas.

Stewart Stevenson: Claudia Beamish will ask about penalties, including perhaps the last question that I was going to ask.

Claudia Beamish: Will the panel please clarify what the maximum penalty will be in relation to the register of persons holding a controlled interest in land?

Graham Watson: It will be a criminal offence that is punishable by a fine of up to £5,000, which is at level 5 on the scale.

Claudia Beamish: Is that sufficient to deter those who seek to avoid identification? You have highlighted that that is the maximum sentence under the 2016 act, but I would still value your comment on whether that is sufficient when someone is trying to avoid detection.

Keith Connal: It is difficult for us to comment on whether it is sufficient. It is the maximum sentence that is available to us. We will be interested in the responses to the consultation on that point, but we have gone as far as we can under the current legislation.

Claudia Beamish: To put it starkly, if there is on-going refusal to engage, is £5K the price of anonymity?

Keith Connal: We have heard that point raised. As I say, it is difficult for us to say yes or no to that, because we have pitched the fine at the maximum level.

Claudia Beamish: What would be the process for increasing the level of the fine, if that was considered to be necessary?

Andrew Ruxton: The Land Reform (Scotland) Act 2016 would need to be amended, because the power to make the regulations includes a power to create criminal offences, but only up to the level of £5,000.

Claudia Beamish: I see. Have you considered whether there are other offences that might apply for a consistent refusal to register? I am not asking because I know that there are such offences—I am just wondering.

Graham Watson: Beyond the criminal offence that we have proposed—

Andrew Ruxton: I am not aware of any, but we can take that question away and consider whether there are any other options.

Claudia Beamish: How does the Scottish Government intend to enforce compliance, and

what process will it follow in advance of referring cases to the procurator fiscal?

Graham Watson: We still need to explore the process that is gone through before a case gets to the procurator fiscal. I am afraid that we will have to pick that up with the committee in the future.

Claudia Beamish: Should compliance with the ROCI be a precondition of land registration?

Graham Watson: We considered that potential approach and understand its attraction. In our proposals, we have taken a different approach for a couple of reasons. One is that making compliance a condition of land registration or transacting on the land would emphasise the point at which people are transacting on the land, whereas we are keen that the information in the register is accurate across the piece. We therefore propose duties to update on an event-driven basis, whereas, if we make that a precondition of land registration, we may get updates at only very intermittent key points.

Another issue that is worth making in relation to that—

Claudia Beamish: I am sorry to interrupt, but surely the register could be updated. There could be an obligation to update the information if things change.

Graham Watson: Yes, absolutely. However, in that case, the incentives for updating and the offences for not updating would be equivalent to the ones that we have proposed, so the situation would remain similar. One reason for proposing event-driven updates—which we think is important and which we have chosen to emphasise—is that, if we made updating a condition of land registration or of transacting on the land, we would need a system of registration numbers or of placing restrictions on the land. If we continually had to update those or lift and restate or replace restrictions, there could be a potential disruption to the property market, as it can take a while for transactions to go through. We were wary of that, which is one reason why we stepped back from that approach. We think that it is important that the information on the register is up to date, and that is what we have chosen to focus on.

Claudia Beamish: Could it be updated at the point of sale or at the point of the contract formalities?

Graham Watson: Possibly. However, if there was a registration number that could be updated at any point to reflect a change in the controlling interest, that might not give the consistency that people are looking for, as even the sale of a house can take months to go through, and the period can be much more extended with a commercial property. We were aware of the possibility that

updates could impact on the conveyancing process.

The Convener: Let us come at this from a different direction and talk about possible leverage for getting people to register. With respect to the way in which the new register will work and be accessed, is there scope for it to identify parcels of land that do not have the information attached to them so that pressure could be brought to bear on their owners to register them? I am trying to think of an appropriate term—I am thinking of a list of people who have not complied, or of properties that do not have such compliance attached to them.

Graham Watson: That question links in with how we will go about publicising the duties in order to ensure that people are aware of what is expected of them, and that the information gets on the new register. Clearly a significant amount of work will be required to do that, so we will reach across different categories of entity. We are looking to work with Registers of Scotland and with various representative groups, including Community Land Scotland, Scottish Land & Estates, and the Office of the Scottish Charity Regulator. That should ensure that people are aware of what they are expected to do, and that the information gets onto the register.

The Convener: I say with respect that Scottish Land & Estates is probably not the problem. It has taken a policy position on registration, and you pretty much know who Scottish Land & Estates members are, because they are part of the communities that they live in. I suspect that others will be the issue—the people who do not comply will not be among its members.

