



## **Analysis of Responses**

# **Delivering Improved Transparency of Land Ownership in Scotland**

**Consultation on Draft Regulations**

**Final Report April 2019**

## Contents Page

<b>EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>1. Introduction .....</b>	<b>6</b>
<b>2. Quantitative summary of responses .....</b>	<b>8</b>
<b>3. The Functioning of The Register .....</b>	<b>10</b>
<b>Part 1 and 2 – The Form of The Register .....</b>	<b>10</b>
<b>Part 3 – Duties to Provide Information .....</b>	<b>15</b>
<b>Part 4 – Miscellaneous.....</b>	<b>19</b>
<b>Part 5 – Application and Transitional Provisions.....</b>	<b>24</b>
<b>4. Who we will be Registering .....</b>	<b>25</b>
<b>Part 1 of Schedule 1 - Contractual or other arrangements with an individual.....</b>	<b>25</b>
<b>Part 2 of Schedule 1 – Partnerships .....</b>	<b>28</b>
<b>Part 3 of Schedule 1 – Trusts.....</b>	<b>30</b>
<b>Part 4 of Schedule 1 – Unincorporated Associations.....</b>	<b>32</b>
<b>Part 5 of Schedule 1 – Overseas Legal Entities .....</b>	<b>35</b>
<b>5. Schedule 2 .....</b>	<b>37</b>
<b>6. Conclusions .....</b>	<b>42</b>

# EXECUTIVE SUMMARY

## Introduction

- i. This report presents an analysis of responses to the Scottish Government's public consultation entitled Delivering Improved Transparency of Land Ownership in Scotland: Consultation on Draft Regulations. The Land Reform (Scotland) Act 2016 is a key part of the Scottish Government's commitment to achieving transparency. Part 3, Section 39 of The Act, states that a new Register will be introduced to identify and make information accessible about those who own and control land in Scotland.
- ii. Earlier this year the Scottish Government developed draft regulations for the proposed Register and put these out to consultation. The consultation achieved nineteen responses from eighteen organisations and one individual. Participating organisations varied in nature and included: ten membership organisations representing a range of stakeholders, six law firms; a Non-Departmental Public Body; and the Scottish Charity Regulator (OSCR).
- iii. This executive summary presents themes within consultation responses; individual views are set out in the main body of the report.

## The Functioning of the Register

### *The form of the Register*

- iv. The Scottish Government asked for comments on the proposals for the form of the Register. Many participants shared their overall views on the new Register in their response to this question. Three described their satisfaction with the level of detail proposed; another suggested it amounted to an infringement of the right to privacy. Four participants suggested more detail about associates would assist anyone searching the Register to identify records that refer to the same individual.
- v. Three participants called for more detail within the Register about the status of information about associates. Two suggested it was unclear if historical searches of the Register would be possible; three participants reflected on ways to search the new Register.
- vi. One participant expressed concern about the widespread nature of the changes. Conversely, another three participants highlighted as positive that the new Register covers all types of legal entities and non-natural persons; that it will apply to land owners and long-term leaseholders and cover all land in Scotland.
- vii. Aspects of the draft proposals that would benefit from further clarification were identified by participants. Two highlighted that, given the sanctions associated with non-compliance, precise language is of paramount importance. There were comments about the details provided in relation to exclusions. Two participants suggested that the decision to exclude entities from the Register which are already subject to other transparency regimes would make it difficult for the general public to identify who controls Scotland's land. Two participants suggested the list of exclusions might be extensive. Potential confusion was also identified in relation to the terms 'control' and 'significant influence'.
- viii. The most common point made in relation to the role of the Keeper concerned the need for sufficient resources to be provided to the Registers of Scotland to accommodate the new activity associated with the regulations. Three participants referenced Scotland Land

Information Service (ScotLIS) in their responses, asking whether the intention was for the RCI to be accessed in the same way; one of these explicitly suggested that it should be accessed in the same way. Two highlighted that access to the Register is described in the draft regulations as 'at the discretion of the Keeper' and called for more clarification about this.

- ix. Four participants identified a need for specific timescales for any entries or amendments to the Register by the Keeper. Three participants emphasised the importance of robust security measures to protect the information held in the new Register. Two participants called for strengthening the regulations in relation to establishing a process of systematic checks to support data validation and verification. Four participants suggested that the Regulations should provide that anyone who suffers loss or damage as a result of a security breach must be compensated.

### ***Duties to provide information***

- x. Participants' views about information to be provided in the Register were mixed. Just under half of those who responded to this question expressed agreement that the information is sufficient. Six participants voiced concern about the level of data gathered and a variety of views were evident concerning duties to provide information. Three agreed with the proposed duties. Three expressed concerns there will be inadvertent breaches and noted this will require significant efforts to raise awareness and understanding among the public. Other responses included calls for greater simplicity in guidance and forms; two participants suggested that the duties are onerous.
- xi. Responses to the proposed process for security declarations were mixed. Roughly half expressed agreement with the proposed duties, some called for small amendments. Three participants commented on the role and experience of the Keeper in relation to security declarations, calling for comprehensive training and guidance to be given to those involved in any decision-making. Two participants made detailed comments on the process for making a security declaration. They made suggestions about the form, guidance and appeals. A small number expressed concern about the level of disclosure required.
- xii. Opinions varied among those who responded to the question on any barriers to applying for information not to be disclosed. Half indicated they were satisfied that the current proposals did not exclude any people who may wish to apply for their information not to be disclosed; however, one of these suggested the Scottish Government undertake some specific consultation with those who may wish for their information not to be disclosed.

### ***Miscellaneous aspects of the Register***

- xiii. A range of responses were received about the proposals for referral of questions about the accuracy of the Register. Two participants said they did not wish for the range of people who could apply for exemptions to disclosure to be expanded, one suggested that the complexity of verifying the accuracy of the Register would have resource implications for the Lands Tribunal. One questioned the expertise of the Lands Tribunal to address questions on the accuracy of the Controlled Interests; in contrast, another participant suggested that the proposal was reasonable.
- xiv. Many of those who responded to the proposals for criminal offences expressed some form of concern. These views varied and included references to disproportionate measures, calls for greater preparation time and a grace period and responsibility or, conversely that more enforcement and stronger deterrent is needed. Two participants

noted that such an enforcement mechanism is already proposed by the UK's new Draft Registration of Overseas Entities Bill.

- xv. Responses to the proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution typically focused on the complexity of these measures.
- xvi. Many of those who responded to the proposals for a transitional implementation argued that the transitional period of six months is too short. Others referenced the proposed transitional period under the UK Registration of Overseas Entities Bill as 18 months and saw this as a more realistic timescale. Two participants reiterated the importance for owners and tenants in land, and their associates, to be made aware of the Regulations in order to meet the requirements. Four participants indicated they found the proposals reasonable.

## **Who will be Registered**

- xvii. Questions twelve to fourteen covered contractual or other arrangements with an individual. All of those who provided a response suggested that the current description in the explanatory documents is too vague. They provided a range of examples to highlight different aspects of contractual arrangements that they wish the Scottish Government to consider.
- xviii. Questions fifteen and sixteen concerned land that is owned or leased by partnerships. Two participants agreed the proposals do sufficiently reflect how land is owned and leased in Scotland. Two gave qualified agreement. Three participants described a range of issues in relation to control within partnerships. Two participants indicated they agree that the proposals sufficiently reflect how control is exercised.
- xix. Questions seventeen and eighteen concerned land that is held in trust. In these responses six participants expressed agreement that the proposals reflect how land is typically held in trust. Four participants described complexities about ways in which land is held in trust. Two highlighted potential adverse impacts for trusts resulting from the new regulations. Two participants answered 'yes' indicating agreement that the proposals sufficiently capture how control is exercised over trusts. Two participants voiced concern that disclosure of associates in relation to trusts could hold information about a corporate vehicle rather than a person.
- xx. Questions nineteen to twenty-one cover land that is owned or leased by unincorporated associations. In these responses two participants indicated agreement that the proposals reflect how land is owned and leased on behalf of unincorporated associations. Two participants indicated that they were supportive of the regulations as they were sufficiently broad. Two participants expressed concern that members of unincorporated bodies may not be aware of their duty to comply with the regulations.
- xxi. Questions twenty-two to twenty-four concerned land that is owned or leased by Overseas Legal Entities. In their comments three participants called for Part 5 of Schedule 1 to be deleted. They suggested that due to the publication of the Overseas Entities Bill by the UK government would create dual reporting requirements for overseas entities. Two participants explicitly agreed that the proposals reflect how land is typically owned or leased by overseas entities.
- xxii. Two participants noted that they were not aware of any mechanisms through which control is exercised which would fall out of the scope of these regulations but requested the implementation of the regulations to be monitored. Three participants gave concise

replies to suggest that they were satisfied that the relevant scenarios have been identified.

