

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

Introduction to the Proposed Explanatory Document prepared in accordance with section 41(2)(a)(ii) of the Land Reform (Scotland) Act 2016

1. On 26 November 2014, the First Minister, as part of the Programme for Government, set out the Scottish Government's vision that Scotland's land must be an asset that benefits the many, not the few. That vision was articulated in the Land Reform (Scotland) Act 2016 which received Royal Assent on 22 April 2016.
2. The attached proposed Explanatory Document has been prepared in respect of the proposed draft regulations that will implement Part 3 of the 2016 Act. The draft regulations are the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021.
3. The Regulations are to be made in exercise of powers conferred by section 39 of the Land Reform (Scotland) Act 2016 ("the 2016 Act").
4. References throughout to the Explanatory Document and the draft Regulations refer to the proposed Explanatory Document and the proposed draft Regulations required by section 41(2)(a)(ii) of the 2016 Act.
5. This introduction provides background to the Register of Controlling Interests in owners and tenants of land and summarises the proposals within the draft Regulations. It also outlines next steps in delivery of the draft Regulations, including the associated consultation. It will not form part of the final Explanatory Document.

Background

The Land Reform (Scotland) Act 2016

6. The passage of the Land Reform (Scotland) Act 2016 was a substantial step in the development of land reform in Scotland. The Act represented the culmination of a significant debate with contributions from across Scottish society, and the proposals introduced in the Bill were developed and strengthened during its Parliamentary stages. This was particularly the case in the sections dealing with transparency of land ownership.
7. The inter-related provisions of the Act provide a range of measures to progress land reform, driving change in how Scotland's land is owned and used. These provisions include:
 - The Scottish Land Rights and Responsibilities Statement. Published in September 2017, this aims to support a strong relationship between the land

and people of Scotland, where rights and responsibilities in relation to land are fully recognised and fulfilled.

- The Scottish Land Commission. The Commission became operational on 1 April 2017 with a remit to review the effectiveness and impact of laws and policies relating to land, and to make recommendations to Scottish Ministers. A key part of its Strategic Plan is to examine options for future land reform including the concentration of land ownership in Scotland.
- Guidance on Engaging Communities in Decisions relating to land. Published in April 2018, this expects land owners and those with control over land to engage constructively with communities across rural and urban Scotland.
- A new Right to Buy to Further Sustainable Development. This is expected to be in force in 2019, and follows the new Right to Buy Abandoned, Neglected and Detrimental Land which is will come into force in June 2018. These will both deliver more land to Scotland's communities.

Register of Controlling Interests in land

8. Section 39 of the 2016 Act is the result of Government amendments that were agreed at Stage 3 of the Bill. These gave Scottish Ministers new powers to provide for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland. The proposals were widely welcomed and the Scottish Parliament voted unanimously to support them.
9. Section 39 requires Ministers to make regulations requiring information to be provided about persons who have controlling interests in owners and tenants of land, and about the publication of that information in a public register kept by the Keeper of Registers of Scotland.

Land Registration in Scotland

10. Information about land ownership is held in the General Register of Sasines, Scotland's original national register of property deeds which dates back to 1617, and the map-based Land Register of Scotland which was established in 1981. These registers ensure that information about the owner of a right in land is publicly available. In October 2017, RoS launched ScotLIS (Scotland's Land Information Service) – a new map-based, on-line land information service.
11. Under these current arrangements, all but a very small number of properties – typically those which have not changed hands in over 400 years – will appear in one of the two property registers. Information about the legal owner or tenant of the land can be accessed for the vast majority of the land in Scotland.
12. There are, however, reasons why this may not be sufficient to reveal the persons who can actually exercise control in relation to the land. The legal owner of the land may be an opaque legal entity, such as an overseas company, or the legal owner of the land may hold the title subject to an arrangement which is not discernible from the Land Register itself, such as a trust arrangement.

13. There are approximately 2.7 million property titles in Scotland of which around 1.7 million titles are included in the Land Register. This represents about 65% of all the potential property titles in Scotland and covers approximately 32% of the Scottish land mass, leaving just under 1 million property titles remaining in the Register of Sasines. Information about accessing these property registers can be found on the Registers of Scotland website.
14. The Land Register has a number of advantages over the existing Register of Sasines. In addition to providing a state-backed guarantee of title supported by the Keeper's warranty, as the Land Register is map-based it is more easily searched, with title sheets defining the extent of individual properties on the Ordnance Survey map.
15. Accordingly, in May 2014 Scottish Ministers invited the Keeper to complete the Land Register by 2024 and also committed to all publicly owned land being on the Land Register by 2019. Registers of Scotland are working to enable these targets to be met and expect that over 90% of titles will be on the Land Register by 2021. Further information on this is available on the Registers of Scotland website¹.

Next Steps

16. The Regulations to be made in respect of Part 3 of the 2016 Act are subject to an 'enhanced' affirmative procedure. Sections 40 – 42 of the 2016 Act sets out the process:
 - i. Under section 41(2), Ministers must lay a copy of proposed draft regulations in Parliament for the purposes of consulting the Keeper of the Registers of Scotland and such other persons as they consider appropriate. Ministers must also lay a copy of the proposed explanatory document in Parliament alongside those regulations. The draft regulations must be laid for a period of 60 days not including periods in which the Parliament is dissolved or is in recess for more than 4 days.
 - ii. Subsequently, Ministers must lay a further draft of the regulations, having had regard to any representations made about the proposed draft during the period of consultation. Ministers must also lay an updated version of the explanatory document that explains any changes (if any) made as a result of the representations made during the consultation.
 - iii. Finally, Ministers must lay the regulations in draft as they would with any other affirmative instrument. There is no specified period between the "second" and the "third" laying of the regulations.
17. An accompanying consultation document will also be published and an analysis of the responses received will be published. Responses are sought on a number of specific questions; however, additional comments or views on any part of the regulations are also welcome.

¹ <https://www.ros.gov.uk/>

18. Ministers have committed to avoid the duplication of information in the new register and elsewhere if possible. Considerations on this issue are set out elsewhere in this explanatory document, including how the proposed draft regulations take account of existing legislation.
19. The UK Government, however, has recently committed to establish a Register of Overseas Entities' Beneficial Owners and have this operational by 2021. This would apply to overseas legal entities, including companies, which own land or are tenants of registrable leases in the UK. The legislation establishing the register is still to be introduced.
20. The proposed draft Regulations do not take into account the proposals for a Register of Overseas Entities' Beneficial Owners as the detail of these is not yet known. The Scottish Government will continue to monitor progress of UK proposals. It is possible that the proposed draft Regulations may be amended at a later date to take account of the UK proposal. The consultation accompanying the Explanatory Document seeks views on this approach.
21. The proposed Explanatory Document is being laid in Parliament alongside the proposed draft regulations, and a partial Business and Regulatory Impact Assessment and a Privacy Impact Assessment.
22. The Scottish Government have considered whether a full Strategic Environmental Impact Assessment, a Equalities Impact Assessment, or a Children's Rights and Wellbeing Impact Assessment were necessary and have concluded that they are not at this stage. Fuller details of these considerations are set out at Chapter 3 of the Explanatory Document.

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

Explanatory Document prepared in accordance with section 41(2)(a)(ii) of the Land Reform (Scotland) Act 2016

Introduction

1. This document has been prepared under sections 40 to 42 of the Land Reform (Scotland) Act 2016 in respect of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 (“the Regulations”).
2. It has been prepared by the Scottish Government in order to assist the reader of the Regulations. It should be read in conjunction with the Regulations and where a regulation does not appear to require an explanation or comment, none is given.

Purpose of the Regulations

3. The overarching purpose of the Regulations is to increase public transparency in relation to individuals who have control over decision-making in relation to land. They are intended to ensure there can no longer be categories of land owner or tenant where, intentionally or otherwise, control of decision-making is obscured. In conjunction with other transparency regimes, this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land. We do not require double reporting for entities subject to other regimes as we do not want to duplicate existing publicly available information. The Regulations will also aid policy making by enabling a fuller picture of those individuals who have control over decisions about land in Scotland.
4. A consultation on the policy proposals for a new register was carried out from September – December 2016. Responses and an analysis of the responses were subsequently published online².
5. The consultation document explained at paragraph 18:

“The Scottish Government is keen to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. Improved information about who controls land owners and tenants in Scotland will therefore help empower people, including community groups, and

² Where consent has been given to publish responses they can be accessed here: <https://consult.gov.scot/land-reform-and-tenancy-unit/controlling-interests/>. An analysis of the responses can be accessed here: <https://beta.gov.scot/publications/improving-transparency-land-ownership-scotland-consultation-analysis/>.

give them the opportunity to understand who is in control of land owners and tenants. This transparency should also allow people to engage constructively with any person with a controlling interest who makes decisions in relation to land that might have an impact on sustainable development.”

6. The Register of Persons Holding a Controlled Interest in Land will require categories of entities who may own land in Scotland and where the controlling interests in the entities is not currently transparent, to make details of their controlling interests publicly available.

Contents

7. This Explanatory Document is divided into 3 Chapters.
8. Chapter 1 explains Parts 1-5 of the Regulations, which concern: the functioning of the Register, the duties on persons to provide information for entry onto the Register, the role of the Keeper as registrar, how information in the Register will be maintained, and the non-disclosure of information in the Register in exceptional circumstances. This Document sets out how these proposals will work and the policy rationale behind them.
9. Chapter 2 explains Schedules 1, 2 and 3 of the Regulations. These concern who is to be registered in relation to each category of owner or tenant and which categories of owner or tenant will be excluded from the draft regulations as proposed. It also sets out details of the evidence required to support a security declaration.
10. Chapter 3 summarises the impact assessments undertaken in respect of the Regulations.

Summary of the Regulations

11. The Regulations require that a new Register be created – the Register of Persons Holding a Controlled Interest in Land. This is referred to throughout as ‘the Register’ (although in the Regulations themselves, it is referred to as the ‘RCI’).
12. The Register will contain information about the persons who can influence or control owners and tenants of land. As such, there will be an entry for each controlled person detailing who is in a position to influence or control them.
13. Duties will be placed on owners and tenants of land, and persons who can influence or control them, to provide information for inclusion in the Register. This information will enable members of the public to engage with the respective parties. It will be a criminal offence not to comply with the duties, punishable by a fine.

14. The Register will be created and held by the Keeper of the Registers of Scotland who will be under duties to enter the relevant information onto the Register, and to act on any notices provided to her if there are changes in the relevant information.
15. The Keeper will have the power to amend the Register should the information in it be inaccurate, and questions about the accuracy of information in the Register can be referred to the Lands Tribunal.
16. Individuals whose information is to be included in the Register as a person with influence or control over another may make a “security declaration”. This would be made on the basis that inclusion in the Register of one or more of the individual’s required details would put them, or another person connected to them, at risk of violence, abuse, threat of violence or abuse, or intimidation. While a security declaration is in force no information about that individual will be disclosed in the Register.
17. The Regulations apply to owners of land and tenants of registrable leases (that is, leases of over 20 years). The Regulations primarily seek to address two particular scenarios in which there is currently a lack of transparency as to the control or influence of the decision-making of an owner or tenant of land. Firstly, where the legal owner or tenant of the land is an opaque legal entity, such as an overseas company, or secondly, where they hold the title or lease in an arrangement which is not necessarily discernible from the Land Register itself, such as a trust arrangement.
18. Accordingly, the Regulations will result in the disclosure of information about persons who have influence or control over the person listed as the owner or tenant of the land by means of the existence of one of the following types of association:
 - a contractual or other arrangement with a person to give that person influence or control over significant decisions in relation to the land,
 - a partnership, including any Scottish partnership where at least one partner is an individual,
 - a trust,
 - an unincorporated association, and
 - an overseas legal entity.
19. Where information similar to that which is required for the Register is already reported and publicly available, the information is not duplicated in the Register. This prevents the same information being gathered, recorded and held in different places, and minimises the administrative burden on public services and those who are already under requirements to report this information elsewhere. Categories of entities who are an owner or a tenant of land and who meet this condition are therefore not required to provide information for inclusion in the Register as an owner or tenant of land. They may, however, still be recorded as an associate of another owner or tenant of land.

CHAPTER 1

How the Register will work – Parts 1-5 of the Regulations

20. Parts 1-5 of the Regulations explain the functioning of the Register, the duties on persons to provide information for entry onto the Register, the role of the Keeper as registrar, how information in the Register will be maintained, and the non-disclosure of information in the Register in exceptional circumstances.

Part 1 – Introduction

21. Regulation 1 sets out that the Regulations will come into force on 1 April 2021. This will enable the Register to be operational from 1 April 2021.
22. Regulation 2 explains the meanings of terms used in the Regulations.

Part 2 – Register of persons holding a controlled interest in land

23. This Part sets out what information the Register is to contain, how and when entries should be amended or removed, and how people can search the Register for information.

The establishment and contents of the Register

24. Regulation 3 (Register of persons holding a controlled interest in land) provides that the Keeper must establish and maintain a Register known as the Register of Persons holding a controlled interest in land (“the Register”). This regulation also sets out the information that the Register is to contain. Regulation 3(2) sets out that the Register will be a record of persons who own or are tenants of land and, in relation to that land, are associated with a person to whom Schedule 1 applies. Persons to whom Schedule 1 applies are referred to as ‘associates’. Owners or tenants who have associates (with the result that there is an entry in the Register in relation to them) are referred to as ‘recorded persons’.
25. Regulation 3(3) sets out that an entry in the Register is to contain:
- The name and address of a recorded person;
 - The title number of the land or, where the land is not in the Land Register, a description of the land sufficient to allow it to be identified;
 - Details of the capacity in which the recorded person owns or leases the land. (This would include, for example, where an individual owns the land in their capacity as a trustee);
 - The required details in relation to each associate (these details are set out at regulation 10) or, where a security declaration has been made, a statement of that instead; and,
 - The date of any notice given to the Keeper in respect of the entry.

26. Paragraph (4) of regulation 3 sets out that the Register will be in a form considered appropriate by the Keeper, which may be electronic. This gives the Keeper latitude as to the form of the Register and ensures that an electronic system, like the existing Land Register, can be used.
27. In practice, regulation 3 therefore requires that each entry in the Register will be specific to a piece of land in respect of which there is some sort of controlling interest over the owner or tenant of that land. An entry will have an identifier relating to the land by which it can be searched. This identifier may be the Land Register title number (where there is one) or alternatively an address or other description of the land sufficient for it to be identified. It is also possible that the Keeper may elect to give a unique identifier in respect of each entry.
28. Entries in the Register will be in relation to land owned (i.e. where title to land is held) or a lease which can be recorded in the Land Register (i.e. a lease of 20 years or more).
29. An entry will contain information about the owner or tenant of the piece of land (referred to as the 'recorded person') as well as information about the persons who are associated with the 'recorded person'. 'Associate' is the term used in the regulations for the persons who hold a controlling interest in relation to a recorded person. The definition of an 'associate' is contained in regulation 3 and whether a particular person is an associate is determined by reference to the categories of persons described in Schedule 1 of the Regulations.

