

Read-out meeting Minister Environment and Land Reform with representatives of Christian faith groups regarding their concerns with the Register of Persons Holding a Controlled Interest in Land (RCI)

Date meeting: 27 September, 14:30-15:15

Attendees:

SG Minister ELR
[Redacted] Head of Land Reform
[Redacted], SGLD
[Redacted], Land Reform and Land Use
[Redacted], Private Office
[Redacted], Private Office

Faith groups

[Redacted], Solicitor to the Church of Scotland and Secretary of Council of Churches
[Redacted], Secretary General for the Scottish Episcopal Church and Vice-Chair of the Council of Churches
[Redacted], Church of Scotland and Parliamentary and Policy liaison Council of Churches
[Redacted], Property lead and Chair of Trustees, United Reform Church

1. Welcome and introductions

1. The Minister welcomed and thanked attendees for joining the meeting today, and briefly summarised the background to the Register, noting that it was intended in particular to add an additional layer of transparency beyond information of ownership. She acknowledged the concerns raised by churches in their communications to date, and cited the importance from an SG perspective that the large number of properties held by Church of Scotland and other churches are captured on the RCI. She set out that she cannot commit to any decisions in the meeting, but that she would listen closely and take any points away for consideration.

2. Concerns about RCI

2. The Minister invited representatives to explain in a bit more detail what their concerns with the Register are. Representatives discussed this, highlighting that in their view the Regulations are not well suited to religious bodies like their own where decision making is dispersed throughout the organisation. They also noted that faith groups like theirs are in a unique position as most unincorporated bodies do not own significant amounts of property. The fact that organisations like theirs own a large number of small property titles across Scotland creates a significant administrative burden not faced by other entities with similar structures. They also noted that it is this administrative burden associated with complying with the register that is the cause of their concern, they understand and support the need for transparency, but consider that this is already provided sufficiently by their organisations.

3. Faith group representatives also reiterated concerns that Charity Law Reforms announced in the recent Programme for Government would introduce a very similar transparency regime to RCI. In their view this raises not only the spectre of double reporting but also risks investing significant time and resource into compliance with RCI only to become exempt from its duties a few years down the line. In light of the commitment to introduce a Charities Bill this parliamentary year, faith group representatives requested that compliance with RCI be paused for now, to await the proposed reforms and align better with their progress through Parliament.

3. Potential resolutions

4. Turning towards potential further mitigations, the Minister noted that one of the difficulties in all this seems to be the disparity between organisations and organisational structures. She highlighted that the Scottish Baptists are opting to restructure their congregations as SCIOs, which are exempt, and wondered if the faith groups present had considered this route. Representatives of the Church of Scotland explained that in their case, restructuring over a thousand congregations into SCIOs would still involve a very significant administrative undertaking and could not be considered a desirable solution.
5. Faith group representatives explained that their preferred resolution would be for all religious bodies, or failing that all charities, to be made exempt from the duty to register on RCI, as in their view they already provide sufficient transparency. The Minister challenged this somewhat, and pointed out that losing the significant amount of properties held by religious groups, and the entire charitable sector, would risk critically undermining the efficacy of the Register and the effort to improve transparency.
6. In response, faith group representatives pointed to a proposal submitted by them to officials prior to the meeting, which would see the creation of a named list of churches that wish to be exempt but would in return nominate one office-bearer in their organisation to be registered on RCI and place a duty on this person to provide information when enquiries about church-held property were lodged. The Minister agreed to look at these proposals as part of her considerations.

4. Improving transparency and the Land Register

7. In light of the honest and open discussions being held, the Minister queried whether the representatives felt their organisational structures were up to the standards of modern expectations of transparency. Faith group representatives indicated they felt that they do, and pointed to the fact they already receive and answer queries regarding their property holdings on a regular basis, without any legal obligation to do so.
8. The Minister also enquired what efforts the organisations present were making to transfer their property holdings from the General Register of Sasines to the more easily accessible Land Register. Representatives for the Church of Scotland highlighted their programme of voluntary registration on the Land Register, which prioritises glebe land, property about to be sold, and historic buildings, but

acknowledged this had been delayed by the COVID-19 pandemic over the last few years. The Minister welcomed these efforts, and encouraged attendees to continue working towards getting the majority of their properties onto the Land Register.

5. Next Steps & Close

9. The Minister thanked attendees for their time, and indicated she would carefully consider the proposals they had put to her. Representatives raised that the current onset for criminal penalties is 1 April 2023, so they would welcome a decision being made in this matter soon. The Minister committed to letting them know her decision within a couple of weeks. Faith group representatives also highlighted that many independent churches may not yet be aware that they would have to register for RCI. Officials confirmed that Registers of Scotland had been planning further outreach activities.

MINISTER FOR ENVIRONMENT AND LAND REFORM

Briefing for meeting Church of Scotland and other faith groups about RCI

What	<p>A stakeholder engagement meeting with representatives from Church of Scotland, Scottish Episcopal Church and United Reform Church about the Register of Persons Holding a Controlled Interest in Land (RCI)</p> <p>You will be chairing the meeting, but will primarily be in listening mode to hear more about the concerns raised by the representatives of the faith groups attending.</p>
Where	<p>Tearns meeting [Redacted]</p>
When	<p>14:30 – 15:15 Tuesday 27 September</p>
Key Message(s)	<ul style="list-style-type: none"> ◦ Improving transparency in decisions and ownership about land was a key aim of the Land Reform (Scotland) Act 2016 ◦ Transparency continues to be a vital priority in our commitment to empower communities to have a say in what happens to land in their local area. ◦ [redacted]. ◦ [redacted]
Attendees	<p>[redacted], Solicitor of the Church, Church of Scotland [redacted], Secretary General Scottish Episcopal/Anglican Church [redacted], Convenor of Finance and Property, United Reformed Church [redacted], <i>Policy and Public Affairs & Scottish Churches Parliamentary Officer, Church of Scotland – not confirmed</i></p>
Why (Objectives and Outcomes)	<p>This meeting was arranged following concerns raised by Church of Scotland (CoS) and a subsequent annual meeting between the Moderator of CoS and the First Minister. The objective of this meeting is to be in listening mode and let stakeholders share their concerns. It will not at this stage be possible to offer any concrete solutions, but a successful outcome would be to agree to continue exploring options.</p>
Supporting officials	<p>[redacted], Land Reform Policy and Legislation [redacted] [redacted], Land Reform Policy and Legislation [redacted], <i>SGLD, can also attend if you would find this helpful</i></p>
Briefing contents	<p>Annex A: Meeting Agenda and suggested speaking notes Annex B: Background: RCI requirements on churches Annex C: Attendee Bios Annex D: RCI – Criticisms and Rebuttals Annex E: Prior engagement with CoS & 2019 EQIA Annex F: Charity Law Reforms Top lines</p>
Media Handling	<p>No media.</p>

ANNEX A – Meeting Agenda & Suggested speaking notes for opening

MINISTER FOR ENVIRONMENT AND LAND REFORM

Briefing for meeting Church of Scotland and other faith groups about RCI

Agenda: This is provided for the purposes of chairing the meeting, but no official agenda has been issued for this engagement. Updates since 9 September in red

TIME	OUTLINE
16:00 – 16:45 (45 mins)	<ol style="list-style-type: none">1. Introductions2. Minister to briefly set out briefly policy aim and importance of RCI3. Invite representatives to share their issues4. Reiterate the importance of transparency and the role third sector organisations have in leading by example. [redacted]5. Reiterate commitment and willingness to continue discussions. [redacted]6. Hear final thoughts7. Thanks and close.

