



OFFICIAL REPORT
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Environment, Climate Change and Land Reform Committee

Tuesday 2 October 2018

Session 5



The Scottish Parliament
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Tuesday 2 October 2018

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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
27th Meeting 2018, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Finlay Carson (Galloway and West Dumfries) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Angus MacDonald (Falkirk East) (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:

Jennifer Henderson (Keeper of the Registers of Scotland)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 2 October 2018

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Gillian Martin): Welcome to the 27th meeting in 2018 of the Environment, Climate Change and Land Reform Committee. We have received apologies from Mark Ruskell. I remind everyone present to switch off their mobile phones, because they might affect the broadcasting system.

Under agenda item 1, the committee is to consider whether to take items 3, 4 and 5 in private. Do we agree to do so?

Members indicated agreement.

Subordinate Legislation

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

09:31

The Convener: Under item 2, the committee will take evidence on the draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021. We are joined by Jennifer Henderson, who is the keeper of the registers of Scotland. Good morning.

Jennifer Henderson (Keeper of the Registers of Scotland): Thank you for having me.

John Scott (Ayr) (Con): Good morning. Thank you for coming to give evidence.

When developing the register of controlled interests, what consideration was given to creating one single register? Why has that been discounted in the current thinking?

Jennifer Henderson: If we were to create a single register, we would need to add the information into the land register, and a number of other registers under my control that relate to land matters are already separate. Personally, I think that a more elegant solution is to keep information in separate registers, because that allows the information to be discrete and searched in different ways, and it allows different kinds of access to be given.

It almost does not matter that the information is kept in separate registers; what matters is how we allow people to bring together and aggregate the information when they view it. Under our proposal for introducing the register, ScotLIS—Scotland's land information service—will, for example, allow someone to look at a piece of land and then look through to see whether a controlled interest is registered for that land. It will be seamless for the person who is looking; they will not know that the information about the controlled interest is held in a separate database. They will be able to see all the information that has been drawn together, so that is a much more elegant solution.

John Scott: Excellent. That is what we wanted to hear.

The Convener: I have some questions about the accessibility of the information. During our evidence session last week, quite a few of the witnesses talked about the importance of the register being user friendly. How will you ensure that the register is user friendly?

Jennifer Henderson: Whenever Registers of Scotland creates a new register and a new interface to a register, we do a lot of user testing. We work with users who will want to access the information and think about all the ways in which they might want to look at it, and we ensure that that is designed into the window in which they would view the data. We consider general accessibility, including by ensuring that people with disabilities are able to access the information.

We also think through what kind of searches people might want to do on the information. People will want to look at a piece of land and track through and understand who has the controlling interest in that land. They might want to look at an individual and ask whether they have a number of controlling interests in a number of pieces of land, or they might want to look at a recorded person and see who all their associates are. We will think about all the possible ways in which someone might want to interrogate the information, and we will ensure that that is designed into the system right from the beginning and that we structure the underlying data in a way that can support all those kinds of queries.

The Convener: Will you provide any guidance for potential users as part of that?

Jennifer Henderson: Absolutely. With everything we do, we think about how we guide people through how to search effectively, what to do if they cannot find the information that they are looking for and so on. We would absolutely provide guidance to make sure that people can use the system effectively and find what they are looking for. The system is not worth having if people cannot find what they need when they are searching.

The Convener: Exactly. There was some concern that the system has to be user friendly for the ordinary person. We do not want a situation in which only lawyers can navigate these registers.

Jennifer Henderson: I could not agree more. Our ScotLIS system has been mentioned a few times; our public offering for it is quite limited in scope at the moment, but we are going through a lot of user testing right now to get the public more engaged in using ScotLIS. We are thinking about what kind of information the public want to access and how they want to understand the information that is presented to them. By the time the regulations come into force, I think that we will have a public who are much more familiar with the kind of information that we can present them about land, and who understand what they are looking at when they are looking for it.

The Convener: Obviously, transparency over ownership and controlling interests is very important to a lot of people. How will you balance

public interest in accessible information with a workable and transparent system?

Jennifer Henderson: It is important that the regulations define what will be published, as they do in draft at the moment, so that the people who will be asked or required to submit information to the register understand what will be made publicly available and what we may collect as aggregate data but not make public. It is for the regulations to define the boundary between what is and is not made viewable; that is not a matter on which I would have an opinion. I will publish what I have been asked to publish when that is defined in the final regulations.

