

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

Most landowners are familiar with the current Land Registration regime in Scotland. However, as of the 1st April 2022, there will be a new kid on the block. Over the last decade or so, there has been a concerted effort to modernise property registration in Scotland, resulting in the Land Registration (Scotland) Act 2012, introducing some much-needed changes. However, The Land Reform (Scotland) Act 2016 now introduces a further register to the system on top of the Land Register and the retiring Register of Sasines.

In an effort by the Scottish Government to make information on who has a controlling interest over land more transparent, from the 1st April 2022, a Register of Persons Holding a Controlling Interest in Land will become active. The purpose of the register is to make it clear who makes decisions over land and property in Scotland. This will allow people to identify more clearly who has control over land, where previously it was unclear. The register will be free to access for the public.

In most cases, the person who owns land will be the only person who has significant control over it. However, this is not always the case. The new register will clearly identify who has a controlling interest in property. There will be two categories of people who need to be aware of the new register.

1. A “recorded person” – the owner or tenant who has significant control over the property.
2. An “associate” – these people are not owners or tenants; however, they possess significant control over the property.

Examples of where a person may be deemed to have a controlling interest (an “associate”) in land include:

1. Where a partnership owns property, the partners of that firm would have a controlling interest.
2. Where a trust owns property, the trustees or those who possess significant influence within the trust would have a controlling interest. A beneficiary of a trust shall not be classified as an associate for the purposes of the regulations even though they may, at times, have influence over the trust’s decision-making process.
3. An overseas entity where an associate directly or indirectly holds more than 25% of the voting rights.
4. Where a contractual relationship or other arrangement exists which gives a person influence or significant control over decision-making in relation to land.

The new regulations will mainly impact (but are not limited to) partnerships, trusts and overseas entities.

A duty will be imposed on recorded persons and associates to inform the Keeper (responsible for overseeing the new register) of a controlling interest. Notably, the new system is flexible

and does not require persons to register where the relevant information is available to the public elsewhere. This duty will not impact, companies and public bodies subject to their own transparency regulations. For example, although falling within the definition of an “associate”, a director of a company does not need to be on the register because a member of the public can easily find out this information from Companies House.

On the other hand a charity which operates as a trust, would be required to report the Trustees as “associates” on the register. This is because details of the Trustees are not currently within the public sphere. Beneficiaries are not inherently classified as “associates”; however, where they are seen to have a controlling influence over the decision making process then they may be classed as an “associate”.

For those who are not exempt, the obligation to inform the Keeper is automatic. Failure to record in the register or providing false or misleading information will result in a criminal offence with a potential fine of up to £5,000. However, it should be noted that a twelve-month grace period will take effect from 1st April 2022. This should allow enough time for those affected to register before fines are imposed.

If you are unsure about your potential obligations under the new regulations, please contact us, and we will be happy to assist.