Suggested speaking notes to open

- Welcome and thank you for taking the time to attend
- I am here to listen and better understand your issues, and am hopeful we can have a productive discussion about ways we may strike a balance between the need for transparency and the administrative duties on organisations like yours.
- Before we dive in, I think it might be helpful to briefly remind ourselves of the purpose of the Register and what is aiming to achieve, so we can bear this in mind as we explore resolutions.
- Improving transparency was a key aim of the Land Reform Scotland Act 2016, and it remains an integral part of our commitment to empower communities to have a say about land.
- It is vital that communities have access to the people who make decisions about land and property in their local area.
- I appreciate that from your perspective, this is already provided by Churches, but I invite you to consider that for a lay person or community group, who may not be a part of a congregation or have interacted with church structures before, it is not at all easy to work out who to contact about a specific local property.
- This is where the RCI enables that access and transparency, by providing a free to search online record of who makes decisions about that property in their area.
- The legislation has the full backing of the Scottish Parliament, who unanimously voted to approve the implementation of RCI, with strong cross-party support.
- But I am mindful that RCI is a complex item of legislation, and that understandings of its working and impacts will evolve as the Register matures.
- To this end, I am keen to hear from you how you think the Register can be improved so religious organisations and charities will find it easier to comply.

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ANNEX B – Background on Requirements on churches/charities under RCI

Updates since submission of 13 September in red.

Church of Scotland

1. [redacted] (an incorporated body) on behalf of local congregations, for [redacted].
2. In summary, the requirements under RCI for Church of Scotland are:
 - For the [redacted], there would be 1 registration of a recorded person, and around 3 to 4 registrations of local office bearers as associates. This number per property is in line with what is expected of other charitable organisations and unincorporated bodies.
 - For the [redacted], the requirements will depend on how exactly the title is structured, but it is likely to be a higher number of registrations as each office bearer will need to register as recorded person and note the others as associates. We do not have exact figures but estimate it could be 5 to 15 registrations per property.
3. Church of Scotland agree that the administrative responsibility resulting from RCI arises primarily from the number of properties they hold. We estimate that they are the largest land-owner by volume of property titles held that is in scope for RCI. The volume of property owned, from a policy perspective, makes it very important the CoS complies with the legislation, while in their view further mitigations would be justified because the volume makes the impact on them significantly greater than that on other bodies.
4. CoS have stated that they expect the financial cost of compliance with and ongoing maintenance of entries on the Register to be significant, in the tens if not hundreds of thousands of pounds, and they will have to recruit additional staff. It is worth noting in this context that CoS have been engaged in developing the RCI since its inception in 2016, so have had more than five years to prepare.
5. Failure to comply with RCI duties risks criminal penalties, which will come in to force once the transition period ends on 1 April 2023. [redacted].

Other churches

6. The administrative responsibilities on other churches will differ according to their internal structures and property holdings. Until recently, no other faith groups had raised concerns with us directly, but CoS have told us they are advocating on behalf of a range of Christian faith groups with concerns about RCI. [redacted]
7. [redacted]
8. It is worth noting that Church of Scotland benefit from a unique legal structure that reduces the amount of registrations, but many other faith groups do not have a corporate body like the General Trustees and as a result have to register a greater number of entries. The figures supplied by the Episcopal Church can be considered a better indicator of the number of registrations required per property for other faith groups, but the impact on each will vary according to how their property holdings are structured and the number of properties held.

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9. [redacted]

10. Faith officials have also advised that other religious groups, notably the Scottish Baptists, have indicated that although they have concerns about the administrative requirements, they do not contest the principle underpinning the legislation and are not seeking an exemption. [redacted]

11. We have not been approached by faith groups other than Christian denominations regarding RCI. This may be because many other religious groups have fewer land holdings or are structured in a way that either puts them out of scope or reduces the amount of registrations they would have to make on RCI, or it may be due to a lack of awareness.

Charities

12. We have not been approached by charities other than faith groups with concerns around RCI, but as noted above, this may be due to lack of awareness. Registers of Scotland have been undertaking various activities to highlight RCI, and are starting to reach out to charities and faith groups directly in a soft approach to raise awareness among these audiences of the need to register.

Further communications with CoS

13. [redacted]

14. [redacted]

15. [redacted] This is in contrast to SCIOs who are already exempt due to their higher reporting requirements. [redacted].

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ANNEX C – Attendee Bios

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

MINISTER FOR ENVIRONMENT AND LAND REFORM
Briefing for meeting Church of Scotland and other faith groups about RCI

ANNEX D – RCI – Criticisms and Rebuttals

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

[redacted]

1. [redacted]

[redacted]

2. [redacted]

[redacted]

[redacted]

3. [redacted]

[redacted]

4. [redacted]

[redacted]

[redacted]

5. [redacted]

6. [redacted]

[redacted]

[redacted]

[redacted]

7. [redacted]

[redacted]

[redacted]

[redacted]

8. [redacted]

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[redacted]

9. [redacted]

[redacted]

10. [redacted]

11. [redacted]

12. [redacted].

13. [redacted]

14. [redacted]

[redacted]

15. [redacted]

[redacted]

16. "redacted"

[redacted]

15. [redacted]

[redacted]

MINISTER FOR ENVIRONMENT AND LAND REFORM

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ANNEX E - Prior engagement with Church of Scotland and the 2019 EQIA

Early stages & consultation

- CoS have been aware of the Register since its very early inception at the time of the 2016 Land Reform bill
- CoS submitted a consultation response to the SG consultation held in 2016 *Improving transparency in land ownership in Scotland: a consultation on controlling interests in land*
- The draft RCI Regulations were laid in Parliament in June 2018 and were subject to super-affirmative procedure in Parliament: CoS were not invited to present evidence to committee, and did not submit evidence to Parliament as part of a general call for evidence.
- Over the course of the Regulations being developed, officials met with CoS representatives to better understand their governance structures and how the RCI would impact them.

2019 EQIA

- Based on concerns raised by CoS, an Equality Impact Assessment (EQIA) was carried out in 2019.
- The EQIA identified the potential for the RCI as drafted to indirectly impact faith groups because of their internal structures and historic landholdings.
- A further meeting was held with CoS in 2019, as well as a separate workshop with Registers of Scotland.
- Following this, three measures were introduced to remove duplication and reduce the number of registrations in scope:
 - exempting bodies that exert influence through a function conferred by an enactment,
 - allowing bodies that are both trusts and unincorporated associations to register following only the provisions for an unincorporated association,
 - and exempting individuals that are both recorded persons and associates for the same piece of land
- [redacted]
- [redacted]. The measure was introduced because the provisions for unincorporated associations (Part 4) require far fewer people to register as associates – CoS advised at the time that under Part 3 up to 45 people could be registered as associates per property.
- The 2019 EQIA gave due regard to the concerns raised by CoS, and the mitigating measures put in place greatly reduced the number of registration per property (currently around 3-4 per property if held by the General Trustees).
- On the basis of the final draft Regulations and the accompanying EQIA with its mitigations, Parliament voted unanimously to approve implementation of the RCI in 2021.

Since Parliamentary approval in 2021

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- Registers of Scotland had a further workshop with Church of Scotland to test out the beta-version of the registration website – this seems to have triggered renewed concerns about the administrative duties under RCI.
- **[redacted]**
- Ahead of the current meeting (13 September) officials met with CoS representatives to better understand their internal structures and how the Regulations impact CoS.

MINISTER FOR ENVIRONMENT AND LAND REFORM
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ANNEX F – TOP LINES – CHARITY LAW REFORMS

- As announced in the Programme for Government, we will bring forward a Charities (Regulation) Bill this year. [redacted]
- The Bill is based on practical proposals put forward by OSCR to update the current system of charity regulation by improving transparency and accountability in charities and enhancing OSCR's enforcement powers.
- The proposals have been thoroughly consulted on and the vast majority of responses supported them, including those organisations who also called for wider reforms.