The Convener: Who makes the decision on what is published and what is not?

Jennifer Henderson: It is for the regulations, as Parliament decides on them, to set out what should be published and made public in the register.

The Convener: I know that a number of my colleagues have questions about that, so I will not delve into it too much.

John Scott: I want to ask about the language that is used in the register. The Law Society of Scotland in its written and oral evidence has raised concerns about the use of language, including the words “controlled”, “significant influence” and

“direct the activities of another”.

Its representative said last week that the language was

“nebulous in concept and hard to ... demonstrate,”—
[*Official Report, Environment, Climate Change and Land Reform Committee*, 25 September 2018; c 11.]

although he also said that it might be difficult to find a better way of putting it. When developing the register, what discussions did you have with the Scottish Government about the language that is used? What alternatives were considered or might yet be considered?

Jennifer Henderson: I listened to last week’s evidence. At the moment, the scope has deliberately been left quite broad. The idea of the register is to ensure that anyone who may be considered to have a controlling interest over someone who owns land is in scope, subject to the fact that some types of organisation are out of scope because they are already covered by other types of register.

There was a helpful suggestion last week about the use of examples to help people to understand whether they should be in or out. Once we have started to publicise the fact that the register is coming in and to deal with questions from individuals asking us to clarify whether they should

register, it may be possible to add to those examples.

Last week, a helpful suggestion was made about cases in which someone who should have registered has inadvertently not done so. If it is brought to my attention that someone should have submitted a registration, I can alert them to the fact that we would consider them to be in scope and advise them of the process to register. In that way, people would not be caught out and inadvertently criminalised by not having quite understood which side of the line they are on.

Until we start testing, there are potentially grey areas. If necessary—if it becomes apparent that we are getting a lot of questions from people who are not clear about the definition of the terminology—we will invite the Lands Tribunal for Scotland to rule on whether a certain category of individual should be in scope.

I agree with colleagues from last week that it is hard to get a precise definition without then creating loopholes that allow people to say, “I’m definitely not in that category and therefore I don’t need to register.” Leaving the definition broad helps to meet the policy intent.

John Scott: We are aware of the language in the United Kingdom register of people with significant control. Was much reliance placed on the drafting that had already been for that, or is there a conflict between the different uses of the same words in the different registers? If so, how will that issue be resolved for the layperson?

Jennifer Henderson: My vision for how the register will ultimately work is that you will be able to look at a piece of land in the land register and see whether it has a register of controlled interests entry and whether it has an entry that relates to the register of people with significant control. If the UK introduces legislation on the registration of overseas entities, you will also be able to see an entry for that. That information would all be presented seamlessly. Therefore, being consistent in the use of language will be helpful in that people will be able to say, “If someone is registered as having some sort of control through any of these registers over this piece of land, I understand what kind of control they might be exercising.” Fundamentally—at a simple level—it comes down to whether a person is exercising control over the decision making that goes with that land. We want to guide the layperson who wants to understand the situation and is interested in talking to the person who controls the decisions about the land to find the person that they need to have that conversation with.

John Scott: I certainly agree that consistency in the use of language in the different registers must at least be aimed for.

What work has been done to develop guidelines that might address the concerns of the Law Society, whose evidence I think you are aware of?

Jennifer Henderson: As yet, nothing, but after this round of evidence, we will be working closely again with colleagues in the Scottish Government’s land reform policy unit to ask whether there is a need to change any of the language.

I understood from last week’s evidence that John Sinclair of the Law Society will provide further written thoughts on the issue. We will look at what else he has to say on the matter and see whether there is anything we can do to be more precise without narrowing the scope and thereby potentially undermining the policy intent.

The Convener: I call Claudia Beamish.

Claudia Beamish (South Scotland) (Lab): Convener, Finlay Carson will start the next line of questioning and I will continue it.

Finlay Carson (Galloway and West Dumfries) (Con): Part 2 sets out what the register should contain and how people can add information to it, remove information from it and search it. A topic that kept coming up in evidence is the protection and security of individuals in that process. Given the information that the register will hold, it is essential that security is robust. How do you intend to balance the security of individuals, including their personal data, and the ability for individuals and communities to search for and identify the person with a controlling interest?

Jennifer Henderson: The draft regulations set out the ability for someone to put in a security exemption, if they feel that the inclusion of their personal data in the register would put them at risk of, in particular, the threat of violence.

