



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 4 February 2020

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
4th Meeting 2020, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Angus MacDonald (Falkirk East) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Robin Cornwall (Scottish Government)

Dr Simon Cuthbert-Kerr (Scottish Government)

Andrew Ruxton (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament
Environment, Climate Change
and Land Reform Committee

Tuesday 4 February 2020

[The Convener opened the meeting at 09:37]

Decision on Taking Business in
Private

The Convener (Gillian Martin): Welcome to the Environment, Climate Change and Land Reform Committee's fourth meeting in 2020. I remind everyone to switch off mobile phones or put them on silent, as they may affect the broadcasting system.

Under agenda item 1, are members content to take in private agenda item 4, which is consideration of the evidence that we will hear today on the register of persons holding a controlled interest in land?

Members *indicated agreement.*

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

09:38

The Convener: Agenda item 2 is to hear from Scottish Government officials about the register of persons holding a controlled interest in land. I am glad to welcome you all this morning. Joining us are: Robin Cornwall, who is a senior policy officer in the land reform policy and legislation team; Andrew Ruxton, who is a solicitor and the head of land and Crown estate branch; and Dr Simon Cuthbert-Kerr, who is the head of the land reform unit.

The briefing paper for today's session sets out a number of themes and issues that we want to explore with you. Members will recall that the committee considered then reported and made recommendations on the first draft of the regulations in late 2018. Will you give us an overview of some of the things that have changed as a result of the consultation on the regulations?

Robin Cornwall (Scottish Government): We have made various technical adjustments, which are small, minor changes, to improve the clarity of the regulations.

The first substantive change is an increase to the length of the transitional period, because we want to ensure that people are aware of what is required and are not penalised for failing to take action when there has been insufficient time to allow them to do so. We are aware of the need to balance the need for information with what is practical for people.

Given the views that were expressed in the consultation, we have increased the length of the transitional period from six to 12 months, which would allow additional time for people to deal with any technical challenges that may arise or if they are finding it difficult to gather the information that is required for the register. We also plan to run a significant awareness-raising campaign in advance of the commencement of the regulations.

The result of that change is that the regulations would come into force on 1 April 2021 but no criminal penalties would come into force until 1 April 2022.

The second substantive change relates to the required details of the associates or the people with the controlling interest. We have introduced a unique reference number for associates. That was on the back of the committee's report, consultation

responses and consultation with the Scottish Information Commissioner on the regulations.

Under the previous draft regulations, we would have collected the month and year of birth, which would also be made public. The Scottish Information Commissioner strongly recommended that we do not make that information public if possible and that we should use a unique reference number instead.

The Convener: I presume that that is because of issues to do with privacy and dealing with potentially vulnerable people. Using a unique reference number would mean that, while the keeper of the registers of Scotland would know who those people are, others could not necessarily identify them.

Robin Cornwall: Yes, that is right. The way in which the regulations are now constructed means that we would still collect the full date of birth, but that information would not be made public. The Registers of Scotland could use that information to differentiate between two people with the same name—say John Smith—and then allocate unique reference numbers to them.

The Convener: I do not want to interrupt your flow, but a couple of members would like to pick up on some of the changes that you have just mentioned.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Can you share any detail on the rigorous publicity campaign that you intend to run?

Dr Simon Cuthbert-Kerr (Scottish Government): We have taken the view that it is slightly too early to start developing the detail of that, partly because the regulations have not yet been finalised. However, we have worked closely with Registers of Scotland to scope out the type of campaign that we might run. ROS is quite experienced in promoting new registers and requirements through a variety of methods. For example, it routinely runs roadshows for faculties and its staff speak at public events, such as the Royal Highland Show. That is the approach that we are planning to take.

The on-going engagement that we have had with key stakeholders, such as the Law Society of Scotland, and other large membership organisations, such as the Scottish Property Federation, will help us to get on the front foot. Although we do not yet have all the detail of the regulations, that process has allowed those organisations to let their members know that the register is going to be introduced. We do not yet have the detail of the campaign, but that outlines the process.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a small point. I note that, under the Companies Act 2006, Companies House publishes the month and year of people's birth to enable differentiation. Why did the Scottish Information Commissioner consider that we should take a different approach in this case? Many of the people concerned are people who will also be directors of companies. Indeed, the information published by Companies House contains information about people who ceased to be company directors 30 years ago.

