

# **Improving Transparency in Land Ownership in Scotland**

## **Consultation Analysis**

**April 2017**

## Contents

<b>1. Executive Summary</b> .....	<b>7</b>
Defining controlling interest .....	7
Scope of the regulations .....	8
Where the information should be held and what information should be disclosed	9
The duty to provide information .....	9
Sanctions and enforcement .....	10
Challenge and exemptions .....	11
Assessing impact.....	11
<b>2. Introduction</b> .....	<b>12</b>
Consultation responses .....	13
Analysis of responses.....	13
<b>3. Workstream 1: Defining Controlling Interest</b> .....	<b>14</b>
Transparency of land ownership and controlling interests in Scotland .....	14
Question 1: Do you have any comments about making information about persons with controlling interests in owners and tenants of land available? .....	14
Views in general support .....	14
Concerns and considerations .....	15
Question 2: In your view, taking into consideration the contents of Chapter 2 of the consultation and the associated Annex C, what are the key considerations that Scottish Ministers should take into account in defining a “controlling interest” or “persons with controlling interests in land owners and tenants” for the purposes of these regulations? .....	16
General views .....	16
Views on the PSC framework.....	16
Other suggested frameworks .....	17
Other considerations.....	17
<b>4. Workstream 2: Practical Aspects - Scope</b> .....	<b>18</b>
Question 3: In your opinion, should the regulations apply to all types of uses of land? Yes/No. Please give details. ....	18
Question 4: Do you think that particular categories of land should be exempt? .....	19
Question 5: If yes, please give details. ....	19
Question 6: In your view, for the purposes of these regulations, should “land” have the same meaning used for Land Registration purposes? Yes/No. Please give details. ....	20
Question 7: In your opinion, should the regulations also apply where the proprietor of land is not recorded in the Register of Sasines or registered in the Land Register because either:.....	21

I. The property was acquired prior to the Register of Sasines commencing in 1617; or.....	21
II. They have acquired a personal right to property but have not yet registered the deed in their favour in the Land Register?.....	21
Question 8: In your opinion, should the regulations apply where a tenant in a high value lease that is not a long lease (a lease of 20 years or fewer) falls within the definition of persons with controlling interests in land owners and tenants? .....	22
Question 9: In your opinion, are there instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land? For instance, if the land in question is an asset of a partnership or trust, or part of a trust arrangement? .....	23
Question 10: In the light of the contents of this consultation, and this chapter in particular, can you foresee any ways in which the obligations under these regulations could be avoided, and, if so, what could the Scottish Government do to combat this? .....	24
<b>5. Workstream 2: Practical Aspects – Where the information should be held and what information should be disclosed .....</b>	<b>25</b>
Question 11: In your opinion, should a new register of persons with controlling interests in land owners and tenants be created? Yes/No .....	25
Question 12: What would the advantages be?.....	25
Question 13: What would the disadvantages be? .....	26
Information to be disclosed.....	26
Question 14: In your view, in addition to the names of “persons with controlling interests in land owners and tenants” should other information about them be disclosed? Yes/No.....	26
Question 15: If yes, how would disclosure of that information fulfil the regulations’ aim(s)? .....	27
Question 16: If no, why not?.....	27
Question 17: In your view, should information about the nature and extent of a person’s “controlling interest” be disclosed? Yes/No.....	28
Question 18: In your view, should information about the nature and extent of a person’s “controlling interest” be disclosed on a public register? Yes/No. Please give details.....	28
Question 19: If yes, how would this information fulfil the purpose of the regulations’ aim(s)? .....	29
Question 20: If no, why not? Please give details.....	29
Question 21: Thinking about the information which in your view should be disclosed, are you aware of any potential sensitivities relating to this? Yes/No. Please give details.....	29
Question 22: If yes, in your view what are the advantages of keeping this information up to date? .....	31

Question 23: If no, why not? Please give details.....	31
Question 24: In your view, are there instances in which the information about the nature and extent of a person’s “controlling interest” is commercially sensitive and should not be revealed? Yes/No. ....	31
Question 25: If yes, please explain why you think that this information should not be revealed.....	32
Question 26: If no, why not? Please give details.....	32
<b>6. Workstream 3: The duty to provide information .....</b>	<b>33</b>
Question 27: In your view, should a duty to provide information about persons with controlling interests in land owners and tenants apply to land owners and tenants with titles in the Land Register or Register of Sasines and: .....	33
1. Land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617? .....	33
2. Land owners or tenants who have acquired a personal right to property, but have not yet registered the deed in their favour in the Land Register? .....	33
3. Tenants in a high value lease that is not a long lease (a lease of 20 years or fewer)? Yes/No .....	33
Views on applying the duty to land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617 .....	33
Views on applying the duty to land owners and tenants who have not yet registered the deed in their favour in the Land Register.....	33
Views on applying the tenants in a high value lease that is a lease of 20 years or fewer .....	34
Question 27: If no, why not? .....	35
Question 29: If yes, in your view what are the advantages of this arrangement? .....	35
Question 30: If yes, in your view what are the disadvantages of this arrangement? .....	35
Question 31: In your view, should a duty to provide information apply to the “person with the controlling interest”? Yes/No.....	36
Question 32: If no, why not? .....	36
Question 33: If yes, in your view what are the advantages of this arrangement? .....	36
Question 34: If yes, in your view what are the disadvantages of this arrangement? .....	37
Question 35: In your view or experience, are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land? Yes/No. ....	37
Question 36: If yes to Q35, in what scenarios do you think that there are parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land? .....	38

Question 37: If yes, in what capacity are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land? .....	38
Question 38: In your view should a duty to provide information apply to such intermediaries? Yes/No. ....	38
Question 39: If no, why not? .....	38
Question 40: If yes, in your view what are the advantages of this arrangement? .....	39
Question 41: If yes, in your view what are the disadvantages of this? .....	39
Question 42: In your view, should the duty to disclose information about any person with a controlling interest in a land owner or tenant apply either when a person is a person with a controlling interest in a land owner or tenant when the regulations come into force, or becomes a person with a controlling interest in a land owner or tenant when the regulations are in force? .....	39
Question 43: If no, why not? .....	40
Question 44: If yes, in your view what are the advantages of this arrangement? .....	40
<b>7. Workstream 3: Sanctions and enforcement .....</b>	<b>41</b>
Question 45: In your view, should a civil penalty be imposed for failure to comply with any of the duties contained in the regulations? Yes/No. Please give details. ....	41
Question 46: In your view, should failure to comply with any of the duties contained in the regulations be a criminal offence? Yes/No. Please give details. ....	42
Question 47: In your view, should an application for land registration be rejected if the applicant fails to supply information about any “person with controlling interest”? Yes/No. Please give details. ....	42
Question 48: In your view, should an application for land registration be rejected if the applicant fails to certify that no such “person with controlling interest” exists. Yes/No. Please give details. ....	43
Question 49: In your view, taking into consideration all of the sanctions and enforcement options set out in this chapter, what mechanisms would be most appropriate to enforce the duty to provide information? Please explain your answer. ....	44
Challenge and exemptions .....	45
Question 50: In your view, are there instances in which there should be exemptions? Yes/No. ....	45
Question 51: If no, why not? .....	46
Question 52: If yes, in your view what is the justification for such exemptions? .....	46
<b>8. Assessing Impact .....</b>	<b>47</b>
Equality .....	47

Question 53: Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have in respect of equality issues. Please be as specific as possible. ....	47
Business and regulation .....	47
Question 54: Please tell us about any potential costs and burdens that may arise as a result of the proposals within this consultation, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.....	47
Privacy .....	48
Question 55: Please tell us about any potential impacts, either positive or negative, upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.....	48
Environmental.....	49
Question 56: Please tell us about any potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment. Please be as specific as possible. ....	49
<b>Annex: List of Respondents .....</b>	<b>50</b>
Private Sector and Professional Bodies .....	50
National Non-Governmental Organisations/Public Sector .....	50
Stakeholder Representative Groups .....	50
Local Government .....	50
Individuals.....	50

# 1. Executive Summary

1.1 The Land Reform (Scotland) Act 2016 introduced new powers to provide for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland.

1.2 Following public consultation, the Scottish Government identified the following key issues to be considered and resolved in developing regulations to deliver a register of controlling interests:

- The definition of a “controlling interest” in relation to a controlling interest in a land owner or tenant;
- The scope of the regulations, the type of land they will apply to and the persons to whom the regulations will apply;
- Where the information about persons with controlling interests in land owners and tenants should be held;
- The information to be disclosed about persons with controlling interests in land owners and tenants;
- The duty to provide the information, and the associated sanctions and enforcement arrangements;
- The process for challenging the information that ultimately appears on the register, or any refusal to disclose information; and
- Any (limited) exemptions from disclosure that should be provided for under the regulations.

1.3 The Scottish Government published a consultation document on 11 September 2016 to seek wider views on these issues with responses invited by 5 December.

1.4 58 responses to the consultation were received, 33 from organisations and 25 from individuals. A summary of the views they contained follows.

## Defining controlling interest

1.5 There was much support for the principle of making information about persons with controlling interests in owners and tenants of land available, this being perceived as fitting for a modern democracy and in line with practice elsewhere.