At last week’s evidence session, there was quite a bit of discussion about whether there would be other reasons why someone might wish to have their information excluded. The regulations do not make provision for that, and it is not for me to say whether they should. I will publish the data that I have been asked to publish, as per the regulations. At the moment, the only reason why I would not publish someone’s data would be that they had submitted a valid security exemption that I had accepted as having the necessary evidence to convince me that that person was at threat of violence. The regulations make provision for me to mark that there is a security exemption for that property and provide no further information about who the person is and what their personal details are.

09:45

If there was to be an appetite for providing other categories of people who could request an exemption from having their information published, that would need to be added into the regulations, and we would need to be clear about what sort of exemptions could apply and what the process would be for providing evidence to me to make the case for that.

Finlay Carson: What will

“the recorded person’s name and address”

mean in practice? From what you are saying, I take it that it does not mean that all information that is held will need to appear on the register. Is that right?

Jennifer Henderson: My understanding is that one of the things that this register is intended to do is to enable someone who is interested in finding the person who has a controlling interest in a property to get in touch with that person. For me, that clearly means that there must be contact details of some kind. An address is clearly a way of contacting someone. However, I do not have an opinion on whether that should be a residential address or some sort of service address. We are simply trying to give people the ability to contact the person who has a controlling interest in a property. As long as there are provisions in the regulations for contact details of some form to be published, that meets the policy intent. On the register of persons with significant control, people use a service address when they have one, but people who do not have a service address may well provide their residential address.

Claudia Beamish: Do you think that commercial confidentiality is a valid reason for not publishing some information? Last week, the Law Society and the Scottish Property Federation expressed some concerns in that regard and I detected a view that it should not be a justification.

Jennifer Henderson: At the moment, as the regulations are written, I do not think that commercial confidentiality is a justification for exemption. It is clear that the exemption is about being at threat of violence.

The Law Society and the Scottish Property Federation made an interesting point about the possibility of a commercial deal being compromised. The example that was given concerned the question of whether someone who was buying a company from someone, and had entered into some sort of arrangement with the seller would become an associate if that organisation owned land and would therefore have to register that, which might be seen as giving away commercially confidential information. I think examples of that would be few and far between.

There perhaps needs to be clarity that, until that commercial transaction has gone through, the organisation that might be buying the company is not considered to be an associate and therefore does not have to register, which means that it would not be giving away any commercial secrets. There are other ways of dealing with that sensitivity without creating a commercial confidentiality exemption.

Claudia Beamish: That clarifies the issue, especially with regard to the point that you made about clarity around what happens at the point of sale.

Jennifer Henderson: If that were clear in the regulations, people could stop worrying about that aspect.

Claudia Beamish: I would like to go back to the important issue of the protection of those who need anonymity because of a risk of violence, abuse or intimidation. Can you say a bit more about that?

Jennifer Henderson: From the way in which the regulations are written, I understand that, at the point at which the recorded person—the person who is recorded in the land register as owning the land—is submitting the names of their associates, if any of those associates needed to have a security exemption submitted along with their name, they would provide that with the necessary evidence. Quite a comprehensive set of evidence is set out.

I would consider the evidence and decide whether what I have been provided with meets what is set out in the regulations, so that named individuals should not be included as associates along with their details—residential address, service address or whatever it is. If I judged that what has been set out in the regulations has been met, I would mark on the register that there is a privacy exemption or a security exemption in place. There would be no further details. There would just be a note to say that I have considered some information and I have decided to accept a privacy exemption.

There is obviously provision in the regulations for what happens if I reject the application and decide that the evidence that I have been provided with does not meet the expectations. There is an appeal process, and we need to firm up and finalise the regulations about whether, when I reject something, I wait until the appeal process has run its course and I am absolutely sure that it is okay to put that person’s information on the register. That is probably the prudent way of going about it rather than publishing because I have rejected the exemption and then risking the appeal saying that the exemption should stand after that

person's information has been put into the public domain unnecessarily.

We will set up internal processes within Registers of Scotland to think about how exemptions will go through. The prudent view would be that the information should not be published until all routes of appeal have failed.

Claudia Beamish: That is helpful. Will there be an annual reporting system on the number and nature of security declarations? What form will that take? What information might be included? I know that it is early days, but it would be helpful to flesh that out as far as you can.

Jennifer Henderson: My view is that, as part of being transparent, I should declare on an annual basis how many privacy exemptions and security exemptions I have received, how many I have accepted, how many I have rejected, and what my reasons are.