Keith Connal: It is an interesting question, convener, because there will be lots of owners of land for whom there is no controlling interest. If I own land that my house sits on, there is no controlling interest, so I would not be required to register. We will have to see what comes back from the consultation, but we cannot assume that absence of registration in the proposed register would mean that something was being hidden.

The Convener: We have heard that the compliance figure in England is 97 per cent. If we achieved a similar figure, would you be in a position actively to highlight who the other 3 per cent were?

Graham Watson: It might be possible to discern who those people would be. For instance, the land register will hold information such that land that is held by overseas legal entities will be identifiable. It could be that steps could be taken to ensure that people who do not have a controlling interest are aware of what they should be doing and will consider registration.

Keith Connal: The point is that it might be better to filter a search according to categories of ownership, as has been mentioned, than to assume that every entry in the current land register ought to have an entry in the proposed register.

The Convener: I am just seeking to explore the options that might get us to the position that we all want.

John Scott (Ayr) (Con): I will ask a slightly off-the-wall question. Are crofting interests in the crofting register covered by the legislation? I know of the difficulty in the mapping exercise for crofting in respect of establishing where boundaries are. Could you talk about that, if it is relevant to this matter?

Andrew Ruxton: We have—

John Scott: I declare that I am a landowner, convener—although I am not a crofter.

Alex Neil: You are not a duke?

John Scott: I am not a duke. Thank you for allowing that clarification, Mr Neil. *[Laughter.]*

Graham Watson: I will let Andrew Ruxton in in a second, but I want to say that the impact on crofters will depend on how they hold the land—whether it is held in a form that will be impacted by the regulations. The map-based element comes from the link back to the land register; we are not looking to duplicate work that has been done elsewhere.

Andrew Ruxton: The duty on owners or tenants of land will be to investigate whether they have any associates. That will apply only to tenants who have registrable leases of over 20 years.

We also have in schedule 1 to the proposed regulations a provision on contractual relationships between individuals, but it does not include simple landlord-tenant relationships. Whether a croft was covered would depend on the nature of the lease.

10:15

Stewart Stevenson: I own land and I have a baron in the family—a first cousin once removed—but he died in 1926, so that probably does not count.

The ownership details of a trust that owns land might endure for hundreds of years. I take it that that is part of the argument for why we are not simply developing the proposed register for changes in ownership, because beneficial interest might change, even though the ownership of the land would not. The two are quite different.

I am seeing nodding heads, so that is okay.

I have another tiny question that has occurred to me since I caught your eye, convener. In respect of beneficial interests, do the holders of standard securities, who will almost invariably be on the land register, constitute beneficial interests? They can ultimately direct what happens to the land.

Andrew Ruxton: We have made exception for holders of standard securities in the regulations. Certain types of relationship do not really constitute a controlling interest in the sense that we are considering: a creditor who holds a standard security is one such. For example, if a lawyer gives advice to a partnership, and if a person in the partnership follows that advice, is the lawyer exercising influence over the decisions of the partnership? That relationship would be exempted; we are not including those types of professional relationships.

Stewart Stevenson: A standard security is essentially contingent control rather than actual control, so will we be excluding contingencies?

Andrew Ruxton: Yes, because that is the nature of the relationship.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to pursue that theme with you a little bit more. Through the draft regulations, beneficial owners would be specifically excluded from the proposed register. As I understand it, they are the people who enjoy the benefits of ownership, although title to the property is in another name. That seems to me to be a pretty obvious loophole. Why have beneficial owners not been included?

Andrew Ruxton: When we talk about “beneficial owners”, we are talking about beneficial interests. As you suggest, when ownership of property is held by one person, another person—the beneficiary from a trust, for example—can obtain benefit from that property. We do not really use the phrase “beneficial owner” in Scotland. It is an English law term.

Mark Ruskell: What is the equivalent?

Andrew Ruxton: “Beneficial interest” is the Scottish equivalent. We have taken “beneficial interest” to mean a purely financial interest in a piece of land or property. This comes back to what we see as the purpose of the regulations, which is to increase the transparency of the persons who control the decisions that are made about land. For example, although the beneficiary of a trust may receive a financial benefit from that trust, they might in practice not be making decisions about what happens to the land. The purpose of the 2016 act is to enable better engagement with the people who control decision-making about land, so that is what we have tried to focus on: we have focused on trustees and anyone who controls decisions about land.