1.6 Maintaining proportion and containing costs emerged as key themes. Other themes included the need to avoid burdensome procedures which may deter inward investment in Scotland; avoiding duplication in data collection between the existing databases including the Sasine and Land Registers; and ensuring a balance is struck between making information accessible whilst adhering to data protection requirements.

1.7 A repeated comment relating to definitions of “controlling interest” and “persons with controlling interests in land owners and tenants” was that definitions will be

easier to determine once the overall purpose of the proposals becomes clearer. Another common view was that Scotland should harmonise new definitions with relevant existing definitions used in other jurisdictions and contexts.

1.8 There was some support for building upon the People with Significant Control (PSC) framework, currently used for UK companies, and learning from its teething problems.

## **Scope of the regulations**

1.9 The majority view was that the regulations should apply to all types of uses of land. The advantages of this were identified as aiding transparency; avoiding loopholes; being equitable; aiding accountability; and being simple.

1.10 Most of those who provided a view considered that there should be no exemptions.

1.11 Most respondents who gave a view supported “land” having the same meaning for the purpose of these regulations and for Land Registration purposes. The benefits identified included using a meaning which is already understood; avoiding confusion and unnecessary complexity; and minimising additional administration costs.

1.12 The majority view was that the regulations should apply where the proprietor of land is not recorded in the Register of Sasines or registered in the Land Register as the property was acquired prior to 1617 or they have not yet registered the deed in their favour in the Land Register. This was seen as ensuring transparency; providing a comprehensive picture; closing possible loopholes; and ensuring one law for all.

1.13 Most of those who responded agreed that the regulations should apply where a tenant in a high value lease that is not a long lease, falls within the definition of persons with controlling interests in land owners and tenants.

1.14 Almost all of those providing a view agreed that there are instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land. Several respondents identified instances of family businesses, such as farms, where this may be the case.

1.15 A repeated view was that those intent on avoiding the regulations will likely find a way of doing this, however the regulations are drafted. It was suggested that to minimise scope for avoidance, the definition of “controlling interest” and scope of the regulations should be made clear, with penalties for non-compliance sufficient to deter.

## **Where the information should be held and what information should be disclosed**

1.16 The majority view was that a new register of persons with controlling interests in land owners and tenants should be created. Whilst individual respondents were generally in favour of creating a new register, organisations were more mixed in view.

1.17 The creation of a new register was perceived to have the key advantages of being tailored for purpose; avoiding adding more information to the Land Register; and ensuring the funding streams of different registers are kept separate.

1.18 The most commonly identified drawback of setting up a new register was that this would result in information fragmented across different registers, with multiple searches required to find out about ownership and controlling interests in land. Other potential disadvantages identified were: costs of establishing the register; and increased burden of registration.

1.19 Most of those who provided a view considered that in addition to the names of persons with controlling interests, other information should also be disclosed; largely so as communication between communities and those with controlling interests in land owners and tenants can be facilitated. The majority view was in favour of disclosure, in a public register, of the nature and extent of a person's controlling interest.

1.20 Although many respondents were aware of potential sensitivities relating to disclosure of such information, the prevailing view was that disclosure is in the public interest and sensitivities can be addressed by taking care to request and disclose only that information required for the purposes of the regulations. Particularly sensitive cases were identified: people in witness protection schemes; those at risk of violence; where physical or mental health problems could be revealed; where there are commercial considerations; and public figures who do not wish their residence to be disclosed. Private sector and professional bodies held the view that there will be cases involving commercial sensitivities in which information should not be disclosed; the majority of other respondents who provided a view disagreed.

1.21 Whilst a common view was that the information must be kept up-to-date in order to be fit for purpose, a few respondents acknowledged that in reality some leeway should be given to allow for changes to circumstances to be updated.

## **The duty to provide information**

1.22 Most of those providing a view considered that, for the sake of completeness and transparency, the duty to provide information should apply to: land owners and tenants where the property was acquired prior to the Register of Sasines, which commenced in 1617; those who have not yet registered the deed in their favour in the Land Register; and tenants in a high value lease that is a lease of 20 years or

fewer. Where there was opposition to these proposals, this was largely on practical grounds.

1.23 Whilst most respondents who addressed the issue were in favour of a duty to provide information applying to the “person with the controlling interest”, potential drawbacks were envisaged including: inadvertent breach of the regulations by those not being aware they have controlling interests or not realising they have obligations under the regulations; reluctance from some people to divulge information; and enforcing the duty where there are complex ownership and controlling interest structures.

1.24 A commonly held view was that professional agents such as solicitors and accountants serve as intermediaries between registered proprietors and “persons with controlling interest” in land. Other intermediaries identified were: factors; companies; and trusts/trustees.

1.25 Views were divided on whether a duty to provide information should apply to intermediaries. A common view amongst those in support was that this would contribute to a comprehensive register with accurate details. Those opposed were largely private sector and professional bodies who considered that this could challenge the principle of client confidentiality.

1.26 Most of those who provided a view agreed that, for the sake of completeness and transparency, the duty should apply either when a person is a “person with controlling interest” when the regulations come into force, or becomes such a person when the regulations are in force.

## **Sanctions and enforcement**

1.27 The majority view was in favour of a civil penalty being imposed for failure to comply with the duties contained in the regulations. Most felt that such a penalty was important in order to strengthen the regulations, although a period of grace should be considered to give time for people to understand the regulations and have time to act.

1.28 A slight majority of those providing a view agreed that failure to comply with the duties in the regulations should be a criminal offence. This was considered to be a powerful and appropriate deterrent to ensure the regulations are respected. Others perceived criminalising non-compliance to be a disproportionate response, which should be triggered only after all civil penalty options have been deployed.

1.29 Most of those responding considered that an application for land registration should be rejected if the applicant fails to supply information about any “person with controlling interest”. A common view was that this represented a sensible and practical solution to ensuring complete information. Those opposed were largely private sector and professional bodies who considered this a disproportionate response which could provide a barrier to completing the Land Register by 2024,

could result in delays in the conveyancing process and deter commercial investment in Scotland.

## **Challenge and exemptions**

1.30 The majority view was that there should be no exemptions from disclosure of information, with the following reasons given: to achieve complete information; minimise loopholes; ensure the register is effective; minimise appeals; maintain simplicity; and ensure transparency. All of the private sector and professional bodies who provided a view considered that there will be instances in which exemptions will be appropriate, for example, where there is risk of violence to those identified.

## **Assessing impact**

1.31 The most common view was that the proposals would result in greater transparency and enable everyone to be treated equally.

1.32 Potential costs were identified to the tax-payer and to land owners, in addition to greater costs of conveyancing and possible reductions in inward investment. Some respondents considered that over time costs would reduce and be partially offset by registration income.

1.33 A recurring view was that whilst some land owners and tenants might view disclosure of their details as an infringement of their privacy, their concerns will be inconsequential when set against the public gains from reliable, accessible and transparent data on ownership.

1.34 Positive impacts on the environment were envisaged in terms of better environmental stewardship leading to more sustainable land management.

## 2. Introduction

2.1 The introduction of the Land Reform (Scotland) Bill to the Scottish Parliament in June 2015 and the subsequent Parliamentary and public scrutiny of the Scottish Government's proposals led to much debate on the future of land reform, with the issue of transparency of land ownership a key topic which attracted attention. In particular, opinions emerging within and outwith Parliament were in favour of greater transparency over who owns and controls Scotland's land.

2.2 The Scottish Government brought forward amendments at Stage 3 of the Bill to give Scottish Ministers new powers to provide for the disclosure and publication of information about controlling interests in land owners and tenants across Scotland. The amendments were supported and now form part of the Land Reform (Scotland) Act 2016.

2.3 Scottish Ministers undertook to issue a public consultation to inform the process of developing the necessary policy and practical arrangements to give effect to the amendments. The key issues identified by the Scottish Government to be considered and resolved in developing regulations to deliver a register of controlling interests included:

- The definition of a "controlling interest" in relation to a controlling interest in a land owner or tenant;
- The scope of the regulations, the type of land they will apply to and the persons to whom the regulations will apply;
- Where the information about "persons with controlling interests" in land owners and tenants should be held;
- The information to be disclosed about "persons with controlling interests" in land owners and tenants;
- The duty to provide the information, and the associated sanctions and enforcement arrangements;
- The process for challenging the information that ultimately appears on the register, or any refusal to disclose information; and
- Any (limited) exemptions from disclosure that should be provided for under the regulations.

2.4 The Scottish Government published a consultation document on 11 September 2016 to seek wider views on these issues with responses invited by 5 December. The consultation document divided the topics for debate into three separate workstreams:

- Workstream 1: Covered the background and context to the proposals and focused on defining a controlling interest;
- Workstream 2: Covered practical aspects of the regulations including scope, where information should be held and what information should be publicly available; and

- Workstream 3: Covered who should provide information and in what circumstances. It also dealt with non-compliance and appropriate and proportionate sanctions for failing to comply.

2.5 This report presents the analysis of the responses to the written consultation.

## Consultation responses

2.6 The Scottish Government received 58 responses to the consultation. Most respondents submitted their views via the online system Citizen Space, established for consultation responses. Where responses were submitted in email or hard copy, Scottish Government officials entered them manually onto the Citizen Space system to create one complete database of responses and to aid comparison of views and analysis.

2.7 33 responses were received from organisations and the remaining 25 were from individuals. Table 2.1 shows the distribution of responses by category of respondent. A full list of the organisations which responded is in the Annex. The respondent category applied to each response was agreed with the Scottish Government policy team.