With such sensitive issues, we need to be a bit careful that, in aggregating and presenting that kind of data, we are not inadvertently giving away something that we are trying to keep private. We need to make sure that in no way does any kind of report about how I considered the exemptions make it possible to identify someone or to draw any conclusions about who might have submitted exemptions. However, it is certainly worth being public about how many exemptions we have been considering.

I know that there are some concerns that a security exemption system could be open to abuse and that people might use it as a way of choosing not to be published on the register. Being transparent about how many exemptions we have received and are considering would give people a sense that it is in line with the people with significant control register, which has a similar system and a very small number of exemptions. We would expect to see similarly small numbers and, if we did not, we would need to ask why not.

Claudia Beamish: My final question is a broader question. If I am right, there is not a recognised independent standard for the security registration process. Is that correct? If not, would it be useful if there was a broader standard that could be referred to for all the registers?

Jennifer Henderson: That is a good question. You are right to say that there is not a standard. Different registers would have different requirements for when someone might not wish to have their information published. It would therefore probably 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, rather than trying to create something

that would fit every set of circumstances for all the different registers.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to examine the timeline for what happens when a property is sold. This particularly applies to the commercial confidentiality issue that my colleague Claudia Beamish has raised. A party will make an offer to another party. That will be accepted, almost invariably conditionally, and there will be a tango between the two parties until the offer is agreed and accepted.

However, at that point, ownership is of course not yet transferred. In the sequence of making a payment, taking possession and then finally—perhaps six months later—the ownership being registered in the register, at what point does the controlled interest spring into action? I could make an argument for that being at almost every step of the way.

Jennifer Henderson: That is a good question. I will quickly say something about the registration process when ownership transfers. If a property is already in the land register, it is a two-day process to transfer the registration, so that is very quick. I imagine that, at the point at which the lawyer who has dealt with the sale and the purchase of the property sends in the forms to register the new ownership, they would also ask the party that is being registered as the owner to determine whether they had any associates and needed to submit an entry to the register of controlled interests. That may not be—

Stewart Stevenson: Forgive me for interrupting, but who is asking that person? Did you say that it is the person who is doing the selling?

Jennifer Henderson: The person who has bought the property, at the point at which their lawyer submits the paperwork to register them as the owner of the property, would need to be made aware that, if they have associates, they should make an entry in the register of controlled interests. That is the moment to do it.

Stewart Stevenson: So it is a duty on the purchaser.

Jennifer Henderson: Yes—absolutely.

The person who has purchased the property would then have to think about whether they have any associates and so need to make an entry in the register of controlled interests. The process of someone figuring out who they need to record as their associate is not necessarily an instant one. They will have to think about who they need to record and whether anyone needs a security exemption. Perhaps there should be a grace period so that, once someone has registered their

ownership, if they are going to make an entry in the register of controlled interests, they have to do it within a certain period after submitting the documentation to register the property. We could clarify the process for that.

Stewart Stevenson: Will things be different with the register of sasines?

Jennifer Henderson: Yes. The time that it takes for the registration to be processed is different. We have closed the register of sasines to new entries so, if someone purchases a property that is on it, that triggers a first registration, which takes up to six months to process. However, we take on the application on the day that it is received, so I see no reason why that cannot be the point at which the purchaser is also asked to submit an entry to the register of controlled interests. We will just have to track it through and ensure that we do not get a mismatch at the point at which someone looks in the land register and sees that the property has gone on it with its new ownership and then clicks through to see who the controlling interests are behind it.

Stewart Stevenson: What you have said presents considerable clarity, which is helpful, but I have one final little point. It is not uncommon for possession to be taken before the registration process is initiated. For example, that happens in domestic purchases.

Jennifer Henderson: Yes.

Stewart Stevenson: How does that influence the point at which the registration should take place?

Jennifer Henderson: My normal experience is that the lawyers dealing with the purchaser will send off the registration document as quickly as possible after the entry date because, understandably, the purchaser wants certainty that the title is registered on the land register in their name. We have a process where lawyers submit advance notices when purchases are going through. People usually want to get the registration application in before the advance notice has expired. We do not typically see long delays between possession being taken and the land registration application appearing. With a first registration, it sometimes takes us time to create the plan and the new entry in the register, but I do not see why the register of controlled interests could not be filled in at the same time.