Mark Ruskell: How does that work in relation to families? I can think of several examples under previous land reform legislation in which communities' aspirations were thwarted because of option agreements between members of a family. If you are trying to understand where power and influence are in respect of control of a piece of land for development potential or whatever, how can you unpick that if it is not clear who has a beneficial interest in development of that land, because they sit behind the scenes and are not registered?

Andrew Ruxton: We have tried to draft the regulations quite widely to ensure that, in such unclear situations, when a person exercises significant influence or control over a trust's decision making, regardless of their particular position, they should be registered, whether or not they have a financial interest.

John Scott: How would you define such a person?

Graham Watson: That goes back to points that we discussed earlier. In relation to a trust, such a person might be a person who can direct trustees' decisions, a trustee, someone who can unilaterally revoke the trust, such as the of-age beneficiary of a bare trust, or someone who can appoint or remove trustees. That sort of formulation is sometimes included in trust deeds.

Mark Ruskell: What feedback has there been from stakeholders on the exclusion of beneficial interests?

Graham Watson: We have discussed the matter with a range of stakeholders, and people have generally understood the points that we have made and the reasoning behind our approach. In the consultation, we are aware that there is a difference between conversations and people seeing full draft legislation and its explanatory material. Once people have had a chance to digest that and take in the more detailed proposals, we expect to revisit points and to have further conversations with them.

Mark Ruskell: Are there other ways to include those interests—for example, a voluntary register?

Andrew Ruxton: We are open to looking at different ways in which we might be able to deal with such situations, and we are certainly aware that there are a lot of different arrangements that can be reached. As Graham Watson said, we are looking to explore and test the draft regulations against that.

On what we are able to do and what we wish to do, I go back to the purpose of the 2016 act and why we are asking people to register. As we have set out, the purpose of the legislation is to try to identify who controls decision making about land

in order to increase transparency and to allow for better engagement with those decision makers.

Mark Ruskell: What proportion of Scotland's land will be covered by the proposed register and other registers?

Graham Watson: The intention of the draft regulations is that there should no longer be land in the land register in which the controlling interest in that land is opaque. As has been mentioned, that will involve use of the other registers that are already in place. I can give numbers, if that would be helpful.

We understand that there are around 2.6 million titles to land in Scotland, about 260,000 of which are held by legal entities. We expect the majority of those to be UK companies, limited liability partnerships or other entities that are covered by the PSC register, which we have discussed. We are aware that around 2,500 titles are held by overseas legal entities. Obviously, they would be picked up by the new register. There is also land that is held by individuals—it might be held in trust or on behalf of partnerships—that would be picked up by the new register. During the consultation, we will work to try to put numbers on those, as well.

The Convener: Earlier, I touched on Police Scotland. We know what the purpose of the proposed register is, but there would be a potential spin-off benefit when the police are pursuing a case of vicarious liability in relation to wildlife crime. Colleagues might remember that Police Scotland said at committee that it had investigated the possibility of bringing a vicarious liability prosecution, but had had to abandon it because it could not identify who owned the land in the case.

That was a long-winded way of building up to asking my question. Have you been talking to Police Scotland about how the new register will be able to assist it in that way? How confident are you that what is suggested will allow Police Scotland readily to pursue vicarious liability cases—with the support of the Crown Office and Procurator Fiscal Service, obviously?

Graham Watson: We have been in touch with and will have those conversations with the Crown Office. We are also in touch with relevant policy colleagues in the Scottish Government, and we are aware of the interest in what we are proposing with regard to identifying landowners in relation to vicarious liability. As I mentioned, we can support a range of policy outcomes and we are keen to try to do so and to explore the possibilities. I appreciate that the subject will be of on-going interest to the committee.

Keith Connal: You will be aware that that policy area is under the same part of Government as is responsible for the draft regulations. We have definitely made the links with wildlife crime.

The Convener: Are you optimistic that the new register will be of great assistance or interest to the prosecuting authorities in situations such as the one that I mentioned?

Keith Connal: Yes. It will, at least, be possible to identify absences of information that could be pursued. The regulations will not guarantee that information will be there, but it will be possible to identify gaps.

The Convener: Yes. That is fine—thank you.

Richard Lyle (Uddingston and Bellshill) (SNP): In my view, for the system to work it will have to be robust, informative and usable, but not costly. I am sure that someone else will ask about costs. How will the register of controlled interests interact with other registers? Will information that is held on other registers be signposted from the register of controlled interests?