**Table 2.1: Distribution of responses by category of respondent**

Category	Number of respondents	% of all respondents
Private sector and professional bodies	11	19
National non-governmental organisations/public sector	11	19
Stakeholder representative groups	9	16
Local government	2	3
<b>Total organisations</b>	<b>33</b>	<b>57</b>
<b>Individuals</b>	<b>25</b>	<b>43</b>
<b>Grand total of individuals and organisations</b>	<b>58</b>	<b>100</b>

## Analysis of responses

2.8 The analysis of responses is presented in the following six chapters which follow the order of the questions raised in the consultation paper. Workstream 1 relating to defining controlling interest is dealt with in Chapter 3; Workstream 2 relating to practical aspects is dealt with in Chapters 4 and 5; Workstream 3 on the duty to provide information and sanctions for non-compliance is dealt with in Chapters 6 and 7. Chapter 8 reports the analysis of views on the impact of the proposals on different groups of people, sectors and the environment. The analysis is based on the views of those who responded to the consultation and may not necessarily represent the views of the wider population.

2.9 The Citizen Space database was exported by the analyst to an Excel working database for detailed analysis. Where respondents have requested anonymity and/or confidentiality, their views have been taken into account in the analysis but quotations have not been taken from their responses. Quotations have been included where they illustrate a point of view clearly and have been selected from a range of respondent groups.

## 3. Workstream 1: Defining Controlling Interest

3.1 This Workstream relates to the approach to be taken in the regulations to defining a “controlling interest” and seeks views on the key considerations which Scottish Ministers and the Scottish Parliament should take into account in doing this.

### Transparency of land ownership and controlling interests in Scotland

Scotland has a long history of public registration of rights in land. The General Register of Sasines, Scotland’s original national register of property deeds, dates back to 1617. In 1981, the map-based Land Register of Scotland, “the Land Register” began to be rolled out across Scotland. Together, these registers have ensured that information about the owner of a right in land is publicly available.

Calls for greater transparency of land ownership in Scotland have increased over recent years, driven in part by concerns over the potential for legal entities to obscure or hide the identity of persons with controlling interests in land owners and tenants.

The Scottish Government is keen to ensure that land in Scotland is sustainably owned, used and developed in the interests of land owners, communities and wider society. Improved information about who controls land owners and tenants in Scotland is seen as helping empower people, including community groups, and gives them the opportunity to understand who is in control of land owners and tenants. Several other benefits are associated with increased transparency over land ownership and controlling interests, including identifying the perpetrators of wildlife crime; helping local authorities in their exercise of compulsory purchase powers or enforcement actions; enabling the Scottish Environment Protection Agency to take action on unlicensed landfill sites; and helping to address tax fraud and evasion.

### Question 1: Do you have any comments about making information about persons with controlling interests in owners and tenants of land available?

3.2 52 respondents addressed this question, including all of the individual respondents.

#### Views in general support

3.3 There was much general support, largely from individuals, for the principle of making information about persons with controlling interests in owners and tenants of land available. Recurring views were that making this information available was fitting for a modern democracy and in line with practice in other jurisdictions.

Several respondents stated that they agreed with the rationale underpinning this proposal, set out in the consultation. A few of the NGO/public sector respondents specifically welcomed the proposal in terms of public interest. Others focused on benefits for their own organisation and members, for example, the Scottish Orienteering Association and Paths for All.

3.4 The majority view from those expressing an opinion was to make registration obligitory in all but the most exceptional circumstances.

3.5 A view shared amongst several individuals and stakeholder representative groups was for details of persons with controlling interests in owners and tenants of land to be made freely available.

3.6 Two private companies suggested maximising opportunities to streamline approaches across the UK, for example, using the same unique identifier number for overseas companies investing in UK land and property.

### **Concerns and considerations**

3.7 Five general concerns and further considerations arose from responses:

- The purpose of the proposals could be clearer according to a few respondents, with some questioning the overriding driver. It was suggested that identifying the controlling interests in land may not serve to improve transparency in land ownership, nor help communities engage in decisions on matters relating to land in Scotland. A few respondents suggested that simply requesting contact details on the title sheet for land would serve the same purpose in terms of enabling communities to communicate on land issues; others suggested information on controlling interests be required only where lack of this is impeding community engagement over land issues.
- The themes of maintaining proportion and containing costs emerged across several responses. A few respondents considered that costs would outweigh benefits; others that the proposals represented a “sledgehammer to crack a nut”; some expressed their support for the overall principle of greater transparency in land ownership and controlling interests but felt that there were higher priorities for public funding.
- A few of the private sector respondents shared the view that the proposals should not be so burdensome as to put off foreign investment in Scotland, and urged that consideration of modern market economies are taken into account in developing the proposals.
- The need to avoid duplication in data collection was raised by several respondents. They suggested that a significant amount of the required information is already existing in various databases including the Sasine and Land Registers, Companies House, Office of the Scottish Charity Regulator, Council Tax and Rating records, and so on.
- A common concern across sectors was that accessible data should not lead to misuse of data. Some considered that a balance should be struck between making information widely accessible but also adhering to data protection

requirements and protecting the privacy of land owners or those with controlling interests.

**Question 2: In your view, taking into consideration the contents of Chapter 2 of the consultation and the associated Annex C, what are the key considerations that Scottish Ministers should take into account in defining a “controlling interest” or “persons with controlling interests in land owners and tenants” for the purposes of these regulations?**

3.8 38 respondents addressed this question.

**General views**

3.9 A repeated theme was that once the overall aim of the proposals is clearer, then definitions will be easier to determine. Several respondents suggested that as the key aim appeared to be to identify decision-makers in relation to land, then definitions should focus on this rather than including ownership or beneficiary criteria:

“A person who benefits financially from the land but does not control decision-making will not be in a position to engage with statutory authorities or with communities in relation to its administration and use.” (Church of Scotland General Trustees)

3.10 A few respondents remarked that beneficial owners may have little or no involvement in decisions on land, with one commenting that in some cases there may be no one meeting the dual criteria of decision-maker and financial benefactor.

3.11 A second overarching theme was that Scotland should harmonise new definitions as far as possible with relevant existing definitions used in other jurisdictions and contexts. The benefits of this were cited as avoiding unnecessary complexity, double-counting, and duplicated effort. One respondent commented:

“In an ideal world there should therefore be some synergy between registers, either to ease navigation from one to the other or to somehow allow for the updating of one to follow the updating of the other.” (Individual)

**Views on the PSC framework**

3.12 There was a body of support across sectors for building upon the PSC framework currently used for UK companies, learning from its teething problems, and firming up what some perceived to be vague criteria or criteria which created tensions (the situation of Scottish share pledge holders was mentioned in this regard). One stakeholder commented that this had further advantages in that concerns regarding compatibility with the Data Protection legislation and protection of privacy rights have already been addressed and resolved by the PSC framework.

3.13 A few respondents suggested broadening its scope to encompass all types of corporate vehicle and legal entity such as trusts and limited partnerships.

### **Other suggested frameworks**

3.14 One individual considered that definitions in the the Money Laundering Regulations could be adopted to be consistent and simple. However, an opposing view from a stakeholder representative group was that the purpose of these regulations was entirely different from the aim of the proposed register, and therefore the definitions were not appropriate.

### **Other considerations**

3.15 Some respondents cautioned that care should be taken in relation to charities, with contrasting views on whether or not they should be included within the scope of the new regulations. Trustees were seen as potentially being classed as having a controlling interest, despite possibly not being responsible individually for land. Another view was that, even if complex, there should be transparency over interests within charities and trusts.

3.16 A few private sector companies argued for banks and other mortgage lenders to be exempt from being designated as having a controlling interest. Likewise, there were arguments made against the inclusion of pension funds.

3.17 One NGO considered that those leasing land (agricultural tenants, crofters, commercial lease holders) who have control over land and property management decisions, but are not the owners, should not come under the auspices of the proposed regulations.

3.18 A private sector respondent anticipated further questions arising over definitions on account of the extension of the community right to buy.

## 4. Workstream 2: Practical Aspects - Scope

4.1 This Workstream relates to the practical aspects of the regulations including the intended scope, where the information should be held, and what information should be publicly available.

The Scottish Government considers that to achieve the desired level of transparency, the regulations should apply to all types of land irrespective of whether it is urban or rural, built on or not, or what the land is used for. They also consider that the definition of “land” for the purposes of the new register should be the same as that used for the purposes of the Land Register. “Land” in the Land Register is denoted as including: buildings and other structures; the seabed of the territorial sea of the UK adjacent to Scotland (including land within the ebb and flow of the tide at ordinary spring tides); and other land covered with water.

### Question 3: In your opinion, should the regulations apply to all types of uses of land? Yes/No. Please give details.

4.2 40 respondents answered this question with a majority of 34 agreeing that the regulations should apply to all types of uses of land. Table 4.1 shows views by category of respondent.

**Table 4.1: Views on whether the regulations should apply to all types of uses of land by category of respondent**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	4	3	7
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	4	1	5
Local government	0	1	1
Individuals	23	1	24
<b>Grand total of individuals and organisations</b>	<b>34</b>	<b>6</b>	<b>40</b>

4.3 The reasons given by respondents who agreed that the regulations should apply to all types of uses of land were:

- Aids transparency;
- Avoids leaving loopholes which could be exploited and/or opening the way for challenges;
- Equitable – applies to all;
- Aids accountability; and
- Simple approach which avoids complexities.