[redacted]
[redacted]
[redacted].

From: [redacted]
Land Reform
ARE – FRPFLULR
25 August 2022

MINISTER FOR ENVIRONMENT AND LAND REFORM

Update on engagement with Church of Scotland regarding impact of Register of Persons Holding a Controlled Interest in Land (RCI) on (religious) charities

Purpose

1. To update you on the issues raised by Church of Scotland and other churches during engagements with officials over the summer

Priority

2. Routine – you are due to meet the Church of Scotland, and other churches, on 7 September. A detailed engagement briefing pack will follow.

Recommendation

3. The Minister is invited to:-
 - Note the concerns raised by CoS and other churches
 - [redacted]
 - Indicate if she is content with the proposed handling for the September 7 meeting

Background

4. The Register of Persons Holding a Controlled Interest in Land (RCI) went live on 1 April 2022, and has been in development since before 2016, when the framework powers for it were introduced in the Land Reform (Scotland) Act 2016. Church of Scotland were engaged in the development process early on and raised concerns about the impact on large land-owners and religious bodies in their consultation response and to officials directly. An Equalities Impact Assessment was carried out and mitigations were brought in to reduce the number of people organisations like CoS would have to register under RCI. Church of Scotland did not submit any evidence to Parliament at the time, and the RCI regulations were passed unanimously with cross-party support in Spring 2021. Since then, and particularly since RCI going live, CoS have expressed growing concerns about the cost of compliance and maintenance of entries on RCI, and are now requesting an exemption for religious bodies or charities.

Upcoming meeting and proposed handling

5. Following the annual meeting with the CoS Moderator and FM in June 2022, you have a scheduled meeting with CoS on 7 September. CoS have also invited two further churches with concerns about RCI to attend this meeting, the Scottish Episcopal Church and the United Reform Church. Over the summer, officials have been engaging with CoS representatives to get a better understanding of their concerns and how the RCI impacts them and other religious bodies. **Annex A**

contains an overview of what we now understand the apparent impact to be on CoS and the other churches attending.

6. Despite best efforts, the meeting between SG officials and C of S officials was tricky to handle. Furthermore, CoS have made it clear that only legislative resolutions will be acceptable. We have reached out to the other two churches to get more information about their particular concerns. The requirements flowing from RCI and the concerns of the other two churches differ from those of the Church of Scotland, but the Scottish Episcopal Church have confirmed they too think legislative amendments are the only viable solutions.
7. [redacted]
8. [redacted].
9. As a result of the complexity of the legislation, the position outlined by C of S to the policy team and the [redacted], officials propose the meeting is framed towards a 'listening mode' to hear the concerns raised by this group of stakeholders. [redacted]. In addition to listening to concerns, the key messages for you to articulate would focus on the importance of transparency overall.

Recommendations

10. The Minister is invited to:
 - Note the concerns raised by CoS and other churches
 - [redacted]
 - Indicate if she is content with the proposed handling for the September 7 meeting

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Environment and Land Reform	X				
Minister for Equalities and Older People			X		
Director of Agriculture and Rural Economy Deputy Director , Future Rural Policy Frameworks, Land Use and Land Reform [redacted], Head of Land Reform Unit [redacted], Land Reform Policy and Legislation [redacted] Land Reform Policy and Legislation [redacted], Land Reform Policy and Legislation [redacted], Land Reform Policy and Legislation Deputy Director, Connected Communities [redacted], Faith and Belief policy [redacted], Faith and Belief policy [redacted], Charity Law [redacted], Charity Law [redacted], Charity Law [redacted], SGLD [redacted], SGLD [redacted], Communications NetZero and Rural John MacFarlane, SPAD					

Requirements under RCI for CoS and other churches

Church of Scotland

11. [redacted] (an incorporated body) on behalf of local congregations, [redacted]
12. Details of the requirements under RCI for Church of Scotland are in summary:
 - For the [redacted], there would be 1 registration of a recorded person, and around 3 to 4 registrations of local office bearers as associates. This number per property is in line with what is expected of other charitable organisations and unincorporated bodies.
 - For the [redacted], the requirements will depend on how exactly the title is structured, but it is likely to be a higher number of registrations as each office bearer will need to register as recorded person and note the others as associates. We do not have exact figures but estimate it could be 5 to 15 registrations per property.
13. Church of Scotland agree that the administrative responsibility resulting from RCI arises primarily from the number of properties they hold. We estimate that they are the largest land-owner by volume of property titles held that is in scope for RCI. The volume of property owned, from a policy perspective, makes it very important the CoS complies with the legislation, while in their view further mitigations would be justified because the volume makes the impact on them significantly greater than that on other bodies.
14. CoS have stated that they expect the financial cost of compliance with and ongoing maintenance of entries on the Register to be significant, in the tens if not hundreds of thousands of pounds, and they will have to recruit additional staff. It is worth noting in this context that CoS have been engaged in developing the RCI since its inception in 2016, so have had more than five years to prepare.
15. Failure to comply with RCI duties risks criminal penalties, which will come in to force once the transition period ends on 1 April 2023. [redacted]

Other churches

16. The administrative responsibilities on other churches will differ according to their internal structures and property holdings. Until recently, no other faith groups had raised concerns with us directly, but CoS have told us they are advocating on behalf of a range of Christian faith groups with concerns about RCI. [redacted].
17. [redacted]
18. It is worth noting that Church of Scotland benefit from a unique legal structure that reduces the amount of registrations, but many other faith groups do not have a corporate body like the General Trustees and as a result have to register a greater number of entries. The figures supplied by the Episcopal Church can be considered a better indicator of the number of registrations required per property

for other faith groups, but the impact on each will vary according to how their property holdings are structured and the number of properties held.

19. [redacted]

20. We have not been approached by faith groups other than Christian denominations regarding RCI. This may be because many other religious groups have fewer land holdings or are structured in a way that either puts them out of scope or reduces the amount of registrations they would have to make on RCI, or it may be due to a lack of awareness.

Charities

21. We have not been approached by charities other than faith groups with concerns around RCI, but as noted above, this may be due to lack of awareness. Registers of Scotland have been undertaking various activities to highlight RCI, and are starting to reach out to charities and faith groups directly in a soft approach to raise awareness among these audiences of the need to register.

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From: [redacted]
ARE: Land Reform
12 October 2022

Minister for Environment and Land Reform

ISSUING A HOLDING RESPONSE TO FAITH GROUP REPRESENTATIVES RE REGISTER OF PERSONS HOLDING A CONTROLLED INTEREST IN LAND (RCI)

PRIORITY AND PURPOSE

1. This **Routine** submission seeks your agreement to issue a letter to attendees of a recent meeting with representatives of Christian faith groups.

RECOMMENDATION

2. That you: **Agree to issue a holding response**

CONTEXT AND ISSUES

3. You met with church representatives on 27 September to hear their concerns around the administrative burden arising from their duty to register on RCI. In this meeting, you committed to carefully considering the requests put forward, and to letting attendees know your decision within a couple of weeks.

OPTIONS CONSIDERED AND ADVICE

4. [redacted].

5. As noted previously, there are no straightforward pathways to resolve this complex issue. [redacted]

6. [redacted]

7. [redacted]

8. Given these considerations officials advise that it is premature to indicate that you are [redacted]. We recommend instead issue a holding response to the attendees of the 27 September meeting.

9. A draft response is included alongside this submission. It sets out reassurance that you are considering the issues raised and may be open to some of the solutions discussed in the meeting. It goes on to note that this is a complex issue that you need to consider carefully, including with regards to the proposed Charity Law Reforms, but commits informing them of your decision as soon as you can.