## Schedule 2

- xxiii. Two participants highlighted the relevance of the PSC regime in terms of a model that the new Register could learn from and the current degree of effectiveness of the PSC regime in revealing control of corporate entities owning land in Scotland.
- xxiv. Most participants agreed with the proposals not to require SCIOs, CIOs, mutuals or public authorities to provide information for inclusion in the Register.
- xxv. Four participants expressed agreement with the conclusions in the impact assessments. In reflecting on additional impacts that have not been considered five participants agreed that there were no other potential impacts to identify.
- xxvi. A common theme in responses to the question on measures to inform and publicise information about land in Scotland were calls for a high-profile approach to advertising the new Regulations. Four participants suggested that the Scottish Government should consider using the model of the ScotLIS system, on the basis of its reliability. Three participants took the opportunity to reiterate concerns they had about the accessibility of a new Register for members of the general public.

## 1. Introduction

- 1.1 This report presents an analysis of responses to the Scottish Government's public consultation on the Draft Regulations of Delivering Improved Transparency of Land Ownership in Scotland.
- 1.2 In recent years the Scottish Government has focused on reforming the use, ownership and management of land in Scotland. Opportunities for change have been identified in relation to sustainable development, community empowerment, regeneration, environmental management and housing. Policy makers have concluded that a lack of transparency about ownership and decision making about land is a barrier to dialogue and progress for owners, communities and wider society.
- 1.3 The Land Reform (Scotland) Act 2016 is a key part of the Scottish Government's commitment to achieving transparency. Part 3, Section 39 of The Act, states that a new Register of Persons Holding a Controlled Interest (RCI) in Land will be introduced to identify and make information accessible about those who own and control land in Scotland. Under current plans, the Registers of Scotland will be responsible for holding and maintaining the new Register, which will include details of those 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.
- 1.4 Earlier this year the Scottish Government developed draft regulations for the proposed Register and put these out to consultation. The consultation on the draft regulations ran for five months (20th June: 8th November 2018). It achieved nineteen responses from a range of interested parties including an individual, public and third sector organisations, businesses and representative bodies. The consultation document contained twenty-nine open-ended questions which centred around three themes:
  - Outcomes (will the Register deliver improved transparency in land ownership?)
  - Categorisation of land owners and tenants (who the regulations will apply to and responses to the suggested approaches being proposed for different parties) and
  - Accessibility (how to ensure the Register is easy to use and that information is accessible).

### Profile of participants and consultation response rate

- 1.5 The consultation achieved nineteen responses from eighteen organisations and one individual. The organisations varied in nature and included: ten membership organisations representing a range of stakeholders, such as community land groups and those with specific property interests; six law firms; a Non-Departmental Public Body (Historic Environment Scotland); and the Scottish Charity Regulator (OSCR).
- 1.6 Responses to the discussion were submitted or uploaded to the online platform Citizen Space. Participants were asked to submit a Respondent Information Form (RIF) to establish their identity, contact details and publication preferences.

## Analysis and reporting

- 1.7 A coding framework based on a review of the consultation questions and sample of responses was developed. Qualitative data (responses to open questions) was coded manually according to specific themes; quantitative data was analysed with Excel.
- 1.8 While qualitative analysis of open-ended questions does not permit the quantification of results, we describe the number of participants who have expressed a particular view throughout the document.

## Report structure

- 1.9 The Lines Between was commissioned '*to produce a clear and concise report for publication, that reflects a robust analysis of the responses*'. This report presents the findings of the consultation analysis:
  - Chapter two presents the number of responses to each question.
  - Chapter three provides analysis of responses to 'the Functioning of the Register' (consultation questions one to eleven).
  - Chapter four presents analysis of responses to 'Who we will be Registering: Schedule 1' (consultation questions twelve to twenty-four).
  - Chapter five presents analysis of responses to 'Who we will be Registering: Schedule 2' and the 'User Experience' (consultation questions twenty-five to twenty-nine).
  - The final chapter contains conclusions.
- 1.10 Participants' responses to the consultation, where permissions for publication were granted, can be found on the Scottish Government's website at <https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/>.

## 2. Quantitative summary of responses

2.1 The table below provides a quantitative overview of consultation responses. It shows how many participants responded to each consultation question.

Question	Response	No response
<b>Part 1 and 2 – The Form of The Register</b>		
1: Do you have comments on the proposals for the form of the Register?	18	1
2: Do you have any comments on the proposals for the role of the Keeper in relation to information in the Register?	13	6
<b>Part 3 – Duties to Provide information</b>		
3: Do you consider the information that we are requiring to be provided for inclusion in the Register sufficient and proportionate?	14	5
4: Are our proposals for the duties people will be under to provide information sufficient and proportionate?	14	5
5: Is our proposed process for security declarations reasonable?	13	6
6: Are there people who you think should be able to apply for their information not to be disclosed in the Register, who may not be able to under our current proposals?	12	7
<b>Part 4 – Miscellaneous</b>		
7: Do you have any comments on our proposals for referral of questions about the accuracy of the Register to the Lands Tribunal?	11	8
8: Do you have any comments on our proposals for criminal offences?	14	5
9: Are there alternative or additional means of enforcement that we should be considering?	10	9
10: Do you have any comments on our proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution?	11	8
<b>Part 5 – Application and Transitional Provisions</b>		
11: Do you have any comments on our proposals for a transitional implementation?	15	4
<b>Part 1 of Schedule 1 - Contractual or other arrangements with an individual</b>		
12: Can you provide examples where land is owned or leased by individuals subject to contractual arrangements such as those described in the explanatory document?	11	8
13: Are there other contractual arrangements we should be looking to capture?	10	9
14: Do you have any comments on this proposal?	10	9
<b>Part 2 of Schedule 1 – Partnerships</b>		
15: Does this reflect how land is typically owned or leased by or on behalf of partnerships or can you provide examples of other ways in which land is owned or leased by on or behalf of partnerships?	13	6
16: Do our proposals reflect sufficiently how control is exercised over partnerships?	11	8
<b>Part 3 of Schedule 1 – Trusts</b>		
17: Do our proposals reflect how land is typically held in trust? Can you provide examples of other ways in which land is held in trust?	14	5
18: Do our proposals sufficiently capture how control is exercised over trusts including through financial interests?	11	8

<b>Part 4 of Schedule 1 – Unincorporated Associations</b>		
19: Do our proposals reflect how land is owned or leased on behalf of unincorporated associations. Can you provide examples of other ways in which it is leased or owned on their behalf?	10	9
20: Are there other types of groups than those mentioned who may be affected by these proposals? If so, please provide examples.	9	10
21: Do our proposals sufficiently capture how control is exercised over unincorporated associations?	11	8
<b>Part 5 of Schedule 1 – Overseas Entities</b>		
22: Do our proposals reflect how land is typically owned or leased by over overseas legal entities. Can you provide other ways in which it is owned or leased by over overseas legal entities?	12	7
23: Do our proposals sufficiently capture how control is exercised over overseas legal entities. Are there other examples that you are aware of where control is exercised over an overseas entity?	10	9
24: Are there examples where transparency is lacking as to control over a legal owner or tenant of land that we have not taken into account in our proposals?	10	9
<b>Schedule 2</b>		
25: Do you have any comments on the usefulness of the PSC regime in revealing control of corporate entities which own land in Scotland?	9	10
26: Do you have any comments on our proposals to not require SCIOs <sup>1</sup> , CIOs <sup>2</sup> , mutual or public authorities to provide information for inclusion in the Register?	12	7
27: Do you agree with the conclusions in the impact assessments?	9	10
28: Are there potential impacts that we have not considered?	13	6
29: What measures, if any do you think we should take to inform and publicise information about land in Scotland?	14	5

<sup>1</sup> Scottish Charitable Incorporated Organisations (SCIOs)

<sup>2</sup> Charitable Incorporated Organisations (CIOs). These are the equivalent of SCIOs in England and Wales.

### 3. The Functioning of The Register

#### Introduction

- 3.1 This chapter presents analysis of responses to the first eleven consultation questions. Questions one and two concern the form of the Register, questions three to six address duties to provide information and questions seven to eleven concern miscellaneous aspects of the Register.