10:00

John Scott: I want to take you back to the security of individuals and your ability, within the guidelines, to allow people's names to be withheld. There will be combinations of circumstances that neither committee members nor those who are

drafting the regulations will be able to envisage. I do not know whether this is in the regulations, but would you welcome, or should you be seeking, the ability to use your discretion to make a decision, even if the case is not covered by the guidelines?

Jennifer Henderson: I might be wrong, but I think that the lengthy list of the possible evidence in schedule 3 to the regulations covers almost anything and everything that could be relevant to requiring a security declaration. There is a long list of things that could be provided and a comprehensive list of people who could certify or attest to the situation.

The challenge with my having an additional discretionary power would be that an incredibly large number of possible cases might be brought forward. The current situation is that, using the guidance provided by schedule 3, I will look to see whether something that is in front of me matches something that is on the list. If it does not, and I judge that what is in front of me is not appropriate, I will reject the claim. However, there is an appeal route through a court, and that is the right route to take. If there were a set of circumstances that we had not envisaged, the court could take a test case and say that the regulations should be amended.

Having a discretionary power would place too much reliance on my knowing the intimate circumstances in which people might be at threat, and I do not have experience of that. I am very happy to use the guidance to make a judgment but, if I were looking at documents that did not fit with the list, I would struggle to know whether what I was looking at was valid.

John Scott: The reason why I ask is that our bitter experience in Parliament over the years has been that, when we create a list, we always think of something else that should have been on it once the legislation is passed. However, if you are happy with schedule 3 as drafted, that is fine by us.

Jennifer Henderson: Schedule 3 plus the right of an individual to appeal if they do not like the outcome gives the individual the protection, without having a very open-ended opportunity up front.

Angus MacDonald (Falkirk East) (SNP): We have covered, in part, the duties to provide information, but I would like to look at part 3 of the regulations in a bit more detail. Part 3 sets out the duties on persons to provide information for publication in the register, the information that they are required to provide and the offences that are committed in the case of non-compliance. We will look at non-compliance shortly.

On regulation 8, the Law Society of Scotland has stated that

“there should be more detailed and clearer guidance on the persons to whom the Regulations do not apply”,

and that there

“appears to be no differentiation between for example, a local sports club and a large commercial organisation, or between small family partnerships and major pension fund trusts”.

The Scottish Property Federation also questions the benefit of including investors or beneficiaries on the register.

You have already partly covered the issue, but could you expand on who will be caught by the regulations and who will be exempt? Is it correct that the regulations will apply to all those with a controlling interest? For example, will they apply to small family partnerships as well as to major pension funds? How can the guidance help to clarify those concerns?

Jennifer Henderson: My personal view is that, 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. One of the things that people would wish to do with the information on the register is to get in touch with the person who has the controlling interest. It makes no difference whether that is a sports club that owns a piece of land or a pension fund that is investing through a company in a piece of land. It is important that all controlling interests in all pieces of land are appropriately recorded in the register. The onus will be on ensuring that the process for people submitting the information to the register is very straightforward and easy to access, and that it is not an onerous task, so that compliance does not cause a small organisation a big overhead.

There is also an issue about how we ensure that, in the run-up to the register going live, there is significant publicity so that those small organisations that are perhaps not in tune with changes to the legislation are well aware that they need to comply and what they need to do to comply. There was a helpful suggestion last week that if someone has failed to comply through ignorance of the rules, they get a chance to put that right before they are deemed to have committed a criminal offence. A combination of all of those things will ensure that we give people the opportunity to correct things if they have misunderstood whether they are in scope, and capture everyone who needs to be captured, so that the citizen out there who wants to get in touch with someone about a piece of land can find the right person to get in touch with.

The Convener: Angus MacDonald talked about community groups or individuals who might have little experience of dealing with the register. Will

they be able to speak to somebody and get guidance about whether they have got it wrong?

Jennifer Henderson: Absolutely. At Registers of Scotland we have a customer services function whose day job is to answer questions from people who are trying to deal with our registers. We have a lot of online guidance, too, but we have real people at the end of a phone who can offer guidance to anyone who is struggling to understand what they need to do. The best outcome would be that, by the time the register goes live, we have done such a good job with Scottish Government colleagues of ensuring that everyone understands what they need to do, why they need to do it and how to do it, the number of people who need to phone my customer services and ask for advice is very small.

The Convener: This is a huge piece of work. Does Registers of Scotland have the capacity for it, or will you expand your capacity to deal with the new register?