Robin Cornwall: I think that the Scottish Information Commissioner took the view that the aim of the new register is to improve the transparency of who controls decision-making in relation to land and that date of birth is not really relevant in enabling someone to contact that person.

Stewart Stevenson: It might be an issue in my family because we have lots of duplicate names.

The Convener: Mr Cornwall, please continue with some of the key points. Members will probably jump in with questions. The last thing that you mentioned was the unique reference number.

Robin Cornwall: Yes. The draft regulations have been amended so that Registers of Scotland will allocate a unique reference number to an associate. Therefore, if an associate had a controlling interest in four different areas of land, the same unique reference number would appear across the four entries.

The Convener: Stewart Stevenson wants to pick up on some of the definitions.

Stewart Stevenson: It is inevitable that I will go over some old ground that we should probably be familiar with already, but it will be useful—at least to me—to revisit some of that and ensure that we have a proper understanding of the definitions. The three things in which I have a particular interest are: “significant influence”, “controlled interest” and “associate”.

Section 2(2)(a) of the draft regulations, which covers interpretation, says:

“control is a reference to where a person can direct the activities of another”.

However, schedule 1 says:

“This Part applies to a person (the associate)”,

and paragraph 2(b)(i) of schedule 1 gives the exception:

“a creditor of the individual (such as the holder of a standard security)”.

The holder of a standard security could have considerable influence over the landowner to whom that security applies. Why are people who

have a standard security not regarded as an associate? The bank—the typical holder of a standard security—can basically pull the plug on the landowner the moment that they default on what are sometimes relatively small items in contractual agreements. Why is there an exception for holders of a standard security and, in general, creditors as a whole? How did you come to that conclusion?

09:45

Andrew Ruxton (Scottish Government): Creditors are not considered to be part of this because, through our overall approach to the regulations, we are trying to identify where there are opaque ownership arrangements and where control of the land is not apparent from looking at a land register, for example. We considered that creditors are, in a sense, similar to professional advisers. Although they might have control as a result of their being a creditor, that is not what the register is aimed at; it is about identifying those who can direct the use of land. It was considered that creditors do not really fall into that category. We can always consider whether they should do, but we tried to focus on particular ownership structures in the first instance. We are trying to improve transparency in order to allow people to engage with those who control decision making. That is the intention of the draft regulations.

Stewart Stevenson: I can sort of understand that in one sense. In standard securities, creditors will almost certainly be visible as part of the register, because a standard security is not worth very much if it is not put on a land register. Will it be apparent from looking at the new register that there is a standard security, which is another part of Registers of Scotland's area of responsibility? That opens up a more general question about how people can access data, of which this is but one example—my colleagues might talk about that issue. When we look at who has an interest in land, is it likely that the new register will lead us to a standard security, which involves a creditor who has significant influence over what the landowner does?

Robin Cornwall: As you said, the information will be held on two different registers. Registers of Scotland envisages that more information that it holds will be accessible via Scotland's land information service—ScotLIS—in a single online portal. We will look to bring together a lot of the information that ROS holds on its registers in order to provide a one-stop shop.

Stewart Stevenson: I have used ScotLIS in its present incarnation, which, I think that it is fair to say, is a pale shadow of what it will become.

Under "Interpretation", regulation 2(2)(b) says that, for the purposes of the regulations, a reference to

"dealings with the land is a reference to disposing"

and

creating real rights".

Are "real rights" the analogue of real burdens, which would be in the current land register, or does that refer to something different? Of course, a real burden is normally something such as a heritable right of access, but a heritable right of access is a real right. I just wonder what the phrase "real rights" actually means in that context.

Andrew Ruxton: It includes real burdens. However, it is a more general reference to transactions generally.

Stewart Stevenson: Can you give me an example beyond real burdens? I am not a lawyer, although I might vaguely sound as if I know more about the law than I actually do, because I have some of the terminology.

Robin Cornwall: Somebody who has control over the land has the ability to create a real right—to grant a long lease, for instance. It is about somebody who has the ability to create real rights or grant a servitude right of access, thereby creating a real burden.

Stewart Stevenson: Of course, the utilities have a right of access, but they are independent of all this.

Robin Cornwall: I would have to double check, but I think that that is more of a statutory right.

Stewart Stevenson: Yes. Their right is statutory. That is certainly true for a wide range of things, although curiously not for the transmission of heat—but let us not go there; I am straying well off the subject.

Regulation 2(2)(c) states:

"significant influence is a reference to where a person is able to ensure that another person will typically adopt the approach that the person desires."