#### Part 1 and 2 – The Form of The Register

#### Responses to Question One: The form of the Register

- 3.2 A quantitative summary of responses to question one is provided below:

Question	Response	No response
<b>Part 1 and 2 – The Form of The Register</b>		
1: Do you have comments on our proposals for the form of the Register?	18	1

#### Views on the proposed Register

- 3.3 Many participants expressed their overall views on the new Register in their response to the first question; some discussed specific aspects of the regulations that were covered elsewhere in the consultation document. These detailed responses are presented under the relevant question heading in this report to avoid duplication.
- 3.4 The overall views expressed in responses to question one are summarised below:
- Three participants suggested that greater transparency would have positive impacts in relation to communities' abilities to take advantage of opportunities such as Right to Buy. Within these responses:
    - They suggested they did not foresee any negative commercial impacts from the greater transparency of data that will be afforded by the new Register.
    - They noted the new Register could aid understanding of the total land holdings of individuals and recommended that all of the data within the Register be publicly accessible as open data, following the format of the Register of people with significant control (PSC), for that reason.
    - It was highlighted that greater transparency would have positive impacts in relation to driving down abuse of corporate vehicles for the purposes of corruption, organised crime and tax evasion.
    - One praised the intention to make use of the Register free.
  - Four participants made the case for incorporation of new information within existing registers, rather than the creation of a new one. Within these responses three cited complications such as duplication of existing information, transparency and accessibility. One described a perception that the creation of a new Register would be an undue burden on the Registers of Scotland.
  - Another participant echoed the comments made by others in relation to information, transparency and accessibility but said they accepted the Scottish Government's rationale for the creation for a new Register.

- One participant questioned the need for a new Register, expressing view that existing information about owners and controllers on the Companies House Register of Persons of Significant Control is sufficient for the purposes of transparency about land ownership in Scotland.

3.5 One participant asked for the Register to be called the Register of Controlling Interests in Land, noting a subtle difference between the terms ‘controlling’ and ‘controlled’. They suggested that the Land Register of Scotland already provides details of controlled interests. Another suggested the creation of a new Register should be established, maintained and enforced at an appropriate cost.

### **Details about recorded persons and associates**

3.6 There were different responses to the personal information to be gathered in the new Register from four participants. Three described their satisfaction with the level of detail proposed; for example, they highlighted that the PSC Register meets GDPR requirements and the UK Government did not consider any of the information to be disclosed to constitute personal sensitive data under the Data Protection Act 1988 or the European Convention on Human Rights. However, concerns about the proposed personal information to be gathered were expressed by one participant who suggested it amounted to an infringement of the right to privacy.

3.7 Four participants suggested more detail about associates would assist anyone searching the Register to identify records that refer to the same individual. They advocated for the allocation of a unique identifying number for each person when they are first entered into the Register.

3.8 Calls for more details within the Register about the status of information about associates came from three participants. They highlighted a number of different conclusions that might be reached if no registered associate(s) was listed in the Register, for example (i) there not being any associates (ii) because the information has not yet been provided or (iii) because the associate is subject to a Security Declaration.

3.9 In comments on the information to be recorded for associates covered by Schedule 2, another participant raised the issue of duplication mentioned at 3.5 above, namely that they felt the Land Register of Scotland already provides details of controlled interests. They suggested that anything other than name and registered number for an associate would be available on the relevant register.

### **Searching the Register**

3.10 Three participants reflected on ways to search the new Register. Two suggested it was unclear if historical searches of the Register would be possible, for example if someone wished to identify recorded persons and associates previously connected to the land. Another suggested there should be multiple ways of searching, above and beyond using the Land Registry Number, but did not explain any potential shortfalls of relying on a Land Registry Number.

### **Scale of the change**

3.11 One participant expressed concern about the widespread nature of the changes. They suggested these duties may affect a wide range of individuals and bodies and noted that the present lack of detail about trust or partnership ownership means it is not possible to estimate how many will be affected by the new Regulations. Conversely, another three participants highlighted as positive that the new Register covers all types of legal entities

and non-natural persons; that it will apply to land owners and long-term leaseholders and cover all land in Scotland. They described this approach as more far-reaching than proposals from the UK Government; particularly the public disclosure of who controls various forms of trusts.

### Areas requiring clarification

**3.12** Aspects of the draft proposal that would benefit from further clarification were identified by some participants. Two participants highlighted that, given the sanctions associated with non-compliance, precise language is of paramount importance. Areas of potential confusion are described in more detail below.

- There were comments about the details provided in relation to exclusions. Two participants suggested that the decision to exclude entities from the Register which are already subject to other transparency regimes would make it difficult for the general public to identify who controls Scotland's land. Another said it is not clear that individuals who own or rent their homes are not within the scope. Two participants suggested the list of exclusions might be extensive. In this discussion, one of these participants described potential difficulties in identifying associates in unincorporated bodies without formal constitutions and called for the proposals to offer suggestions and solutions.
- Potential confusion was also identified in relation to the terms 'control' and 'significant influence'. For example, two participants described in detail a range of potential differences in interpretation that could arise. They suggested the Explanatory Document should expand on the types of circumstances in which 'control' or 'significant influence' exists or will arise and give examples of what 'control' and 'significant influence' means in practice.
- One participant suggested the use of the term 'recorded person' changed within the Explanatory Document; in one instance 'owners or tenants' are referenced, in another 'each person recorded in the RCI', which could be taken to include associates.
- Another felt the list of those who have contractual or other arrangements with an individual might be extensive and that the draft proposals do not currently reflect all eventualities.
- One participant also asked for clarification within the draft regulations as to how overseas entities are to be included in the current arrangements.
- One highlighted that there should be a clear exclusion for those holding the role of the 'trusted advisor' in a paid professional capacity and said they did not think it appropriate for solicitors to require to certify those who hold a controlling interest.
- Another called for a new consultation on the revised Regulations once the ambiguities had been resolved.

## Responses to Question Two: the role of the Keeper

3.13 A quantitative summary of responses to question two is provided below:

Question	Response	No response
<b>Part 1 and 2 – The Form of The Register</b>		
2: Do you have comments on our proposals for the role of the Keeper in relation to information in the Register?	12	7

3.14 Over half of the consultation participants responded to question two (thirteen out of nineteen). One of these participants simply replied ‘no’, interpreted with reference to this question to mean ‘no – I do not have any comments on the proposals for the role of the Keeper in relation to information in the Register’.

## Resources

3.15 The most common point made in relation to the Keeper concerned the need for additional resources to be provided to the Registers of Scotland to accommodate the new activity associated with the regulations. Eight participants made similar comments on this matter; in which many highlighted the already significant workload faced by the Registers of Scotland. A sufficient level of resources was also highlighted as crucial for ensuring the accuracy of the Registers.

## Access

3.16 Accessing information in the Register was another repeated theme in comments, referenced by four participants.

3.17 Three participants referenced Scotland Land Information service (ScotLIS) in their responses, asking whether the intention was for the RCI to be accessed in the same way; one of these explicitly suggested that it should be accessed in the same way.

3.18 Two highlighted that access to the Register is described in the draft regulations as ‘at the discretion of the Keeper’ and called for more clarification about this on the basis that those providing information will want to know who can access it and for what purpose. They also called for more detail about the way in which information will be made available in the explanatory document.

3.19 One advocated for a dual access system, with public access to information that there is a controlling interest, but a further step for anyone wishing to view personal information such as contact details. Another participant suggested that a new Register was not necessary and described steps through which members of the public could access information if the new information sought from landowners were to be incorporated within existing registers.

## Compensation

3.20 Four participants suggested that the Regulations should provide that anyone who suffers loss or damage as a result of a security breach must be compensated. Two of these highlighted the need for compensation in the case of any acts or omissions by the Keeper or staff which lead to criminal sanctions being imposed on the recorded persons.

## **Timescales**

- 3.21** A need for specific timescales for any entries or amendments to the Register by the Keeper was mentioned by four participants. They typically suggested the introduction of a sixty-day limit, mirroring the requirement for those submitting information to the Register. One suggested the Register should contain details of the date on which information was last updated, to signify the point at which it was last accurate.

## **Data security**

- 3.22** Robust security measures to protect the information held in the new Register were called for by three participants. They suggested this should be done to a recognised independent standard, not simply in a way that 'appears reasonable to the Keeper', as currently stated in the draft regulations.

## **Data validation**

- 3.23** Two participants called for strengthening the regulations in relation to establishing a process of systematic checks to support data validation and verification.