Jennifer Henderson: The timing of the introduction of the regulations is a good thing for Registers of Scotland. We are working very hard on the completion of the land register and we will continue to do that up to 2024. However, we are putting a lot of effort in over the next couple of years to bring in digital ways of working and roll out our ScotLIS system. There will be a real rump of effort from Registers of Scotland staff, and I think that we will have people with spare capacity at exactly the time that we need it to build and implement this register and ensure that it is up and running. We have had plenty of experience over the past few years of taking on and creating new registers and we have always managed to fit that into our work programme. I have no concerns about the capacity for us to support the new register in the timescale in which it is due to come in.

Alex Rowley (Mid Scotland and Fife) (Lab): You will be aware that Community Land Scotland has raised concerns about data validation and verification, saying:

“The envisaged validation process in the draft regulations appears relatively weak”.

Where does the legal responsibility for ensuring that the register is up to date and contains the correct information lie? Is it up to the person registering or is it up to the keeper to validate?

Jennifer Henderson: I will make a distinction between validation and verification. The way in which we design the collection mechanism for the registration information will allow us to do an awful lot to address some of the examples that Community Land Scotland and Global Witness cited around dates of birth that cannot be correct and validating whether addresses are real

addresses. We can build the system to ensure that people cannot deliberately choose to put in a date of birth such as the year 9000. If, however, someone deliberately chooses to put in a false address that, although a real address, is not their address, we would have no way of knowing that that is what has happened. That would be a verification task.

At the moment, the regulations are clear that the legal responsibility to provide accurate information to the register rests with the recorded person and they are the person who would face the criminal sanction if they had deliberately not done so.

It would be very difficult for me as the keeper to take on a significant verification responsibility that would involve in some way checking whether information that has been submitted to me is true. I have no investigatory powers or ability to look behind the submission. That would be a significant move away from what is currently required by the regulations, where the onus is on the person to provide that information accurately. As I said, when information is submitted, there is a lot that we can do to check whether it is probably true, but determining whether it is absolutely true is not something that is within my gift.

Alex Rowley: If someone raises specific concerns with you about information on the register, are you able to investigate at that point?

Jennifer Henderson: Investigate is probably too strong a word. The regulations are clear that I would need evidence as to why an assertion has been made that what is in the register is incorrect. The only route open to me would be to go back to the recorded person.

Let us say someone writes to me and says that recorded person X should also have recorded person Y as their associate. In that case, the only thing that I could do would be to notify the recorded person that it has been asserted that there is an omission in their registration and invite them to correct it, if it is indeed wrong. If the recorded person chooses not to correct it, I have to take it that I have given them the opportunity to exercise their legal duty to provide me with accurate information and if they have not done anything then that is either because what has been reported to me is not correct and there is nothing wrong with the register, or the recorded person is committing a criminal offence. If they are committing an offence, the next recourse is for the police to investigate and decide whether a criminal offence has been committed, with the consequent associated penalties.

That was rather a long answer. In short, I can let someone know that there might be an error with their registration, but I do not have any power to investigate it in any more detail.

Alex Rowley: Would it be the duty of the person who made the complaint to take the matter to the police?

Jennifer Henderson: Yes. If they really felt that someone was committing a criminal offence by not recording certain information on the register, it would be their duty to make an allegation that a criminal offence had been committed.

Richard Lyle (Uddingston and Bellshill) (SNP): I was thinking that someone who is registered to vote can ask for their address to be withheld from the electoral roll. Is there any situation where for a reason other than potential violence, you would agree that someone could have their address withheld?

Jennifer Henderson: I do not think so, and certainly not as the regulations are drafted. If anyone was minded to think of other examples and put them in the regulations, I would abide by those. However, at the moment, the regulations are very clear, so unless someone has made a security exemption application, I will publish the details that are provided.

There is a decision to be made about whether people provide residential or service addresses. The example that was given last week was whether people will want someone knocking on their door to ask about buying land in which they have a controlling interest. However, that could be appropriately overcome by the use of a service address, which would mean that a member of the public could still make contact with them.

10:15

Richard Lyle: Yes, I pressed that point with the Law Society of Scotland, which said in written evidence:

"For privacy reasons, we do not consider it appropriate for a recorded person to be required to give their home address."

However, it should still be possible to contact them, either through their lawyer or through a business address. Which do you prefer—a home address, a business address, or an email address?

Jennifer Henderson: Certainly not an email address, because email addresses can change. I think that a physical address is an appropriate way of providing a citizen with a place with which to make contact, but I am agnostic about whether it should be a residential or business address. An address is an address, and it would allow someone to send a letter to that place and ask for the information that they were interested in.