ASSESSMENT OF OPTIONS

10. Further advice is being developed by officials, but in order to meet your undertaking to respond within two weeks, we recommend issuing a holding response in the interim.

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BUTE HOUSE AGREEMENT IMPLICATIONS

11. There are no direct Bute House agreement implications. However, [redacted]. In preparing our full advice we also need to consult internally with relevant Ministerial colleagues and the Green Party.

FINANCIAL AND LEGAL CONSIDERATIONS

12. There are no direct legal or financial implication to issuing a holding response, but there are [redacted]. Further advice on this is being developed and will be provided shortly.

SENSITIVITIES

13. Significant stakeholder and parliamentary sensitivities have been noted in para 6 - 8.

QUALITY ASSURANCE

14. This submission has been approved by **Fiona Harrison, DD Land Reform.**

CONCLUSION AND NEXT STEPS

15. The Minister is invited to agree to issue a holding response and note that further advice is being prepared.

[redacted]

ARE: Land Reform Policy and Legislation Unit

[redacted]

Copy List:	For action	For information		
		Portfolio interest	Constituency interest	General awareness
Minister for Environment and Land Reform	X			
Minister for Public Finance, Planning and Community Wealth		X		
Cabinet Secretary for Net Zero, Energy and Transport		X		
Minister for Equalities and Older People		X		

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Director of Agriculture and Rural Economy
Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform
[redacted], Head of Land Reform Unit
[redacted], Land Reform Policy and Legislation
Deputy Director, Connected Communities
[redacted], Faith and Belief policy
[redacted], Faith and Belief policy
[redacted], Faith and Belief policy
[redacted], Charity Law
[redacted], Charity Law
[redacted], Charity Law
[redacted], SGLD
[redacted], SGLD
[redacted], Communications NetZero and Rural
[redacted], ARE Finance
John MacFarlane, SPAD
Liz Lloyd, SPAD

Extract from: "Submission – ROUTINE – RCI and Churches – Mitigation Options – 9 September 2022"

1. ...The Minister's thoughts on this before the scheduled meeting with faith group representatives planned for 13 September could help ease stakeholder discussions, but is not critical to the handling of the meeting. A separate engagement briefing has been put up to you in parallel to this submission.

26. In relation to the meeting with CoS on the 13th, as part of the separate engagement briefing pack, proposed handling includes the possibility for the Minister to indicate **[redacted]**.

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Land Reform Bill – Meeting between the Minister for Environment and Land Reform and Calum MacLeod, 13:15, 28 September 2022, MS Teams (Virtual)

Meeting Note

Present

Màiri McAllan MSP, Minister for Environment and Land Reform

Calum MacLeod, Partner, Harper Macleod LLP

[Redacted], Scottish Government

[Redacted], Scottish Government

Land Reform Bill proposals

- The Minister invited Mr MacLeod's views on the consultation proposals.
- Mr MacLeod thought that the proposals may not break up ownership of landholdings but will improve accountability.
- In terms of the proposals for pre-notification to community bodies, Mr MacLeod raised the challenges of late registration in terms of community buy outs and questioned whether the proposed measures would lead to many more due to the current lack of large-scale community buy outs.
- Mr MacLeod also questioned whether the proposals would bring significant change in terms of diversification of ownership given the focus on large-scale landholdings and noted the issue of loopholes, such as the purchasing of smaller holdings to avoid being in scope of the measures.
- The Minister asked whether the proposed threshold of 3000ha for defining the threshold of large-scale landholdings compared with Mr MacLeod's experience of landholdings.
- Mr MacLeod considered it difficult to say, providing examples of an estate in Sutherland and an estate in Badenoch and Strathspey. Mr MacLeod suggested that there is a stronger economy in the latter area compared to Sutherland so the actions of a landholding in Sutherland might have a greater impact than the actions of a landholding in Badenoch and Strathspey.
- Mr MacLeod considered that the 3000ha threshold was arbitrary and whether there was a concentration of power depended on local communities, although he recognised the need to draw a line.
- Mr MacLeod also noted the proposal to use data zones as one of the thresholds for bringing measures into scope could address situations where there is a concentration of power not captured by the 3000ha threshold.

Community ownership and pre-notification

- Mr MacLeod highlighted that communities are asked to frontload an effectively speculative community right to buy application, which requires a significant amount of work with no guarantee that it will ever move forward given it depends on a landowner proceeding to sale within the time period of the registration.
- As the new proposal still requires communities to be constituted bodies, Mr MacLeod considered the Bill may not lead to more purchases by communities as they may still see the process as speculative and so overly burdensome.
- Mr Macleod suggested an alternative approach, with a more streamlined way to register which does not give a full pre-emptive right but is less onerous than a full

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part 2 registration. This would be taken into account if a group proceeded with a late registration.

- Noted that Community Land Scotland are interested in a less onerous registration process which results in an entry on a register.
- Mr MacLeod noted that it was difficult to get a successful late registration and there was a need to better understand the barriers to registration.
- [Redacted] noted that around one third of all applications were now late registrations and that communities were not applying until land was on the market. It is important for communities to take relevant steps and compliance is a part of that process.
- The Minister raised the need to balance work and rights, and that more work was needed for greater rights. The time in which sales could be held up also needed to be considered.
- Mr MacLeod noted that the pre-notification proposal could postpone the merits of an application to a later stage and just require the administrative aspects to be met.
- [Redacted] noted that the average time for a community group to become compliant in terms of community right to buy legislation was 4-6 weeks, but that groups can achieve compliance in as little as 2-3 weeks.
- The Minister noted that the pre-notification proposal would also enable groups to express their interest in purchasing part of a landholding in scope, rather than the whole landholding that is intended to proceed to market.

No action points

MEETING BETWEEN THE MINISTER FOR ENVIRONMENT AND LAND REFORM AND CALUM MACLEOD

Meeting requested by Calum MacLeod to discuss land reform.

Date and Time

Wednesday 28 September 2022

13:15 – 14:00

Location

Online (Microsoft Teams)

Link: [Redacted]

Attendees

Calum MacLeod, Partner, Harper MacLeod

Official Support

[Redacted]

Mobile: [Redacted]

Briefing Contents

- Agenda
- Meeting Objectives and Outcomes
- Briefing
- Attendee Bio
- Annex A – Consultation Proposals

Agenda

1. Introductions
2. Land Reform Bill

Meeting objective(s) and what outcome(s) are desired

Objective

This is an opportunity to hear views on land reform measures, in particular those proposed in the Bill consultation, from a practising lawyer with expertise in crofting law and experience in advising clients on a wide range of rural property work, including agricultural tenancies, community group purchases, and land reform.

Outcome

To set out SG's priorities on land reform and hear Mr MacLeod's views on land reform issues, particularly the proposals for the Land Reform Bill.

Briefing

LAND REFORM BILL

Scotland has a proud history of land reform going back to the early days of devolution and we are committed to bringing forward a new Land Reform Bill in this parliamentary session.

- The Bute House Agreement sets out our commitment to the introduction of a further land reform Bill by the end of 2023
- This new Bill will build on our land reform measures to date and will further tackle Scotland's historically iniquitous patterns of land ownership.
- We are fully committed to tackling the adverse effects of scale and concentration of landownership - and empowering communities in the process.
- The public consultation on the Bill, "*Land Reform in a Net Zero Nation*", launched on 4 July, and will be open until the 30 October.

We are consulting on an ambitious set of proposals for the new Bill.