4.4 Those who did not agree that the regulations should apply to all provided the following rationales:

- Should apply only where the land is subject or likely to be subject to community interest;
- Should apply only where a significant transaction in respect of the land is effected; and
- Should be exemption of gardens of domestic properties if less than a certain size (e.g. 5 acres).

### Question 4: Do you think that particular categories of land should be exempt?

### Question 5: If yes, please give details.

4.5 37 respondents answered these questions, with a majority of 30 considering that there should be no exemptions. Table 4.2 shows views by category of respondent.

**Table 4.2: Views on whether particular categories of land should be exempt by category of respondent**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	3	2	5
National non-governmental organisations/public sector	0	3	3
Stakeholder representative groups	0	4	4
Local government	1	0	1
Individuals	3	21	24
<b>Grand total of individuals and organisations</b>	<b>7</b>	<b>30</b>	<b>37</b>

4.6 Proposed exemptions were:

- Urban commercial property where the underlying policy considerations may not apply and there is a risk of disincentivising inward investment by applying the regulations;
- Volume short-term leases as part of a portfolio management approach;
- The principal residence of any home owner; and
- Philanthropic and/or charitable use of land.

4.7 One private company questioned whether government-owned property and that used for military and defence as well as Crown land, would be exempt.

**Question 6: In your view, for the purposes of these regulations, should “land” have the same meaning used for Land Registration purposes? Yes/No. Please give details.**

4.8 33 respondents answered this question, with a majority of 29 considering that for the purposes of these regulations, “land” should have the same meaning used for Land Registration purposes. Table 4.3 shows views by category of respondent.

**Table 4.3: Views on whether, for the purposes of these regulations, “land” should have the same meaning used for Land Registration purposes**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	4	2	6
National non-governmental organisations/public sector	4	0	4
Stakeholder representative groups	3	1	4
Local government	1	0	1
Individuals	17	1	18
<b>Grand total of individuals and organisations</b>	<b>29</b>	<b>4</b>	<b>33</b>

4.9 The benefits of “land” having the same meaning for these regulations and for Land Registration purposes were identified as:

- The Land Registration meaning is already understood and is sufficient;
- Maintaining the same meaning will avoid confusion and unnecessary complexity;
- Administration costs would be incurred if two different meanings existed;
- Makes sense in preparation for digital transformation; and
- Will facilitate the merger of the different registers in future.

4.10 A view from a stakeholder representative group in favour of different meanings was that the meaning of “land” should be extended to “mineral rights” as well as “surface land”. A contrasting view from another stakeholder group was that the inclusion of “mineral rights” within the meaning of “land” would be both difficult and costly to maintain in practice.

**Question 7: In your opinion, should the regulations also apply where the proprietor of land is not recorded in the Register of Sasines or registered in the Land Register because either:**

**I. The property was acquired prior to the Register of Sasines commencing in 1617; or**

**II. They have acquired a personal right to property but have not yet registered the deed in their favour in the Land Register?**

4.11 39 respondents answered this question, with a majority of 29 considering that the regulations should apply where the proprietor of land is not recorded in either of these registers on account of the reasons specified. Of the seven private sector and professional bodies who responded, the majority opposed this proposal. Table 4.4 shows views by category of respondent.

**Table 4.4: Views on whether the regulations also apply in the circumstances stated**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	2	5	7
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	5	0	5
Local government	1	0	1
Individuals	18	5	23
<b>Grand total of individuals and organisations</b>	<b>29</b>	<b>10</b>	<b>39</b>

4.12 The main reasons given in favour of the regulations applying where the proprietor of land is not recorded in the Register of Sasines or registered in the Land Register for the reasons stated were:

- For the sake of transparency;
- To provide a comprehensive picture;
- To close loopholes; and
- To ensure non-discrimination – “one law for all”.

4.13 A few respondents supported the enactment of proposal in due course, but did not see this as an immediate priority, or considered that retrospective cases should come within its scope.

4.14 Two private sector respondents considered that the regulations were more relevant in the case of properties acquired prior to the Register of Sasines than where a personal right to property has been acquired. In the latter case, they argued that a personal right may not give you true control of the land, or the option may never be exercised, with such parties, legally speaking, not actually having rights in the land (only personal rights against the owner).

**Question 8: In your opinion, should the regulations apply where a tenant in a high value lease that is not a long lease (a lease of 20 years or fewer) falls within the definition of persons with controlling interests in land owners and tenants?**

4.15 36 respondents answered this question, with a majority of 22 agreeing that the regulations should apply where a tenant in a high value lease that is not a long lease, falls within the definition of persons with controlling interests in land owners and tenants. Of the seven private sector and professional bodies who provided a response, six of them disagreed. Table 4.5 shows views by category of respondent.

**Table 4.5: Views on whether the regulations should apply in cases of high value leases that are not long leases**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	1	6	7
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	3	0	3
Local government	0	1	1
Individuals	15	7	22
<b>Grand total of individuals and organisations</b>	<b>22</b>	<b>14</b>	<b>36</b>

4.16 Reasons provided in support of the proposal were that this would ensure transparency; would avoid creating exceptions and loopholes; and was not discriminatory. Three respondents, including two NGOs and one individual, commented that a lease of relatively little value and/or length, could still be important for the purposes of amenity management and sustainable development issues.

4.17 Six respondents questioned the relevance of value of lease. Two other respondents considered it difficult to provide a reasoned response as the consultation did not define “high value”. Three respondents remarked that defining “high value” could prove to be problematic, one arguing that value could be viewed in ways other than simply rent.

4.18 Views against the proposal focused largely on practicalities, with questions over whether the benefits of the proposal would outweigh the envisaged costs and effort required:

“This is a clear over-regulation to the commercial leasing market in particular because it could capture an inordinate number of transactions without any real purpose” (Scottish Property Federation).

4.19 One stakeholder representative body did not predict much “buy-in” from those involved in short-term, high rent, seasonal lets (e.g. potato or pea farming). A private sector respondent identified potential issues over including unwritten leases such as those associated with sporting rights, which could be considered personal licences rather than legal leases.

**Question 9: In your opinion, are there instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land? For instance, if the land in question is an asset of a partnership or trust, or part of a trust arrangement?**

4.20 31 respondents answered this question, with a majority of 27 agreeing that there are such instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land. Table 4.6 shows views by category of respondent.

**Table 4.6: Views on whether there are instances where natural persons who own land have an undisclosed relationship with another person who has a controlling interest in land**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	5	0	5
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	4	0	4
Local government	0	0	0
Individuals	15	4	19
<b>Grand total of individuals and organisations</b>	<b>27</b>	<b>4</b>	<b>31</b>

4.21 Recurring comments were that the consultation document had, in effect, answered its own question by highlighting partnerships and trusts in this context. Several respondents emphasised that such cases where relationships are undisclosed are perfectly legal and may include family businesses such as farms. One stakeholder representative body took issue with the word “undisclosed” as suggestive of malpractice when this need not be the case.

4.22 One NGO suggested that relevant information may already be captured by legislation relating to controlling interests in businesses and in charities.

4.23 Several respondents repeated their previous comments that for the sake of transparency, all people associated with controlling interests in land should be identified.

**Question 10: In light of the contents of this consultation, and this chapter in particular, can you foresee any ways in which the obligations under these regulations could be avoided, and, if so, what could the Scottish Government do to combat this?**

4.24 26 respondents answered this question. A view expressed repeatedly was that those intent on avoiding the regulations would most likely find a way to do this, however the regulations are drafted. Circumstances in which avoidance is most likely to arise were suggested:

- If the definition of “controlling interest” and the scope of the regulations are not made sufficiently clear;
- Where there are complex structures of companies or trusts registered in other jurisdictions; foreign entities; or off-shore companies; and
- If penalties are not enough to act as deterrents; where enforcement is not rigorous.

4.25 Respondents urged that to minimise opportunity for avoidance of the regulations, these should be comprehensive with clear definitions to avoid any doubt regarding meaning and scope. It was suggested that lessons be learned from previous experience elsewhere (the Panama Papers were referred to in this respect). Robust enforcement and penalty frameworks were called for, with a few respondents recommending that the Scottish Government take ownership of assets which are not disclosed according to the regulations by the deadline specified. A few respondents suggested that requesting information on the title sheet when registering properties will go some way to combating avoidance.

## 5. Workstream 2: Practical Aspects – Where the information should be held and what information should be disclosed

The Land Reform (Scotland) Act 2016 provides that the information is to be published in a public register maintained by the Keeper. The main options are to publish the information as part of the existing Land Register or to hold the information as a free-standing public register.

### Question 11: In your opinion, should a new register of persons with controlling interests in land owners and tenants be created? Yes/No

5.1 36 respondents answered this question with a majority of 22 considering that a new register of persons with controlling interests should be created. Table 5.1 shows views by category of respondent. Individual respondents were generally in favour of creating a new register; organisations were more mixed in view.