What does that mean? Clearly, it is a lesser influence than is referred to in the other definitions. One can see a hierarchy, with control and significant influence. Again I come back to the point that creditors can have significant influence, yet schedule 1 specifically excludes them. If it is not people such as creditors, can you give an example of significant influencers in this context?

Andrew Ruxton: That is focused on less formal arrangements than the control aspects. For example, with a partnership, there might be somebody who used to be a partner and who still exercises significant influence over the partnership by giving advice on how to use the land. That

provision brings in such people. It is trying to ensure that people cannot simply step out of a formal ownership structure while still influencing the dealings in land and not be caught by the regulations. The provision is based on definitions in the persons of significant control regime, which uses the same term.

Stewart Stevenson: If the owner of land bumps into a previous partner in the pub on a Sunday and that previous partner says, “I see you’re putting something in that field—I’m a bit surprised you’re doing that because of the soil type there”, is that sort of situation caught?

Andrew Ruxton: You would have to decide whether that is significant influence, but the—

Stewart Stevenson: You said:

“You would have to decide”,

which maybe goes to the heart of my point. Who has to decide?

Robin Cornwall: Ultimately, it is the recorded person—the person who owns the land or tenants the land on a long lease.

Stewart Stevenson: But there are duties on a person if they become aware that they are an associate, and there is a sanction regime if they do not take action in that situation. Therefore, if a previous partner bumps into a continuing partner and offers him informal advice over a pint in the pub on a Sunday, or any other day of the week, is that previous partner now under the cosh to take action?

Robin Cornwall: The recorded person would not be under an obligation to follow that advice, so that previous partner cannot actually direct the recorded person.

Stewart Stevenson: Ah—it is the directing that is the essence of it.

Robin Cornwall: Yes.

Stewart Stevenson: Right—that is helpful. Convener, I have exhausted my questions for now but I might come back in if necessary.

The Convener: That is fine. I want to move on to the recording of names and addresses and the issue of consistency.

Finlay Carson (Galloway and West Dumfries) (Con): The committee previously had a lengthy discussion about whether home or business addresses are to be used on the register. There were concerns that, if pressure groups or others were unhappy with the way in which a parcel of land was being managed, people could get a knock on the door and could be intimidated. It is a safety issue. What is the final decision on whether business addresses or personal home addresses will be used in the register?

Robin Cornwall: The important thing is that the address is a genuine contact address at which the person can be contacted. It could be a business address or a personal address. It would be up to the individual to supply an address; if they decided to use a personal address, that would be their decision. The important thing is that they can be contacted at the address.

Finlay Carson: Okay. How will that be tested? Will it be tested only when something arises, the person needs to be contacted, and that does not happen? Will there be any checking of the database? Will it simply be the case that people will use the register and find that someone has not registered correctly?

Robin Cornwall: When people enter addresses, addresses will come from a database to ensure accuracy and that nobody enters an incorrect postcode by mistake, for example.

Finlay Carson: Okay. We have raised concerns about whether the address requires to be in Scotland, and we still do not have a view on whether that will be mandatory or whether, as you have previously said, there will just be an address at which the controlling interest can be contacted.

Robin Cornwall: We have taken the view that the address does not have to be in Scotland. That is partly because an overseas entity might not have an address in Scotland. Therefore, we have not prescribed that an address has to be in Scotland.

The Convener: Is there any guidance that says that someone who is registering their interest in land must be contactable at the address that they put in, which means that they have to respond to inquiries within a certain period of time?

Andrew Ruxton: There are various time limits in the regulations for duties to respond and to provide information, including time limits by which people have to respond.

The Convener: So someone could not simply put in an address and think, “Well, that’s me done that.” There is guidance that says that they must be able to be found at the address. Obviously, that puts a duty on them to respond to inquiries within a certain period of time. What is that period of time?

Andrew Ruxton: There are different periods in different regulations. For example, the recorded person who is the owner or tenant of land needs to inform their associates about the fact that they are about to register within 60 days. That is the kind of time limit that we are talking about generally across the regulations. That allows people to do things within 60 days.

The Convener: So the onus will be on them to respond to an inquiry from somebody within 60 days.

Andrew Ruxton: Yes. Things need to happen within those time periods.

The Convener: Okay.