- Measures being put forward for this Bill are squarely aimed at strengthening regulation around the use of, and market in, large-scale landholdings in rural areas – tackling issues that provided the original motivation for our land reform policies.
- But the Bill will also seek to ensure that our land is owned, managed and used in ways that rise to the challenges of today: net zero, nature restoration and a just transition.
- We are proposing that the Bill should include three key measures that will apply to large-scale landholdings:
 - The strengthening of obligations on owners to comply with the Land Rights and Responsibilities Statement (LRRS);
 - The introduction of compulsory management plans
 - New measures to regulate the market in large-scale landholdings, including the introduction of a Public Interest Test, and requirements for community bodies to receive prior notification of impending sales or transfers
- We are seeking views on the definition of 'large-scale' landholdings, but have proposed a threshold of 3000 hectares.
- Our proposals will complement existing community right to buy mechanisms.
- We have also taken the opportunity offered by the consultation to invite views on wider issues emerging from the growth in natural capital markets, and to ensure we think about community benefit as well as community ownership.
- Other proposals include a new land use tenancy to support tenant farmers and others to be able to undertake hybrid land management within one tenancy, assisting Scotland to meet our climate change challenges both now and into the future.
- The Small Landholding Consultation will be undertaken separately towards the end of this summer.
- Our proposals will be fully compliant with the ECHR, including the right to private property, and the terms of the current devolution settlement. But they will also be ambitious, and designed to ensure that land plays its full part in delivering the vision set out by the Just Transition Commission - a fairer, greener future for all.

- This reflects the principled position of the SG, and our explicit commitment to respecting, protecting and fulfilling human rights for every member of society.

Further details on the consultation proposals are at **Annex A**.

NATURAL CAPITAL INVESTMENT

It is vital that we balance the need for investment in our natural capital with efforts to empower local communities.

- We are very fortunate to have great potential in Scotland's natural world to sequester carbon and to support biodiversity, for example through woodland creation, peatland restoration, energy generation, blue carbon and many other initiatives.
- These will help us reach net zero but they also represent a real opportunity for our rural communities, for investment and for good green jobs and industries of the future.
- To bring about a just transition we need to have a framework of law and policy that ensures communities can make the most of these opportunities. This means that not only must we address questions of who owns land, who uses it, and how it is managed, we must also consider the issue of who is benefitting from land, and from investment in it.
- The Bill is an important part of a framework of law and policy that creates the conditions for responsible investment.
- In the last Parliament, we implemented legislation to extend community rights to buy to include a right to buy land to further sustainable development, and to introduce a new Register of Persons Holding a Controlled Interest in land.
- At that time fears were raised that our measures would deter inward investment. These fears have proved to be entirely unfounded, as we can see from the substantial rises in land values that have happened over the last few years.

We already have a suite of existing measures in place to mitigate the impacts of this rapidly evolving market.

- In March this year we published the Interim Principles for Responsible Investment in Natural Capital.
- These set out our approach to establishing a values-led, high-integrity market for responsible private investment in natural capital. The Principles clearly set out our expectations of investors looking to benefit from Scotland's natural capital.

LAND RIGHTS AND RESPONSIBILITIES STATEMENT

Our Land Rights and Responsibilities Statement articulates our vision for the ownership, use and management of land, setting out how we see the balance between the rights of landowners, managers, local communities and society at large.

- The revised Land Rights and Responsibilities Statement was published on 22 September 2022.
- The Statement has been updated to reflect the times in which we now live, with the challenges of the cost crisis and the aftermath of the pandemic, in addition to the climate and nature emergencies. The revised Statement will help ensure that our land supports a sustainable future for the benefit of all the people of Scotland.
- That is why the revised Statement contains new references to just transition to net zero and natural capital. This reflects the changing landscape since 2017,

recognising the Scottish Government's legal commitment to ensuring a just transition to net zero carbon emissions.

- It also reflects the Scottish Government's commitment to ensuring responsible investment in our natural capital, so that local communities and wider society share in the benefits.

COMMUNITY OWNERSHIP

Mr MacLeod is currently working with the community on Colonsay, who are looking into options for either a whole estate acquisition, or key asset acquisitions on the islands. The community are working with both Mr MacLeod and [Redacted] at Highlands and Islands Enterprise. Officials will discuss this with Community Land Scotland in the near future.

Both the Programme for Government 2021-22 and the Bute House agreement commit to doubling the Scottish Land Fund (SLF) to £20m by 2026 to support community ownership.

- We believe that it is essential that local communities are able to engage in decisions about what land is used for, and that they can benefit from investment in it.
- The role of government is to open up these opportunities – it is up to communities themselves to take them up.
- Community Right to Buy legislation is intended to give communities the opportunity to purchase land, at market value.
- For Part 2, this is only when the owner chooses to sell. Up to that point, they may develop or lease their assets as they see fit.
- The compulsory purchase powers (Part 5 – right to buy land for sustainable development and Part 3A, right to buy abandoned, neglected and detrimental land) can only be used where an owner has neglected their land, or is not using it sustainably, to the detriment of the local community, and is in compliance with ECHR
- All of the rights to buy give owners the opportunity to engage in the process and to give their views on any application. Those views are always taken into account in any final decision on an application.
- The Scottish Government's Community Land Team are available to offer advice to any owner who wishes to contact them.

EXISTING LAND REFORM LEGISLATION

We have an ongoing and unwavering commitment to land reform.

- The first statutory Community Right to Buy, and the right of responsible access, were flagship measures brought in by the Scottish Parliament in the early days of devolution.
- In the last Parliament, we implemented legislation that: further extended community rights to buy to include a right to buy land to further sustainable development; introduced the Land Rights and Responsibilities Statement; established a new Register of Persons Holding a Controlled Interest in land; and established the Scottish Land Commission.
- Our existing land reform legislation has been subject to public consultation, and parliamentary scrutiny, to ensure that it achieves the appropriate balance between communities and landowners.
- All land reform legislation is compliant with the ECHR.

- We cannot legislate for every circumstance, but we always invite feedback from interested parties.

CROFTING

- Crofting delivers real benefits – sustaining agricultural activity; supporting the rural economy; enhancing wildlife and the natural environment; and retaining young people in our remote, rural and island communities.
- The SNP manifesto contained a commitment to reform crofting law and develop crofting to create more active crofts.

[Redacted]

-

[Redacted]

-

TOP LINES

Each year the Scottish Government approves and provides croft businesses with over £40m.

- The Scottish Government has a track record of investing to improve croft housing. Since January 2007, the Scottish Government has approved Croft House Grant payments of over £23.6 million helping to build and improve over 1085 croft homes.
- From 2016 to 2022, over £19m in Crofting Agricultural Grant Scheme funding has been approved, helping over 4,000 crofters with their businesses – 85% of all eligible applications being approved.
- The Crofting Commission has reported that from January 2019 until March 2022 there were over 1070 new entrants into crofting. Each of these represents a new or continuing member of the local community.
- The Scottish Government is committed to the future of crofting and the role it plays in sustaining rural and island communities.

CROFTING LEGISLATION

The Scottish Government is committed to modernising crofting law, to make it more transparent, understandable and workable.

- The Crofting Bill Group has been reinstated to consider crofting legislation, including the issues raised by the Crofting Bill Group in 2016-2018.
- Three meetings have already taken place, on 22 June 2022, 11 July 2022, 8 August 2022, with a fourth to take place on 28 September 2022.

Crofting Commission

- The Crofting Commission recently secured an increase to its annual budget of £700k. The additional resources will allow the Commission to increase its staffing levels and make it more efficient at discharging its duties.
- Six Commissioners were elected in March 2022, and two Commissioner public appointments were finalised on 1 September 2022. The first meeting of the new Crofting Commission Board took place on 27 September 2022.

Attendee Bio

Calum MacLeod is a Partner at Harper MacLeod, based in the firm's Inverness office. He is a Law Society of Scotland accredited specialist in Crofting Law and advises clients on a wide range of rural property work, including crofting, agricultural tenancies, forestry purchases and sales, farm purchases, community group purchases, land reform and other rural property matters. He has acted for developers and landowners in a number of renewable energy projects and he has significant experience in community renewables projects.