Richard Lyle: If I were registering my property and I wanted to use my lawyer as the address, you would not have a problem with that.

Jennifer Henderson: To be accurate, it will depend on exactly what is defined in the regulations. I think that Global Witness made the point that one of the potential functions of an address, as well as providing a means of contact, is allowing us to identify unique individuals who have controlling interests. There would have to be some consistency: if someone gave an associate's address as their preferred means of contact, they would need to use that address consistently.

Again, that takes us back to the verification question. I would have no means of knowing whether the address that someone provided to me was their home address, their business address or their lawyer's address. I am agnostic about that; it provides a means of contact and allows us to meet the policy intent.

Richard Lyle: So as long as they provide an address, that satisfies the regulations?

Jennifer Henderson: As long as they provide an address that they can be contacted at. The regulations do not currently define which address should be used; if they did, obviously I would expect people to provide the precise address defined in the regulations, but at the moment an address is sufficient.

Finlay Carson: On your point about validation, when someone signs up for an eBay account or whatever, they have to validate their email address by clicking on a link. When a piece of land is registered, could you not use a simple validation process of sending a recorded letter to the address provided and expecting a response within so many days? If the whole idea is to provide the means for someone to contact the controlling person, whether through a solicitor or a PO box, would that not provide confirmation that that address is the route to contacting them?

Jennifer Henderson: That could be done. It would add to the cost of running the register, because my staff would need to produce a letter every time and the question would arise about what to do if we got no response. If there were a desire to provide me with some level of responsibility to validate, the regulations would need to be clearer about how far I am expected to go and what action I would take if I got no reply. Has the person just been on holiday for a month, or is it that they cannot be contacted at the address that they provided? We would need to think about that carefully; I would like to take that question away and think harder about what would really be involved before saying that it is something that we could do. Theoretically it is absolutely possible, but practically I would need to think about what doing it would mean.

Stewart Stevenson: May I politely correct Finlay Carson? It is very easy to obtain an email

address without providing any identification or confirmation whatever. Indeed, the email address I use as my parliamentary address would be one such.

Claudia Beamish: I have a brief follow-up on the issue that Finlay Carson raised. I have a concern that you might be able to help me with; it is about the fact that a factor's address or a lawyer's address is secondary to the person in question. If my understanding is correct, a professional has the right—quite rightly—not to be prosecuted if they are not the person who should be prosecuted. Therefore, they might withhold information if the person in question does not want them to give their address. Why can it not simply be an address at which that person can be contacted that is provided? Why does it have to be the address of their lawyer? That provision seems to add another layer of lack of transparency.

Jennifer Henderson: The answer is that it does not do that.

Claudia Beamish: I am sorry if I have misunderstood it.

Jennifer Henderson: As defined, the regulations refer to

"the address of its registered office or, where it does not have such an office, an address at which it may be contacted",

which is a very broad provision. That means that the regulations allow people to provide a suitable address at which they can be contacted; they are not prescriptive about the kind of address at which someone can be contacted. Some people might choose to say to their lawyer, "Could I provide your address as my contact address?" It is clear in the regulations that, if the associate has a registered office, that is the address that they should use. However, given the breadth of the organisations that will be captured by the regulations, there will be many organisations that do not have such a thing as a registered office. Their associates will want to decide what the best address at which to contact them is, particularly if they are unwilling to provide their home address.

John Scott: I turn to regulations 18 to 20. In oral evidence, there was a difference of opinion on whether the proposed offences and defences that are set out in regulations 18 to 20 are appropriate. In the worst-case scenario, regulation 18 proposes a fine of up to £5,000, as you will know. Community Land Scotland and Global Witness would like the proposals relating to those offences to be strengthened but, as I am sure that you are aware, the Law Society of Scotland and the Scottish Property Federation do not share that view. The Law Society, in particular, thinks that many people—certainly, in the first instance—will breach the various requirements of the regulations

innocently and inadvertently. The Scottish Property Federation has concerns about the transitional period of six months being different from the proposed transitional period under the draft registration of overseas entities bill, which is 18 months.

How will the process of identifying and reporting non-compliance function? You might already have touched on that. How will you become aware of some breach?