**Table 5.1: Views on whether a new register of persons with controlling interests should be created**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	4	4	8
National non-governmental organisations/public sector	1	2	3
Stakeholder representative groups	2	2	4
Local government	1	0	1
Individuals	14	6	20
<b>Grand total of individuals and organisations</b>	<b>22</b>	<b>14</b>	<b>36</b>

### Question 12: What would the advantages be?

5.2 Responses to this question revealed that there was some confusion over whether this question referred in general to the advantages of registering people with controlling interests in land owners and tenants, or the specific issue of whether a new register should be created for this purpose.

5.3 14 respondents provided arguments in favour of creating a free-standing public register. Most common was the view that a bespoke register would be easier to access and navigate than would be the case if it was part of the existing Land Register.

5.4 Other advantages were identified as:

- A new register can be tailored for purpose;
- Adding to the Land Register could clutter it and could result in delays in routine conveyancing transactions;

- Operating the new regulations should not be paid from Land Register fees and two separate registers will keep funding streams apart; and
- The Keeper is under statutory duty to ensure the Land Register is accurate. However, there is a risk that it would be constantly inaccurate if it had to contain information on persons with controlling interest.

### **Question 13: What would the disadvantages be?**

5.5 21 respondents identified disadvantages to creating a new register. The most commonly identified drawback was that setting up a new register would result in fragmented information with multiple searches required across registers to find out about ownership and controlling interests in land:

“An additional portal of information will add an unnecessary further step to investigations into who owns and controls land.” (Brodies LLP)

5.6 Another potential disadvantage identified repeatedly was that the establishment of a free-standing public register would incur disproportionate costs at a time when public resources are stretched and the focus should be on driving forward the ScotLIS project.

5.7 Several respondents considered that having to provide details to two different registers would increase the burden of registration, result in duplication of effort and introduce unnecessary red-tape.

5.8 One stakeholder representative body suggested linking both registers so one could be accessed directly via the other, with shared reference numbers and updates applying automatically across both.

### **Information to be disclosed**

The Scottish Government intends that the name of any person having a controlling interest in a land owner or tenant should be disclosed. However, disclosure of the name of a person alone may not be sufficient to enable a community body or other interested party to identify “a person with a controlling interest in a land owner or tenant”. More personal information may be required including a person’s postal address, service address, email address or contact telephone number. This raises issues of data protection, proportionality and keeping details up-to-date. There may also be commercial sensitivities relating to this information.

### **Question 14: In your view, in addition to the names of “persons with controlling interests in land owners and tenants” should other information about them be disclosed? Yes/No.**

5.9 36 respondents answered this question with a majority of 32 considering that in addition to the names of “persons with controlling interests in land owners and tenants”, other information about them should also be disclosed. Table 5.2 overleaf shows views by category of respondent.

**Table 5.2: Views on whether other information, in addition to names, should be disclosed of “persons with controlling interests in land owners and tenants”**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	4	2	6
National non-governmental organisations/public sector	2	1	3
Stakeholder representative groups	4	0	4
Local government	0	0	0
Individuals	22	1	23
<b>Grand total of individuals and organisations</b>	<b>32</b>	<b>4</b>	<b>36</b>

### **Question 15: If yes, how would disclosure of that information fulfil the regulations’ aim(s)?**

5.9 30 respondents answered this question. The overarching view was that information to be disclosed should be sufficient to enable communication between communities and those with controlling interests in land owners and tenants to commence:

“There should be sufficient detailed information given to facilitate communication and engagement with these persons.” (Bute Land Reform Group)

5.10 The most important information for this purpose was identified as:

- Name
- Business/service address

5.11 Concerns over data protection and misuse of information were expressed if other details such as personal addresses, email and phone numbers were made publicly available. It was suggested that these details should be registered, but made available only on request, in a formal application and with valid reasons for requiring these.

5.12 Restricting the amount of information to be disclosed to only that which is strictly necessary for the purposes of fulfilling the aims of the regulations was seen as avoiding unnecessary burden.

### **Question 16: If no, why not?**

5.13 Very few comments were provided in response to this question. The main view was that information should not automatically be disclosed publicly if it is not required for communities to make contact with those with controlling interests in land owners and tenants.

**Question 17: In your view, should information about the nature and extent of a person’s “controlling interest” be disclosed? Yes/No.**

5.14 36 respondents answered this question, with a majority of 29 of the view that the nature and extent of a person’s “controlling interest” should be disclosed. Table 5.3 shows views by category of respondent.

**Table 5.3: Views on whether the nature and extent of a person’s “controlling interest” should be disclosed**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	2	4	6
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	2	1	3
Local government	0	0	0
Individuals	22	2	24
<b>Grand total of individuals and organisations</b>	<b>29</b>	<b>7</b>	<b>36</b>

**Question 18: In your view, should information about the nature and extent of a person’s “controlling interest” be disclosed on a public register? Yes/No. Please give details.**

5.15 35 respondents answered this question, with a majority of 27 agreeing that information about the nature and extent of a person’s “controlling interest” should be disclosed on a public register. All of the private sector respondents who replied did not think that such information should be disclosed on a public register, although two of them considered this information should be disclosed (see question 17 above). Table 5.4 shows views by category of respondent.

**Table 5.4: Views on whether the nature and extent of a person’s “controlling interest” should be disclosed on a public register**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	0	6	6
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	3	1	4
Local government	0	0	0
Individuals	21	1	22
<b>Grand total of individuals and organisations</b>	<b>27</b>	<b>8</b>	<b>35</b>

5.16 The advantages of disclosing this information on a public register were seen largely as:

- Facilitating transparency;

- Illuminating who owns what and how land is managed; and
- Enabling more informed communication between communities and those with “controlling interests”.

5.17 A few respondents stated their view that there appeared to be no good reason to withhold such information from a public register.

5.18 Amongst those disagreeing with making this information publicly available on a register were respondents who suggested that this could create data protection issues and potential misuse of information. Whilst there was general agreement that this information should be retained, they did not agree that it should be available for public view without valid reason.

### **Question 19: If yes, how would this information fulfil the purpose of the regulations’ aim(s)?**

5.19 24 respondents answered this question although several simply referred to their response to the previous question. The most common response amongst the others was that public disclosure of this information would aid transparency on who owns and/or has controlling interest over land in Scotland.

5.20 A few respondents stated that the information would enable communities to make contact with those with “controlling interest”. One stakeholder representative group suggested that the information would contribute to the evidence-base for future policy.

### **Question 20: If no, why not? Please give details.**

5.21 Five respondents (four private sector and professional respondents and one stakeholder representative group) answered this question. All considered that information on the nature and extent of a person’s “controlling interest” is not necessary to meet the aim(s) of the regulations. A few suggested that public disclosure of such information may raise issues of commercial confidentiality and may deter inward investment. One respondent envisaged difficulties establishing this information in cases of complex ownership structures.

### **Question 21: Thinking about the information which in your view should be disclosed, are you aware of any potential sensitivities relating to this? Yes/No. Please give details.**

5.22 34 respondents answered this question, with a majority of 23 stating that they are aware of potential sensitivities relating to information to be disclosed. All of the six private sector and professional bodies who provided a response to the question expressed their awareness of potential sensitivities. Table 5.5 overleaf shows views by category of respondent.

**Table 5.5: Views on whether there are potential sensitivities relating to the information which should be disclosed**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	6	0	6
National non-governmental organisations/public sector	2	1	3
Stakeholder representative groups	3	1	4
Local government	0	0	0
Individuals	12	9	21
<b>Grand total of individuals and organisations</b>	<b>23</b>	<b>11</b>	<b>34</b>

5.23 Two key themes emerged from the supporting details provided by respondents. Firstly, there was a broad acknowledgement that some of those with “controlling interests” may not wish to disclose various details, but that disclosure was in the public interest and a small price to pay for transparency over land ownership and “controlling interests”. Secondly, several respondents considered that sensitivities could be addressed largely by taking care to request and disclose only information required for the purposes of the regulations:

“The more information which is sought and the more tenuous that information is to the purpose of the regulations, the risk of sensitivities obviously increases and also arguably diminishes the transparency of the information provision through an overload of and potentially irrelevant and extraneous additional detail.”  
(Scottish Land and Estates)

5.24 Several respondents, from different categories, identified particular cases where sensitivities may be heightened:

- People in witness protection schemes;
- People at risk of violence and intimidation;
- People who have physical or mental health problems where this could be revealed in information about legal capacity;
- Where there are commercial considerations; and
- Public figures who do not wish their personal residence details known.

5.25 A few respondents suggested that a mechanism be put in place whereby those with valid reasons for having their details withheld could have their request honoured. One respondent recommended following the model protection regime adopted by the PSC Register, “Protection will only be granted if your application contains evidence proving a serious risk of violence, intimidation or physical harm to the PSC or someone who lives with the PSC”.

## Question 22: If yes, in your view what are the advantages of keeping this information up-to-date?

5.26 28 respondents answered this question, with the most common response being that unless the information is kept up-to-date, the register will not be fit for purpose. In reality, a few respondents acknowledged that it would be rare for all details to be totally current, and suggestions were made for windows of 30 days, 6 months or one year, to be acceptable for changes in circumstances to be recorded. “Triggers” for updating details were put forward and included annual confirmation statements (such as those required for Companies House), and new registrations of land.

5.27 Other advantages identified in keeping the information up-to-date were:

- For efficient communication with those with “controlling interest”;
- To minimise friction and conflict over use of land;
- To maintain transparency;
- To send a clear message that the register is to be taken seriously; and
- To facilitate policy-making and research.