## Part 3 – Duties to Provide Information

### Responses to Question Three: Information to be provided in the Register

3.24 A quantitative summary of responses to question three is provided below:

Question	Response	No response
<b>Part 3 – Duties to Provide information</b>		
3: Do you consider the information we are requiring to be provided for inclusion in the Register sufficient and proportionate?	14	5

- 3.25 Around three quarters of the consultation participants (fourteen out of nineteen) responded to question three. A small number of these (four participants) made short responses to state their views on the duties to provide information were expressed in responses to other consultation questions; these are covered elsewhere in this report in the relevant section. One suggested they could not answer this on the basis that felt the regulations are currently not clearly drafted. Five participants made no comment whatsoever.
- 3.26 Views among those who responded to this question were mixed. Just under half of those who made a substantive comment (four participants) expressed agreement that the information is sufficient. However, one of these suggested the requirement to provide information that is already in the property register could be considered disproportionate and result in duplication. They proposed some simple administrative changes that would make the links between the Land Register and RCI easy to identify; these have been signposted to the Scottish Government for consideration. This participant also felt that the guidance about who is excluded from the requirements could be clearer.
- 3.27 Six participants voiced concern about the level of data gathered. For example, four participants suggested the level of personal information sought is too extensive; of these, one suggested that personal addresses could be used for malicious purposes and asked for business addresses to be recorded instead; three questioned the need to gather information about a person's home address or date of birth. Two highlighted that unwillingness to share personal information might have an adverse business impact by discouraging land ownership in Scotland from overseas investors who do not wish for this information to be made public.
- 3.28 One participant suggested that Schedule 2 entities should simply require information about the name and registered number (if appropriate) and called for it to be made more explicit that Schedule 2 entities do not need to provide additional information.
- 3.29 Another anticipated a problem with keeping details about listed entity with public shareholders up-to-date.

## Responses to Question Four: Duties to provide information

3.30 A quantitative summary of responses to question four is provided below:

Question	Response	No response
<b>Part 3 – Duties to Provide information</b>		
4: Are our proposals for the duties people will be under to provide information sufficient and proportionate?	14	5

3.31 Around three quarters the consultation participants (fourteen out of nineteen) provided a response to question four. A small number of these (three participants) said their views on the duties to provide information were expressed in responses to other consultation questions; one simply stated they had no comment to make and another suggested they could not answer this on the basis that felt the regulations are currently not clearly drafted. Five participants did not respond to the question.

3.32 Views among those who responded to question four were mixed. A third of those who provided a substantive response to the question (three out of nine participants) expressed agreement with the proposed duties; these responses were short, for example simply 'yes', interpreted with reference to this question to mean 'yes - proposals for the duties people will be under to provide for inclusion are sufficient and proportionate'.

3.33 Other responses are summarised below:

- Three called for greater simplicity in guidance and forms.
- Two suggested the duties are onerous.
- Three expressed concerns there will be inadvertent breaches and noted this will require significant efforts to raise awareness and understanding among the public.
- One called for the obligation for a recorded person to notify an associate within seven days of serving a notice on the Keeper about an associate be replaced with an obligation on the Keeper to send a copy of the notice received to the associate.

3.34 Reiterating a point made in previous responses, one highlighted that the guidance should make clear who is excluded from the requirements.

3.35 One participant asked for clarity about the obligation to take 'reasonable steps' to verify the accuracy of the associate's required details. They also suggested that the period of sixty days to provide the information is too short.

## Responses to Question Five: Process for security declarations

3.36 A quantitative summary of responses to question five is provided below:

Question	Response	No response
<b>Part 3 – Duties to Provide information</b>		
5: Is our proposed process for security declarations reasonable?	13	6

- 3.37 Over half of the consultation participants (thirteen out of nineteen) provided a response to question five; however, one of these participants simply said they had no comment to make.
- 3.38 Views among those who responded to question five were mixed. Roughly half of those who provided a substantive response to the question (six out of twelve participants) expressed agreement with the proposed duties. Three of those in agreement called for small amendments which they suggested would minimise possibilities of abuse of the system; these were (1) publication of an annual report on the reasons for and number of security declarations granted, plus (2) for any requests for anonymity to be forwarded to relevant law enforcement bodies.
- 3.39 Three participants commented on the role and experience of the Keeper in relation to security declarations, calling for comprehensive training and guidance to be given to those involved in any decision making. Another questioned whether this was the right way to make the decision, suggesting that it might be a more appropriate role for Companies House to perform.
- 3.40 Two participants made detailed comments on the process for making a security declaration. They made suggestions about the form, guidance and appeals which have been signposted to the Scottish Government for consideration and asked that opportunities for making a security declaration be prioritised in the process of making an entry in the Register. One of these suggested that the default position should be to assume that a security declaration would be applied for, with information treated as confidential until it had been confirmed that this would not be required. The other identified potential gaps in the process where details may be publicly available on the Register, before that individual has had the opportunity to make a security declaration to the Keeper.
- 3.41 A small number commented on the level of disclosure required. One suggested that the level of detail called for could be detrimental for businesses, for example by making it possible to identify assets. They also highlighted concerns about data security and identity theft. Another suggested there was imbalance in the Regulations between what a vulnerable person is required to show to support a security declaration.
- 3.42 One called for anyone making a security declaration to be able to apply for an extension of time if required.

## Responses to Question Six: Barriers to applying for information not to be disclosed

3.43 A quantitative summary of responses to question six is provided below:

Question	Response	No response
<b>Part 3 – Duties to Provide information</b>		
6: Are there people you think should be able to apply for their information not to be disclosed in the Register, who may not be able to under our current proposals?	12	7

3.44 Over half of the consultation participants (twelve out of nineteen) provided a response to question six, however three simply stated that they had no comment to make.

3.45 Views among those who responded to this question were mixed. Half of those who provided substantive responses (five out of nine participants) indicated they were satisfied that the current proposals did not exclude any people who may wish to apply for their information not to be disclosed; however, one of these suggested the Scottish Government might undertake some specific consultation with those who may wish for their information not to be disclosed.

3.46 Of the remaining four participants that responded to this question:

- One reiterated a view they had expressed in responses to other questions that the commercial sensitivity of the information sought may inhibit some commercial entities from investing in property.
- One provided a detailed explanation of why they believed their organisation should be exempt from providing the information sought, for example describing a diffuse Trustee structure which encompasses a large number of individuals. They noted that they are required by law to provide copy of latest accounts to any enquirers. These include Trustee's names, and on that basis they consider their organisation subject to an alternative transparency system.
- Another reiterated a view they had expressed in responses to previous questions that the list of those exempt from the Regulations should be clearer. They expressed a view that Part 2 of Schedule 1 will require an owner to consult the Register of People with Significant Control regulations to establish if they are required to comply or not. This participant also suggested that only corporate contact details should be collected.
- One suggested that to protect the privacy of individuals, anyone seeking access to information at this level should have to provide a reasonable rationale for their enquiry.

## Part 4 – Miscellaneous

### Responses to Question Seven: proposals for referral of questions about the accuracy of the Register

3.47 A quantitative summary of responses to question seven is provided below:

Question	Response	No response
<b>Part 4 – Miscellaneous</b>		
7: Do you have any comments on our proposals for referral of questions about the accuracy of the Register to the Lands Tribunal?	11	8

3.48 Eight of the nineteen participants are judged to have given a substantive response to this question. Nine left the question blank. Two replied 'No Comment' and one said 'No' (interpreted in this context to mean 'no – I do not have any comments on the proposals for referral of questions about the accuracy of the Register to the Lands Tribunal).

### Minimise the exploitation of loopholes

3.49 Two participants said they did not wish for the range of people who could apply for exemptions to disclosure to be expanded, as this may increase the risk of exemptions being exploited by those wishing to avoid the disclosure requirements.

### Resources

3.50 One participant suggested that the complexity of verifying the accuracy of the Register would have resource implications for the Lands Tribunal.

### Expertise

3.51 One participant questioned the expertise of the Lands Tribunal to address questions on the accuracy of the Controlled Interests information. They point out that such information will not relate to the land, but to the arrangements for holding and dealing with that land and this may involve complex trust or corporate arrangements. The participant suggested this may be beyond the expertise of the Lands Tribunal.

3.52 In contrast, one response suggested that the proposal was reasonable, given the existing jurisdiction of the Lands Tribunal to hear appeals against the Keeper arising out of matters relating to the registration of title to land.

### Possible vexatious complaints

3.53 One participant expressed concern in relation to regulation 17 in Part 4, explaining that the reference to 'a person' at 17(1) allows anyone to make a referral. They fear this has a potential to lead to 'vexatious complaints'.

### Access to justice and speed

3.54 One participant argued that the referral process and the costs involved must not impede access to justice. Another argued that a simple procedure should be established in order that, when required, rectification of the Register can be dealt with swiftly.