Claudia Beamish (South Scotland) (Lab): I am quite concerned by the response that was given on whether the address would have to be in Scotland, in the context of the contactability and traceability of people who have the responsibility to register. Will you expand on why the Scottish Government made that decision? I refer to the issue that my colleague Finlay Carson raised. As it says in paragraph 28 of paper 1, the committee requested that

“the Scottish Government provide a view as to whether there should be an address in Scotland where a recorded person can be contacted”,

but

“A view on this has not been provided.”

This is the first time that I have heard such a view. Will you expand on that, please?

10:00

Robin Cornwall: Obviously, overseas entities are within the scope of the regulations, but their associates might not be able to provide an address in Scotland at which they are contactable. In addition, some of those who are within the scope of the regulations might be based elsewhere in the United Kingdom or abroad and might not be able to provide a Scottish contact address.

Claudia Beamish: I am sorry, but why would that be? I am simply giving my view, but it makes sense to me that there should be an address in Scotland at which somebody who owns land in Scotland is contactable. I do not understand why the Scottish Government would move away from that.

Robin Cornwall: In practice, someone might use a solicitor who is based in Scotland. However, they might use a solicitor who is based in England, for example, so it is not something that we want to prescribe in the regulations.

Claudia Beamish: I thought that the whole idea was to get transparency. One of the big difficulties with land in Scotland is that we do not really know who owns some parcels of land, which is not helpful when we need to contact people.

Robin Cornwall: The key point is that they would still be under an obligation to provide a contact address. Whether or not it is in Scotland, there would still be a contact address available.

Claudia Beamish: Okay—so that is the Scottish Government view.

The Convener: The crucial point is that the person would respond to anyone who contacted them.

Claudia Beamish: I do not see fines going over borders, either. I just wanted to raise that point.

Stewart Stevenson: The point was made that the ROS would use a database—to check a United Kingdom address, I presume. What database would be used? I ask because I think the one that is mostly used is the Royal Mail’s database, and my personal address dropped off that register for three years accidentally, due to administrative error. Of course, we did not immediately spot that because we were still getting the mail. We are placing a duty on the ROS to make the check, but perhaps we are not clear whether the ROS has the valid means to do that.

With foreign addresses, I just mention three areas where it is very difficult to contact people—South Ossetia, Abkhazia, and Northern Cyprus, all of which are jurisdictions that are not recognised internationally but are clearly physical presences on the ground. There are other examples. How will we deal with such places?

Robin Cornwall: I am not entirely sure what address data will be used. I think that it is more of an implementation question; when the ROS comes to build the system, it will decide what dataset to use.

Stewart Stevenson: In practice, there will be some limitations on the ability of the ROS to verify addresses—I have identified some of them. I presume that it is an aspiration rather than a legal requirement that the ROS checks addresses—or is it a legal requirement? Does the ROS have to be sure that it has an address through which somebody is contactable, or is the obligation on the person making the registration to provide an address and if they fail to provide one through which they are contactable, it is their problem, not the ROS’s problem?

Andrew Ruxton: Ultimately, the duties are on the recorded person and the associates to provide information that allows them to comply with their duties, rather than it being a case of the ROS verifying individual addresses.

Rachael Hamilton: My colleagues will cover criminal offences, but I want to clarify a point that you made. You said that there were 60 days to register—is that correct?

Andrew Ruxton: There are various time limits. I just picked one time limit, which is about responding to notices that are given.

Rachael Hamilton: Okay. I will stop there because I know that my colleagues will cover that issue in more detail. I will listen to their questions.

Finlay Carson: The committee has previously discussed validation of the information. If we are going to oblige people to respond to correspondence within 60 days, I am still uncertain about whether there is an intention to have a validation process. Once the register is up and running in 2022, could there be a simple process of writing to all the people at their given addresses, asking them to validate their entries? It could be something as simple as sending back a tear-off slip to acknowledge receipt of the request to validate their address. That would go a long way towards ensuring that the data was as accurate as possible. Is that something that was considered?

Robin Cornwall: Are you talking about what happens after individuals' details are on the register?

Finlay Carson: Yes.

Robin Cornwall: I do not think that anything has been considered for that point in time. There are duties on individuals to provide accurate information to the keeper and they are liable for criminal offences if they knowingly give false information or fail to give information to the keeper. The register will be updated on an event-driven basis, so whenever an associate changes or details change, the individual will be under an obligation to update the details, at that point. If the keeper becomes aware of an inaccuracy, including from a third party, she can correct the register, but there is no plan to contact individuals.

Finlay Carson: There will not be validation at that stage—okay. Finally, will the public interface allow the public to search, using the unique identifier?