## Question 23: If no, why not? Please give details.

5.28 Only one significant comment of relevance was made in response to this question. A stakeholder representative body remarked that at present, information about persons with “controlling interest” in corporate bodies of various types is already disclosed in other registers.

## Question 24: In your view, are there instances in which the information about the nature and extent of a person’s “controlling interest” is commercially sensitive and should not be revealed? Yes/No.

5.29 35 respondents answered this question, with a majority of 24 considering that there are no instances in which information about the nature and extent of a person’s “controlling interest” is commercially sensitive and should not be revealed. Of the five private sector and professional bodies who responded, all were of the view that there are potential commercial sensitivities which should not be revealed. Table 5.6 overleaf shows views by category of respondent.

**Table 5.6: Views on whether there are potential commercial sensitivities relating to the information which should not be revealed**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	5	0	5
National non-governmental organisations/public sector	0	3	3
Stakeholder representative groups	1	3	4
Local government	1	0	1
Individuals	4	18	22
<b>Grand total of individuals and organisations</b>	<b>11</b>	<b>24</b>	<b>35</b>

## **Question 25: If yes, please explain why you think that this information should not be revealed.**

5.30 Seven respondents, from four respondent categories, provided responses to this question. Two considered that there should be a default position of privacy for all information bar that required to meet valid public interest over “who owns and manages what”. Two respondents suggested that commercial sensitivities may be time-specific, with confidentiality required for a defined period, following which information could be made public.

5.31 A private company commented that third parties will need their privacy protected where information about their affairs may be revealed in complex “trust” arrangements. An individual respondent considered that there will always be rare situations in which commercial sensitivities should be prioritised and a blanket ruling over revealing all information would be inappropriate.

5.32 One private sector respondent commented that the PSC regulations have provisions to protect some information from being made public.

## **Question 26: If no, why not? Please give details.**

5.33 23 respondents answered this question. The most common response was that commercial sensitivities should not stand in the way of legitimate public interest:

“Any commercial sensitivity must be outweighed by the statutory right of the Scottish public to know who owns and controls land in Scotland.” (Individual)

5.34 Other reasons given in support of the view that there are no instances in which information about “controlling interest” should be withheld due to commercial sensitivities were:

- To be transparent, there can be no exceptions;
- Creating exceptions will provide loopholes to be exploited;
- No information is so sensitive that it should be hidden; and
- For those with “controlling interest” to be held to account, information must be revealed.

## 6. Workstream 3: The duty to provide information

Currently, anyone who wishes to know more about who controls land can obtain information about the legal owner by searching for this information in the Land Register or Register of Sasines. However, it is often the case that having information about the legal owner will not assist in reaching the person(s) who controls the land owners or tenant of the land in question. In most cases land owners and tenants should know who the person(s) with controlling interest is.

**Question 27: In your view, should a duty to provide information about persons with controlling interests in land owners and tenants apply to land owners and tenants with titles in the Land Register or Register of Sasines and:**

- 1. Land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617?**
- 2. Land owners or tenants who have acquired a personal right to property, but have not yet registered the deed in their favour in the Land Register?**
- 3. Tenants in a high value lease that is not a long lease (a lease of 20 years or fewer? Yes/No**

**Views on applying the duty to land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617**

6.1 39 respondents answered this question with a majority of 28 considering that a duty to provide this information should apply to land owners and tenants where the property was acquired prior to the Register of Sasines commencing. Table 6.1 overleaf shows views by category of respondent.

**Views on applying the duty to land owners and tenants who have not yet registered the deed in their favour in the Land Register**

6.2 39 respondents answered this question with a majority of 28 considering that a duty to provide this information should apply to land owners and tenants who have not yet registered the deed in their favour in the Land Register. Table 6.2 overleaf shows views by category of respondent.

**Table 6.1: Views on whether the duty should apply where property was acquired prior to the Register of Sasines commencing**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	2	6	8
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	5	0	5
Local government	0	1	1
Individuals	18	4	22
<b>Grand total of individuals and organisations</b>	<b>28</b>	<b>11</b>	<b>39</b>

**Table 6.2: Views on whether the duty should apply where the land owners or tenants have not yet registered the deed in their favour in the Land Register**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	1	6	7
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	5	0	5
Local government	0	1	1
Individuals	19	4	23
<b>Grand total of individuals and organisations</b>	<b>28</b>	<b>11</b>	<b>39</b>

### Views on applying the tenants in a high value lease that is a lease of 20 years or fewer

6.3 37 respondents answered this question with a majority of 23 considering that a duty to provide this information should apply to tenants in a high value lease that is a lease of 20 years or fewer. Table 6.3 shows views by category of respondent.

**Table 6.3: Views on whether the duty should apply where tenants are in a high value lease that is a lease of 20 years or fewer**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	1	7	8
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	4	0	4
Local government	0	1	1
Individuals	15	6	21
<b>Grand total of individuals and organisations</b>	<b>23</b>	<b>14</b>	<b>37</b>

## **Question 27: If no, why not?**

6.4 13 respondents answered this question, although a few of these simply referred to their response(s) to other questions.

6.5 Arguments against applying a duty to provide information in the scenarios outlined were largely on practical grounds:

- All public land will be registered by 2019 and the Land Register will be completed by 2024 anyway;
- There can be uncertainty over information such as precise boundaries and the extent of titles in property acquired pre-Sasines, and in registers such as the Sasines; attempting to bring relevant land owners and tenants within the duty to provide information could be unenforceable and could require a relaxation of mapping requirements; and
- Defining a high value lease could be challenging and requiring tenants in a high value lease that is not a long lease to provide information about persons with controlling interests will create a disproportionate administrative burden for little gain.

## **Question 29: If yes, in your view what are the advantages of this arrangement?**

6.6 27 respondents answered this question. Four key advantages were identified and are listed below from most frequently mentioned to least:

- Greater transparency;
- Completeness; minimising loopholes;
- Equity; level playing field; and
- To meet the purpose of the regulations.

## **Question 30: If yes, in your view what are the disadvantages of this arrangement?**

6.7 Nine respondents suggested potential disadvantages of this arrangement. Several anticipated increased costs to those needing to register (depending on who becomes in-scope) and to those managing the register and attempting to identify owners and tenants of land acquired pre-1617.

6.8 A few respondents considered that where the title has not yet been registered, non-compliance could be challenging to address.

6.9 Two individuals anticipated potential legal challenges to the Scottish Government arising from the application of the duty under the arrangement.

6.10 A local government respondent suggested that the arrangement will require clear definitions to be established (for example, the meaning of “high value”).

It may also be appropriate to place the duty to provide information on the person(s) with a “controlling interest”. This may be difficult in practice to enforce, if it cannot be ascertained if such a person exists from available information or if these persons are established or resident outside the UK.

### Question 31: In your view, should a duty to provide information apply to the “person with the controlling interest”? Yes/No.

6.11 37 respondents answered this question with a majority of 32 considering that a duty to provide information should apply to the “person with the controlling interest”. Table 6.4 shows views by category of respondent.

**Table 6.4: Views on whether the duty to provide information should apply to the “person with the controlling interest”**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	6	1	7
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	4	0	4
Local government	1	0	1
Individuals	18	4	22
<b>Grand total of individuals and organisations</b>	<b>32</b>	<b>5</b>	<b>37</b>

### Question 32: If no, why not?

6.12 Very little response was provided to this question. Those providing a response considered the proposal to be potentially unenforceable and not practical, particularly in relation to persons residing outwith Scotland. An individual respondent argued that the duty should be placed on the legal owner at the point of application of registration in the Land Register.

### Question 33: If yes, in your view what are the advantages of this arrangement?

6.13 22 respondents answered this question. The most common response, largely from individuals, was that this arrangement would lead to greater transparency and certainty about where duties lie.

6.14 Five respondents, four of them private companies and professional bodies, considered that information gained from this arrangement would be more likely to be accurate and up-to-date than that obtained by placing the duty on those holding title, who may not be aware of all controlling interests.

6.15 A few respondents across different sectors argued that as information about those with controlling interests is key to the regulations, then it makes sense to place the duty on them.

6.16 Two respondents suggested alternative approaches:

- Place the duty on both those with controlling interests and the legal owner(s); and
- The duty should apply to those with controlling interests, but in complex ownership structures (particularly corporate vehicles registered off-shore) the duty should then apply to the legal person(s) that are the registered land owner or long-term lease holder.

### Question 34: If yes, in your view what are the disadvantages of this arrangement?

6.17 11 respondents answered this question. The three main disadvantages identified were:

- Those with controlling interests may inadvertently breach the regulations due to not knowing they have such interests and/or not knowing about their obligations under the regulations;
- There may be a reluctance of people with controlling interest to divulge information; and
- Enforcement could be challenging particularly where there are complex ownership and controlling interest structures.

It may also be possible that there are intermediate persons who hold the information necessary to determine who has a controlling interest, such as solicitors in law firms or accountants who have been dealing with either the land owners or tenants, or the person with a controlling interest in a land owner or tenant.

### Question 35: In your view or experience, are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land? Yes/No.

6.18 32 respondents answered this question with a majority of 29 considering that there are parties who serve as such intermediaries. Table 6.5 shows views by category of respondent.