## Responses to Question Eight: Do you have any comments on our proposals for criminal offences?

3.55 A quantitative summary of responses to question eight is provided below:

Question	Response	No response
<b>Part 4 – Miscellaneous</b>		
8: Do you have any comments on our proposals for criminal offences?	14	5

3.56 Fourteen of the nineteen participants are judged to have given a substantive response to this question. Five did not respond to the question.

3.57 A majority of participants (ten of thirteen) expressed some form of concern over these proposals.

### Concern about disproportionate measures

3.58 One argued that many individuals to whom these Regulations apply will fail to comply inadvertently.

3.59 Another supported this and suggested that deliberate acts of fraud or negligence would be caught by existing legislative measures such as through Companies House or Anti-Money Laundering/Proceeds of Crime legislation. They felt it is likely that most ‘offences’ under the proposed Regulation will be committed unintentionally, by people with nothing to conceal.

3.60 Another said they do not support criminal sanctions for non-compliance with the regulations. They had concerns, that without sufficiently rigorous promotion of the new Regulations, there may be many owners and associates who inadvertently fail to comply with the Regulations and will find themselves committing a criminal offence. They suggest that the scale of inadvertent non-compliance will be significant. Criminalisation of persons due to their lack of awareness of the requirements was said to be disproportionate.

### Preparation time, grace period and responsibility.

3.61 Others commented on ways to make the system work fairly. These included steps to ensure relevant people have adequate time to adjust to the new measures and are clear about responsibilities under the new arrangements.

3.62 One argued that it is essential that all of the requirements of the Regulations are well publicised, to ensure that those on whom the duties fall are aware of them. They also called for help and support to be made available for property owners or tenants. For example, in the case of religious bodies where title to church buildings may have been vested in a number of ex officio bearers for a century or more, it is likely that the current holders of these offices will be unaware of the fact that by virtue of their office they hold title and thus fall within the definition of recorded person or associate in the Regulations.

3.63 Another said that account should be taken of mitigating circumstances in situations where the regulations are not complied with inadvertently. One participant recommended it should be a requirement that before an offence is deemed to have been committed, the person concerned is given a period of time to comply with the duties that attract a penalty under the Regulations.

- 3.64 Another noted that the proposed transitional period under the UK Registration of Overseas Entities Bill is eighteen months. They suggested the proposed transitional period of six months is not long enough given the number of people likely to be affected by the Regulations.
- 3.65 One participant argued that with the scope of the Regulations and a short transitional period, it would be harsh for failure to comply to carry a criminal penalty. They suggest there will be a need for a national advertising campaign, across all media, explaining in simple terms who will be required to register and how. Another said the Scottish Government must ensure that there is visible and sustained publicity to highlight the requirements of this Register if multiple breaches of the Regulations, through ignorance of their existence, are to be avoided.
- 3.66 A few participants identified aspects of the regulations which might give rise to confusion. One said it was not clear about who the term 'manager' refers to in Regulation 20(3). In the same Regulation they argued that those covered under the 'other body or association' definition should be limited to those holding an office or management role through which they are a controlling mind of the organisation. Another noted some uncertainty in the application of Part 1 of Schedule 1, believing it would be inappropriate to make it a criminal offence to fail to disclose information if it is not absolutely clear to whom and to what 'contractual or other arrangements' the regulations apply.

### **Need for enforcement and stronger deterrent needed**

- 3.67 In contrast to the views expressed above, four participants suggested stronger deterrents were needed. One argued that for the system to work it must be enforced. Three others suggested that the penalties envisaged were insufficient to act as a deterrent for non-compliance. They pointed out that the offences envisaged will be subject to a maximum penalty of up to £5,000, a sum they do not consider to be sufficient to deter those seeking anonymity.
- 3.68 Within these responses were reference to the equivalent offences as set out in the UK's proposed regulations for the Registration of Overseas Entities. The offences as set out for failing to comply with these duties are: imprisonment for up to two years or a fine (or both) for a conviction on indictment; and on summary conviction in Scotland, imprisonment for up to twelve months or a fine up to the statutory maximum £10,000.

## Responses to Question Nine: Are there alternative or additional means of enforcement that we should be considering?

3.69 A quantitative summary of responses to question nine is provided below:

Question	Response	No response
<b>Part 4 – Miscellaneous</b>		
9: Are there alternative or additional means of enforcement that we should be considering?	10	9

3.70 Nine of the nineteen participants are judged to have given a substantive response to this question. Nine left the question blank and one replied 'No Comment'.

### Pre-conditions

3.71 Two participants noted that such an enforcement mechanism is already proposed by the UK's new Draft Registration of Overseas Entities Bill. This will require any foreign entity who wants to buy land in Scotland to have already registered their beneficial ownership with this new Register at Companies House. They recommend that completion of the Register for recorded persons and associates should be introduced as a pre-condition for undertaking other administrative and financial changes and / or transactions relating to the land.

3.72 In contrast, one participant was pleased to see that compliance would not be made a pre-condition of land registration. They pointed out that the legal right to land is only made real on registration any delay in the registration process could have had serious consequences for purchasers of property in Scotland

### Civil penalties and Justice

3.73 Several participants reiterated points made in Question 8. One said they considered civil penalties to be more appropriate than criminal penalties. Another argued that an offence should only be committed, and a fine payable, where someone delays or refuses to provide the required information within a reasonable period after having been asked to do so by the Keeper.

## Responses to Question Ten: Do you have any comments on our proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution?

3.74 A quantitative summary of responses to question ten is provided below:

Question	Response	No response
<b>Part 4 – Miscellaneous</b>		
10: Do you have any comments on our proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution?	11	8

3.75 Seven of the nineteen participants are judged to have given a substantive response to this question. Nine left the question blank. Three replied 'No Comment' and one said 'No' (interpreted in this context to mean 'no – I do not have any comments on the proposed process for notification of the Keeper in the case of a person's death or an entity's winding up or dissolution').

3.76 The responses typically focused on the complexity of these measures.

### Complex and onerous

3.77 One participant had a concern that the failure of an executor to notify the Keeper of the death of an individual who is a recorded person or an associate is to be a criminal offence. Two pointed out that the executor may have no knowledge of the existence of the deceased's details on the Register. They also noted that those affected by this provision may involve overseas entities and suggested it raises the question of enforceability of the sanctions. Another had a concern regarding regulation 21, arguing it can take months to obtain confirmation and for the transfer of a property to take place.

3.78 Another considered this duty to be onerous, especially in situations where those responsible for making the notification might be unaware of the requirements and may not have the benefit of professional advice.

### Sensitivity

3.79 One participant said this proposal needs to be reviewed to ensure it deals sensitively with the position of a bereaved spouse acting as executor, for whom it would seem extremely harsh to be found guilty of a criminal offence at such a time because they were unaware of their spouse's role as 'associate'. Another participant considered this measure may prove oppressive in practice.

## Part 5 – Application and Transitional Provisions

### Responses to Question Eleven. Do you have any comments on our proposals for a transitional implementation?

3.80 A quantitative summary of responses to question eleven is provided below:

Question	Response	No response
<b>Part 5 – Application and Transitional Provisions</b>		
11: Do you have any comments on our proposals for a transitional implementation?	15	4

3.81 Fifteen of the nineteen participants are judged to have given a substantive response to this question. Four left the question blank.

#### Insufficient time

3.82 Several participants argued that the transitional period of six months is too short. One noted that, in the case of properties which may not have changed hands for a generation, people will have no reason to be alert for this change. In their discussion they expressed a view that a more proportionate implementation proposal would be that the obligation to record the required information would only be triggered by defined dealings with the land. They suggested this could be backed up by a ‘longstop’ implementation date, within which the obligation would apply regardless of whether or not a trigger event had occurred.

3.83 Others reference the proposed transitional period under the UK Registration of Overseas Entities Bill as 18 months and saw this as a more realistic timescale. One participant had a concern that it may take some charities longer than six months to establish which individuals are required to register, citing village halls as a prime example. They were concerned about the awareness and understanding of this issue among the charitable sector.

#### Preparation

3.84 Two participants reiterated the importance for owners and tenants in land, and their associates, to be made aware of the Regulations in order to meet the requirements. One argued that the proposed transitional period will depend on Registers of Scotland having sufficient capacity to receive and process the needed data.