Amendment of the Register

30. Regulation 4 requires the Keeper to amend the Register in certain circumstances. This is to ensure that the information in the Register be kept as accurate as possible.
31. Regulation 4(1) sets out that the Keeper must remove an entry from the Register if the previously recorded person is no longer the owner or tenant of the land, or if the recorded person no longer has any associates.
32. Regulation 4(2)(a) and (b) sets out that the Keeper must amend entries in the Register as she considers necessary if she receives: a notice under regulation 11 (relating to the updating of information in the Register), a security declaration, a notice under regulation 16 (relating to revocation of a security declaration), a notice under regulation 23 (relating to the death of an individual or winding up of a legal entity), or a security declaration ceases to have effect under regulation 17.
33. Regulation 4(2)(c) requires the Keeper to make such amendments to the Register as she considers appropriate if she "becomes aware of an inaccuracy" in the Register.

34. This is intended to enable the Keeper to amend the Register where there are clear errors in the material provided. This may be particularly helpful where a clear error has been made such as a foreign limited partner being registered as an associate when they cannot be so under paragraph 26 of Schedule 1 of the regulations.
35. Regulation 4 does not prescribe how the Keeper may become aware of an inaccuracy but this could be as a result of being notified of an inaccuracy by a third party. She may correspond with persons to help her reach a conclusion. It is not, however, envisaged that the Keeper would investigate suggestions that there was or might be an inaccuracy in the register if the information provided to her did not disclose one.
36. It is recognised that there will be situations in which the Keeper is unable to conclude whether the Register is accurate or not on the basis of the information available to her, and there is therefore the need for other means of resolution.
37. Regulation 4(2)(c) does not give the Keeper power, or place a duty on her, to amend the Register to create an entry. There may be cases where there is not an entry in the Register in respect of a piece of land where it is believed that there should be one. It is not, however, intended that it should be the Keeper's role or duty in such cases to investigate or to create a new entry in the Register.
38. Where the Keeper is unable to reach a conclusion on the basis of the evidence presented to her, or where a question relates to whether an entry in the Register should be created, she or a third party can refer a question about the accuracy of, or lack of entry in, the Register to the Lands Tribunal. The Lands Tribunal has investigatory powers which enable them to consider complex cases, and to hold hearings into them, making them an appropriate body to determine issues that arise in relation to this part of the regulations.
39. The process for referring a question to the Lands Tribunal is set out at Regulation 19.

Timing of making an entry or amendment

40. Regulation 5 requires the Keeper to amend an entry in the Register as soon as is practicable. These provisions are designed to ensure that the Register is as accurate as possible. In particular it means that when third parties alert the Keeper to any perceived inaccuracies in entries to the Register (section 4(2)(c)), she is under a duty to amend as she considers appropriate.

Protection of the Register

41. Regulation 6 provides for the Keeper to be responsible for ensuring the security of the Register and protecting it from interference, unauthorised access or damage.

Access to the Register

42. Regulation 7 sets out how people can access the Register and are able to search for information using certain criteria, namely, name and address of owner or tenant, title number of land or details of the associate.
43. This regulation sets out the means for persons to have access to the Register and the information it contains. It is intended that searching the Register is as easy as possible, and that only one of the criteria needs to be known to enable someone to search the register to find details of controlling interests in the owner or tenant of the land.

Part 3 – Duties to provide information

44. This Part of the Regulations 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.

Duty to notify of controlled interest and associates

45. Regulation 8 sets out the duties which apply to persons who (a) own or tenant land and, (b) in relation to that land, are associated with a person to whom a Part of Schedule 1 applies.
46. Regulation 8(3) sets out that such a person must provide the Keeper with a title number or description of land sufficient for it to be identified, and the required details of the associate or a copy of a security declaration.
47. Regulation 8(4) sets out that the person is required to take reasonable steps to verify the accuracy of the associate's required details with the associate, and to inform the associate about their duties and rights under the regulations. These are:
 - the timescales for responding;
 - the offences for failure to comply;
 - the right to make a security declaration; and
 - the duty to inform the recorded person about any changes to their details.
48. Regulation 8(6) requires the person to provide the information to the Keeper within 60 days of the associate becoming an associate.
49. Regulation 8(7) provides that it is a criminal offence to fail to do this, unless the person has a reasonable excuse for not doing so.
50. Regulation 8(8) sets out that a person has a reasonable excuse if they have taken reasonable steps to establish whether they have associates or to verify details of the associate but have been unable to do so. They must also have given notice to that effect to the Keeper.

51. The references to 'persons' in Regulation 8 refer to the person who owns or tenants the land. This label applies until the information required by Regulation 8 is notified to the Keeper. Thereafter the owner or tenant is referred to as the 'recorded person', for example in Regulation 10 and elsewhere. These terms differentiate between the point before and the point after the required details have been notified to and are recorded by the Keeper in the Register.
52. A person will not become a recorded person if they consider under Regulation 8 whether they have an associate, and conclude that they do not in fact have one. In that case they would not notify information to the Keeper and would not become a recorded person.

Required details of an associate

53. Regulation 9 sets out that the 'required details' of an associate that must be provided by the owner or tenant (under regulation 8) must include the date when the association with the person who owns or tenants land began or a statement that such a date is not known.
54. Where the associate is an individual, the required information also includes:
- Their name;
 - A contact address; and
 - Their month and year of birth.
55. Where the associate is a non-natural person,(i.e. an organisation or entity) other than a person of a type listed in schedule 2, the required details also include:
- Its name;
 - Its registered number (if applicable); and
 - The address of its registered office or its contact details.
56. Where the associate is a person of a type listed in schedule 2, the required details are:
- Its name;
 - Its registered number (if applicable);
 - The address of its registered office or its contact details; and
 - The paragraph of schedule 2 that applies to it.
57. The intention of this regulation is that information suitable for the associate to be identified and engaged with is available in the Register. Where the person is subject to another transparency regime, their required details ensure that there is sufficient information to enable those registers to be searched to disclose the ownership and control structures for those persons.

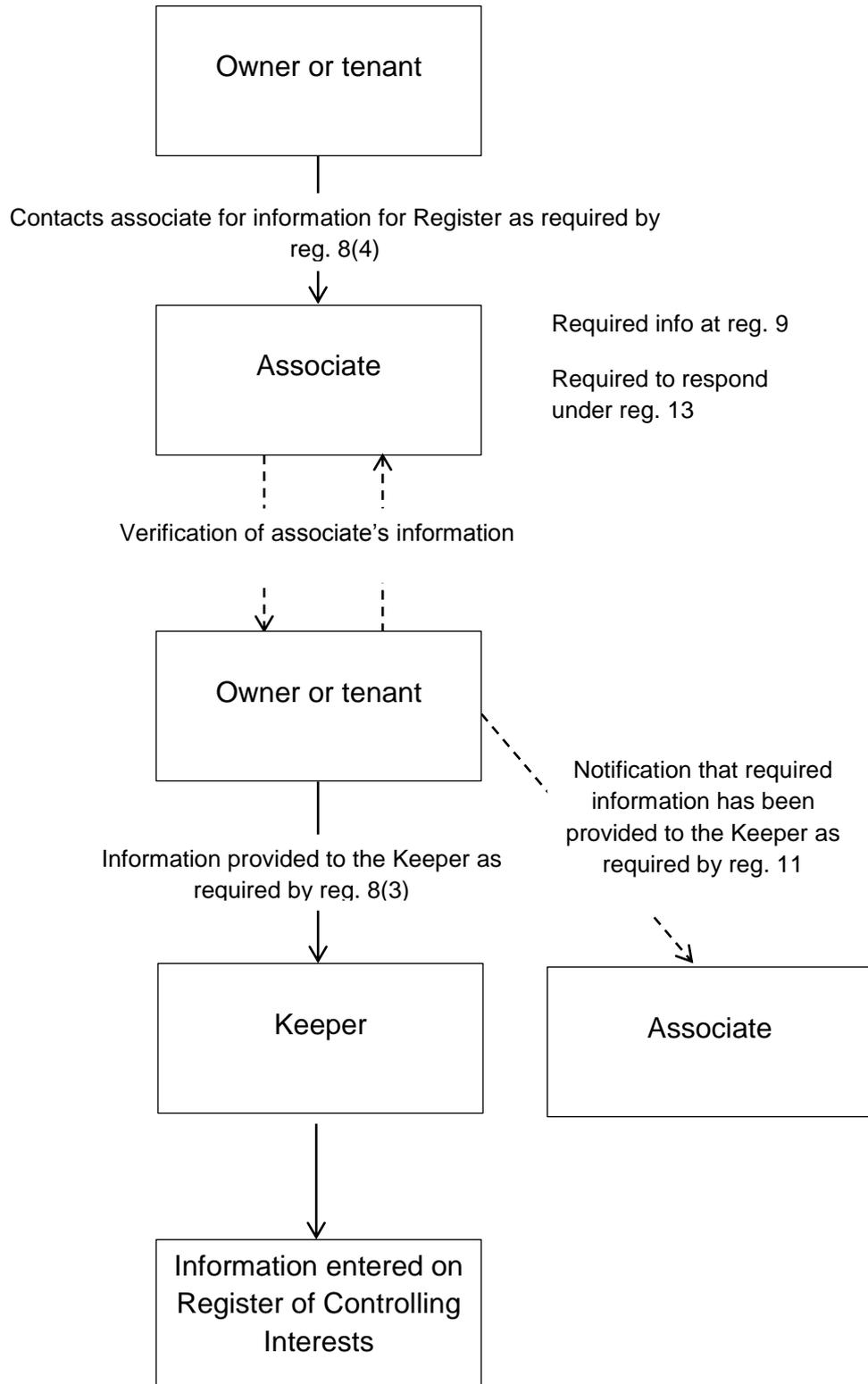
Information about events affecting the Register

58. Regulation 10 sets out in a table who should do what when certain changes about information in the Register become known. Regulation 10(2) sets out timescales for the Keeper to be notified of changes and regulation 10(3) requires the recorded person to take reasonable steps to ensure the accuracy of the information.
59. The latter requirement to take reasonable steps reflects requirements of regulation 8(8)(a)(ii) and 8(8)(b) in respect of original notification to the Keeper about an associate. The offences and penalties for failure to comply also replicate those in regulation 8.

Notification of associates about registration

60. Regulation 11 sets out that, when information about an associate is provided to the Keeper for inclusion in the Register, the relevant owner or tenant must notify the associate this has been done. Regulation 11(4) sets out that a failure to comply with this regulation without reasonable excuse is an offence.
61. This regulation ensures that an associate is aware that the process of supplying information to the Keeper has been completed. This is important given that the associate is under a duty to provide information to the owner or tenant of the association (see regulation 12). Where the associate does not have notification under this section with 60 days of becoming an associate, the associate will want to take steps to ensure that the information is provided.
62. Failure to provide give such a notice constitutes an offence.
63. The following diagram sets out the process of verification and notification.

Diagram 1 – Duties to Provide Information



Associate's duty to notify of association

64. Regulation 12 requires that where a person knows they are an associate of a person but have not received notification of this from the person (as required by regulation 11) within 60 days, then they must notify the person that they are an associate and provide their required details (the required details are set out in regulation 9). Regulations 12(3) and (4) set out the offences and penalty for not complying with this duty, which replicate those in regulations 8 and 10.
65. This is intended to ensure that even when the person is not aware that they have an associate or are otherwise unable to identify an associate, then information about the associate will still be provided for inclusion in the Register.

Duty of associate to provide information on request

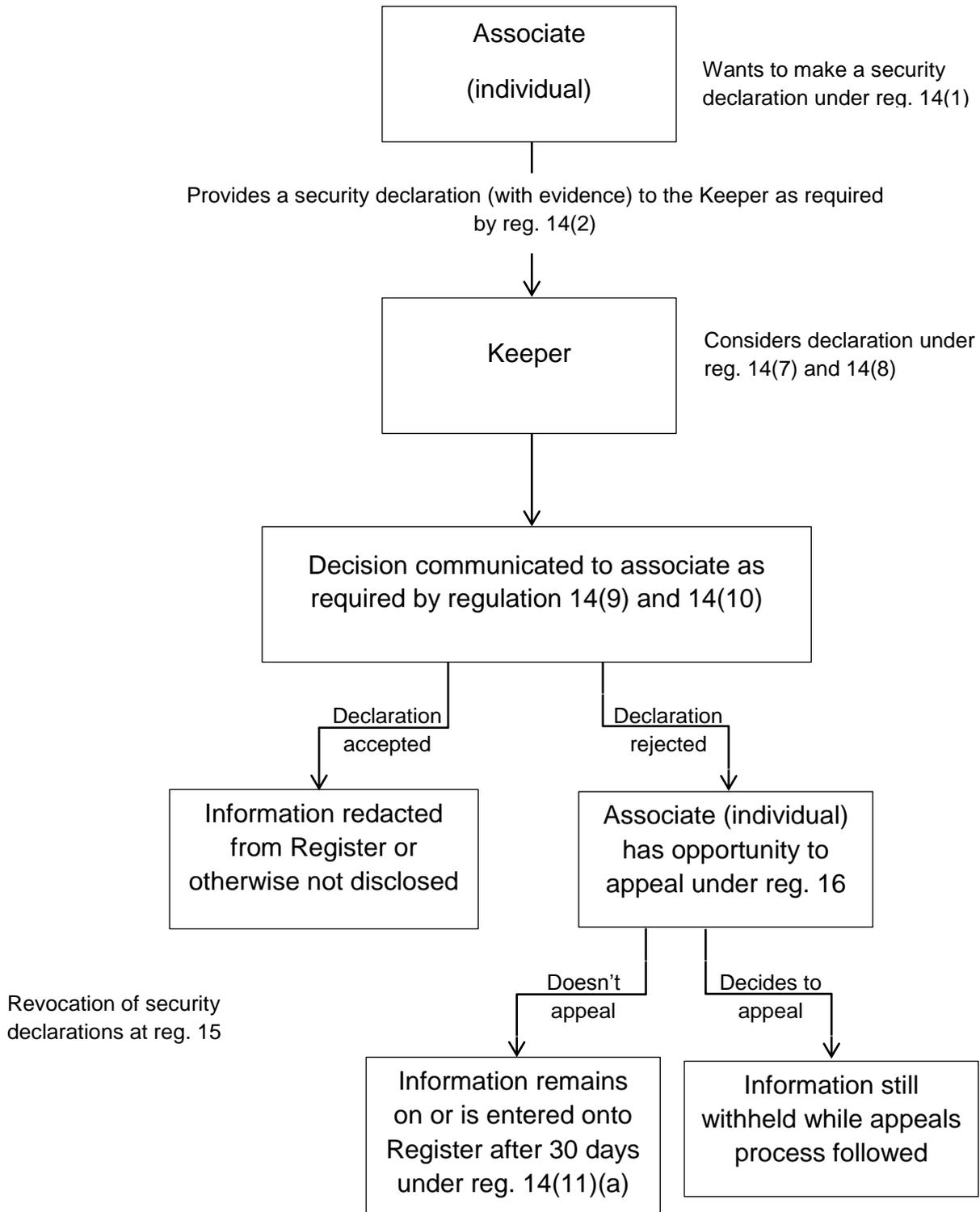
66. Regulation 13 sets out that a person (referred to as "A" in the regulation) who is contacted by a person under regulation 8(4) (that is, a person who may become a recorded person) must either confirm that they are an associate and that their details are correct, make a security declaration or inform the person that they are not an associate.
67. Regulation 13(3) and (4) sets out that if the details of an associate as recorded in the Register require to be changed, or if a person ceases to be an associate of a recorded person, then the associate or former associate must inform the recorded person of the change as soon as reasonably practicable.
68. Regulation 13(5) and (6) sets out that if a person receives a request under regulation 10(3) they must confirm the accuracy of their required information or provide the correct information if necessary. This will usually apply to existing or former associates. An offence is committed if these requirements are not complied with and the penalty is the same as that imposed under regulations 8 and 10 (i.e. a fine not exceed level 5 on the standard scale (currently £5000)).