Robin Cornwall: Yes, it will.

Finlay Carson: Could that potentially return hundreds of registrations that associates manage as a group?

Robin Cornwall: If the person is an associate for 12 different areas of land, yes it could.

Mark Ruskell (Mid Scotland and Fife) (Green): Are there particular forms of documentation that somebody who is entering details into the register will have to provide to the keeper—an electricity bill, a legal document or whatever—to help out with the verification process?

Robin Cornwall: No. The plan is that it will be a purely online system into which a person will enter details; no paper documents will accompany the application.

Mark Ruskell: Is that slightly different from other forms of registration in society, such as electoral registration, in which the onus is on the individual, but there is still documentation—national insurance numbers or other forms—that can be provided?

Dr Cuthbert-Kerr: The fact that it will be a criminal offence to provide false information is ultimately what we rely on, but, given the committee's concerns, we should continue to speak to Registers of Scotland about what options there are to validate data. It is worth noting that Registers of Scotland deals with a huge amount of that sort of data and has excellent systems in place. Our position is that the combination of the criminal offence and Registers of Scotland's experience will lead to a position in which the vast majority of information given is accurate and true. However, we can continue to speak to Registers of Scotland to try to find a way to offer as much reassurance as possible.

Claudia Beamish: I will expand on that point. When we had discussions with the keeper in committee, it was clear that, as things stood, there was not to be a duty to check accuracy—I understand that, because it would be a significant job. However, has there been any discussion on the possibility of having, if not a duty, at least a power for the keeper to check accuracy, where there are concerns? Although there is the risk of a fine and all that, it is still possible that somebody could have reasons for obfuscation.

Robin Cornwall: That is probably an issue for us to take away and investigate a bit more thoroughly.

Claudia Beamish: Thank you. We would appreciate that.

The Convener: We will move on to one of the issues that we flagged up in our recommendations. We were keen to put forward the point that there may be vulnerable people who might have to register their interest in land, which might put them at risk. You have talked about the unique reference and have alluded to some of those issues. Can you give us details of what you have done to ensure that at-risk people will not be put at further risk by declaring their controlling interest?

Robin Cornwall: Schedule 3 of the regulations outlines the criteria for a security declaration, which is when an associate would provide their details or they would not be made public on the register. We have done a few things on that. Regulation 4(2) creates what we call a "standstill period" of 30 days, which is 30 days after the receipt of the information by the keeper. There would not be an entry before 30 days had passed,

which would allow an associate time to apply to make a security declaration.

We have not made any changes to the criteria for schedule 3, which were taken from those for anonymous voter registration—I think that that was fairly well received. There is also a discretionary power for the keeper of the registers to grant a security declaration when the application might not fit one of the criteria.

We are going to amend the Lands Tribunal rules by way of a separate Scottish statutory instrument, so that it can consider appeals regarding the keeper's decisions on security declarations. If the keeper refused a security declaration application, the person could appeal the decision to the Lands Tribunal. We will amend its rules to enable it to hear those appeals in private, in order to keep the person's identity private until a final decision is made.

That covers the main things that we have done.

The Convener: Are fees associated with those appeals? If so, can you outline what they are?

Robin Cornwall: There is a standard £150 fee to appeal a decision to the Lands Tribunal. That relates to an appeal involving the accuracy of the register and to an appeal involving the keeper's decision not to grant a security declaration.

The Convener: So, at every point, people are able to have their identity protected until the process has completed.

Robin Cornwall: Yes.

The Convener: Will security declarations be subject to on-going reviews, or is it just a case of things being as they are for evermore?

Robin Cornwall: We will monitor how many people are applying for security declarations, as well as things such as how many declarations are being granted and rejected.

Andrew Ruxton: If the circumstances in which a security declaration is granted cease to exist, there will be a duty on the person to tell the keeper that, and the security declaration will be removed at that point.

Claudia Beamish: If there was thought to be a need for a change in the list of those who could come under the security declaration arrangements, would that be dealt with through primary legislation or through secondary legislation?

Andrew Ruxton: We could amend the list of documentary evidence in schedule 3 through secondary legislation.

The Convener: Let us move on to questions about criminal offences.

Mark Ruskell: The current arrangement is that, if someone wilfully puts information into the land register that is inaccurate, or if they fail to make a registration, they can be fined up to £10,000. For this register, the maximum fine is £5,000. Is there a reason for that, beyond the legislative difficulties in having to go back and amend the Land Reform (Scotland) Act 2016? Is there a policy reason why one fine is double the other?