#### Reasonable

3.85 Four participants indicated they found the proposals reasonable.

## 4. Who we will be Registering

4.1 This chapter presents analysis of responses to thirteen consultation questions, as follows:

- Questions twelve to fourteen concern Part 1 of Schedule 1 (contractual or other arrangements with an individual).
- Questions fifteen and sixteen address Part 2 of Schedule 1 (partnerships).
- Question seventeen and eighteen address Part 3 of Schedule 1 (trusts).
- Question nineteen to twenty-one address Part 4 of Schedule 1 (unincorporated associations).
- Question twenty-two to twenty-four address Part 5 of Schedule 1 (overseas entities).

### Part 1 of Schedule 1 - Contractual or other arrangements with an individual

**Responses to Question Twelve: Can you provide examples where land is owned or leased by individuals subject to contractual arrangements such as those described in the explanatory document?**

4.2 A quantitative summary of responses to question twelve is provided below:

Question	Response	No response
<b><i>Part 1 of Schedule 1 - Contractual or other arrangements with an individual</i></b>		
12: Can you provide examples where land is owned or leased by individuals subject to contractual arrangements such as those described in the explanatory document?	11	8

4.3 There were six substantive responses this question. Eight left no response. Five participants either answered 'no comment', 'no' indicating they had no examples to share, or explicitly stated that they had no examples to give.

### Calls for more detail

4.4 Each of those who provided a substantive response suggested that the current description in the explanatory documents is too vague. They provided a range of examples of contractual arrangements in their responses:

- Two noted that those who enter into contracts for the future sale of land, should not be treated as having a controlling interest in the land.
- Two called for clarification in relation to crofts and tenancies.
- One highlighted that charities may hold land in lieu of tax, or with grant conditions, which they do not believe should be considered a controlling interest.
- One called for clarification about the position with regards to those holding options in land ownership.
- One made a general comment about the need for greater specificity in contractual arrangements described in the explanatory document.

## Responses to Question Thirteen: Are there other contractual arrangements we should be looking to capture?

4.5 A quantitative summary of responses to question thirteen is provided below:

Question	Response	No response
<b>Part 1 of Schedule 1 – Contractual or other arrangements with an individual</b>		
13: Are there other contractual arrangements we should be looking to capture?	10	9

4.6 There were seven substantive responses to this question. Three participants stated they had no comment to make, nine left no response. Participants reflected on different aspects of contractual arrangements that they wish the Scottish Government to consider. These responses are summarised below:

- Two said they were not aware of any such arrangements; another said they had nothing further to add.
- Two participants stated that they would object to the addition of any further arrangements being added to the regulations unless they have specifically been defined in the consultation document.
- One reiterated a comment elsewhere in their response of the need for greater specificity in contractual arrangements described in the explanatory document.
- One participant suggested the '1991 Act, Secure Agricultural Tenancies' as a contractual arrangement that should be captured.

## Responses to Question Fourteen: Do you have any comments on the proposal?

4.7 A quantitative summary of responses to question fourteen is provided below:

Question	Response	No response
<b>Part 1 of Schedule 1 - Contractual or other arrangements with an individual</b>		
14: Do you have any comments on this proposal?	11	8

4.8 There were eight substantive responses to this question. Three participants stated they had no comment to make and eight did not respond to the question.

4.9 Most of those who provided a substantive response called for more clarity. These comments are summarised below:

4.10 Three participants gave detailed responses to this question all of which requested clarity about who is deemed an 'Associate'. Two of these noted that the text was confusing and one suggested alternative wording for consideration noting *'the statutory guidance for the PSC regime excludes from categories of those deemed to be exercising significant control "[persons providing] advice or direction in a professional capacity" such as lawyers, accountants, tax advisers, financial advisers and others. We suggest this or other similar expression should be adopted in the Regulations'*.

4.11 One also suggested that the difference in approach between the treatment of trustees and members of unincorporated bodies was confusing and requested clarity on this.

4.12 Other comments on contractual arrangements varied and are summarised below:

- One participant requested that any person with significant control should be named in the Register.
- One requested a statement defining whether managing agents are intended to be captured in the Register or Guidance.
- One requested clarity about whether the Regulations do not apply to owner occupiers such as a non-entitled spouse.
- Another reiterated an earlier response in which they called for more specificity within the definitions of 'controlling interest', with particular reference to the role of paid professional advisors.
- Another reiterated an earlier response in which they noted that those who enter into contracts for the future sale of land, should not be treated as having a controlling interest in the land.

## Part 2 of Schedule 1 – Partnerships

**Responses to Question Fifteen: Does this reflect how land is owned or leased by partnerships or can you provide examples of other ways in which land is owned or leased by partnerships?**

4.13 A quantitative summary of responses to question fifteen is provided below:

Question	Response	No response
<b>Part 2 of Schedule 1 – Partnerships</b>		
15: Does this reflect how land is typically owned or leased or on behalf of partnerships or can you provide examples of other ways in which land is owned or leased by or on behalf of partnerships?	13	6

4.14 There were eight substantive responses to this question. Five participants stated they had no comment to make and six made no response.

4.15 Two participants made unqualified expressions of agreement that they believe the proposals do reflect sufficiently how land is owned and leased in Scotland. Another two gave qualified agreement. One highlighted the difficulty of determining whether a property is a partnership property in specific situations. They suggested an inclusion of guidance to the regulations in the event that there are no associates linked to the particular property. Another suggested that while they believe the proposals reflect sufficiently how land is owned and leased in Scotland, they feel that the requirement to register would be an unnecessary interference with the running of a business without clear public benefit

4.16 One participant gave a detailed response about the nature of Limited Partnerships and Scottish Limited Partnerships, suggesting that the proposed changes would add unnecessary complexity to these arrangements. Given the level of detail in this response it has been signposted directly to the Scottish Government. Another participant referenced their previous response in which they highlighted the potential for wider than anticipated application of the provisions, such as standard options, exclusivity agreements, and short-term lock-out agreements.

**Responses to Question Sixteen: Do our proposals reflect sufficiently how control is exercised over partnerships?**

4.17 A quantitative summary of responses to question sixteen is provided below:

Question	Response	No response
<b>Part 2 of Schedule 1 – Partnerships</b>		
16: Do our proposals reflect sufficiently how control is exercised over partnerships?	11	8

4.18 There were five substantive responses to this question, six participants stated they had no further comments to make and eight participants did not respond.

4.19 Two participants indicated they agree that the proposals sufficiently reflect how control is exercised over partnerships.

4.20 Three participants described a range of issues in relation to control within partnerships which are summarised below:

- One participant expressed concern about how the exceptions in Paragraphs 4, 7 and 10 of Schedule 1 could be interpreted. They suggest that a provision be included in these regulations to specify that any advisor, for example a solicitor, only fall outwith the exception if they are acting as a trustee.
- Another suggested that those interested in liaising with ‘decision makers’ should not automatically seek out the associate as decision making will often rest with the owner or tenant.
- One participant described an issue relating to Formation Agents and their supervision in relation to anti-money laundering rules and client requirements. They suggest that the robustness of these systems should be examined.

4.21 Another reiterated a concern expressed in a previous response about the level of interference with business operations without a clear public benefit.

## Part 3 of Schedule 1 – Trusts

### Responses to Question Seventeen: Do our proposals reflect how land is typically held in trust? Can you provide examples of other ways in which land is held in trust?

4.22 A quantitative summary of responses to question seventeen is provided below:

Question	Response	No response
<b>Part 3 of Schedule 1 – Trusts</b>		
17: Do our proposals reflect how land is typically held in trust? Can you provide examples of other ways in which land is held in trust?	13	6

4.23 There were eleven substantive responses to this question. Six participants did not respond, and two participants stated they had no further comments to make.

4.24 Six participants expressed agreement that the proposals reflect how land is typically held in trust.

4.25 Four participants described complexities about ways in which land is held in trust, as follows:

- One called for greater clarification from the Scottish Government about the definitions of controlling interests and how they would be interpreted in the new Register. They outlined a number of complex scenarios for investment; units of investment, collective investment funds, pension funds and overseas trust companies.
- One described their organisations' complex ownership arrangements in which titles may be held in numerous different structures.
- Another explained that their legal vehicle is a statutory corporation with a board of trustees and noted there will be a number of other bodies with a similar legal basis.
- One highlighted challenges of implementing the Register in trusts where the power to appoint or remove trustees resides with another body.

4.26 Two highlighted potential adverse impacts for trusts resulting from the new regulations:

- Both suggested that where trustees are not registered owners of the land held by the trust, they will be subject to personal liability, which may discourage individuals from taking on trustee roles.
- One participant expressed concern with the premise of the question, explaining their view that trustees should not exert control over each other and that this is supported by a body of case law establishing the duties of a trustee.