Security Declarations

69. Regulations 14 to 16 set out details for the making and revocation of security declaration, and for appeals against decisions about security declarations. The right to make a security declaration contained in these regulations is intended to ensure that no-one is put at serious risk of violence, abuse, threat of violence or abuse or intimidation through the inclusion of their information in the Register. For example, this would be a mechanism by which victims of domestic abuse can prevent their information being disclosed in the Register. This mechanism is also intended to be suitable for use by persons who are at risk in relation to a position they hold which is relevant to the Register. This may be a refuge worker who would be registered as an associate as result of their position within the unincorporated association which runs the refuge.

70. Suitable evidence is required in support of any declaration to ensure that only legitimate declarations are accepted. Suitable evidence is set out in Schedule 3 of the Regulations. Schedule 3 lists a number of orders, interdicts, injunctions and measures that can support a security declaration. It also lists persons who can sign an attestation which can support a security declaration. The evidence listed in Schedule 3 reflects that used to determine whether a person is eligible for anonymous voter registration. That process is similarly focussed on individuals subject to risk.
71. In certain limited circumstances the evidence listed in Schedule 3 may not be reasonably obtainable. For example, where persons who are subject to risk as a result of another person being registered as an associate, such as a refuge worker in the example above, the evidence at Schedule 3 may not be suitable because of its emphasis on personal risk. In such circumstances regulation 14(4)(b) provides that the Keeper may consider such other evidence as she considers appropriate.
72. Regulation 14 sets out that an associate who is an individual can make a security declaration if they, or someone connected with them, would be put in danger if any or all of their required details were made publicly available in the Register. Regulation 14(2), (3) and (4) set out what must be provided in the declaration and that the declaration must be provided to the Keeper and to the recorded person. The evidence required to support the declaration is set out in Schedule 3. Regulation 14(6) sets out that the security declaration ceases to have effect if evidence is not supplied to the Keeper within 60 days of the notification.
73. The purpose of 14(5) and (6) is to allow sufficient time for individuals to obtain and provide the required evidence, while not providing an open ended time period for doing so.
74. Regulation 14(12) sets out that a security declaration takes effect on the day on which the declaration is received by the Keeper. They cease to take effect on the day that the declaration is revoked (under regulation 15) or 30 days after a decision of the Keeper that the security declaration should not apply. Where the Keeper has decided that a security declaration should not apply, regulation 16 provides that an applicant may appeal that decision to the Lands Tribunal. If the decision is upheld the declaration would cease to have effect 30 days after the determination of the appeal.
75. The process for making a security declaration is set out in the diagram below.

Diagram 2 - Security declarations



Revocation of Security Declaration

76. Regulation 15 sets out that an associate may revoke his or her security declaration at any time by giving notice to the Keeper.
77. Regulation 15(2) requires that a security declaration must be revoked if:
 - it is no longer required under Regulation 14(1); or,
 - the evidence required under Regulation 14(2)(a) has not been obtained.
78. It is an offence carrying a penalty (as explained in relation to regulation 18) if the associate fails to comply with their duties to revoke.
79. The purpose of this Regulation is to ensure the Register is as up to date as possible, and that people do not continue to have their required information withheld from the public should the serious risk to them pass.

Appeals against decisions about security declarations

80. Regulation 16 provides that an associate may appeal to the Lands Tribunal for Scotland against a decision by the Keeper in relation to a security declaration which they have made. Paragraph (2) provides that the appeal must be lodged with 30 days of the date of receiving notice that a security declaration has been refused. The grounds of the appeal must be based on a fact or a point of law and paragraph (3) provides that they must be sent to the Keeper within seven days of the appeal date. On receipt, the Keeper must note the appeal in the Register. The note must be removed when the appeal is determined. The Keeper must give effect to a determination of the Lands Tribunal under regulation 16.
81. The purpose of this regulation is to ensure that people who do not agree with the Keeper's decision on a point of fact or law are able to appeal it, and that their appeal is considered by an objective and authoritative 'third party', i.e. the Lands Tribunal for Scotland. The Lands Tribunal is the regular point of appeal in relation to decisions of the Keeper regarding other registers.

Part 4 – Miscellaneous

Referrals

82. Regulation 17 provides that a person who believes that there is an inaccuracy in the Register may refer it to the Lands Tribunal for Scotland for determination. A person may also refer questions of what is needed to rectify an inaccuracy in the Register. This is without prejudice to any other recourse people may have.
83. Regulation 17 ensures that persons who believe that information in the Register is not correct have sufficient recourse to have the issue considered and if required the information corrected. It also helps maintain the accuracy of the Register.

Offence of giving false or misleading information

84. Regulation 18 makes it a criminal offence to knowingly or recklessly make a materially false or misleading statement relating to, or intentionally and recklessly fail to provide, the information required for the documents listed in regulation 18(4).
85. Regulation 18(3) provides that a penalty on summary conviction is a fine not exceeding level 5 on the standard scale i.e. up to £5,000.

Defence to false or misleading information offences

86. Regulation 19 sets out that regulation 18 does not apply if the accused took all reasonable precautions or exercised all due diligence to avoid committing the offence. Regulation 19(2) sets out that this defence is established if the accused relied on information supplied by another person and did not know or had no reason to suppose that the information was false or that not all the information had been disclosed. An example of this may be a recorded person who is provided with inaccurate information by an associate. Regulation 19 is intended to ensure that those who unknowingly or unintentionally committed an offence under Regulation 18 are not unfairly punished for it.

Individual culpability where organisation commits offence

87. Regulation 20 sets out that where an individual holds a certain position in a specified organisation, and the organisation has committed the offence, the individual may also be held culpable and be subject to the same penalty as an individual who committed the offence would be. Regulation 20(1)(b) sets out that this would be the case where the individual has consented or connived in the commission of the offence, and where their neglect has caused the offence to be committed.

Rationale for offences and penalties

88. The Regulations set out that knowingly or recklessly failing to comply with the information duties associated with the Register is a criminal offence. This is intended to deter and counter persons who are deliberately evading disclosure of certain information in the Register. It is not intended to criminalise persons who have made genuine errors.
89. Section 39(4)(b) of the Land Reform (Scotland) Act 2016 provides that for any criminal offences proposed in the Regulations, the maximum penalty for those offences must be a fine, which must not exceed level 5 on the standard scale (£5,000). This is proposed to be the maximum penalty in the Regulations.
90. The Regulations do not propose civil penalties or making compliance with the Regulations a pre-condition of land registration.

Notification of Keeper on event of death, winding up or dissolution

91. Regulation 21 requires executors of recorded persons, associates and persons to whom regulation 8 applies to notify the Keeper about the death of any of these persons as soon as reasonably practicable. Similarly those responsible for the assets or liabilities of an entity that is wound up or dissolved must inform the Keeper where the entity is a recorded person, associate or if regulation 8 applies to it. Executors and those responsible for the assets and liabilities of an entity must also provide any further information that is reasonably requested by the Keeper.
92. It is an offence to fail to comply with this regulation without reasonable excuse, liable to a fine not exceeding level 3 on the standard scale.

Specified forms

93. Regulation 22 sets out that the Keeper may specify the forms that are to be used for providing information for inclusion in the Register. Accordingly, references in the Regulations to a “specified form” refer to a form which the Keeper may specify for the given purpose.

Part 5 – Application and transitional provisions

Application of these regulations

94. Regulation 23 sets out that these regulations will come into force from 1 April 2021. It also provides for a six month transitional period when owners and tenants in land, and their associates, should provide the required information to the Keeper as set out in the regulations. However offences for failure to comply with those duties will not come into force until 1 October 2021.
95. As this is a new register, this transitional period is to allow for any technical challenges that may arise or for issues that persons may find in gathering the information required for the Register, and in completing and providing the required information, to the Keeper. It is expected that all owners and tenants of land, and their associates, will have fulfilled their duties under the regulations from 1 April 2021 and may be subject to the criminal offences if they have not done so by 1 October 2021.

CHAPTER 2

Who we are seeking to register – Schedules 1 and 2 of the Regulations

96. Schedules 1 and 2 of the Regulations set out the persons to be registered as ‘associates’ in the Register. Schedule 1 identifies who is an ‘associate’ for each category of in-scope entity to which the Regulations apply. Schedule 2 sets out the entities that are subject to other transparency regimes and to which the duty in regulation 8 to provide details of controlled interests and associates does not apply.
97. The Regulations take account of existing legislation around transparency of land ownership – including land registration in Scotland – and corporate transparency including, for example, the UK people with significant control register.

Corporate Transparency – People with Significant Control

98. As set out in the previous consultation on a Register of Controlling Interests of June 2016, the people with significant control (PSC) register established in June 2016 under Part 21A of the Companies Act 2006 provides a great deal of information about persons exercising control of entities which may own land in Scotland. The PSC register, which is held by Companies House, is a valuable resource when seeking information about control over decision-making in relation to land.
99. The PSC register covers:
- UK companies;
 - Limited Liability Partnerships (LLPs);
 - Scottish Limited Partnerships (SLPs);
 - Societas Europaeae; and
 - Scottish general partnerships where all the general partners are limited companies.
100. Where one of these entities is the legal owner or tenant of land in Scotland, their legal form should be identifiable from the Land Register or Register of Sasines. Companies House maintain a register of company names so they cannot be duplicated. Searchers can use the information in the Land Register or Register of Sasines to access the information about that entity in the PSC register via the Companies House website.
101. The PSC regime was established by the UK Government to address the “problem of corporate opacity” and “tackle the misuse of companies”³.

³ <https://hansard.parliament.uk/Commons/2016-01-27/debates/16012748000006/RegisterOfPeopleWithSignificantControl?highlight=%22people%20with%20significant%20control%22#contribution-16012748000009>

102. The PSC regime means that:
- Entities within its scope must investigate their ownership chains to identify their PSCs;
 - A person can be registered as a PSC if they meet one or more of the five conditions in relation to the entity. The conditions are based on: shareholdings, holding voting rights, having the right to appoint or remove the persons in charge of the entity, or otherwise being able to exercise significant influence or control over the entity;
 - The entity should then contact these people, or others who might know them, to confirm whether they meet one or more of the conditions and, if they do, to provide the required information (the required information includes their name, month and year of birth, address) for inclusion in the entity's PSC register;
 - Prospective PSCs must respond to requests for information;
 - The information must then be added to the entity's own PSC register and filed at Companies House to be made available on the central public register; and
 - Where there are changes in the information to be registered the entity must update the register with Companies House within 28 days.
103. Since the PSC register was created in June 2016, more than 4.7 million PSCs have been entered onto the Register. Companies House statistics indicate that they currently have a compliance rate of 98% and they continue to work to improve this.
104. The PSC regime is a significant step forward in terms of corporate transparency in the UK. It is easy to use and free to access. The Regulations seek, to a large extent, to avoid duplicating the information already publicly available in the PSC register, and avoid replicating the work that has gone into creating and maintaining it. The Regulations require certain basic information to be provided about such entities if they are associates of an owner or tenant of land, but the Regulations generally do not require investigation of the ownership of the types of entity listed in Schedule 2.

Identifying an 'associate'

105. The ability or right of a person to control or direct the decision-making of an individual or entity which owns or tenants land determines whether they are an 'associate' for the purposes of the Regulations. This ability or right is set out in detail in the different parts of Schedule 1, and varies dependent on the nature of the entity.

Contractual or other arrangements with an individual

106. Part 1 of Schedule 1 concerns persons with contractual or other arrangements with an individual.

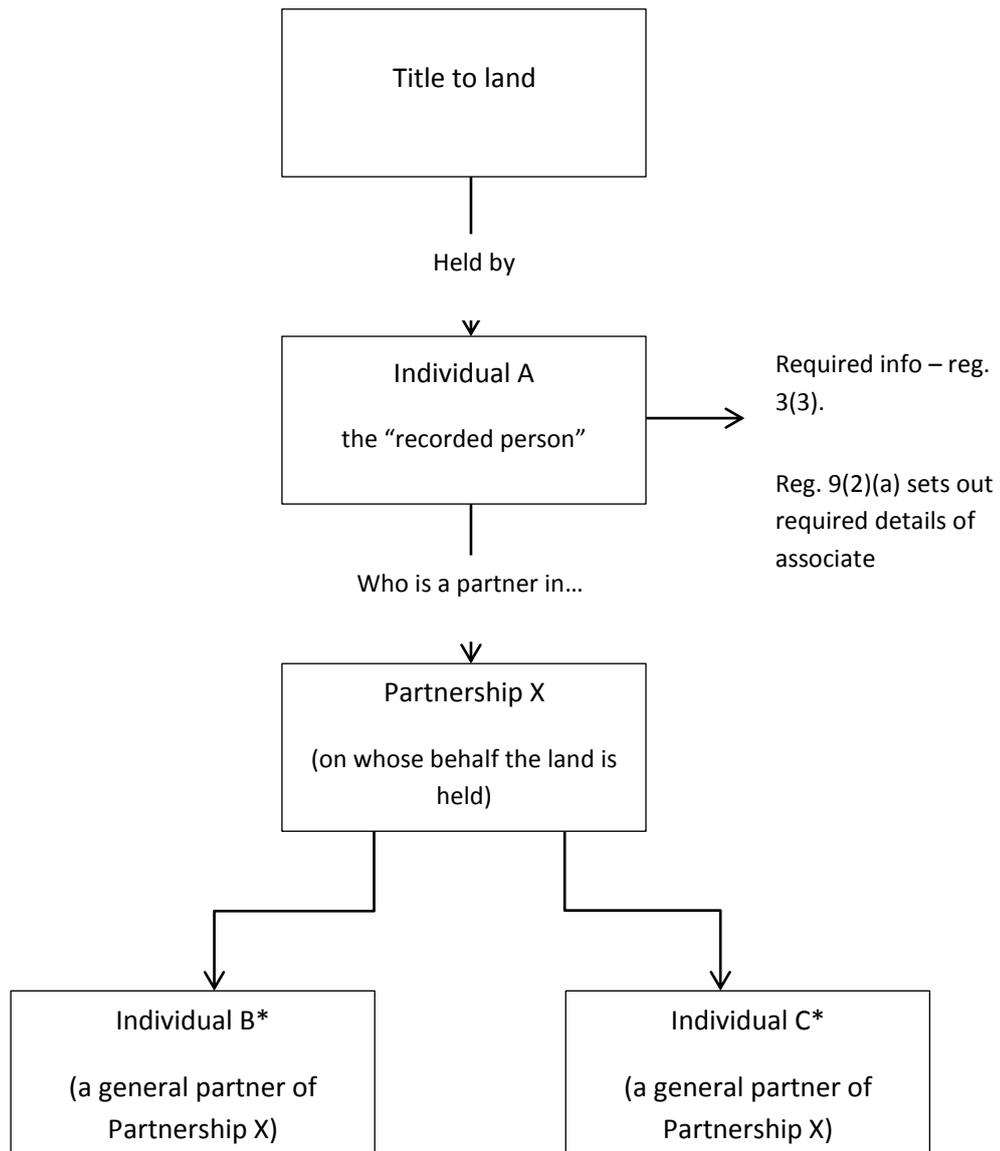
107. In some cases individuals may own land as a result of a contractual arrangement in which they own it on behalf of another person. It is understood that this formulation is unlikely to be particularly common as such a relationship would more usually be subject to a trust agreement. This sort of contractual arrangement could be made on a nomination or on an agency basis.
108. The Regulations are not intended to impact upon owner-occupier situations in which only one party is registered as the legal owner of the land e.g. a couple where only one party is the legal owner etc. It is also not the intention to capture straightforward leasing arrangements or mortgaging practices.
109. Paragraph 1 of Schedule 1 sets out that this Part applies to situations where a person has entered into a contract or other arrangement with an individual who is the owner or tenant of the land, so that the land is owned or leased on the person's behalf or so that they have the right to exercise or actually exercise significant influence or control over the individual's dealings with the land.
110. Paragraph 2 sets out that this part does not apply where:
- The contract or arrangement between the individual (owner or tenant) and the person is one to which another Part of Schedule 1 applies. This would exclude, for example, trust arrangements as these are covered elsewhere;
 - The person's relationship to the individual (owner or tenant) is that of a creditor only. This would exclude banks or building societies from being registered as associates having granted a mortgage to an individual; or
 - The person is the landlord of the individual. In this situation the landlord will be registered as the legal owner of the land in the Land Register or Register of Sasines. Where the landlord is themselves subject to control, information about this will be available in the Register or elsewhere.