Mr MacLeod also has an interest in Land Reform and is a director of Highland charity, New Start Highland.

SUMMARY OF CONSULTATION PROPOSALS

A number of measures are included in the consultation document:

The first three measures would apply to large-scale landholdings. We propose meeting one or more of the following criteria would classify a landholding as 'large-scale', and seek views on these criteria:

- A fixed threshold of 3,000 hectares;
- Land that accounts for more than a fixed percentage of a data zone¹ (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through SG's six-fold urban/rural classification scheme;
- Land that accounts for more than a specified minimum proportion of a permanently inhabited island.

The measures that apply to 'large-scale' landholdings are:

- The strengthening of obligations to comply with the Land Rights and Responsibilities Statement;
- The introduction of compulsory management plans;
- The regulation of the market in transfers of large-scale landholdings via the introduction of a Public Interest Test, together with a requirement to give prior notice to community bodies of the intention to sell

We will also:

- Require those seeking land-based subsidies to have the land registered in the Land Register – this is about transparency around who benefits from public funding
- Introduce a new Land Use Tenancy to support tenant farmers and others;
- Modernise small landholders legislation

In addition the consultation:

- Explores, in the light of developments in recent years, whether we could increase transparency in relation to land ownership by requiring owners of large-scale landholdings in Scotland to be registered for tax purposes in the UK or EU
- Is an opportunity to invite views on wider issues emerging from the growth in natural capital markets, and to make sure we think about community benefit as well as community ownership. The consultation starts a conversation about changes that could be made outwith the Bill, e.g. via fiscal measures, subsidy regimes or funding programmes.

¹ Data zones are the small area geography used by SG to allow statistics to be available across a number of policy areas. They are designed to have roughly standard populations of 500 to 1000.

MINISTER FOR THE ENVIRONMENT AND LAND REFORM

Briefing for meeting with Mr. Ewing, Scottish Gamekeeper's Association, and Scotland's Regional Moorland Groups

What	<i>Meeting with the Mr. Ewing (MSP) and representatives from the Scottish Gamekeepers Association (SGA) and Scotland's Regional Moorland Groups, to discuss Hunting with Dogs Bill.</i>
Where	Microsoft Teams meeting Join on your computer, mobile app or room device [Redacted]
When	Wednesday 28 September 2022 16.00-16.45
Key Message(s)	<i>That we appreciate the work and advice of the Scottish Gamekeeper's Association.</i>
Who	<i>Mr. Ewing, MSP for Inverness and Nairn (SNP) Alex Hogg, Chairman, Scottish Gamekeeper's Association (SGA) Kenneth Stephen, PR Coordinator, SGA Lianne MacLennan, National Co-Ordinator of Scotland's Regional Moorland Groups</i>
Why	<i>This meeting is a follow-up from one held on the 28th October 2021 to discuss the progress of the Hunting with Dogs (Scotland) Bill</i> <i>MiCase: 202200279934</i>
Supporting official	[Redacted]
Briefing contents	Annex A: Agenda and Biographies Annex B: Background Annex C: Lines to Take

MINISTER FOR THE ENVIRONMENT AND LAND REFORM

Briefing for meeting with Mr. Ewing, Scottish Gamekeeper's Association, and Scotland's Regional Moorland Groups

Annex A

Agenda

The meeting has been requested to discuss (in no particular order):

1. The two dog limit
2. The licensing scheme
3. How the SGA can be involved in the design of the licensing scheme

While the meeting is primarily about the Hunting with Dogs (Scotland) Bill, the original correspondence also asked about SG plans regarding muirburn, grouse licensing, snaring, and deer legislation. In particular, they were curious about the timing of such work.

Biographies

Alex Hogg, Chairman, SGA



Alex became Chairman of the SGA in 2000 and has worked in the Scottish countryside for four decades. He previously worked for Forestry Commission Scotland in Argyll and has been a gamekeeper on several estates across the country. He is based in the Scottish Borders.

Kenneth Stephen, PR and Communications Officer, SGA



Kenneth was raised in an agricultural family in Angus, was a journalist with the Daily Record and has established two successful media companies. He has 17 years of experience in the National media in Scotland and is now also the editor of the SGA quarterly magazine, Scottish Gamekeeper.

Mr. Ewing (MSP)



Mr. Ewing was a member of the Rural Affairs committee in 2000-2001 and then was a member of the Rural Development Committee from 2001-2003. He attended hustings held by the Scottish Countryside Alliance (SCA) in April 2021, the SCA record him as stating that the traditional method of using dogs to flush out foxes to guns *"is a necessary method of pest control."*

He also mentioned that, when hunting legislation was first debated in the Scottish Parliament, he and cross-party colleagues *"came to the conclusion that this traditional practice was actually the most humane way of dealing with it which quickly dispatched the fox in almost all circumstances and was carried out by professionals."*

Lianne MacLennan, National Coordinator, Scotland's Regional Moorland Groups



Scotland's Regional Moorland Groups are a collection of sporting estates across Scotland. In 2020 they launched a video supporting the use of muirburn, arguing that it reduces fuel loads and thereby lowers the risk of wildfires. These wildfires are likely to burn hotter, releasing more carbon and damaging the peat stores for a longer period of time.

Annex B

MINISTER FOR THE ENVIRONMENT AND LAND REFORM

Briefing for meeting with Mr. Ewing, Scottish Gamekeeper's Association, and Scotland's Regional Moorland Groups

Background

Mr Ewing wrote to the Minister on the 9 February 2022 requesting a follow up meeting regarding the Hunting with Dogs (Scotland) Bill. This was a follow up to one you attended had with him and the SGA on the 28 October 2021.

Ian Duncan Millar from the SGA gave evidence to the Rural Affairs, Islands and Natural Environment Committee on the 8 June regarding the Hunting with Dogs (Scotland) Bill.

In the evidence session on the 8 June 2022, Ian Duncan Miller from the SGA stated:

"I think that most of my friends, colleagues, neighbours and members would generally welcome much of what is in the bill. There are obviously areas of concern, which we will come to."

The SGA appear particularly concerned about the proposed licensing scheme. Their two main issues are:

1. The expertise of NatureScot - they believe that the dog handler is best placed to determine how many dogs should be used on a given day
2. The 14 day time period - they would prefer a licensing scheme that applies at an organisational and seasonal level.

Alex Hogg has since told the media:

"Any licensing system must be workable for land management professionals."

"Lamb loss has financial and mental health implications. Land managers need help to stem the downward spiral in upland bird species. It is fact, not conjecture, the fox is one of the biggest predators of ground-nesting species and needs to be managed humanely. When it comes to the Curlew, for example, we are facing possible extinction. The Capercaillie, too."

"Chucking away good tools to avoid such scenarios would be short-sighted and well trained scenting dogs are the best and most humane tool in forested upland environments."

Lines to take – Hunting with Dogs (Scotland) Bill

Licensing

- I recognise that foxes need to be controlled to prevent damage to livestock such as lambs and poultry, and also to wildlife such as ground-nesting birds.
- I know that in certain types of terrain, such as dense forestry, it is necessary to first flush foxes from cover so that they can be safely shot.
- That is why this Bill contains provisions to allow 2 dogs to be used to search for, stalk and flush wild mammals.

- It also allows for a licensing scheme to use more than two dogs for these activities, where there is no other solution which would be effective.
- The intention of the scheme is to provide for exceptional situations where, for example, the local terrain or conditions mean that a limit of two dogs would not allow farmers to protect their livestock adequately.