**Responses to Question Eighteen: Do our proposals sufficiently capture how control is exercised over trusts including through financial interests?**

4.27 A quantitative summary of responses to question eighteen is provided below:

Question	Response	No response
<b>Part 2 of Schedule 1 – Partnerships</b>		
18: Do our proposals sufficiently capture how control is exercised over trusts including through financial interests?	11	8

4.28 There were seven substantive responses to this question. Four participants said they had no comment to make and eight did not respond to this question.

4.29 Two participants answered ‘yes’ indicating agreement that the proposals sufficiently capture how control is exercised over trusts.

4.30 Two participants expressed concern that any disclosure of associates in relation to trusts could hold information about a corporate vehicle rather than a person. They explained that this may cause difficulty in sourcing information about those who ultimately hold controlling interests of any land or property in question. By not disclosing information about specific individuals, they suggested the Register is at risk of not being able to achieve the objective of transparency and could create loopholes for those who wish to retain their anonymity. They suggest the regulations be reviewed to ensure this is not the case.

4.31 Three described differing concerns which are summarised below:

- One participant reiterated a concern expressed in their response to question sixteen that those interested in liaising with ‘decision makers’ should not automatically seek out the associate as decision making will often rest with the owner or tenant.
- One participant referred to their detailed response to question seventeen in which they indicated that the objectives in relation to trusts are not clear. They outlined a range of investment structures in which the controlling interests may differ and called for more clarity about how the regulations would apply.
- Another participant reiterated their concern with the premise of the question, explaining their view that trustees should not exert control over each other and that this is supported by a body of case law establishing the duties of a trustee. They further discussed the duties of a trustee in relation to the Charity and Trustees investment (Scotland) Act 2005 and expressed a fear that if further sanctions are introduced charities may continue to struggle to engage trustees.

## Part 4 of Schedule 1 – Unincorporated Associations

**Responses to Question Nineteen: Do our proposals reflect how land is owned or leased by unincorporated associations. Can you provide examples of other ways in which it is leased or owned on their behalf?**

4.32 A quantitative summary of responses to question nineteen is provided below:

Question	Response	No response
<b>Part 4 of Schedule 1 – Unincorporated Associations</b>		
19: Do our proposals reflect how land is owned or leased by unincorporated associations. Can you provide examples of other ways in which it is leased or owned on their behalf?	10	9

4.33 There were five substantive responses to this question. Five participants said they had no comment to make and nine did not respond to the question.

4.34 Two participants indicated agreement that the proposals reflect how land is owned and leased on behalf of unincorporated associations but did not provide examples of any other ways which land is owned or leased on their behalf.

4.35 One participant expressed understanding of the purpose of the regulations but explained that they do not reflect the situation in charity law. The participant also signalled that despite the regulations possibly easing the administrative duties of charities they may hinder educational work taken to ensure that charity trustees understand that trustees are all equally responsible for decision making. Furthermore, this participant highlighted a view that the regulations may impact the diversity of office holders within boards, in terms of their skills and experience, for example by limiting ‘healthy turnover’ of office holders.

4.36 In the remaining two responses participants referenced their answers to previous questions, summarised below:

- One participant referred to their response to question fourteen where they called for more clarity as to the meaning of the words ‘control’ and ‘significant influence’. They expressed concern that specific definitions in the Regulations are not applicable to all circumstances. They also discussed that it is the duty of trustee to manage the trust estate in the ways enumerated and were therefore concerned that this means that every trustee is a person who ‘has significant influence or control’ as currently stated in the Regulations.
- Another participant expressed they had no further comments beyond what they had already discussed in response to questions sixteen and eighteen; which was that those interested in liaising with ‘decision makers’ should not automatically seek out the associate as decision making will often rest with the owner or tenant.

**Responses to Question Twenty: Are there other types of groups than those mentioned who may be affected by these proposals? If so, please provide examples.**

4.37 A quantitative summary of responses to question twenty is provided below:

Question	Response	No response
<b>Part 4 of Schedule 1 – Unincorporated Associations</b>		
20: Are there other types of groups than those mentioned who may be affected by these proposals? If so, please provide examples	9	10

4.38 There were four substantive responses to this question. Ten participants did not respond to the question and five participants stated they had no further comments.

4.39 Two participants indicated that they were supportive of the regulations as they were sufficiently broad.

4.40 Another participant said they were not aware of any other types of groups than those mentioned who may be affected by these proposals.

4.41 One participant suggested that paid advisors such as solicitors or accountants should not be considered associates of recorded persons unless they meet other conditions in addition to their paid role. They expressed concern that a paid advisor who is acting for a client may be liable to the regulations, requesting clarity as to when a paid advisor would be considered to have met the requirements to become an associate as there are some situations where solicitors and accountants will act as trustees within the Regulations.

## Responses to Question Twenty-One: Do our proposals sufficiently capture how control is exercised over unincorporated associations?

4.42 A quantitative summary of responses to question twenty-one is provided below:

Question	Response	No response
<b>Part 4 of Schedule 1 – Unincorporated Associations</b>		
21: Do our proposals sufficiently capture how control is exercised over unincorporated associations?	11	8

4.43 There were five substantive responses to this question. Eight participants skipped the question and six participants stated they had no further comments.

4.44 Two participants expressed concern that members of unincorporated bodies may not be aware of their duty to comply with the regulations. They also noted aside from the bodies suggested in the regulations that control may not be exercised consistently by the same individuals but may be carried out only when necessary by who is available.

4.45 Other concerns in relation to identifying control are summarised below:

- One participant expressed concern about differing circumstances in which they would like provisions made such as if an unincorporated body cannot identify who should be Registered as an associate.
- One participant called for greater definition in the regulations of the words 'significant' and 'control'.
- Another participant expressed concern that the regulations may not accommodate the full range of unincorporated bodies across Scotland in relation to their land interests as decision making responsibility will differ.
- One participant noted that small unincorporated bodies may be run by volunteers and therefore may be subject to regular personnel changes.

## Part 5 of Schedule 1 – Overseas Legal Entities

**Responses to Question Twenty-Two: Do our proposals reflect how land is typically owned or leased by over overseas legal entities. Can you provide other ways in which it is owned or leased by over overseas legal entities?**

4.46 A quantitative summary of responses to question twenty-two is provided below:

Question	Response	No response
<b>Part 5 of Schedule 1 – Overseas Legal Entities</b>		
22: Do our proposals reflect how land is typically owned or leased by over overseas legal entities. Can you provide other ways in which it is owned or leased by over overseas legal entities?	12	7

- 4.47 There were six substantive responses to this question. Seven participants did not respond to the question, five stated they had no further comments and one suggested that other participants may be better placed to respond to this question.
- 4.48 Three participants called for Part 5 of Schedule 1 to be deleted. They suggested that due to the publication of the Overseas Entities Bill by the UK government this would create dual reporting requirements for overseas entities.
- 4.49 Two participants explicitly agreed that the proposals reflect how land is typically owned or leased by overseas entities. They also requested that the Scottish Government should regularly review the implementation of these regulations in line with changing future circumstances. These participants also expressed concern that the application of the twenty-five percent threshold for voting rights could create a loophole through which controlling interests could remain anonymous, and suggest lowering the voting threshold to ten percent. They also refer to a previous response where they express an overarching concern with the requirements.
- 4.50 Another participant said they had nothing further to add to the proposals.

**Responses to Question Twenty-Three: Do our proposals sufficiently capture how control is exercised over overseas legal entities. Are there other examples that you are aware of?**

4.51 A quantitative summary of responses to question twenty-three is provided below:

Question	Response	No response
<b>Part 5 of Schedule 1 – Overseas Legal Entities</b>		
23: Do our proposals sufficiently capture how control is exercised over overseas legal entities. Are there other examples that you are aware of where control is exercised over an overseas legal entity?	10	9

4.52 There were five substantive responses to this question. Nine participants did not respond to the question and five stated they had no further comments.

4.53 Two participants noted that they were not aware of any mechanisms through which control is exercised which would fall out of the scope of these regulations but reiterated their request for the implementation of the regulations to be reviewed.

4.54 One participant reiterated their response to the previous question in which they suggested deletion of Part 5 of Schedule 1.

4.55 One participant echoed a concern shared by others in their response to the previous question; that separate UK and Scottish registration requirements may impose double reporting requirements from overseas entities.

4.56 One participant observed that these proposals were similar to those of the PSC Regime.

**Responses to Question Twenty-Four: Are there examples where transparency is lacking as to control over a legal owner or tenant of land that we have not taken into account?**

4.57 A quantitative summary of responses to question twenty-four is provided below:

Question	Response	No response
<b>Part 5 of Schedule 1 – Overseas Legal Entities</b>		
24: Are there examples where transparency is lacking as to control over a legal owner or tenant of land that we have not taken into account in our proposals?	10	9

4.58 There were three substantive responses to this question. Nine participants did not respond to the question and seven stated they had no further comments.