Partnerships

111. Part 2 of Schedule 1 concerns land held by, or on behalf of, partnerships.
112. Scottish partnerships where all the partners are limited companies, SLPs and LLPs are all required to report information to the people with significant control register (PSC). There are, however, no equivalent reporting requirements on Scottish partnerships where at least one partner is an individual or on general partnerships governed by English law.
113. Partnerships under English law do not have legal personality and therefore cannot be the legal owner of land or holder of a lease on their own behalf. Scottish partnerships do have legal capacity and can own the land directly. It is understood that they usually do not hold title to land directly and instead one or more of the partners will typically hold the land in 'trust' for the partnership. English and Scottish partnerships are therefore treated in the same way in these Regulations.

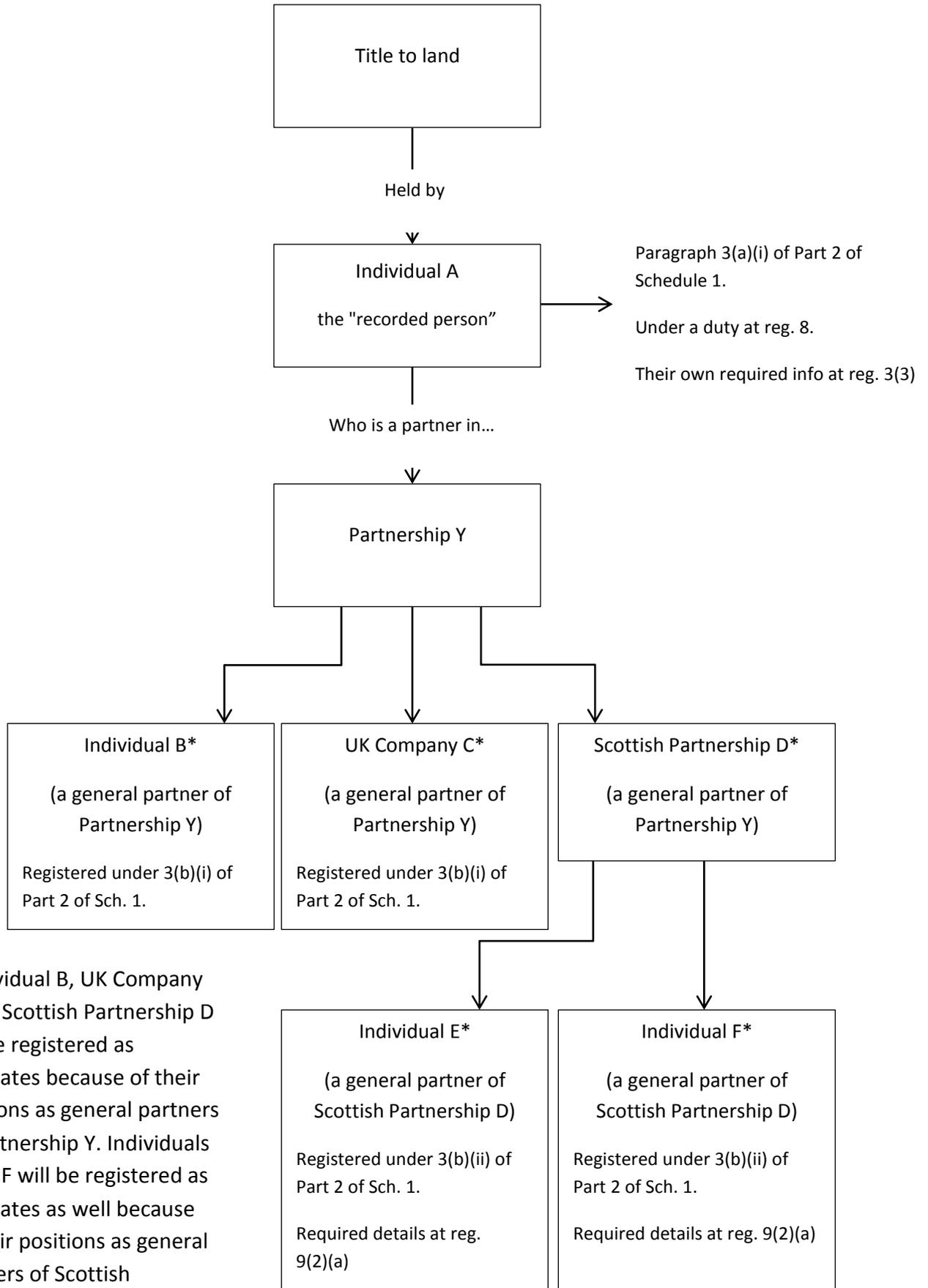
114. Where one or more of the partners holds the land in trust for the partnership, those partners will be recorded as the legal owner of the land. The trust relationship by which the land is held may not be apparent from the Land Register. The connection of the legal owner and the land in question to the partnership may not therefore be discernible from the Land Register either.
115. Although Registers of Scotland systems allow partners to register their title as trustees on behalf of the, and include the name of the partners in the Land Register entry as trustees, this is not a requirement. It is also not required for such an entry to be updated to reflect changes in the makeup of the partners or trustees.
116. Paragraph 3(a) of Schedule 1 sets out that this Part applies where a person who owns or leases land does so as a partnership or on its behalf, or is a partnership. This only applies where the partnership in question is a Scottish partnership where at least one partner is an individual or a general partnership governed by English law.
117. Paragraph 3(b) sets out that an associate in respect of such an owner or tenant is a person who:
- (i) is a general partner of the recorded person, but is not registered as owning or leasing the land;
 - (ii) is a general partner of another partnership which is (of itself) a partner of the recorded person;
 - (iii) is an individual who has significant influence or control over a relevant entity which is a partner of the recorded person; or
 - (iv) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or a partnership in which the recorded person is a partner. This is defined in greater detail below.
118. The following diagrams set out examples of how these proposals will apply where land is owned or leased by or on behalf of a partnership. They illustrate the relationship between the owner or the tenant of the land (who becomes the recorded person) and the persons who can exercise significant influence or control over them (the associates) as set out in Part 2, Paragraph 3(a)(i) of this Schedule. The diagrams also note the duties that apply to the owner or tenant as a recorded person and the associates.

Diagram 3 – Partnerships 1



* Both Individual B and Individual C will be registered as associates under paragraph 3(b)(i) of Part 2 of Schedule 1 because of their positions as general partners

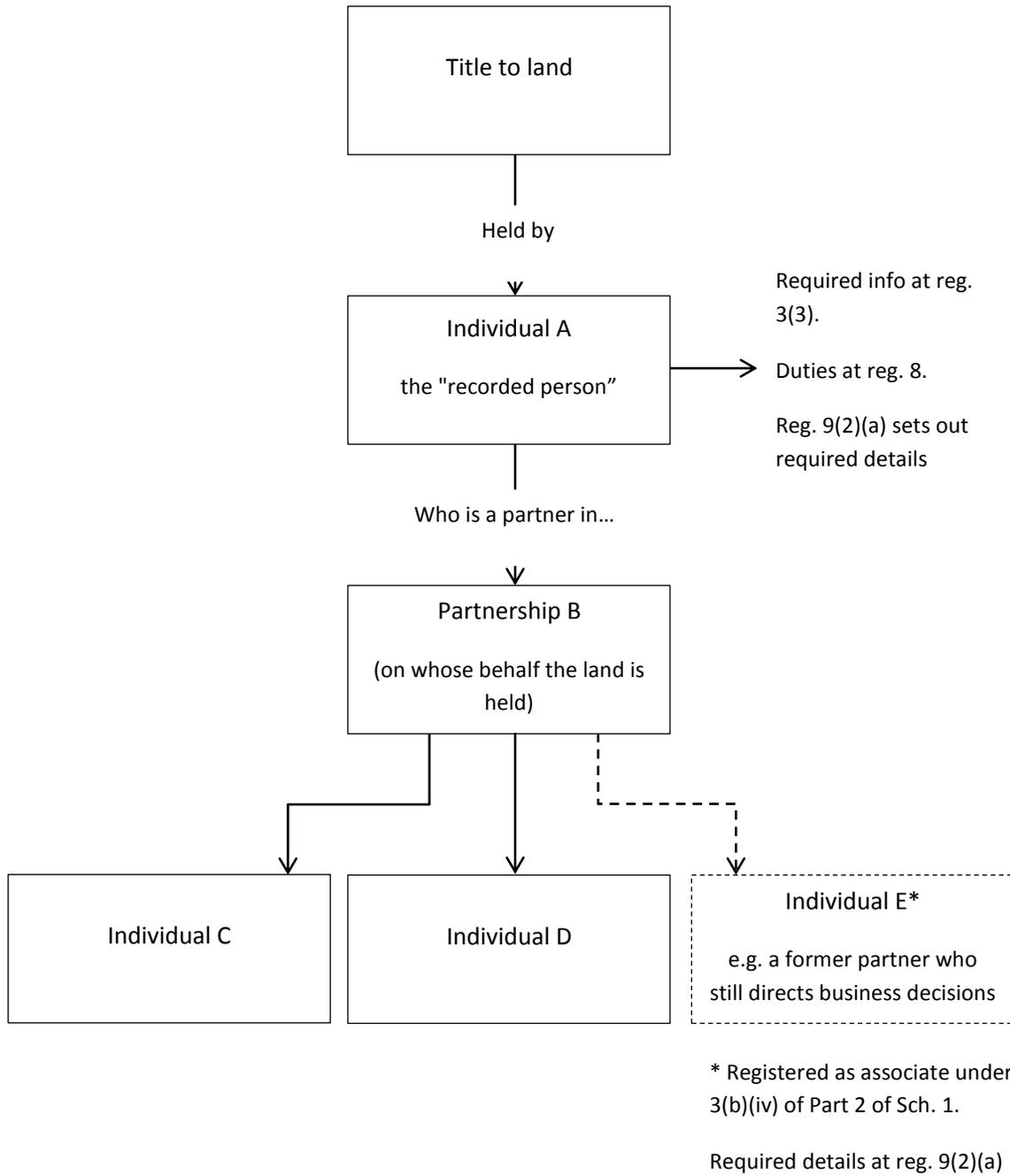
Diagram 4 – Partnerships 2



* Individual B, UK Company C and Scottish Partnership D will be registered as associates because of their positions as general partners of Partnership Y. Individuals E and F will be registered as associates as well because of their positions as general partners of Scottish Partnership D.

119. Paragraph 4 of Schedule 1 sets out cases in which this Part does not apply. 4(1) excludes situations where the owner or tenant of the land is a Scottish general partnership where all the partners are limited companies or a Scottish Limited Partnership.
120. The diagram below illustrates how these proposals will capture relationships of significant influence or control not based on a position e.g. as a general partner. This diagram is an extension of diagram 3. As per diagram 3 Individuals C and D would be registered as associates by virtue of their position as general partners.

Diagram 5 – Partnerships 3



121. Paragraph 4(2) sets out the relationships which a person may have to a partnership, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases control remains with the partners and persons identified above. This is because the inclusion of such persons in the Register would blur users understanding of the situation whilst placing an additional burden of reporting on persons not considered to have a controlling interest. It may be possible for such people to nonetheless meet the conditions to be considered an associate should they meet other conditions in addition to the role defined in 4(2).
122. Paragraph 5 sets out the definition of ‘general partner’ and ‘relevant entity’ for the purposes of this Part. Paragraph 5(c) sets out that examples of significant influence or control include persons who:
- (i) Have the right to unilaterally take or veto decisions about the governance or running of the partnership.
 - (ii) Have the right to appoint or remove any of the partners of the partnership.
 - (iii) Are able to influence the decision-making of the partnership without holding a formal governance position within the partnership.
123. This Part proposes that general partners should be registered as associates as they can unilaterally contractually bind the partnership, and they typically can take a significant role in the management of the partnership, decisions about the disposal of its assets and any eventual winding up of the partnership. These activities can all impact upon how the partnership engages with the use or disposal of its assets including land. There is therefore a clear imperative for individuals or communities who wish to engage with a partnership about land to know who the general partners are.
124. The Regulations do not provide for limited partners to be registered as associates, as their status as limited partners is contingent on not being involved in the management of the partnership. Should they involve themselves in management decisions they will lose their status as limited partners. They will therefore not be able to influence how the partnership engages with its assets including land.