- It is incorrect to claim that in introducing licensing for the use of more than two dogs we are ignoring Lord Bomy's recommendations. He said licensing was not an alternative to amending the legislation. We agree with that and that is why we are completely replacing the old legislation.

- The Bill sets out the overarching principles of how the licensing system will work, as well as the mandatory requirements of the system.
- This will be built on through detailed accompanying guidance, and further operational and administrative elements of the system will be carefully considered and developed by NatureScot as part of that process.

- I recognise the importance of the licensing system operating in a straight forward, user friendly way and the details of the scheme will be carefully considered with stakeholders who will have further opportunities to provide feedback as the finer details of the scheme are developed.
- NatureScot have begun this process- they recently visited the Lauderdale Kennels with a few of my officials to discuss how the licensing scheme would affect such organisations.
- As NatureScot said in their Stage 1 evidence session at Committee, they will continue to work with stakeholders after the licensing scheme is in place, *"and continue to refine it to ensure that it delivers what it says on the tin."*

Use of dogs underground

- In developing the Bill, I have sought to balance animal welfare considerations against the need for effective predator control.
- I know that it is an important activity to help manage the impact of foxes and mink.
- I am carefully considering all of the evidence given at committee stage on the use of dogs underground and any recommendations made in the RAINE Committee's Stage 1 report.

Wildlife Management (Grouse) Bill

- As announced in the Programme for Government, we are planning to introduce the Wildlife Management (Grouse) Bill this year.
- This Bill will implement the recommendations of the Werritty review, including the introduction of licensing on grouse moors and further restrictions on muirburn.
- We will continue to engage with stakeholders and lay out the parliamentary timetable to implement the recommendations in due course, including plans for a public consultation.

MINISTER FOR THE ENVIRONMENT AND LAND REFORM

Briefing for meeting with Mr. Ewing, Scottish Gamekeeper's Association, and Scotland's Regional Moorland Groups

Deer management

- We are progressing the non-legislative recommendations made by the Deer Working Group now and will bring forward legislation during this Parliamentary term to implement the findings of the Deer Working Group and modernise Scotland's systems of deer management.
- We will lay out further details of that legislation, including plans for a full public consultation, in due course.
- We are progressing this work via a project board under the Scottish Biodiversity Strategy Programme. The Board is responsible for focusing our deer management activity on priority areas and takes advice from across the public agencies.
- The Board last met on 12 September and Minutes of the Board's meetings are published on the Scottish Government website.
- We are keen to engage with stakeholders as this work progresses and Scottish Government officials, alongside NatureScot, met with land management and eNGO's at a recent Deer Management Round Table (DMRT).

Out of season deer culling – if SGA raise the issue

- Deer management can be challenging and I appreciate that there are a wide range of views on the best way to manage deer populations in Scotland.
- I fully understand the sensitivities around the culling of female deer and why the issue provokes such a strong response.
- NatureScot takes welfare very seriously when considering whether to authorise the shooting of deer to prevent damage.
- Strict protection is in place for female deer during the period of highest welfare risk to dependant young (1st April – 31st August), guided by research on calving and weaning dates.
- All Forestry and Land Scotland rangers and contractors understand the need to cull young dependants first before any mothers.
- If there is any doubt about dependants, then they are instructed not to cull female deer.
- All deer controllers operating out of season on FLS managed property are registered with NatureScot as being fit and competent to undertake this activity.

This is a short note to inform the Minister about some issues arising for faith and belief communities and their ability to comply with the Register for Persons Holding a Controlled Interest in Land (RCI).

You will receive a more detailed briefing on this from colleagues in Land Reform. In the meantime if you would like any further information or have questions please let me know.

The RCI

- The RCI is a Register of Scotland (RoS) register, required by law, that was launched on 1 April 2022, to improve transparency about land ownership in Scotland.
- RCI registration opened on 01 April 2022 and the deadline for registrations is **01 April 2023**.
- Penalties for non-compliance will apply following this period.
- There are exemptions, however faith and belief groups are currently not exempt.
- Regulations to the RCI were unanimously passed by the Scottish Parliament on 10 February 2021 following extensive consultation and Parliamentary scrutiny.
- Although the legislation has been in development since 2016, it seems churches have only recently become fully cognisant of the practical implications, whilst some faith and belief communities remain unaware of the requirements.

Key Issue

- The Church of Scotland, Scottish Episcopal Church and possibly the United Reformed Church, are seeking an exemption to the RCI for religious bodies and unincorporated charities.
- Both CoS / SEC assert that there is an unmanageable administrative burden resulting from the RCI and that they cannot possibly comply by the deadline. Both have taken legal advice on this matter.
- The issue was briefly raised at the meeting between the new CoS moderator and the FM, which took place on 23 June 2022. After a brief discussion, the FM agreed to speak with the Minister for Environment and Land Reform.
- A meeting took place on 16 August 2022 between the CoS and Land Reform colleagues to try and find a solution, however none was forthcoming.
- There is a meeting scheduled with the Minister for Environment and Land Reform to discuss the issues in more detail on 7 September.
- **[redacted]**
- **[redacted]**
- Faith and belief officials are liaising with colleagues in the Land Reform team, to advise on impacts and help them assess the risks in relation to faith and belief communities.
- **[redacted]**

Extract from Faith and Belief team internal briefing note *last updated Jan 2023*

Meetings

- This issue was raised with faith and belief officials on **04 April 2022** and directed to the LR team, after which there were e-mail communications between Mary and the LR team.
- It was raised at the meeting between the new CoS moderator and the FM, on **23 June 2022**. After a brief discussion, the FM agreed to speak with the Minister for Environment and Land Reform.
- A meeting took place on **16 August 2022** between Mary Macleod (and other CoS reps) and LR colleagues to try and find a solution, however none was forthcoming.
- A meeting took place between the Minister for Environment and Land Reform and the churches on **27 September 2022**. The churches thought this a positive meeting and the Minister was clear that she did not want to place unduly onerous requirements on organisations, particularly in the current cost crisis.

From: [redacted]

Sent: 13 May 2022 15:13

To: [redacted]

Subject: FW: Church of Scotland correspondence and PS minute

Thanks, no suggested changes to the reply (except one addition, of my email address if offering an official meeting), [redacted]

[redacted]

[redacted]

[redacted]

Thanks, [redacted]

[redacted]

[redacted]

From: [redacted]

Sent: 13 May 2022 11:47

To: [redacted]

Cc: [redacted]

Subject: Church of Scotland correspondence and PS minute

Hi [redacted]

Attached are a first draft for our reply to Church of Scotland [redacted]

Let me know what you think!

[redacted]

[redacted]

From: [redacted]

Sent: 16 May 2022 11:04

To: [redacted]

Cc: [redacted]

Subject: RE: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Hi [redacted]

[redacted]

[redacted]

Many thanks

[redacted]

[redacted]

From: [redacted]

Sent: 13 May 2022 16:24

To: [redacted]

Cc: [redacted]

Subject: RE: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Thanks [redacted], this is helpful.

[redacted]

[redacted]

Kind regards, [redacted]

[redacted]

From: [redacted]

Sent: 13 May 2022 16:16

To: [redacted]

Cc: [redacted]

Subject: RE: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Hi [redacted]

[redacted]

Consultations were held in 2019 and 2021 about improvements to the Charities and Trustee Investment (Scotland) Act 2005; which included proposals to establish a publicly available register of charity trustees. The Scottish Government are continuing work on the proposals and as part of our ongoing assessment we are looking at how charities may be impacted by some of the proposals.