Jennifer Henderson: The simplest way in which I would become aware of an allegation that there should be an entry in the register but there is not would be if a third party were to write to me saying that they had reason to believe that recorded person X should have person Y recorded as their associate. As I explained earlier, in that case I would write to the recorded person to ask whether they had missed out that information. If they had, I would ask them to please make the necessary correction, but if the allegation was not correct, it would be a case of, "Sorry to have bothered you—as you were."

If the third party who had notified me that a correction should have been made to the register was still strongly of the view that a correction was required, it would be for them to take the matter to the police and ask them to investigate. The police have the investigatory powers that are necessary to look into such matters and to determine whether a criminal offence has been committed. If necessary, an appropriate fine could be imposed.

That is as far as we can go under the regulations as drafted. If someone is notified that there might be an error, they are given a reasonable length of time to correct it if it was a genuine oversight. It is only after that point that a third party would have recourse to go to the police. That catches the issue of people who might have inadvertently made a mistake. In my opinion, it would not be appropriate to criminalise such people from day 1. Equally, if someone was committing a criminal offence, that would get picked up and taken forward by the police.

John Scott: How could the regulations be proportionately applied to accommodate concerns relating to innocent and inadvertent failure to comply? Have you answered that point sufficiently well?

Jennifer Henderson: We should give people the opportunity, within a reasonable timeframe, to correct their entry on the register. When alerted to the fact that they have made an omission, they may respond, "My goodness me, yes I have—let me get straight online and sort it out." However, after some time has elapsed, they may have chosen not to make a correction. If I write to someone and tell them it has been asserted that

they should have had person Y recorded as their associate and they might need to correct that if it is wrong, I would hope that most people who thought I was wrong would write back to me, saying that I was completely mistaken and that person Y was not an associate. If they just choose to ignore my letter, however, I have to assume that they have been given the opportunity to fix the problem and that they have decided that it is not something that they need to change. If a criminal offence has been committed, it is for the police to take that up.

John Scott: Do you have a view on how consistent non-compliance or repeat offenders should be dealt with?

Jennifer Henderson: It will be interesting to determine how we would know that someone is a repeat offender. I might get lots of letters saying that recorded person X should have Y, Z, A and B as their associates and I could write to them every time, but they could say, "No, I am sorry, but you are mistaken. Those people are not my associates, and I don't need to update my entry." I do not think that such people are repeat offenders.

If someone was found to have committed a criminal offence in that regard, I do not know whether we would have some extra process for trying to understand whether it had been made correct the next time they were recording information, or whether we would notify the police.

I have not thought through whether, if we knew that someone had been found guilty once of deliberately withholding information, we would have any way of looking more closely at any other entries that they made. We do not have a way of doing that at the moment, given how the regulations are written. As I said, I do not have investigatory powers, but we would have to think about what we could do to spot-check information if we knew that someone had committed an offence previously.

John Scott: There are those who adhere to the view that a £5,000 fine is not enough as a maximum penalty. Community Land Scotland and Global Witness are of that view. Would you care to comment on that?

Jennifer Henderson: That is not something on which I have an opinion, other than to say that it is my understanding that that is the maximum fine that is allowed under the overarching legislation. If it was considered that the regulations should include a larger fine, other legislation would need to change to accommodate that.

John Scott: Should a period be specified? If £5,000 is the maximum fine for non-compliance for someone who might regard that amount as being worth it to hide their identity, should that £5,000

fine cover a period of a year, a month or a day, for instance? I merely ask the question.

Jennifer Henderson: That is an interesting question. On the £5,000 fine, regulation 18 says that

“A person commits an offence if”

they have not done certain things, and there is a long list of things that they might not have done. It is not clear to me whether the fine could be applied for each individual offence. If the person has committed a number of separate offences, can they face multiple fines? That is not something to which I know the answer, I am afraid, although I could go away, find out from colleagues in the land reform policy team and come back to the committee if it is not clear.

John Scott: Thank you. We are here just to ask the questions and to provoke answers that will be envisioned in due course.

The Convener: Those are all our questions, unless you wish to say something that you feel you have not had a chance to say.

Jennifer Henderson: No, I do not think so. I think this has been very useful—thank you.

The Convener: It has been very useful to us, too. Thank you very much.

At our next meeting, on 23 October, the committee will hear evidence from the Cabinet Secretary for Environment, Climate Change and Land Reform on the regulations to establish a register of persons holding a controlled interest in land. We will also take evidence on the Climate Change (Emissions Reduction Targets) (Scotland) Bill from the Committee on Climate Change and from ClimateXChange.

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

10:30

Meeting continued in private until 11:48.

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