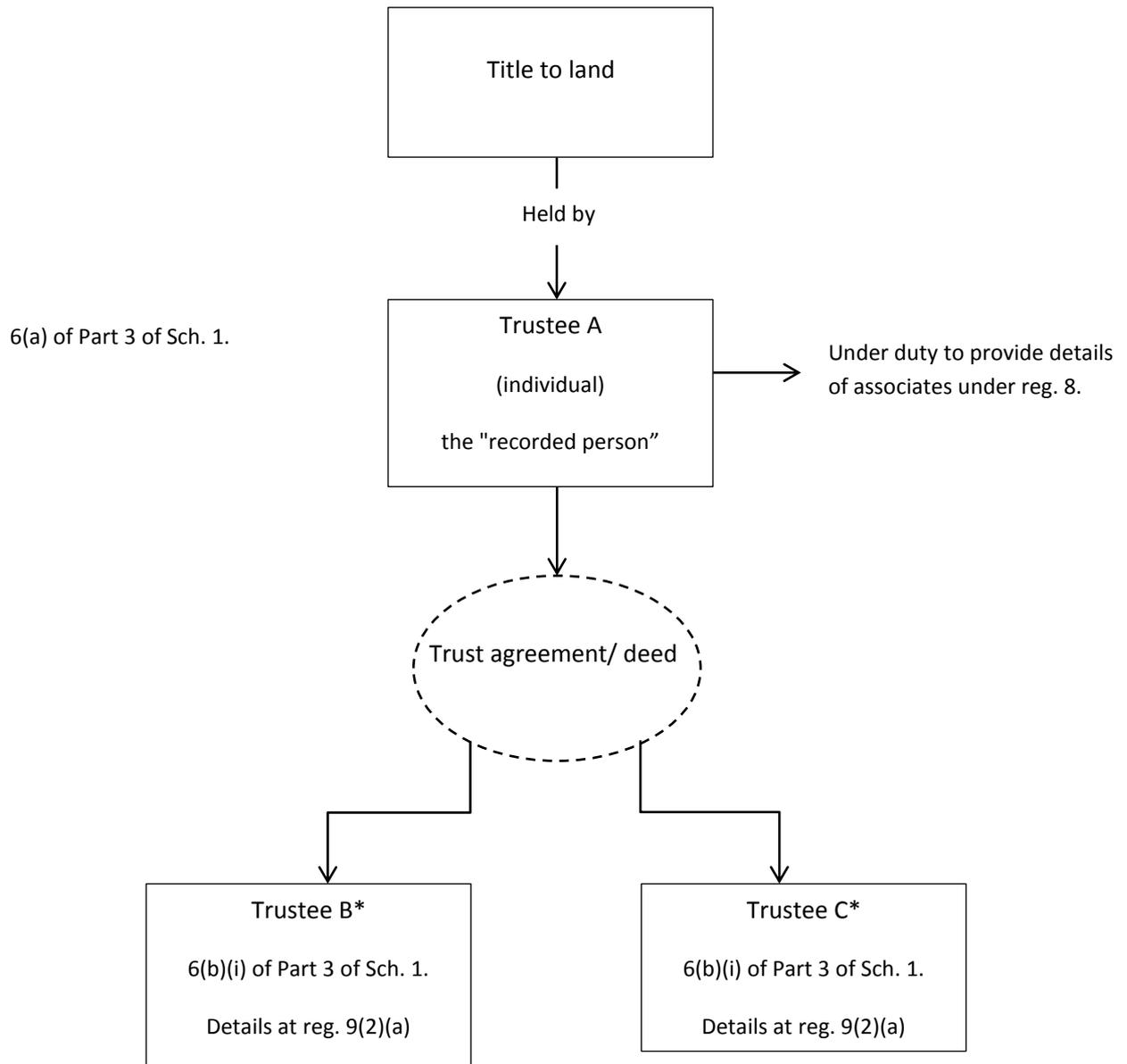
Trusts

125. Part 3 of Schedule 1 concerns land held by a person as a trustee of, or otherwise on behalf of, a trust.
126. Land in Scotland may be held in trust for a variety of reasons. It may be placed in trust to deliver benefits to family members and ultimately to be inherited by a later generation. It may be placed in trust on behalf of a number of investors and to support a commercial venture. Land may also be placed in trust to deliver charitable benefits to a specific group or to the population at large.

127. Where land is placed in trust in Scotland there are typically several elements present:
- The *truster* who is placing the assets (in this case the land) into trust.
 - The *trustees* who become the legal owners of the assets.
 - The *trust deed* which sets out the assets to be placed in trust and makes any additional specification about the powers of the trustees or governance of the trust etc.
 - The *beneficiaries* who receive certain benefits as set out in the trust deed. This may include a wide group of people (such as a local community) who are to benefit from a charitable trust, or a family member who is to benefit from land placed in trust by a relative.
128. In the Land Registers of Scotland, land that is held in trust will record the trustees as the legal owners of the land as a result of their position as a trustee. Where this is recorded, the Land Register title may not be updated to reflect changes in the trustees. For example, title may be recorded in the name of “The trustees of Mr Smith and their successors in office”. Where the trustees are named the Land Register will show their names and addresses and the title may be updated to reflect changes in the trustees will apply. A Land Register title may also show the individual or entity on whose behalf they hold the land. This is not, however, a legal requirement and it is not clear how common this is.
129. The Land Register may also not be updated to reflect changes in the trustees. For example, if Ms Smith is the legal owner of a piece of land as a result of their position as a trustee, the Land Register may show the legal owner as ‘Ms Smith and her successors in office’. If Ms Smith is no longer a trustee having been replaced by Mr McDonald, that will not be apparent from the Land Register unless an update is requested.
130. Trustees are under fiduciary duties to act in the interests of the beneficiaries. These duties will guide and influence their decision making. The trust deed may also make requirements of the trustees and thereby influence their decision making. For example, it may specify that a certain piece of land is to be kept as a garden in perpetuity, or that a building must continue to fulfil a certain role.
131. The trust deed will also not generally be publically available.
132. Once the trust is constituted, there may be no further engagement between the truster and the trustees, and the truster is not normally one of the beneficiaries.

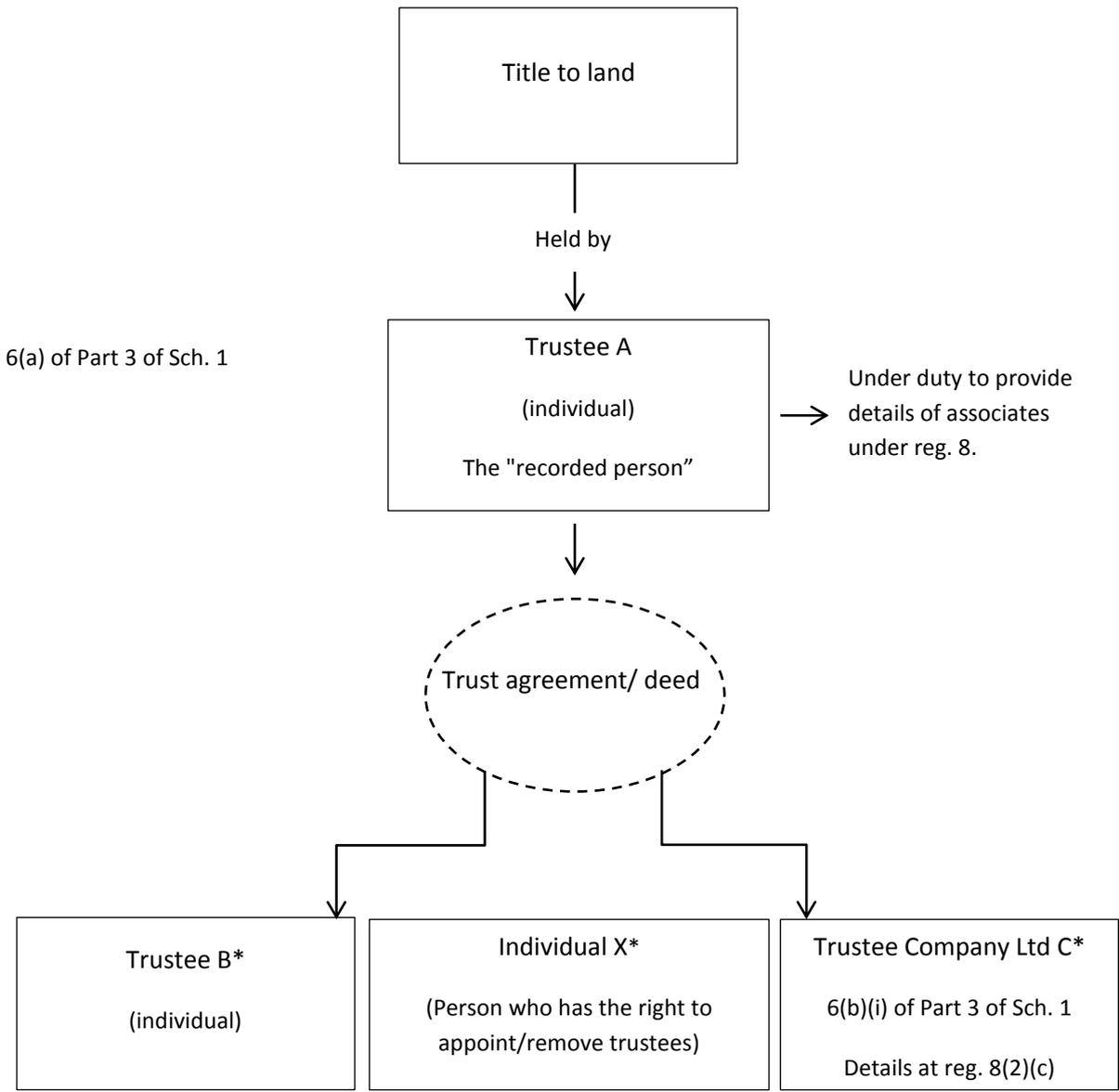
133. This is the typical arrangement used for trusts constituted under Scots law and, it is understood, for trusts constituted under English law as well, although there are differences between Scots law and English law in relation to trusts. There may be some variation in these arrangements across trusts constituted in other jurisdictions and the proposed Regulations are accordingly designed to be able to address a range of potential formulations. There are concerns that trusts can be subject to very unusual structures including truster-as-beneficiary trusts, or that nominee trustees can be put in place to obscure the retention of control by the truster.
134. Part 3 of Schedule 1 is intended to be applicable to trusts constituted under Scots law, English law and the law of other jurisdictions. They are also intended to apply equally to public, private and charitable trusts.
135. Paragraph 6(a) of Schedule 1 sets out that this Part applies where a person owns or leases the land as a trustee of, or otherwise on behalf of, a trust. Paragraph 6(b) sets out that an associate in respect of a trustee is a person who:
- (i) Is a trustee of the trust, but is not registered as being the owner or tenant of the land;
 - (ii) Is an individual who has significant influence or control over a relevant entity which is a trustee of the recorded person,
 - (iii) Is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or the trust. This is expanded on in paragraph 8.
136. The diagrams below illustrate the relationship between the owner or tenant of the land (who will be the recorded person) and their associates as apply to trusts.

Diagram 6 – Trusts 1



* Associates

Diagram 7 – Trusts 2



* Associates

137. Paragraph 7 sets out cases in which this Part does not apply. Paragraph 7(1)(a) excludes situations where the owner or tenant of the land owns or leases the land as a trustee of a trust created for the purposes of insolvency or sequestration. This is because the trust has been created for a specific, known purpose and the trustees will be subject to legally binding duties to take certain decisions. Such a situation will only persist for a limited time until the trustees have discharged their legal duties. Paragraph 7(1)(b) excludes situations where the owner or tenant of the land does so on behalf of a partnership. In that case Part 2 of Schedule 1 would apply.
138. Paragraph 7(2) sets out the relationships which a person may have to a trust and on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases control remains with the trustees and persons identified above. The inclusion of such persons in the Register would blur users' understanding of the situation, whilst placing an additional burden of reporting on persons not considered to have control over the owner or tenant. It may be possible for such people to nonetheless to be considered an associate should they meet other conditions specified elsewhere in the Regulations in addition to the role defined in 7(2).
139. Paragraph 8(a) defines 'relevant entity' for the purposes of this Part. 8(b) sets out that examples of significant influence or control include:
- (i) Persons who have the right to appoint or remove a trustee (other than by application to the court). This power may typically be provided for in the trust agreements of commercial trusts.
 - (ii) Persons who have the right to direct the distribution of assets or funds, or to direct investment decisions of the trust. This may also be provided for in a trust agreement.
 - (iii) Persons who have the right to amend the trust deed. We are not aware that this is a common formulation of trust deeds made under Scots law. It may, however, be used in trust deeds made in another jurisdiction to reserve a role for the truster in the running of the trust.
 - (iv) Persons who have the right to revoke the trust. This may include of-age sole beneficiaries of a bare trust who can unilaterally revoke the trust.
 - (v) Persons who can influence the decision-making of the trust without holding a formal governance position within the trust.
140. There can be substantial variation in the powers of individual trustees, and in the governance of the trust, which may be determined by the truster and in the trust deed (as well as the typically variable influence of trustees depending on how many of them take part in a vote). However it is considered that typically all trustees are in a position to influence or control the decision making of the trust.
141. The roles set out in paragraph 8(a) are examples of persons who can influence or direct the conduct of the trust including in relation to land it may own. There is a clear imperative for communities or individuals who wish to engage with a trust in regard to land it owns or tenants to be able to engage with such persons.

142. The Regulations do not require registration of beneficiaries as a matter of course. This is because a purely financial interest does not equate to engagement in the governance of a landowning body or entity. Where the beneficiaries are engaged in the control or governance of the trust then it is expected they would be registered as associates on that basis.

Unincorporated Associations

143. Part 4 of Schedule 1 concerns land held as a trustee of, or otherwise on behalf of, the members of an unincorporated association.
144. Unincorporated associations do not have legal personality and therefore cannot own land in their own right. An unincorporated association is typically a small body that may be a charity or another voluntary or community group. Common examples include village hall associations, sports clubs and faith and belief groups.
145. The Office of the Scottish Charity Regulator, the Scottish Council for Voluntary Organisations, the Scottish Sports Association and other affected stakeholders have contributed to understanding of how unincorporated associations own land and govern themselves. As set out below, there are a number of complicating factors in this area.
146. As unincorporated associations cannot hold title to land in their own name, a trustee or trustees will typically hold the title to land in trust on behalf of an unincorporated association. The trustee(s) will be shown on the Land Register as the legal owners of the land, or as the tenants of a registrable lease. That they are doing so on behalf of the unincorporated association may not, however, be clear.
147. The trustee(s) recorded as the legal owner(s) of the land (the property trustees) may be the persons involved in the governance of the unincorporated association or a subset of them. In other cases the property trustees may be entirely unrelated. Control over the land may be exercised day-to-day by the association itself, but decisions to dispose of the land, for example, would require the agreement of the property trustees. In some situations the property trustees and the management of the association can disagree about decisions relating to the land and the exercise of their respective functions.
148. There are, however, additional complicating factors. In many cases the arrangement itself may not be known by the persons involved in it. For example, some associations have previously understood themselves to be the legal owners of the land. In other cases the original trustees may have historically been appointed *ex officio* i.e. based on their position as the local bank manager or parish priest. The current officeholders may not be aware of their position as a property trustee, or the position itself may have been abolished. There is not currently complete data on the number of unincorporated associations who are active or who are landowners.