**Table 6.5 Views on whether there are parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	2	2	4
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	4	1	5
Local government	1	0	1
Individuals	19	0	19
<b>Grand total of individuals and organisations</b>	<b>29</b>	<b>3</b>	<b>32</b>

**Question 36: If yes to Q35, in what scenarios do you think that there are parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land?**

6.19 30 respondents answered this question. A few law firms expressed reservation about solicitors being classed as intermediaries on the grounds that they act for their client only, with their primary duty to their client, therefore they are not acting as intermediaries.

6.20 The most common response amongst others was that professional agents such as solicitors and accountants serve as intermediaries between registered proprietors and persons with a controlling interest in land. The remaining recurring responses were: factors; companies; and trusts/trustees.

**Question 37: If yes, in what capacity are there parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land?**

6.21 Several respondents answered this question by referring to their response to the previous question. Where further response was made, respondents across all categories considered that such parties served in professional management and advisory capacities.

**Question 38: In your view should a duty to provide information apply to such intermediaries? Yes/No.**

6.22 38 respondents answered this question with views divided almost evenly between those who considered a duty to provide information should not apply to such intermediaries (a slight majority) and those who considered that they should be under such a duty. Table 6.6 shows views by category of respondent.

**Table 6.6 Views on whether there are parties who serve as intermediaries between registered proprietors and persons with a controlling interest in land**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	0	7	7
National non-governmental organisations/public sector	2	1	3
Stakeholder representative groups	3	2	5
Local government	0	1	1
Individuals	13	9	22
<b>Grand total of individuals and organisations</b>	<b>18</b>	<b>20</b>	<b>38</b>

**Question 39: If no, why not?**

6.23 17 respondents answered this question. The most common view from private sector and professional respondents and from stakeholder representative groups was that applying this duty to intermediaries such as advisory agents would challenge the principle of client confidentiality. A few suggested that this might

deter individuals from taking professional advice which could be to the detriment of the overall registration system.

6.24 Another recurring view across several categories of respondent was that there did not appear to be a valid reason for applying the duty to intermediaries in this context, when this does not occur in other areas such as paying tax.

#### **Question 40: If yes, in your view what are the advantages of this arrangement?**

6.25 14 respondents answered this question. The most common view was that this arrangement would contribute to achieving a comprehensive and accurate register which contained reliable information. One stakeholder representative body suggested that this arrangement was particularly important in cases where those with controlling interests are resident and/or registered off-shore.

6.26 Other advantages were identified as:

- In keeping with requirements in other areas such as those applying in anti-money laundering regulations;
- To increase transparency;
- Cost-efficient for tax payer; and
- Intermediaries are likely to be aware of the regulations.

#### **Question 41: If yes, in your view what are the disadvantages of this?**

6.27 There was very little response to this question, with only a few respondents suggesting potential disadvantages of: cost; resistance; and challenges arising in enforcing the arrangement.

#### **Question 42: In your view, should the duty to disclose information about any person with a controlling interest in a land owner or tenant apply either when a person is a person with a controlling interest in a land owner or tenant when the regulations come into force, or becomes a person with a controlling interest in a land owner or tenant when the regulations are in force?**

6.28 33 respondents answered this question with a majority of 21 considering that the duty should apply either when a person is a “person with controlling interest” when the regulations come into force or becomes such a person when the regulations are in force. A few further respondents indicated, however, that they did not fully understand the question and had not responded with yes or no on account of this. Table 6.7 overleaf shows views by category of respondent.

**Table 6.7 Views on whether the duty to disclose information should apply when a person has controlling interest when the regulations come into force or when a person becomes one with controlling interest when the regulations are in force**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	1	4	5
National non-governmental organisations/public sector	2	1	3
Stakeholder representative groups	4	1	5
Local government	0	1	1
Individuals	14	4	18
<b>Grand total of individuals and organisations</b>	<b>21</b>	<b>11</b>	<b>32</b>

### Question 43: If no, why not?

6.29 Only nine respondents provided relevant commentary with a few others indicating that they were not clear about how to respond.

6.30 The main emerging theme, from across different sectors of respondent, was that applying the duty to those with controlling interests at the time the regulations come into force could place an excessive regulatory burden on existing larger landowners which may not be enforceable and would create significant logistical challenges.

6.31 Respondents considered a more realistic approach would be to apply the duty to those who acquire controlling interest in land owner or tenant following the enactment of the regulations, and then to maintain the register by introducing an annual confirmation statement along the lines of that applying in company law in the UK.

### Question 44: If yes, in your view what are the advantages of this arrangement?

6.32 16 respondents answered this question. They identified the following advantages of this arrangement:

- Completeness/comprehensive;
- Transparency;
- Accurate/up to date;
- Accountable; and
- Usefulness/fit for purpose.

## 7. Workstream 3: Sanctions and enforcement

The duty that will apply will require to be underpinned by proportionate enforcement mechanisms in order to be effective. The Land Reform (Scotland) Act 2016 enables the regulations to include provision for criminal or civil penalties.

### Question 45: In your view, should a civil penalty be imposed for failure to comply with any of the duties contained in the regulations? Yes/No. Please give details.

7.1 32 respondents answered this question with a majority of 25 considering that a civil penalty should be imposed for failure to comply with any of the duties contained in the regulations. Table 7.1 shows views by category of respondent.

**Table 7.1 Views on whether a civil penalty should be imposed for failure to comply with any of the duties contained in the regulations**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	3	0	3
National non-governmental organisations/public sector	2	0	2
Stakeholder representative groups	4	1	5
Local government	0	0	0
Individuals	16	6	22
<b>Grand total of individuals and organisations</b>	<b>25</b>	<b>7</b>	<b>32</b>

7.2 25 respondents provided more details to support their view. It was broadly acknowledged that without some form of penalty for failure to comply, the regulations would lack teeth. However, a few respondents recommended a reasonable period of “grace” to enable those new to the duty to understand this and have time to act:

“...depending on the content of the regulations there may be a significant programme of compliance awareness required. We would hope to see a positive engagement process to raise awareness with those who advise and are controlling interests in land in Scotland. (Scottish Property Federation)

7.3 One stakeholder representative group suggested that penalties should not apply in the case of genuine mistakes.

7.4 Amongst those who supported civil penalties for failure to comply, four individual respondents suggested financial penalties proportionate to the land assets involved. Two individuals envisaged forfeiture of the land to the Scottish Government; one stakeholder representative group suggested compulsory purchase of the asset as the penalty.

7.5 Amongst those opposed to applying civil penalties for non-compliance, the prevailing view was that these were not strong enough deterrents.

**Question 46: In your view, should failure to comply with any of the duties contained in the regulations be a criminal offence? Yes/No. Please give details.**

7.6 30 respondents answered this question with 18 considering that failure to comply with any of the duties contained in the regulations should be a criminal offence. Table 7.2 shows views by category of respondent.

**Table 7.2 Views on whether failure to comply with any of the duties contained in the regulations should be a criminal offence**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	1	3	4
National non-governmental organisations/public sector	1	1	2
Stakeholder representative groups	2	3	5
Local government	0	0	0
Individuals	14	5	19
<b>Grand total of individuals and organisations</b>	<b>18</b>	<b>12</b>	<b>30</b>

7.7 22 respondents provided more details to support their view. Those in favour of a criminal penalty being imposed for failure to comply with any of the duties considered this to be a powerful and appropriate deterrent which will ensure that the regulations are respected.

7.8 Those opposed to failure to comply being a criminal offence felt this to be a disproportionate response. A few suggested that perhaps failure to comply should be criminalised only after all civil penalty options have been deployed, or only in cases of very large/valuable land assets.

7.9 An individual respondent recommended that further discussion on the relative merits of civil and criminal penalties should take place, including consideration of the resources required for enforcement.

**Question 47: In your view, should an application for land registration be rejected if the applicant fails to supply information about any “person with controlling interest”? Yes/No. Please give details.**

7.10 38 respondents answered this question with a majority of 25 considering that an application for land registration should be rejected if the applicant fails to supply information about any “person with controlling interest”. All of the private sector and professional bodies who answered the question were opposed to the proposal. Table 7.3 overleaf shows views by category of respondent.

**Table 7.3 Views on whether an application for land registration should be rejected where information about “person with controlling interest” has not been supplied**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	0	8	8
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	3	1	4
Local government	0	1	1
Individuals	19	3	22
<b>Grand total of individuals and organisations</b>	<b>25</b>	<b>13</b>	<b>38</b>

7.11 The main reason provided in favour of the proposal was that this represented a sensible and practical solution to ensuring complete information:

“...one of the most effective ways of making sure the information on controlling interests is provided is to require this information as part of the application for land registration, and rejecting such applications if the information is not provided or accurate.” (Global Witness)

7.12 One respondent suggested that the proposal be supported by appeal procedures. Another suggestion was for leeway to enable owners to have their registration accepted, even if incomplete, if they have taken all “reasonable steps” to identify those with controlling interest.

7.13 Two respondents questioned how missing information would be identified and by whom?

7.14 Those providing arguments against the proposal were largely private sector and professional bodies. Their reasons to oppose it were:

- Not a proportionate response to the problem;
- Could be self-defeating in providing a barrier to progressing towards a complete Land Register by 2024;
- Could result in delays in the conveyancing process;
- Could unwittingly affect innocent parties;
- Could deter commercial investment in Scotland; and
- May be human rights arguments around statutory loss of land if this results from delays in registration.