4.59 All three participants that commented on the question gave concise replies to suggest that they were satisfied that the relevant scenarios have been identified.

## 5. Schedule 2

5.1 This chapter presents analysis of responses to the remaining five consultation questions, concerning Schedule 2.

### Responses to Question Twenty-Five: Do you have any comments on the usefulness of the PSC regime in revealing control of corporate entities which own land in Scotland?

5.2 A quantitative summary of responses to question twenty-five is provided below:

Question	Response	No response
<b>Schedule 2</b>		
25: Do you have any comments on the usefulness of the PSC regime in revealing control of corporate entities which own land in Scotland?	9	10

5.3 There were six substantive responses to this question. Ten participants skipped the question and three stated they had no further comments.

5.4 Two participants highlighted the relevance of the PSC regime in terms of a model that the new Register could learn from and the current degree of effectiveness of the PSC regime in revealing control of corporate entities owning land in Scotland. They gave several examples to support these statements.

5.5 Other comments in reference to PSC are summarised below:

- One participant suggested that as the purpose of the RCI is different to that of the PSC Register, the terminology should reflect that, and take account of the principal objective of the RCI.
- One participant stated that they had no direct experience with the PSC Regime but that they had received feedback it was useful.
- One participant repeated a view expressed elsewhere that further clarity was required as to who is exempt from the regulations in addition to the entities set out in Schedule 2 for example, a cohabiting partner or spouse. They referenced Part 2 of Schedule 1 and state that this section requires that an owner consult the PSC regulations to establish if they are required to comply or not.
- Another gave a detailed response in which they note that the purposes of the Register of Controlled Interests in Land and the PSC Register overlap but they also note that the purposes of these Registers are not identical. They suggest changes to the language used in the regulations and guidance which have been signposted to the Scottish Government for review.

**Responses to Question Twenty-Six: Do you have any comments on our proposals to not require SCIOs, CIOs, mutual or public authorities to provide information for inclusion in the Register?**

5.6 A quantitative summary of responses to question twenty-six is provided below:

Question	Response	No response
<b>Schedule 2</b>		
26: Do you have any comments on our proposals to not require SCIOs, CIOs, mutuals or public authorities to provide information for inclusion in the Register?	12	7

5.7 There were eight substantive responses to this question. Seven participants skipped the question and four stated they had no further comments.

5.8 Most participants agreed with the proposals not to require SCIOs, CIOs, mutuals or public authorities to provide information for inclusion in the Register.

5.9 Four participants made short responses that simply confirmed they agreed with these exclusions.

5.10 A further three participants stated they agreed with the exclusions and made the following additional comments:

- One participant described these exclusions as reasonable but noted that if there were to be a change in the law in relation to SCIOs these exclusions should be revisited. They also called for clarity as to whether any land owned by 'Council arms-length companies' would be included in the Register.
- Another agreed that there should be a consistent approach to exclusions but argued that the grounds in which the current exclusions have been decided should also apply to statutory bodies such as public corporations and organisations created by specific statute.
- One participant noted that they agreed with the exclusions but suggested that they should be widened to include all charities regardless of how they are constituted. They support this statement with examples for consideration. Given the level of detail in this response it has been signposted directly to the Scottish Government. This respondent echoed other responses to this question by stating that a contact address for every charity in Scotland is already publicly available via the OSCR Charity Register.

5.11 One participant suggested that the proposal to exempt public bodies is counterintuitive if the goal of the Register is transparency.

## Responses to Question Twenty-Seven: Do you agree with the conclusions in the impact assessments?

5.12 A quantitative summary of responses to question twenty-seven is provided below:

Question	Response	No response
<b>Schedule 2</b>		
27: Do you agree with the conclusions in the impact assessments?	9	10

5.13 There were six substantive responses to this question. Ten participants did not respond to the question and three stated they had no further comments.

5.14 Four participants expressed agreement with the conclusions in the impact assessments; however, one noted that further work would be required to develop robustness in terms of estimates of costs associated with compliance.

5.15 The other responses are summarised below:

- One participant suggested that there could be significant costs associated with complying with the regulations.
- Another participant gave a detailed response to this question. This participant made a number of points to indicate that they do not agree with the conclusions in the impact assessments. They argue that the justification of the inclusion of information about the month and year of birth in the Register is weak and indicated disagreement with the expectation that the benefits of transparency will outweigh the costs of compliance.

## Responses to Question Twenty-Eight: Are there potential impacts that we have not considered?

5.16 A quantitative summary of responses to question twenty-eight is provided below:

Question	Response	No response
<b>Schedule 2</b>		
28: Are there potential impacts that we have not considered?	13	6

5.17 There were nine substantive responses to this question. Six participants skipped the question and four stated they had no further comments.

5.18 Five participants expressed agreement that there were no other potential impacts to identify. Another expressed qualified agreement, noting however that further work is required to estimate the costs of compliance.

5.19 Two raised specific points in relation to the business and environmental impact assessments:

- One participant suggested a rewording in 4 (1) of Part 2 of Schedule 1 of the draft Regulations from 'Scottish qualifying partnerships' to 'eligible Scottish partnerships' as this would include Scottish Limited Partnerships as those are subject to the same PSC disclosure requirements as Scottish qualifying partnerships.
- Another said they have considered the environmental impact and that it could have an impact on rural areas and businesses if investment is deterred.

5.20 Several repeated points they had made elsewhere in their consultation response, namely:

- A call for a clear statement of exempt persons or circumstances including for example a couple where one party is the legal owner of the house, but both reside.
- One reiterated a point made in response to earlier consultation questions querying the definition of 'associate'.
- Another reiterated a concern regarding the cost and difficulty to landowners and their associates of compliance with the Regulations.
- One reiterated their response to question twenty-seven concerning the unique structure of this organisation and the nature of how the Requirements may affect it.

## Responses to Question Twenty-Nine: What measures, if any do you think we should take to inform and publicise information about land in Scotland

5.21 A quantitative summary of responses to question twenty-nine is provided below:

Question	Response	No response
<b>Schedule 2</b>		
29: What measures, if any do you think we should take to inform and publicise information about land in Scotland?	14	5

5.22 There were twelve substantive responses to this question. Five participants did not respond to question and two said they had no further comments.

5.23 A common theme in these responses were calls for a high-profile approach to advertising the new Regulations. Participants suggested this could involve a national media campaign, specifically targeting those in sectors which are likely to have greatest reach among individuals who will be affected by the new regulations.

5.24 Four participants suggested that the Scottish Government should consider using the model of the ScotLIS system, on the basis of its reliability. They described it as a good resource for professionals and laypersons alike.

5.25 Three participants took the opportunity to reiterate concerns they had about the accessibility of new Register for members of the general public, describing the proposed arrangements as complex, difficult and time-consuming.

5.26 One highlighted an inconsistency in costs for people searching for information; any details recorded on the new Register can be accessed without charge, but to establish whether or not a property belongs to an owner who is not controlled, users will need to use ScotLIS, which requires payment.

5.27 One participant called for ongoing consultation and communication with their organisation. They emphasised points made elsewhere in their consultation response about alternative ways to access existing information that can provide transparency about land ownership by charities.

## 6. Conclusions

- 6.1 A range of informed stakeholders took part in the consultation. They were typically highly-engaged and knowledgeable about relevant issues, such as land ownership, interpretation of regulations and citizens' rights to accessing information. They shared expertise, examples and reflections on ways the proposals may affect those who own or lease land in Scotland and the implications for greater transparency. These responses provide a useful evidence base for the Scottish Government to draw upon in the development of the final regulations.
- 6.2 At a broad level, responses to the proposals were mixed. Participants' comments typically reflected different interests and perspectives and in some cases these views were at odds with each other; for example, in relation to penalties and enforcement, or the level of information captured in the Register. This presents a challenge for those drafting the regulations; it is likely that the final regulations will not be able to satisfy all stakeholders.
- 6.3 Reflecting across responses, it was evident that participants would like more clarity about aspects of the regulations, particularly in relation to exemptions. In some cases, participants asked for an extension to the timescales proposed in the consultation document. There were frequent calls for the Scottish Government to specify the resources that will be made available to the Registers of Scotland when the Register is created.



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2019

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78781-673-2 (web only)

Published by The Scottish Government, April 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS557490 (04/19)

W W W . G O V . S C O T