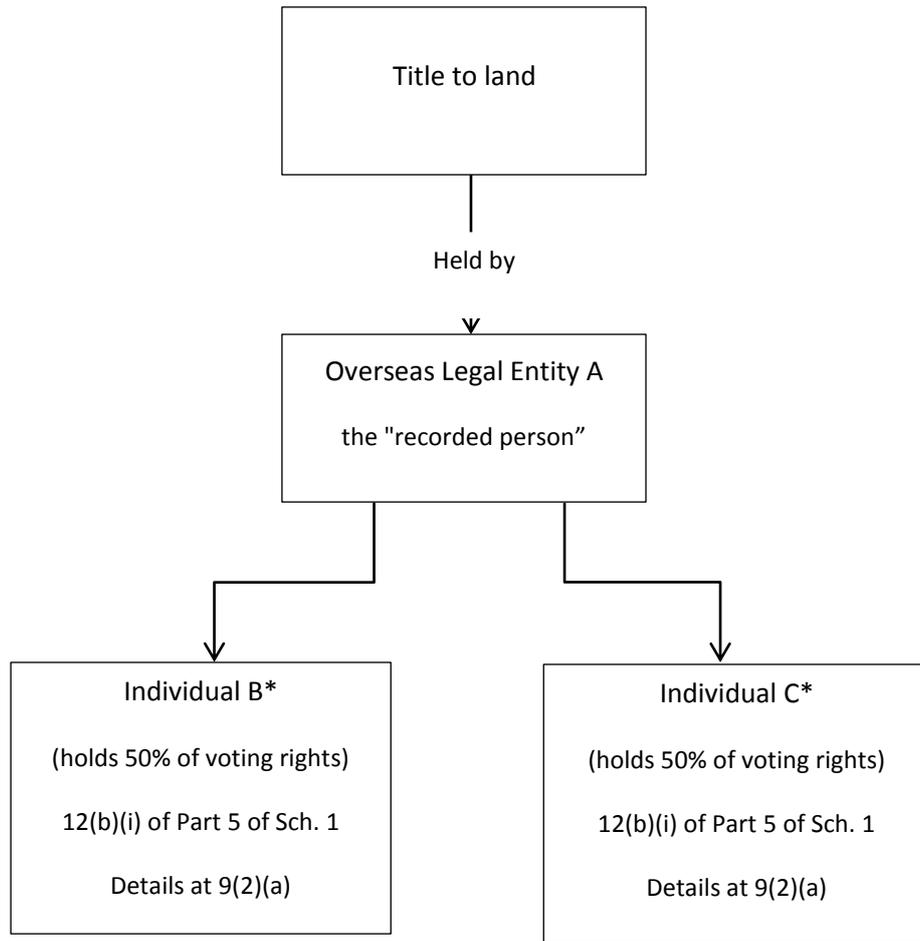
149. Paragraph 9(a) of Schedule 1 sets out that this Part applies when a person owns or leases land as a trustee of, or otherwise on behalf of, the members of an unincorporated association.
150. Paragraph 9(b) sets out that an associate in respect of such a person would be a person who:
 - (i) Is responsible for the general control and management of the administration of the body, and
 - (ii) Is not recorded as the legal owner of the land.
151. Paragraph 10 sets out the relationships which a person may have to a body, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors or creditors. In these cases it is considered that control remains with the persons identified as a result of paragraph 9(b). The inclusion of such persons in the Register would blur users understanding of the situation whilst placing an additional burden of reporting on persons who do not have a controlling interest in the land owner or tenant.
152. Paragraph 11 sets out that a person is responsible for the general control and management of the administration of a body if they hold an office or position (such as chair or treasurer etc.).
153. The effect of these proposals is intended to be that the office holders within the management committee be registered as associates in respect of the unincorporated association. The property trustees would be registered as the recorded person(s).
154. These proposals reflect current understanding of the way in which unincorporated associations function. They are frequently informal and dependant on certain key individuals within it. Unincorporated associations can also be reliant on volunteers and may be subject to regular changes of personnel within management committees or bodies of trustees –this is less likely to be the case within the individuals engaged in the management of the body. These proposals are therefore intended to both deliver increased information but also to be manageable for associations to implement.

Overseas Legal Entities

155. Part 5 of Schedule 1 concerns land in Scotland owned or leased by overseas entities.
156. Overseas entities which own land in Scotland will be recorded as the legal owner of the land or tenant of a lease and their name and registered address will be recorded in the Land Register. This is different to the other situations, such as with trusts, where it is not always clear who is the owner of the land.

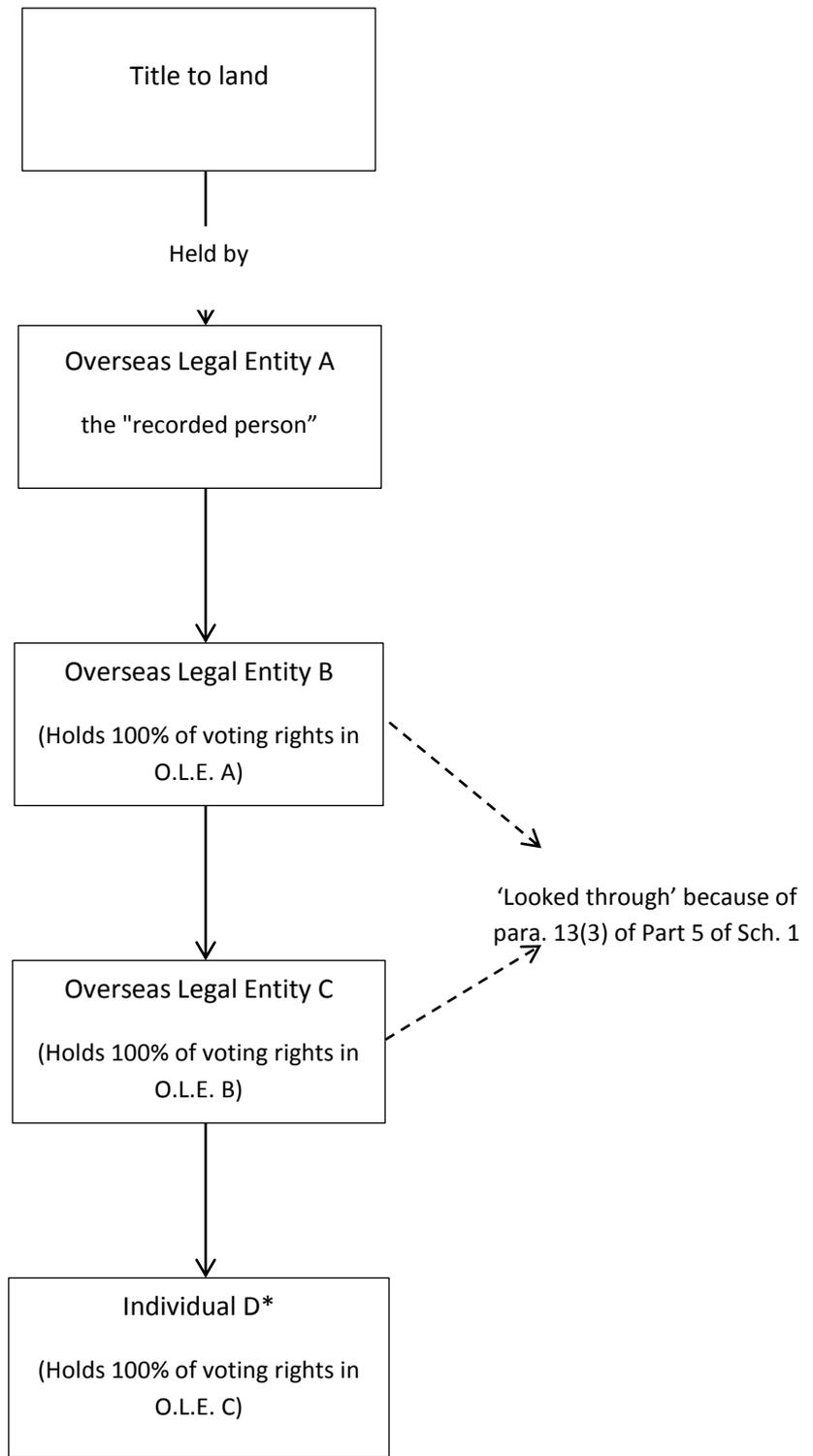
157. Where they are not subject to reporting requirements elsewhere however, that entity may be opaque with no opportunity to identify persons involved in its governance or decision making.
158. Paragraph 12 of Schedule 1 sets out that an associate in respect of an overseas legal entity be a person who:
- (i) Directly or indirectly holds more than 25% of the voting rights in the recorded person,
 - (ii) Directly or indirectly holds the power to appoint or remove a majority of the board of directors of the recorded person (or if it doesn't have a board, the equivalent management body),
 - (iii) Has the right to exercise, or actually exercises, significant influence or control over a partnership or unincorporated body which is not a legal entity or a trust, but in respect of which paragraphs (i) or (ii) would apply if the partnership, body or trust were an individual, or
 - (iv) Otherwise has the right to exercise, or actually exercises, significant influence or control over the decision-making of the recorded person, particularly in respect of its dealings with the land. This is defined in more detail below.
159. These conditions have been previously used in the EU 4th Anti-Money Laundering Directive, and in the subsequent development of the UK Government's PSC register. They follow the formulation developed by the Financial Action Task Force, of which the UK is a member. This is the internationally accepted best practice for identifying control of corporate entities.
160. The following diagrams illustrate the relationship between an overseas entity who is an owner or tenant of land (who will be the recorded person) and their associates. Diagram 8 shows how the Regulations will apply to straightforward corporate structures. Diagram 9 shows how the Regulations will apply to 'chains' of corporate ownership.

Diagram 8 – Overseas Legal Entities 1



* An associate

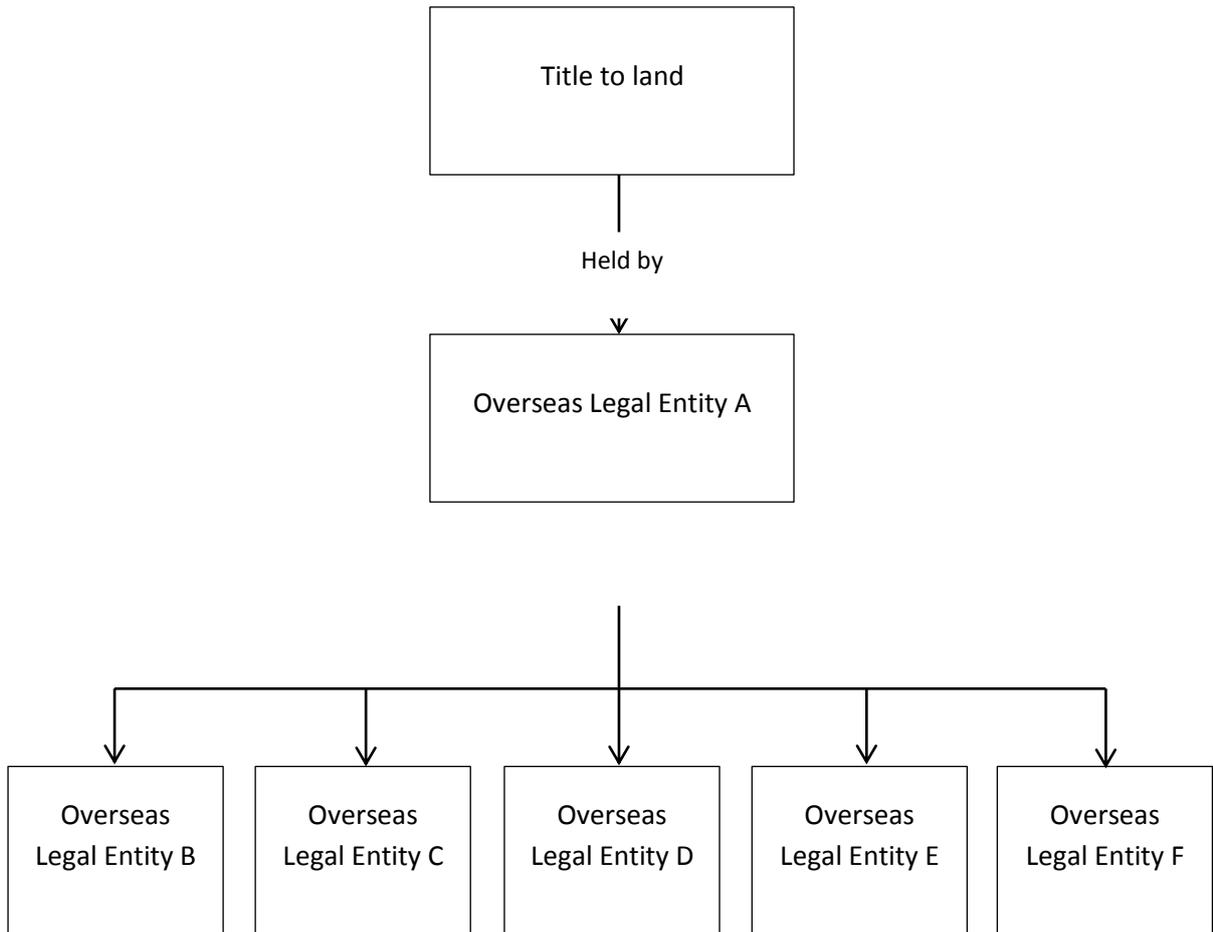
Diagram 9 – Overseas Legal Entities 2



* An associate

161. The Regulations do not propose that persons be registered as associates in respect of their shareholdings for the same reason that it is not proposed to register beneficiaries of a trust. Holding a purely financial interest in land does not in itself equate to control over the land owner or tenant.
162. Paragraph 13(1) of Schedule 1 sets out the relationships which a person may have to an overseas legal entity, on the sole basis of which they cannot be considered an associate. This includes paid professional advisors, employees of the entity or creditors. In these cases it is considered that control remains with the persons identified above and the inclusion of such persons in the Register would blur users understanding of the situation whilst placing an additional burden of reporting on persons not considered relevant. It may be possible for such people to nonetheless be considered an associate should they meet the other conditions in paragraph 12(b).
163. Paragraphs 13(3) and 13(4) set out how the regime will deal with ownership 'chains' – where title to land is held by an overseas entity which in turn is owned by another overseas entity and so on. In this situation 13(3) sets out that where an overseas entity is part of a majority-ownership chain which includes the recorded person, and there is a person other than an overseas entity which would meet a condition in paragraph 12(b) through the overseas entity or the chain, then this Part does not apply to the overseas entity in question. This means that the Regulations would result in the registration of, for example, an individual who owns a succession of overseas companies which ends with the recorded person, rather than the registration of all the engaged overseas companies themselves. It is considered that this better meets the policy goal of increasing transparency as to the persons controlling decision making in relation to land, rather than registering potentially opaque entities without requiring that they disclose the persons controlling their decision making.
164. Paragraph 15 sets out that examples of significant influence or control include in particular where:
- (i) A person has absolute decision rights or absolute veto rights over decisions related to the running of the business of the company;
 - (ii) A person's recommendations are always or almost always followed by shareholders who hold the majority of the voting rights in the company; or
 - (iii) A person is significantly involved in the management and direction of the company.
165. Paragraphs 16 to 26 define terms in relation to this Part.
166. It is recognised that there will not always be an individual behind an overseas legal entity which owns land in Scotland. Diagram 10 sets out a structure which may have this result.

Diagram 10 – Overseas Legal Entities 3



Each has 20% voting rights in Overseas Legal Entity A

= no associates to be registered

= no entry in the Register of Controlling Interests

i.e. Overseas Legal Entity A is not a recorded person with no duties under reg. 8.

Schedule 2

167. Schedule 2 lists persons subject to other transparency regimes who, as set out in regulation 8(2), do not have to double report similar information in the Register of Controlling Interests. This will apply where they are the owner or tenant of land. Entities listed in Schedule 2 may still be recorded as associates in respect of a legal owner or tenant of land.