Pauline Davidson: We are keen to make the information about controlled interests as accessible as possible. We are aware that, at present, information is held in different places. We are exploring with Registers of Scotland and others how to do that, and the things that we are looking at include signposting, linking to other registers and providing comprehensive information about where to find out about land. The fact that the register will be free to access and search is also important with regard to accessibility.

We have had several discussions with Registers of Scotland and we are looking at the feasibility of a technical solution—an electronic link—so that information in the new register will be linked to information in the regime on persons of significant control. That would mean that people will not necessarily have to go to two different websites. The work is in the early stages, but we are considering how people will be able to go to the new register via Registers of Scotland's systems, and to pull in information about controlling interests that is held in the register that belongs to Companies House.

Richard Lyle: You have anticipated my next question. What are the risks or impacts of not having a single register that contains all legally registrable property information? We have so many registers and so much information that people can get snowed under. Why not just have one register?

Pauline Davidson: All land should be registered in the land register and the register of sasines. We know how important it is that that is all in one place, which is why Registers of Scotland has been invited to complete the land register and has target dates for that.

Registers of Scotland is also doing further development of Scotland's land information

service—or ScotLIS—which, I am sure, members have all heard of. It is a key portal for people to access all the different information. We are working with Registers of Scotland to make sure that it is made as easy as possible for people to find the information.

A lot of different work is going on. We are also making the matter a key focus of our consultation so that people can tell us what would make it easier for them, in case there is something that we have not thought about.

When Registers of Scotland develops the new register based on the proposals—of course, they could change—it will undertake what is called a discovery process. There will be extensive testing with people who want to be able to access the information, and their feedback on how the system can be made as easy as possible will be taken on board.

10:30

Richard Lyle: I am neither a duke nor a lord, but I know that when you buy a house you get a title deed, which sometimes includes a map. Will the register—and other such registers—be map based? If so, how will that be checked to ensure accuracy, given that land variations can happen and might not be recorded correctly?

Pauline Davidson: The intention is that the land register will be map based and the new register of controlled interests will be directly linked to pieces of land that are on the land register. In that sense, it will be map based. ScotLIS is working towards being a fully map-based system, although that is a work in progress. Based on feedback from people, that is being developed and improved all the time.

Graham Watson: ScotLIS is going to be the chief source of information and the route in. We are looking to dovetail with the current cadastral map in the land register and to expand that, rather than to duplicate by creating a new map-based element. As you say, that would need to be closely maintained to avoid errors, which is why it would be better to make use of the current system.

Richard Lyle: As a member of the Rural Economy and Connectivity Committee, I am interested to know whether you intend to dovetail the system with farmers' holdings that are registered under the common agricultural policy system. Is that the intention?

Graham Watson: Do you have particular information in mind?

Richard Lyle: I had an interesting visit to one of the local offices. The people there showed me the computer system and told me how they go out, walking around with the computer, to check to the

nearest inch the land that people own—I am sure that you have seen that. When we get into such things as land registers, people can get very uptight about six inches or whatever, and fences move—as we all know. Are you tying up with other systems such as that one?

Graham Watson: The main source will be the land register and its cadastral map.

The Convener: We are engaged from a policy perspective and at a strategic level, but for most people out there, the issue is how it works in practice. Can you give us a sense of what it would mean to someone seeking information? How easy do you envisage that becoming?

Pauline Davidson: It will improve transparency. Much of the work that we are doing on accessibility will, in time, improve how people can access the system in general. For example, for a community that is interested in an urban piece of land and wants to find out who is making decisions on that land, the new proposals should enable them to discover from the land register the identification number of the land and then go behind that to find out who is making decisions about it. We want that to be a straightforward and smooth process, and that is what we are working towards.

The Convener: On the back of that, if someone follows that process and discovers that they cannot find who they need to get to, is there a way for them to draw that to the attention of the keeper of the registers? Would there be any scope for following up the identification of a gap in the new register?

Pauline Davidson: Yes. Third parties can tell the keeper of an inaccuracy. If it is straightforward, the keeper has the power to change it. That is the first level where we expect many inaccuracies to be corrected.

John Scott: I want to ask about set-up and on-going costs. What is your estimate of set-up costs and the costs to businesses of compliance?

Pauline Davidson: Currently, we estimate that it will cost £3 million to develop, build and set up the new register, based on the proposed draft regulations. That would provide a comprehensive system for accessing information about people who control land. That might change if the proposals change, but that is the estimate that we are currently working towards.