**Question 48: In your view, should an application for land registration be rejected if the applicant fails to certify that no such “person with controlling interest” exists. Yes/No. Please give details.**

7.15 36 respondents answered this question with a majority of 24 considering that an application for land registration should be rejected if the applicant fails to certify that no such “person with controlling interest” exists. All of the private sector and

professional bodies who answered the question were opposed to the proposal. Table 7.4 shows views by category of respondent.

**Table 7.4 Views on whether an application for land registration should be rejected where the applicant fails to certify that no such “person with controlling interest” exists**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	0	6	6
National non-governmental organisations/public sector	3	0	3
Stakeholder representative groups	3	2	5
Local government	0	1	1
Individuals	18	3	21
<b>Grand total of individuals and organisations</b>	<b>24</b>	<b>12</b>	<b>36</b>

7.16 12 respondents gave more details. Several others referred to their previous responses, particularly their response to question 47.

7.17 A few individual respondents queried whether the situation could arise in which there is no one with controlling interest, in so far as the owner will ultimately have this, and if there is no owner, then the land will be owned by the Scottish Government.

7.18 Those providing reasons in agreement with the proposal considered it to be logical, sensible and minimising loopholes.

7.19 Those opposing the proposal felt that this could create delays in conveyancing; could risk the security of heritable creditors; the information should be collected only when required and not routinely; and could be challenging to sustain where controlling interests change independently of actual land transactions.

**Question 49: In your view, taking into consideration all of the sanctions and enforcement options set out in this chapter, what mechanisms would be most appropriate to enforce the duty to provide information? Please explain your answer.**

7.20 21 respondents answered this question although a few further respondents referred to their comments relating to previous questions.

7.21 The most common response, largely from individual respondents, was that registrations attempted without the required information should be rejected and knowingly provided false information should be subject to criminal law (as at present):

“The cleanest method of enforcement would be to prevent registration. This will ensure that all parties require to be disclosed. The only way to avoid that would be to keep the interest off register, which would have significant adverse effects with the owner's ability to transact with their property.” (Individual respondent)

7.22 A few of the stakeholder representative groups outlined their vision of an incremental scale of mechanisms, from the “softer” end of voluntary registration, to the final stage of criminalisation for repeated failure to notify of controlling interests and persistent obstruction.

7.23 The possibility (raised in the consultation) of placing a charge on the relevant title sheets which would prevent any dealing in a property where information is incomplete, received explicit support from a few respondents.

7.24 Three respondents suggested that threat of forfeiture of land/loss of controlling interest where information is not disclosed, could provide the necessary deterrent.

7.25 One stakeholder representative group commented that raising awareness of the regulations and making registration simple and low cost would be important steps to increasing compliance with the duty.

## Challenge and exemptions

The Scottish Government considers that privacy exemptions will be necessary in some limited circumstances such as where publication of information about persons will put them at serious risk of harm. The PSC register framework, for example, allows for application for protection, for instance if there is a serious risk of violence or intimidation.

### Question 50: In your view, are there instances in which there should be exemptions? Yes/No.

7.26 34 respondents answered this question with a majority of 22 considering that there should be no exemptions. All seven of the private sector and professional bodies who answered the question were in favour of exemptions. Table 7.5 shows views by category of respondent.

**Table 7.5 Views on whether there are instances in which there should exemptions**

Category of respondent	Number of respondents providing view:		Total
	Yes	No	
Private sector and professional bodies	7	0	7
National non-governmental organisations/public sector	0	1	1
Stakeholder representative groups	2	4	6
Local government	0	0	0
Individuals	3	17	20
<b>Grand total of individuals and organisations</b>	<b>12</b>	<b>22</b>	<b>34</b>

### **Question 51: If no, why not?**

7.27 16 respondents answered this question. They provided the following reasons for not permitting exemptions:

- For completeness of information;
- To minimise loopholes;
- Otherwise the register will be ineffective; undermined;
- There are no cases which will warrant an exemption;
- To minimise appeals;
- To keep things simple; and
- To ensure transparency.

### **Question 52: If yes, in your view what is the justification for such exemptions?**

7.28 Six respondents answered this question although a few others stated that they had already provided relevant text in response to previous questions.

7.29 Five of those who responded considered that there could be valid cases, for example where there is a risk of violence, where the identity of those with controlling interest should not be requested for a public register. The final respondent suggested that there should be allowances made in cases of genuine error on behalf of the person registering information, if they then corrected this within a set time period.

## 8. Assessing Impact

### Equality

The Scottish Government has a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, or sex and sexual orientation.

**Question 53: Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have in respect of equality issues. Please be as specific as possible.**

8.1 20 respondents provided a relevant response to this question.

8.2 The most common view was that the proposals would result in greater transparency and enable everyone to be treated equally. Two respondents suggested that the proposals would contribute to highlighting where inequalities exist.

8.3 One stakeholder representative group identified a potentially negative impact if the disclosure of the details of trust beneficiaries resulted in vulnerable people being targets for abuse.

8.4 Seven respondents from four different sectors stated that they could not envisage any potential positive or negative impacts on those with protected characteristics.

### Business and regulation

A full Business and Regulatory Impact Assessment will be carried out to analyse whether the regulations are likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary or community organisations.

**Question 54: Please tell us about any potential costs and burdens that may arise as a result of the proposals within this consultation, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.**

8.5 27 respondents provided a relevant response to this question.

8.6 Almost all of these respondents identified potential costs which they considered would arise as a result of the proposals:

- Costs to taxpayers: system set-up costs; running costs to ensure databases are up-to-date and effective; costs related to enforcement and addressing legal challenges;

- Costs to land owners: registration; requirement for professional advice;
- Costs of conveyancing: more detailed searches; ensuring appropriate disclosures; and
- Costs of reduced inward investment.

8.7 Whilst some respondents (largely individuals) predicted that increased costs will be minimal, will be partially offset by additional registration income and will reduce over time, others (largely stakeholder representative groups) envisaged more significant costs, particularly to landowners. Several respondents across different sectors predicted substantial costs related to resourcing the new register and its upkeep.

8.8 A few respondents suggested that the scale of additional costs will depend on the nature of the system implemented, the streamlining of its operation and the extent of any exemptions, which were viewed as likely to boost costs due to legal challenges and the creation of loopholes.

## Privacy

The Scottish Government is mindful that proposals that require people to disclose information are likely to have impacts in respect of privacy. A full Privacy Impact Assessment will be conducted to ascertain whether any of the proposals in this consultation will have an impact on the privacy of individuals.

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

8.9 25 respondents provided a relevant response to this question, with a few others referring to their response to previous questions.

8.10 One recurring view, particularly amongst individuals, was that whilst some land owners and tenants might view the disclosure of their details as an infringement of their privacy, their concerns will be inconsequential when set against the potential public gains from reliable, accessible and transparent data on ownership.

8.11 A few respondents across different sectors emphasised the need for the proposals to comply with ECHR and data protection protocols, with mixed views on the likelihood of possible challenges on these grounds.

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

## Environmental

The Environmental Assessment (Scotland) Act 2005 ensures that those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse impacts are sought, where possible, prior to a consultation or implementation of the plan in question.

At this early stage in policy development for these regulations, the Scottish Government considers that it is not possible to assess whether environmental impacts will arise. Following this consultation, an assessment will be made as to whether the Government's obligations under the 2005 Act have been complied with.

### **Question 56: Please tell us about any potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment. Please be as specific as possible.**

8.13 25 respondents provided a relevant response to this question. Of these, nine did not consider that the proposals would have any particular impact on the environment, either positive or negative. The majority of the others identified positive potential impacts.

8.14 Positive impacts were envisaged in terms of better environmental stewardship leading to more sustainable land management. It was expected that the proposals would result in a reduction in environmental damage and instances of derelict land and pollution, due to owners being identified and held to account.

8.15 A few respondents suggested that the proposals would enable better enforcement of wildlife protection laws and less wildlife crime.

8.16 One individual respondent considered that the proposals may result in more community ownership which in turn could create a positive impact on the environment.

8.17 One private sector body identified potential negative impacts on the environment if investors are deterred from investing in Scottish land due to the proposals, leading to some land not being maintained.

# Annex: List of Respondents

## Private Sector and Professional Bodies

British Parking Association  
Brodies LLP  
Council of Mortgage Lenders  
Harper Macleod LLP  
Law Society of Scotland  
Pinsent Masons LLP  
Scottish Property Federation

## National Non-Governmental Organisations/Public Sector

Chartered Institute of Housing Scotland  
Church of Scotland General Trustees  
Highlands and Islands Enterprise  
National Trust for Scotland  
Office of the Scottish Charity Regulator  
Paths for All  
Royal Town Planning Institute Scotland  
RSPB Scotland  
Scottish Council of Voluntary Organisations  
Scottish Orienteering Association  
The Crown Estate

## Stakeholder Representative Groups

Bute Land Reform Group  
Community Land Advisory Service  
Community Land Scotland  
Community Woodlands Association  
Development Trusts Association Scotland  
Global Witness  
Scottish Community Alliance  
Scottish Tenant Farmers Association  
Scottish Land and Estates

## Local Government

Falkirk Council  
Stirling Council

## Individuals

25 individuals



Scottish Government  
Riaghaltas na h-Alba  
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