Charitable incorporated associations

168. Paragraph 1 of Schedule 2 sets out that charitable incorporated organisations (CIOs) and Scottish charitable incorporated organisations (SCIOs) are not subject to the Regulations. CIOs are active in England and Wales – SCIOs are their Scottish equivalent. There is no equivalent body provided for in Northern Irish legislation.
169. Scottish Ministers introduced the SCIO legal form in 2011 to allow charities to be incorporated but to be administered and regulated by a single body, OSCR. The Executive Note for the Scottish Charitable Incorporated Organisations Regulations 2011 sets this out: *The SCIO will allow Scottish charities to enjoy the benefits of incorporation, notably limited liability for members and legal personality for the charity, without requiring them to become companies or industrial and provident societies. SCIOs will be registered with and regulated by the Office of the Scottish Charity Regulator (OSCR).*⁴
170. SCIOs are legal entities and so can hold title to land in their own name. Where a SCIO owns land in Scotland the Land Register will show the name of the SCIO and its registered office address. Additionally, it is expected that SCIO names will soon be registered with Companies House which will offer assurance that the proprietor recorded on the Land Register is the same as that entered onto OSCR's register.
171. It is considered that control of SCIOs is generally exercised by the charity trustees. Even in a two-tier structure, where some decision making resides with the members, the trustees still play the key role in governance of the SCIO. Any person can request that the SCIOs provide them with the names and addresses of its trustees. The SCIO then has to do so within 28 days of a request by a third party – this duty is advertised on the SCIOs page on the OSCR website. That list should be updated by the SCIO within 28 days of a change and anyone requesting a copy should be notified of any changes that are still to be made.

⁴ http://www.legislation.gov.uk/ssi/2011/44/pdfs/ssien_20110044_en.pdf

172. On that basis that the information is already publicly available, the Regulations do not require SCIOs to report in the Register. CIOs follow similar structures and accordingly are also not required to report to the new Register.

Companies and other bodies corporate

173. Paragraphs 2(1), 2(2), and 2(3) do not require entities who have to report information to the PSC register to also report to the Register of Controlling Interests
174. As described above, the PSC register applies to: UK companies, Limited Liability Partnerships (LLPs), Scottish Limited Partnerships (SLPs), Societas Europaeae and Scottish partnerships where all the partners are limited companies.
175. The definition of a person with significant control in relation to each category of entity is listed below.

Category of Entity	Definition
UK companies	(i) Directly or indirectly holding more than 25% of the shares, (ii) Directly or indirectly holding more than 25% of the voting rights, (iii) Directly or indirectly holding the right to appoint or remove a majority of directors, (iv) Otherwise having the right to exercise, or actually exercising, significant influence or control, (v) Having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.
LLPs	(i) Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up, (ii) Directly or indirectly holding more than 25% of the voting rights, (iii) Directly or indirectly holding the right to appoint or remove the majority of those involved in management, (iv) Otherwise having the right to exercise, or actually exercising, significant influence or control, (v) Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.
Eligible Scottish partnerships	(i) Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up, (ii) Directly or indirectly holding more than 25% of the voting rights,

	<p>(iii) Directly or indirectly holding the right to appoint or remove the majority of those involved in management,</p> <p>(iv) Otherwise having the right to exercise, or actually exercising, significant influence or control,</p> <p>(v) Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.</p>
Societas Europaeae	<p>(i) Directly or indirectly holding more than 25% of the shares,</p> <p>(ii) Directly or indirectly holding more than 25% of the voting rights,</p> <p>(iii) Directly or indirectly holding the right to appoint or remove a majority of directors,</p> <p>(iv) Otherwise having the right to exercise, or actually exercising, significant influence or control,</p> <p>(v) Having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.</p>

176. The PSC register is intended to reveal ownership and control of corporate entities and has based the above conditions on international best standards in order to do so.
177. Further to this, paragraph 2(9) of Schedule 2 does not require an overseas entity to report if that entity has shares admitted to trading on a regulated market in an EEA state or other markets listed in legislation. Having shares admitted for trading on these markets requires the entity to meet a number of reporting requirements. These requirements are considered equivalent to those set out by the PSC regime. It is therefore considered that the transparency requirements in relation to these entities are already met and there is no policy gain to requiring them to also provide information for our Register.
178. Paragraphs 2(4), 2(5), 2(7) and 2(8) of Schedule 2 set out that mutual societies including cooperatives and community benefit societies will not be required to report where they own land or are a tenant of a registrable lease. This is on the basis of the similar reporting they are required to do to the Financial Conduct Authority for publication in their Mutuals Public Register⁵.

⁵ <https://www.fca.org.uk/firms/mutuals-public-register>

Public authorities

179. Paragraph 3 of Schedule 2 sets out that public authorities to which the Freedom of Information (Scotland) Act 2002 or the Freedom of Information Act 2000 apply will not be required to report. These Acts apply widely to public sector bodies including Ministers, non-departmental public bodies, local authorities and health boards etc. In each of these cases, the control of the organisation will already be transparent through legislation. It is also not clear how, for example, one could usefully define control of land held by a local authority. Additionally, third parties may make use of the Acts to inquire into the activities etc. of these bodies. We would consider that there would accordingly be no policy gain in requiring such persons to register in the Register.

Partnerships other than general partnerships

180. Paragraph 4 of Schedule 2 sets out that an eligible Scottish partnership and a limited liability partnership are not required to report. The rationale for this is noted in the table above.

CHAPTER 3 – THE IMPACT OF THESE PROPOSALS

181. After consideration it has been concluded that the Regulations have no impact on the environment, equality or children’s rights and therefore no Impact Assessments are required for those areas. Declarations stating as such for each have been made.

Privacy Impact Assessment

182. A privacy impact assessment has been prepared and published as an annex to this document.

Business and Regulatory Impact Assessment

183. A partial Business and Regulatory Impact Assessment has been prepared and published as an annex to this document. We will meet with industry representative groups and individual bodies and businesses to carry out a Scottish Firms Impact Test during the consultation period and beyond as required. A full Business and Regulatory Impact Assessment will be informed by the findings of the Scottish Firms Impact Test and the consultation.

Strategic Environmental Assessment

184. Consideration was given to the environmental impact of the regulations. Designed to increase transparency, the creation of the Register is anticipated to lead to better community engagement, stronger relationships and better decisions made in relation to land use. The direct environmental impact of the draft regulations will therefore be minimal.

Equalities Impact Assessment

185. Consideration was given to the impact on equalities of the draft regulations. It has been determined that the draft regulations will not have any impact on people in terms of the protected characteristics: age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief and marriage and civil partnerships and, therefore, a full impact assessment is not required. It was considered whether the disclosure of information in the Register may impact upon vulnerable persons but the proposals for security declarations will enable the non-disclosure of their information as required.

Children’s Rights and Wellbeing Impact Assessment

186. Consideration was given to the impact on children’s rights and wellbeing. Since no-one under the age of 16 can own land there is no impact on them. Some 16 and 17 year olds may have their information disclosed in the Register but such persons can apply for non-disclosure of their information should it be appropriate. It is therefore concluded that no impact assessment is required.

PRIVACY IMPACT ASSESSMENT

1 – Background to the proposal

Background

The background to these proposals, and a summary of them, has been set out in this draft explanatory document.

Benefits

We anticipate benefits accruing in the following areas:

- sustainable development;
- community empowerment;
- regeneration;
- environmental management; and
- housing.

Scope of the PIA

This PIA will consider the policy and legal basis for the creation of the Register of Persons Holding a Controlling Interest in Land (“the Register”). Out of scope are the practical implementation and operation of the Register itself by Registers of Scotland who will conduct their own PIA.

2 – Describe the use and flow of information

Roles and responsibilities

The Scottish Government (SG) will develop the required legislation to establish the new Register.

Registers of Scotland (RoS) will be responsible for the establishment and maintenance of the new Register. This will include the processing of the personal information to be entered onto the Register.

Key Definitions

An ‘owner or tenant’ – the legal owner of the land as registered as the proprietor on the Land Register or whose title to the land is recorded in the Register of Sasines, or the tenant of a registrable lease (i.e. a lease of more than 20 years).

A ‘recorded person’ – an owner or tenant in relation to whom an entry in the Register exists, which records information about one or more ‘associates’.

An ‘associate’ – For the purposes of section 39 of the Land Reform (Scotland) Act 2016, a person has a controlling interest in an owner or tenant of land if the person is an associate of the owner or tenant. Whether a particular person is an associate is determined by reference to the categories of persons described in Schedule 1 of the draft regulations.

The 'Keeper' – the Keeper of the Registers of Scotland.

Scope of Register

All owners/tenants of land should be required to disclose information about their associates i.e. there will be no exemptions based on 'category' or location of land. We have explained the reasoning behind the exemptions that we do propose for certain categories of owners or tenants of land later in this assessment.

We intend the duties proposed in the draft regulations will apply to new owners and tenants of land i.e. persons who have become owners of land, or tenants of a registrable lease after the point at which the regulations come into force. We also propose to apply the duties to existing owners or tenants of land at the point at which the regulations come into force.

The information to be published

The proposals in the draft regulations require that a recorded person's name and address are to be published on the Register

The proposals in the draft regulations require that, in relation to an associate who is an individual, the following personal information is to be provided for publication in the Register:

- The individual's name;
- A contact address for the individual; and
- The individual's month and year of birth.

The inclusion of the individual's name and contact address will enable third parties to be able to correspond with them.

The inclusion of the individual's month and year of birth is necessary to enable them to be differentiated from other individuals of the same name. This enables the extent of an individual's control to be identified across a number of pieces of land, with a high degree of confidence that the registered individual is the same person. Similar registers, such as the UK People with Significant Control (PSC) Register, already disclose the same or additional information about individuals.

Only including the individual's name and address may lead to confusion should the individual in question choose to enter different addresses for publication in respect of themselves as an associate in relation to different pieces of land. Third parties may try to engage with the individual in question in relation to different pieces of land without realising that it is the same individual, or may erroneously believe that the individual is the same individual as an associate in relation to another piece of land.

We propose that owners and tenants be under a duty to verify the information to be published in the Register with their associates, who will in turn be under a duty to respond. This is to ensure that the information published in the Register is accurate at the point of its entry.

Currency of the information

We consider that to meet our policy objective the information in the Register will have to be current. We have therefore proposed that when a change of circumstances occurs that renders the information in the Register out of date the Register is to be updated accordingly as soon as is practicable. This will apply when:

- A person becomes an associate for the first time in relation to an owner or tenant;
- A person ceases to be an associate in relation to an owner or tenant; or
- The particulars of an associate published in the Register change.

There will be a duty on owners and tenants to, where necessary, verify required information with the relevant persons, including whether or not they are an 'associate'. Those persons will then be under a duty to respond within a set period of time.

We consider that this is the most proportionate means of ensuring that accurate information is provided for publication in the Register while providing the persons involved with sufficient time to effect the necessary changes.

Privacy concerns

We do consider that there will be some circumstances in which it will be appropriate that an individual's information not be disclosed in the Register. This is primarily the case where an individual, or an individual connected to them, may be subject to the threat of harassment or violence if their information were to be disclosed in the Register.

We are proposing that individuals who are associates, and who believe that their information should not be disclosed may make a 'security declaration' to the Keeper, either directly or via the relevant owner or tenant, for non-disclosure of their information. It is proposed that a declaration be accepted at the point at which it is made. A declaration will continue to apply while it is considered by the Keeper.

To ensure that this system is not abused, intentionally or unintentionally, to the detriment of the effectiveness of the Register, it is proposed that applications are considered by the Keeper.

Where the Keeper considers that a security declaration should not apply, the relevant associate will have the option of appealing that decision to the Lands Tribunal.

Protection of the information

We have proposed in the draft regulations that the Keeper be under a duty to amend the contents of the Register should she be aware of an inaccuracy. She may be made aware of an inaccuracy by the correspondence of a third party.

Questions about the accuracy of the Register may also be referred to the Lands Tribunal.

Exemptions

Data Protection Act (2018) Schedule 11 3(2)

The listed provisions do not apply to personal data where disclosure of the data is required by an enactment, a rule of law or the order of a court, to the extent that the application of the listed provisions would prevent the controller from making the disclosure.

(3) The listed provisions do not apply to personal data where disclosure of the data—

(a) is necessary for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights,

to the extent that the application of the listed provisions would prevent the controller from making the disclosure.

The draft regulations propose that the Register will be available for public inspection to anyone with a registered account. Personal information in the Register will include an individual's name and address, and their month and year of birth.

The following therefore do not apply:

- the subject information provisions (the data controller does not have to provide privacy notice or respond to subject access requests);
- the non-disclosure provisions (principles 1-5 plus right to object to processing and right to have inaccurate personal data rectified, blocked, erased or destroyed); and
- the organisation's duty to comply with the fourth data protection principle (accuracy).

Publication of the information in the Register is also exempt from principle eight of the DPA (which states that personal data must not be transferred outside EEA without adequate protection). The public register exemption allows for the transfer overseas of personal data on a public register, as long as the person receiving the data complies with any restrictions on access to or use of the information in the register.

For example, RoS can transfer an extract from the Register to respond to an inquiry from outside the UK, but there are no plans to allow for the transfer of a complete copy of the Register.

In addition entities which currently report their persons with significant control (PSCs) to Companies House (as a result of the Small Business, Enterprise and Employment Act 2015) will be exempt from the duty to notify of their associates under regulation 8 of the draft regulations. This means that this duty will not apply to the following entities where they own land in Scotland: UK companies, Limited Liability Partnerships, Societas Europaeae, Scottish Limited Partnerships, and Scottish

partnerships where all members are limited companies.

We are also proposing that Scottish Charitable Incorporated Organisations (SCIOs) and Charitable Incorporated Organisations (the equivalent in England and Wales) be exempt from reporting under regulation 8 of the draft regulations. SCIOs are required to provide the names and addresses of their trustees within 28 days of a request by a third party – this duty is advertised on the SCIOs' page on the OSCR website. That list should be updated by the SCIO within 28 days of a change.

Our proposals will therefore apply to the following bodies, where they own land in Scotland or where land in Scotland is held on their behalf: trusts, Scottish partnerships where at least one partner is an individual, partnerships under English law, overseas entities, unincorporated associations, and persons who are subject to a contractual or other arrangement with an individual.

However, some information about the entities subject to other transparency regimes may appear on the Register, if such an entity (e.g. a UK company) is an associate of a recorded person. In such a case, that associate is required to provide:

- Its name;
- If applicable, a registered number;
- The address of its registered office, or where it does not have a registered office, a contact address; and,
- The paragraph of Schedule 2 of the regulations (list of persons subject to other transparency regimes) that applies to it.

Searchability / Data sharing

Third parties will be able to search the Register via RoS' systems by the following terms:

- A required property description (such as a the Land Register number);
- The name of an owner or tenant; or
- The name of an associate.

Access will be via an online account. There will not be a fee payable to conduct the search.

3 – Consultation

Summary of 2016 consultation

The Scottish Government published a consultation document on 11 September 2016 to seek wider views on new powers introduced by the Land Reform (Scotland) Act 2016 to provide for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland. Responses were invited by 5 December 2016.