Robin Cornwall: It is a policy position. We consider the criminal penalty to be a significant deterrent to non-compliance and that the size of the fine is appropriate for, and proportionate to, the offence. As you say, we would have to amend primary legislation if we were minded to increase the fine.

Andrew Ruxton: I should make it clear to the committee that section 39 of the 2016 act contains a power to modify enactments, so primary legislation would not be required in order to amend that act—we could do it through secondary legislation.

Mark Ruskell: Why is one fine £10,000 and the other £5,000? There is a different level of proportionality there.

Dr Cuthbert-Kerr: Fundamentally, the approach that we have taken is to try to bear in mind the purpose of the register, which is about transparency around who makes decisions about land. The person of significant control regime is much more connected to financial matters, so there is a policy difference between the purposes of the two registers. The different levels of fine are proportionate to the offences that are committed in relation to each. That is the policy position that we have tried to adhere to.

10:15

Mark Ruskell: Right. Are there plans to update the 2016 act? You say that you could change the fine level through secondary legislation, but are wider reforms to the 2016 act coming?

Dr Cuthbert-Kerr: At the moment, there is no plan to do that. As Robin Cornwall said, we consider the level of the fine to be proportionate to the offence. Andrew Ruxton said that we could change the level if the committee suggested and ministers decided that that should happen. However, the current policy position is that we think that a £5,000 fine is the right level for the offence.

Robin Cornwall: It is worth making the point that on-going failures can be prosecuted multiple times. Also, the implications of having a criminal record go beyond the financial penalty, which should act as a strong deterrent.

Mark Ruskell: What would be the process if a repeat offender said, “Oh well, it’s worth £5,000 to keep my anonymity” and continued to fail to fill in the register accurately? What would be the timescale for a repeat fine?

Andrew Ruxton: Ultimately, the exact timings would be a matter for the Crown Office.

Notwithstanding that failing to provide information is a criminal offence, the duty to provide accurate information continues all the time. The fact that someone has been convicted of the offence and given a fine does not remove the duty to provide information, which continues. As Robin Cornwall said, if non-compliance continued, the person could be prosecuted again, and we anticipate that not just the fine but the criminal record will act as a deterrent.

It is—we hope—fairly straightforward to provide the information that is required. It is not particularly complex information that is needed to satisfy the duty. That should encourage people to comply with their duties.

Claudia Beamish: Failure to give information when there is a duty to do so seems to me to be a pretty serious offence, although I am not a lawyer or an expert. Some people have suggested to me that, in view of that seriousness, the fine does not seem “proportionate”, as Dr Cuthbert-Kerr put it, and will not deter people who have significant wealth. Have you received responses about the fine being set at quite a low level?

Robin Cornwall: Are you asking about responses to the consultation?

Claudia Beamish: Yes. I am sorry that I have not made the time to look at them. I am asking about the £10,000 fine as well as the £5,000 fine.

Robin Cornwall: The picture was quite mixed. A number of respondents thought that there should be no criminal penalties at all, some thought that the fines should be increased and some were in the middle and thought that £5,000 is appropriate and proportionate. There were quite balanced responses in relation to the criminal penalty.

Claudia Beamish: Can you give reasons why people felt that the fines are too low? You do not have to rehearse a list, but can you say whether you were able to pick out a view?

Robin Cornwall: I cannot remember. I would have to go back and look at the consultation. I can get back to you on that.

Claudia Beamish: It would be helpful to know. Of course, I could look myself. That information would be useful in helping the committee to formulate a view.

Dr Cuthbert-Kerr: There was a general view that £10,000 is more of a deterrent than £5,000. It

is not my intention to sound flippant, but it could be argued that someone who is wealthy enough to be not particularly bothered about a £5,000 fine will not be bothered about a £10,000 fine.

As I have tried to explain, we think that £5,000 is proportionate. However, it is worth emphasising that we have the opportunity to change the level of the fine, should it become apparent that that is the right thing to do.

Mark Ruskell: Maybe it should be set at £50,000, then.

Dr Cuthbert-Kerr: Do we have the ability to do that?

Andrew Ruxton: That is not for us to decide at this point. The general position is that we have a power to modify the enactments, including the Land Reform (Scotland) Act 2016, in section 39.

Mark Ruskell: But you are not doing it at this point.

Andrew Ruxton: There is no plan to do that at this point, but the option is there.