The partial business and regulatory impact assessment discusses the cost to business. We are planning to develop that much further and to do a Scottish firms impact assessment, which will involve speaking to industry representatives, businesses and others to define clearly individual costs to businesses.

John Scott: Do you have a ballpark figure for a straightforward business registration? Will it be a few tens, a few hundreds or a few thousands of pounds?

Pauline Davidson: We have looked at the UK Government's business impact assessment for the person of significant control regime. There are some lessons that we can learn from that, but it is not a case of making a straight extrapolation, because our proposals are different.

We think that the initial costs will be slightly higher for individual businesses but that the cost will reduce on an on-going basis.

Graham Watson: The experience with the UK Government's regime is that the cost has been in the tens of pounds rather than significantly higher. The Scottish firms impact test that was referred to requires us to speak directly to businesses that will be affected to discuss the processes. On that basis, we will try to reach a robust figure.

John Scott: How much will the continuing maintenance of the register cost Registers of Scotland? Have you discussed the likely costs with the organisation? Are you at liberty to tell us what they might be?

Pauline Davidson: We have had many discussions with Registers of Scotland about costs since the 2016 act was passed, and those discussions are continuing. The on-going cost for information technology support will be somewhere between £70,000 and £84,000 per annum. That is an early estimate, based on the draft proposals, and it could change. There will be additional staff support costs on top of that.

Discussions with ROS are continuing, and we are pleased that one of the results of those discussions is that, under the current proposals, access to the register will be free. We can keep the committee updated on the financial issues as the costs are developed further.

John Scott: For the avoidance of doubt or confusion, is it the case that there will be no need to build a new IT system? I certainly hope that that is the case, because there can be difficulties with—

Pauline Davidson: It will not be necessary to build a completely new IT system. It will be necessary to build a register that will involve people registering their details online, so there will be a new system, but it will be linked to others.

John Scott: Thank you.

The Convener: It might also be useful if you could update us on progress on the consultation, which you have mentioned on a number of occasions. It is a developing situation. As well as providing us with financial updates, if anything

comes to mind after today's session or in the time ahead, we would appreciate your keeping us updated in writing.

Stewart Stevenson: We have just heard that applicants will register online; I had forgotten that I had read that that will be the case. We have previously heard that applicants will not provide their email address. Will they have to provide their email address as part of the online registration process, to allow interaction between the register and the registrant? If so, ROS will be in receipt of an email address, which could be included in the register. Is that a fair characterisation?

Graham Watson: How the keeper will correspond with people who register information is an operational question. A large part of that process will be digitised but, at the moment, we are not proposing to include the email address on the register.

Stewart Stevenson: Nevertheless, it will be captured as part of the registration process—or rather, an email address will be captured.

Keith Connal: The point is that an email address will be captured.

Stewart Stevenson: Yes, I made that distinction.

The Convener: Do any colleagues have further questions?

Alex Neil: Mr Watson, you said at the beginning that the purpose is to be able to get hold of people if there is a problem. The convener referred to the example of wildlife crime. There might be an urgent problem relating to wildlife crime. Would it not make sense to have the email address and the telephone number of the registrant, even if that information is not made public in the public register? That would mean that the relevant authorities would know whom to contact and would be able to do so pretty damn quickly. In this day and age, it seems daft not to capture the email address and the telephone number of the registrant. That is fairly basic information.

If the controlling interest lies in an unfilled office in the Cayman Islands, it will not be possible to get hold of anybody very quickly. It seems daft not to obtain an email address and a telephone number.

Graham Watson: You give an interesting example and make a fair point. We will take that away and look at it.

The Convener: It would be useful to hear back on your reflections on that, because Mr Neil makes a very good point. There seems to be no reason not to have that information. As he said, you would not have to make it public, but it would be sensible to have it.

Richard Lyle: Following on from Alex Neil's question, we have the electoral roll, whereby information can be held without being disclosed publicly. Some companies buy the information on the electoral roll. The Government might want to consider that, too.

The Convener: Thank you for your time, ladies and gentlemen. It was useful to get a feel for where we are at. You have undertaken to keep us updated. I will hold you to that—please keep us updated on any progress that is relevant to the committee's consideration.

At our next meeting on 27 June, which is tomorrow, the committee will take oral evidence via videoconference from the Secretary of State for Environment, Food and Rural Affairs, the Rt Hon Michael Gove MP, on the environmental implications for Scotland of the UK leaving the European Union.

As agreed earlier, the committee will now move into private session, and I request that the public gallery be vacated.

10:41

Meeting continued in private until 12:39.

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