58 responses to the consultation were received, 33 from organisations and 25 from individuals⁶.

“Consultation responses raising privacy issues

Question 55: Please tell us about any potential impacts, either positive or negative, upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

“An individual respondent suggested that vulnerable beneficiaries of trusts may be impacted negatively by the proposals in terms of their identities being revealed. A national non-governmental organisation predicted that the proposals may result in a reluctance to buy land due to concerns over the purchasers’ details being disclosed.”

Additional consultation

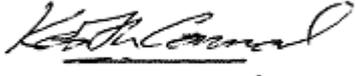
Meetings and consultations have been held with relevant stakeholders, including the Scottish Government data protection team, Registers of Scotland and other key groups and organisations. This Impact Assessment is being published alongside a further public consultation. During that consultation we will seek further views on these issues from stakeholders including examples of the persons, bodies or entities to be affected by these proposals and their representative bodies.

⁶ Both the consultation and responses to it, where consent was given to publish them, can be accessed here: <https://consult.gov.scot/land-reform-and-tenancy-unit/controlling-interests/>. Analysis of responses to the consultation can be accessed here: <https://beta.gov.scot/publications/improving-transparency-land-ownership-scotland-consultation-analysis/>.

4 - Identify privacy and related risks		
Privacy Issue / Risk	Solution or mitigation	Result
Inclusion of personal information (name, address, date of birth) leads to the harassment of those on register	Individuals who are eligible may make a security declaration which will apply during consideration of it. Existing laws against harassment will also offer protection to named individuals.	Reduce such instances to a minimum. Scottish Ministers are responsible for delivery of legislation sufficient to support this result. The legislation governing this will be implemented by RoS.
Veracity of information on register – inaccurate, incomplete or out of date information could lead to confusion, time wasted and a loss of confidence in the Register.	Duties will be placed upon individuals to ensure that the contents of the register are kept up to date. Facility will be created for the Keeper to correct clear errors in the register when she is made aware of them.	Reduce – given the nature of the Register we accept there may always be a degree of inaccuracy. The steps we are proposing are intended to minimise this. Scottish Ministers are responsible for delivery of legislation sufficient to support this result.

5 – Incorporating privacy risks in to planning		
Risk	How incorporated into planning	Responsibility
Inclusion of personal information (name, address, date of birth) leads to the harassment of those on register	Exemption regime has been incorporated into regulations. Additionally, the policy team have examined other register exemption regimes to ensure best practice is followed.	Scottish Ministers are responsible for delivery of legislation sufficient to support this.
Veracity of information on register	Regulations have been drafted to place duty on individual to ensure accuracy of data	Scottish Ministers are responsible for delivery of legislation sufficient to support this.

I confirm that the impact of the draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations has been sufficiently assessed against the needs of the privacy duty:

 Keith Connal, Deputy Director, Natural Resources Division	12/6/2018
---	------------------

PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

<p>Title of Proposal The draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021</p>
<p>Purpose and intended effect</p> <p>Background The background to these proposals is set out in the introduction to this draft explanatory document.</p> <p>Objectives The objectives of these proposals have been set out in this draft explanatory document</p> <p>The creation of the Register of Controlling Interests will deliver this increased transparency and will comply with Part 3 of the Land Reform (Scotland) Act 2016; namely, in Section 39:</p> <p>(1) The Scottish Ministers must by regulations make provision—</p> <p>(a) requiring information to be provided about persons who have controlling interests in owners and tenants of land, and</p> <p>(b) about the publication of that information in a public register kept by the Keeper of the Registers of Scotland.</p> <p>Rationale for Government intervention The rationale for these proposals is set out in the introduction of this draft explanatory document.</p> <p>The proposals are anticipated to provide benefits which contribute to the following National Outcomes:</p> <ul style="list-style-type: none"> • We live in communities that are inclusive, empowered, resilient and safe. • We value, enjoy, protect and enhance our environment. • We tackle poverty by sharing opportunities, wealth and power more equally.
<p>Consultation</p> <ul style="list-style-type: none"> • Within Government We have consulted across Scottish Government agencies, directorates and enforcement bodies including Registers of Scotland and the Lands Tribunal for Scotland. • Public Consultation An initial consultation ran from September to December 2016. This Impact Assessment is being published alongside a second formal public consultation which will be open until 8 November 2018.

- **Business**

Policy officials will engage further with businesses and representative organisations during the public consultation and beyond as required. This engagement will inform completion of a Scottish Firms Impact Test.

Options

Option 1 - create a new register (The Register of Persons Holding a Controlled Interest in Land)

To comply with Part 3, Section 39, of the Land Reform (Scotland) Act 2016, a new Register of Persons Holding a Controlled Interest in Land will be established. The aim of this Register is to improve transparency about the identity of the individuals who are taking decisions in matters relating to land in Scotland.

The Scottish Government is keen to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. Improved information about who controls land owners and tenants in Scotland will therefore help empower people, including community groups, and give them the opportunity to understand who is in control of land owners and tenants. This transparency should also allow people to engage constructively with any person with a controlling interest who makes decisions in relation to land that might have an impact on sustainable development.

The Register's secondary purpose will be to collect information which will enable policy-makers to make better policies relating to land by revealing concentrations of ownership and influence.

Option 2 - do nothing

To do nothing would constitute a failure to comply with the duty placed upon Scottish Ministers by s.39 of the 2016 Act.

It would also be unsatisfactory within the context of wider Scottish Government objectives. The Scottish Government are committed to progressing land reform to create sustainable, empowered communities, and for more people to benefit from, and to have a say in the development of, Scotland's land. Measures to achieve this, however, will be negatively impacted upon if communities and individuals do not have accurate information about the person in control of land.

For these reasons we can conclude that this option is not suitable. The remainder of this Impact Assessment accordingly refers only to Option 1.

Sectors and groups affected

We have identified that the persons, bodies and entities that will be affected by the proposals in the draft regulations are:

- Persons who own or tenant land subject to contractual or other arrangements with an individual;
- Partnerships and persons who own or tenant land on their behalf;
- Trusts and persons who own or tenant land as trustees of a trust;
- Unincorporated bodies and persons who own or tenant land on their behalf; and,

- Overseas legal entities.

Registers of Scotland will also be impacted in their capacity as the body responsible for holding and maintaining the new Register.

To avoid requiring the duplication of existing information we are proposing in the draft regulations that entities which currently report under the UK Government's People with Significant Control (PSC) regime do not also have to report their associates (i.e. their controlling interests) in the new Register. This means that the following categories of entity would not have to report their controlling interests in the Register:

- UK companies;
- Limited Liability Partnerships;
- Eligible Scottish Partnerships – Scottish Limited Partnerships (SLPs) and Qualifying Scottish Partnerships (general partnerships where each of the partners is a limited company);
- Societas Europaeae; and,
- Unregistered companies.

We are also proposing in the draft regulations that Scottish Charitable Incorporated Organisations, Charitable Incorporated Organisations, mutual and public authorities do not have to report their associates under the new Register on the basis of other reporting duties they are under.

However, some information about the entities subject to other transparency regimes may appear on the Register, if such an entity (e.g. a UK company) is an associate of a recorded person. In such a case, that associate is required to provide:

- its name;
- if, applicable, a registered number;
- the address of its registered office, or where it does not have a registered office, a contact address; and
- the paragraph of Schedule 2 of the regulations (list of persons subject to other transparency regimes) that applies to it.

Benefits

We anticipate benefits accruing in the following areas:

- sustainable development;
- community empowerment;
- regeneration;
- environmental management; and,
- housing.

Costs

We will work during the consultation period to develop a robust estimate of the costs associated with compliance with the proposals in the draft regulations. This will require us to identify the numbers of persons, bodies and entities likely to be affected. We will also speak with a range of stakeholders in order to determine costs

for the respective entities complying with the regulations. A full BRIA will then be completed, including a Scottish Firms Impact Assessment which will include the estimated costs associated with compliance with the proposals in the draft regulations based upon the evidence gathered.

There are a number of challenges to identifying the numbers of persons, bodies and entities likely to be required to report information for inclusion in the new Register. We understand that around 10% of titles (approx. 260,000 titles) held in Scotland are held by legal entities. Many of these will be categories of entities that we propose will not be required to report information in the new Register, such as UK companies. It is, however, impossible at this stage to accurately estimate the breakdown of categories of owner within that 10%. It should be noted, however, that for the most common vehicles for holding land, primarily understood to be UK companies or LLPs, the draft regulations would not require them to also provide information for publication in the new Register.

We have noted the report recently released by Registers of Scotland which found that over 1,700 titles to land recorded in the Land Register were held by overseas companies. The report indicates that there will be other titles that are held by overseas companies which cannot be identified as such at this point as information about the country of incorporation was not required until 2014. There may also be titles held within the Register of Sasines. It is; however, clear that substantially fewer than 260,000 titles will be subject to the new Register.

Some holders of titles who are not legal entities are, however, proposed to be required to report within the Register. This will include individuals who hold the land in their capacity as a trustee or as an asset within a partnership. The numbers expected here cannot be accurately estimated at this point. We will conduct specific work during the consultation period to attempt to develop more figures for the numbers of bodies or entities to be included in the new Register.

The proposals in the draft regulations aim to increase transparency of control of land owners and tenants. We also aim for the duties associated with the Register to be straightforward and easy to comply with which will in turn minimise the associated costs. We expect the benefits of transparency to supersede the cost of compliance.

We anticipate costs in relation to compliance with the draft regulations to include costs associated with:

- Familiarisation with the requirements and procedures of the new Register;
- Gathering the required information and verifying its accuracy;
- Administration tasks including providing the requiring information and maintaining it as current and accurate on the Register.

We will seek evidence on the costs associated with each of these aspects.

We have noted previous impact assessments carried out in relation to the People with Significant Control (PSC) Register held by Companies House. The duties placed on entities to provide information for inclusion in that register are similar to those proposed in the draft regulations to establish this new Register. For that reason those impact assessments provide a potentially helpful guide.

There are, however, a number of key differences between the PSC register and the proposals in the draft regulations. In particular, the PSC regime applies on a UK-wide basis to predominantly corporate entities. Affected entities may hold their own PSC registers, access to which can be subject to a charge. The new Register will apply to different persons and bodies who may be relatively informal in their constitution and governance. The Register will also be held centrally by Registers of Scotland and there will be no fees required for access to it.

Based upon the BRIA for the PSC register, we can see that:

- Costs associated with compliance with the new Register are likely to be higher during the transition year (the set-up phase). In relation to the PSC register, the UK Government estimated these costs to be 4.8 times as much as regular annual compliance costs.
- We can therefore expect average annual on-going costs (following the transition year) to be significantly lower.

We will specifically engage with affected persons and business to determine both the costs likely to be incurred in the set-up phase of the new Register, and the average annual on-going costs.

We will also seek views on how those costs can be minimised through the simplification of processes and systems.

Impacts on other organisations – Registers of Scotland

Registers of Scotland (RoS) hold a number of registers. The Keeper of the Registers of Scotland will establish and maintain the new proposed Register. RoS will therefore incur costs associated with this function. We have given consideration to the impact of the Register on RoS and have engaged with them on this issue.

Registers of Scotland operate as a trading fund and so rely on the income they receive to meet the costs of the services they provide.

The Scottish Government policy approach to public services aims to make them as accessible as possible, and as low cost as possible, in the public interest. The draft regulations do not propose that a fee be charged either for the entry of information onto the Register, or for searching for and accessing that information. This is unlike several of the other registers held by RoS.

We are in the process of working with RoS to determine on-going running costs of the Register.

Scottish Firms Impact Test

We will meet with industry representative groups and individual bodies and businesses to carry out a Scottish Firms Impact Test during the consultation period and beyond as required.

Competition Assessment

The proposals in the draft regulations will place some costs on businesses and other bodies which directly or indirectly own or tenant land in Scotland. It is considered that these costs will not impact upon the ability of any category of body to compete.

Test run of business forms

New forms will be introduced as a result of the proposals in the draft regulations. The forms will be designed by Registers of Scotland and will therefore be subject to their standard development processes and testing methods.

Legal Aid Impact Test

We consider that the proposals in the draft regulations could give rise to some occasions when a person may need to either approach the Lands Tribunal or a solicitor, and therefore may require use of the legal aid fund. The main reason for this is that it is mandatory for a person whom the Register applies to; to provide accurate and relevant information and that knowingly or recklessly failing to do so may be an offence.

From a policy perspective, although we have provided for circumstances such as this in the regulations we do not envisage this being a common occurrence. The offence is intended to apply to persons who deliberately seek to evade the duties placed upon them by the regulations and not persons who make honest mistakes in their compliance.

Genuine error may be a particular risk when a new register is created. We will take steps to minimise this by publicising the duties associated with the Register and the means of complying with them, including by working with representative groups.

It is therefore considered that there will be minimal impact on the Legal Aid Fund. The Scottish Government Access to Justice Team has been consulted on this subject.

Enforcement, sanctions and monitoring

It is proposed in the draft regulations that the Keeper of the Registers of Scotland will be responsible for keeping and maintaining the new Register. Where the Keeper becomes aware of an inaccuracy she can amend the Register to either remove or correct information as necessary.

The draft regulations propose a duty on the Keeper to ensure that the Register is kept free from interference, unauthorised access and damage, in respect to all persons and situations. There is also proposed to be a duty on persons who are submitting information for inclusion in the Register to provide accurate information. Consideration may be given to security declarations by all persons involved in the inclusion of information in the Register.

Due to the proposed mandatory nature of the new Register, it is an offence to not comply with the duties proposed in the draft regulations. A person who commits an offence can be penalised by way of a fine of up to level 5 on the standard scale (£5,000). As stated above, it is the Keeper's responsibility to ensure that the Register remains void of interference, unauthorised access and damage. The police and the courts are responsible for identifying where offences may have been committed offences for subsequent prosecution.

Implementation and delivery plan

The Register will become operational subsequent to the passage of the relevant legislation. We will work with Registers of Scotland during the register-development process. This will include testing processes and associated materials, such as forms, with affected groups and persons.

The operation of the Register will be reviewed regularly as a matter of course.

Summary and recommendation

We had two options:

Option 1 - create a new register (The Register of Persons Holding a Controlled Interest in Land)

Option 2 - do nothing. This option was deemed not to be suitable.

Option 1 is therefore the preferred and chosen option. Progressing this option means the Scottish Government is complying with Part 3, Section 39, of the Land Reform (Scotland) Act 2016. This will bring many benefits to Scotland including: empowering people and communities, encouraging constructive engagement between land owners, communities and individuals, promoting sustainable development and supporting improved policy making through collection of data relating to concentrations of ownership and influence.

We will consult with stakeholders to understand and demonstrate the distribution of costs and benefits across the policy. We will complete a full BRIA after the consultation is complete.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:A handwritten signature in black ink, appearing to read 'R. Cunningham', written in a cursive style.**Date: 19 June 2018****Minister's name: Roseanna Cunningham****Minister's title: Cabinet Secretary for Environment, Climate Change and Land Reform****Scottish Government Contact point:** Graham Watson, Land Reform Policy and Legislation Team, Scottish Government (graham.watson2@gov.scot).