Mark Ruskell: Okay. I will move on to inadvertent failure to comply and the grace period. You mentioned that you had settled on a grace period of 60 days. Is it that someone will have a 60-day period in which to submit their registration, or will they have 60 days after they have been warned that they have not submitted the registration?

Andrew Ruxton: There is a 60-day time limit in which to respond to notices issued under the regulations.

Mark Ruskell: Has the thinking on that evolved during the past six months that you have been working on the instrument? Is that your initial position, or has it changed at all?

Andrew Ruxton: It has broadly stayed the same, partly because, as I said, we hope that it is relatively straightforward for people to provide the information. It is not massively onerous information; it is, in essence, contact details.

As Robin Cornwall mentioned, with respect to the grace period, we have adjusted the transitional period to give people more of a chance to put information on the register without attracting the criminal penalties.

Mark Ruskell: I will ask about completion of the register as a precondition for any financial transactions or administrative transactional changes. It would seem to be in the spirit of the act to have as much transparency as possible, particularly at the point at which the ownership of the land may change. Is there such a precondition? I do not think that there is at the moment.

Andrew Ruxton: There is no precondition.

Mark Ruskell: Would that not be quite logical? What are your reasons for not putting it in?

Robin Cornwall: We are mindful of not overly impacting the land register and the property market by making completion of the register a precondition of land registration. Is that what you mean?

Mark Ruskell: Yes—a precondition that the register of controlled interests is filled in and is accurate before there is any sale or change.

Robin Cornwall: That goes back to the aims of the two registers. This register is about providing transparency around who controls decision making. The land register is a transactional register that gets updated if something changes—for instance, if somebody sells the property or remortgages it—rather than an event-driven register. Adding such a precondition would potentially slow down the processing of land register applications. The consultation respondents were quite supportive of not making it a precondition of registration.

Mark Ruskell: Someone who is considering purchasing a piece of land may not be aware of all the history surrounding it and who has held the controlling interest up to that point. Surely, that information is quite important in understanding the history of the land, what the ownership is at that point and how that ownership has been arrived at. That information would surely be beneficial in providing certainty and security to potential owners with regard to the nature of the land, its history and what the controlling interest has been. I fail to understand why you would not want to have that information made clear and transparent at the point of a sale or change.

Andrew Ruxton: In making it an event-driven register rather than a transactional one, we are trying to ensure that the information is in place and that we do not rely on a transaction happening for the information to go on the register. There is a general duty on everybody to update their information whenever a change occurs, rather than the register being reliant on a transaction. That will allow the information to be in place when transactions take place—that is the thinking.

Rachael Hamilton: I have a question about the minimum land requirement for registration. Is there a minimum threshold?

Robin Cornwall: In relation to the size of the land owned?

Rachael Hamilton: In relation to the size of land ownership.

Robin Cornwall: No.

Rachael Hamilton: Currently, if a house purchase includes land, that land is already registered. How does that differ?

Robin Cornwall: If a property is owned by an individual and their name is on the land register, there is generally no controlling interest. That occurs only when an associate exists, whether that be through a formal arrangement such as a trust, an overseas entity or a contractual arrangement such as we touched on earlier, whereby somebody can direct how the person makes decisions about land. For most residential properties, it is unlikely that there will be a controlling interest.

Rachael Hamilton: Thanks.

Stewart Stevenson: I have a point for information. When I took the Long Leases (Scotland) Bill through Parliament, one of the nine parcels of land that it affected was a 1m by 1.5m piece of land in a close, up the street from this building. It had to be separately registered in order to allow people access to three properties. I believe that there is no *de minimis* whatsoever with regard to size. In that example, the land was on something like a 300-year lease, which was converted to ownership. Even that tiny, wee bit, which was the full width of the close but only a few feet in size, is registered.

The Convener: Angus MacDonald has questions about access to the register.

Angus MacDonald (Falkirk East) (SNP): Let us go back to ScotLIS and the single point of access. Clearly, the process of accessing information is critical to meeting the policy objectives. Which registers will be available via ScotLIS, and are there any land-based or land-related registers that will be excluded from it? Basically, will ScotLIS be a single point of access for all land-based registers?

Robin Cornwall: Yes. The keeper of the registers of Scotland maintains 20 public registers. When it comes to land ownership, there are only two property registers: the land register and the general register of sasines. Those are the ones that require to be examined in relation to land ownership.

Registers of Scotland envisages that the register of controlled interests will be a new layer added to ScotLIS, and information will also be added to that register. It wants to make the information that it holds as accessible as possible, so it is looking to bring as much as it can into ScotLIS and make it a one-stop shop for finding out as much information as possible about land.

Angus MacDonald: Is there a time limit for transferring that information over?

Robin Cornwall: I do not know the timeline. Registers of Scotland has a road map that maps out the future improvements to ScotLIS, but I do not know the times when each specific thing is to be brought on.

Angus MacDonald: Okay. That sounds like something that we can explore later. How much information will be available via open public access and registered user access? What costs will be involved in accessing information on the register at each of those levels?

Robin Cornwall: The register of controlled interests will be completely free to access: there will be no fee for that at all.

In relation to information that is held on the land register and the register of sasines, a certain amount of the land register, including a snapshot of the cadastral map, is available free of charge. Last year, there was a 90 per cent reduction in the fee—from £30 to £3—that citizens pay to access a full land registration title sheet, which provides details about servitude rights of access, real burdens, outstanding standard securities and that type of information.

10:30

Angus MacDonald: What has been the take-up of that?

Robin Cornwall: I do not know. You would have to refer to Registers of Scotland for that information.

Angus MacDonald: Okay.

The Convener: I have a question about the ScotLIS interface. Will people be able to access the register of persons of significant control through that portal as well?

Robin Cornwall: Yes.

The Convener: Will a fee be associated with that?

Robin Cornwall: No, there will not be any fee for accessing that register.

The Convener: Claudia Beamish has some questions about the managing of the register.

Claudia Beamish: We have covered quite a few areas; I will highlight four of them, and, if any of the panel want to respond on things that have not been covered so far, that is good. Other committee members may also want to ask questions. The four areas are: the transactional arrangements; the user testing and the enhanced guidance, which perhaps we have not covered; the publicity and means of access, which we have covered to some degree; and the role of the keeper in ensuring accuracy. We have covered quite a lot of that, but perhaps you can say

something about the user testing and enhanced guidance, and about anything else that any of you wants to comment on.

Robin Cornwall: On user testing, Registers of Scotland builds systems in a way that involves users and gets user feedback as early as possible, to ensure that what it is building is fit for purpose and is what the user needs. For example, to understand how an individual might want to search and interrogate information, it would want early user feedback, to ensure that what it produces is fit for purpose. That will be an on-going process from when it starts to build the register to beyond go-live.

Claudia Beamish: Do you have any comments to make on any of the other points?

Robin Cornwall: We will work with Registers of Scotland to develop guidance prior to the register going live. That probably touches on what Simon Cuthbert-Kerr said about respecting and not wanting to pre-empt the parliamentary process.

Claudia Beamish: Thank you.

The Convener: Rachael Hamilton has some questions on costs, although some of them have been covered already.

Rachael Hamilton: A little has been covered—about the initial registration being free. Have you any idea of the running costs, including for monitoring, enforcement and all the other things that will come with the register?

Robin Cornwall: The cost of information technology support is estimated at between £70,000 and £84,000 per annum. However, that is an early estimate and could vary as the register develops. There will also be associated staff costs for Registers of Scotland, to deal with such things as processing information, deciding on security declarations and dealing with general enquiries from the public about the register.

Rachael Hamilton: If the initial registration is free, where will the income come from?

Robin Cornwall: Do you mean the income for the on-going support?

Rachael Hamilton: Yes.

Robin Cornwall: It will come from the Scottish Government and Registers of Scotland, in effect.

Rachael Hamilton: Are you talking about an annual cost?

Robin Cornwall: Yes. The £70,000 to £84,000 is an annual cost for hosting the system.

Rachael Hamilton: Okay.

The Convener: The committee has exhausted its questions. I thank our colleagues from the

Scottish Government for coming here this morning.

10:35

On resuming—

10:34

Meeting suspended.

Subordinate Legislation

Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Order 2020 (SSI 2020/4)

The Convener: The next item on our agenda is consideration of a negative instrument. Do members have any comments to make? If not, is the committee agreed that it does not want to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: That concludes the committee's business in public. Our next meeting will be on 18 February, when we will take evidence on the Scottish Government's budget from the Cabinet Secretary for Environment, Climate Change and Land Reform and from the Cabinet Secretary for Finance, Economy and Fair Work. The committee will also consider the approach to its work on regional marine planning.

10:36

Meeting continued in private until 11:44.

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