Many thanks

[redacted]

[redacted]

From: [redacted]

Sent: 12 May 2022 15:52

To: [redacted]

Cc: [redacted]

Subject: FW: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Hi [redacted]

We are working on an MR for Minister Environment and Land Reform to the Church of Scotland regarding their concerns with our new Register of Persons Holding a Controlled Interest in Land [redacted]

[redacted]

Many thanks and happy to discuss,

[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 03 May 2022 07:48

To: Public Engagement Unit <CorrespondenceUnit@gov.scot>

Subject: FW: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

MR please

From: Bradwell, David <dbradwell@churchofscotland.org.uk>

Sent: 02 May 2022 08:16

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: [redacted]

Subject: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Dear Sir/Madam

Please find attached a letter to the Minister for Land Reform regarding the Register of Controlled Interest in Land, with a request to meet with representatives from the Church of Scotland.

With kind regards,

David

David Bradwell | Policy and Public Affairs & Scottish Churches Parliamentary Officer | Faith Action Staff | The Church of Scotland

121 George Street, Edinburgh EH2 4YN | Tel: 0131 376 9104 | Email: dbradwell@churchofscotland.org.uk

Working Pattern: Monday afternoon, Tuesday, Wednesday, Thursday



The Church of Scotland

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Due to the current Coronavirus concerns, we are operating with most staff working from home in accordance with advice issued by the UK and Scottish Governments. We confirm that we will reply to your message as soon as we are able to do so. Our departmental email address faithimpact@churchofscotland.org.uk continues to be monitored.

Further information and advice on a number of topics is available on the Church of Scotland website www.churchofscotland.org.uk including specific advice on various matters relating to the Coronavirus pandemic which can be found at <https://www.churchofscotland.org.uk/resources/covid-19-coronavirus-advice>

The Church of Scotland - Scottish Charity Number SC011353 This email transmission is privileged, confidential and intended solely for the person or organisation to whom it is addressed. If you are not the intended recipient, you must delete the message immediately without processing it further and you are asked to notify us of the error by email to the sender. All messages passing through this gateway are checked for viruses but you are strongly recommended to check for viruses using your own virus scanner as the Church of Scotland will not take responsibility for any damage caused as a result of virus in

From: Harrison F (Fiona) [redacted]
Sent: 17 May 2022 13:31
To: [redacted]
Cc: [redacted]
Subject: FW: PS Minute Church of Scotland meeting Minister ELR

[redacted]

Many thanks [redacted] couple of tweaks to the letter [redacted] if you are content can you copy changes to the second letter

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 17 May 2022 10:31
To: Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: PS Minute Church of Scotland meeting Minister ELR

Morning Fiona,

Just a quick ask: could you have a look and agree to the attached PS Minute, regarding a meeting request from the Church of Scotland to Minister ELR. [redacted] I have also attached the longer response (this has come in as an MR, we are sending the PS Minute up separately) for reference.

Many thanks,
[redacted]

[redacted]

PS Minute

ADVICE FOR: Minister Environment and Land Reform

MiCase Case Number:	202200298167	Respond by:
Correspondent/Organisation:	David Bradwell, Church of Scotland	
Date and time of Event:	Date is flexible, on accept detailed arrangements would be made	
Location of Event:	TBC	
Overview of invitation and audience profile:	Private meeting with stakeholders to discuss concerns with impacts on CoS of duties under new Registers of Persons Holding a Controlled Interest in Land	
Has the Minister been asked to attend of behalf of FM?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/> Don't Know <input type="checkbox"/>
RECOMMENDATION:	Accept	
	Comments: [redacted] [redacted] [redacted]	
	If recommendation is to accept, has this advice been agreed with your Head of Division? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Has another Minister been asked to attend:	No	
Main theme that the event supports:	Land Reform	
Main purpose of attending: <i>(Tick as many as apply)</i>	[redacted]	
Main message to communicate:	[redacted]	
Most appropriate type of Ministerial input:	[redacted]	
Action Officer:	[redacted]	

From: [redacted]
Sent: 17 May 2022 15:30
To: [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Thanks all, I will get that amended and sent back up

[redacted]
[redacted]

From: [redacted]
Sent: 17 May 2022 15:12
To: Harrison F (Fiona) [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Thanks folks

I agree [redacted]

From: Harrison F (Fiona) [redacted]
Sent: 17 May 2022 15:08
To: [redacted]
Cc: [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Thank you—agree with [redacted], so suggest we redraft [redacted]

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform |
Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 17 May 2022 15:00
To: [redacted] Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Thanks [redacted],

I'd be grateful for [redacted] and Fiona's thoughts, [redacted]

[redacted]

[redacted]

[redacted]
Happy to chat, [redacted]

[redacted]

From: [redacted]
Sent: 17 May 2022 14:38
To: [redacted] Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Hi all,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 17 May 2022 14:05
To: Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: RE: PS Minute Church of Scotland meeting Minister ELR

Hi Fiona,

[redacted]

Thanks, [redacted]
[redacted]

From: [redacted]
Sent: 06 June 2022 13:32
To: [redacted]
Cc: [redacted]
Subject: RE: Draft CoS reply

Looks good to me! [redacted]

Thanks,
[redacted]

From: [redacted]
Sent: 06 June 2022 12:39
To: [redacted]
Cc: [redacted]
Subject: RE: Draft CoS reply

Thanks [redacted] –

Any thoughts or comments on this? [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 17 May 2022 16:59
To: [redacted]
Cc: [redacted]
Subject: RE: Draft CoS reply

[redacted]

[redacted]
[redacted]

From: [redacted]
Sent: 17 May 2022 10:15
To: [redacted]
Cc: [redacted]
Subject: Draft CoS reply

Hi [redacted]

Below a draft reply to CoS [redacted]

Thanks,
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 10 June 2022 10:04
To: [redacted]
Cc: [redacted]
Subject: RE: For checking - micase on RCI and Church of Scotland (Case Ref: RH3161)

[redacted]

From: [redacted]
Sent: 10 June 2022 09:54
To: [redacted]
Cc: [redacted]
Subject: RE: For checking - micase on RCI and Church of Scotland (Case Ref: RH3161)

Hi [redacted]

[redacted]

[redacted]

Thanks,
[redacted]
[redacted]

From: [redacted]
Sent: 10 June 2022 09:47
To: [redacted]
Cc: [redacted]
Subject: RE: For checking - micase on RCI and Church of Scotland (Case Ref: RH3161)

[redacted]

[redacted]

From: [redacted]
Sent: 09 June 2022 18:29
To: [redacted]
Cc: [redacted]
Subject: For checking - micase on RCI and Church of Scotland (Case Ref: RH3161)
Importance: High

[redacted]

[redacted]

Thanks, [redacted]
[redacted]

From: [redacted]
Sent: 09 June 2022 13:41
To: [redacted]
Subject: RE: (Case Ref: RH3161)

[redacted]

From: [redacted]
Sent: 09 June 2022 13:41
To: [redacted]
Subject: RE: (Case Ref: RH3161)

[redacted]
[redacted]

From: [redacted]
Sent: 09 June 2022 13:36
To: [redacted]
Subject: FW: (Case Ref: RH3161)

Hi [redacted],

[redacted]

[redacted]

Thanks,
[redacted]
[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform
Sent: 24 May 2022 10:48
To: Public Engagement Unit <CorrespondenceUnit@gov.scot>
Subject: FW: (Case Ref: RH3161)

MR please

From: Rachael Hamilton MSP <Rachael.Hamilton.msp@parliament.scot>
Sent: 24 May 2022 10:38
To: Minister for Environment and Land Reform <MinisterELR@gov.scot>
Subject: (Case Ref: RH3161)

Dear Cabinet Secretary,

I have sent another letter in relation to the new land reforms which will affect churches. I look forward to a response

Best Wishes

Rachael Hamilton
The Office of Rachael Hamilton MSP, 7, Abbey Court, Kelso TD5 7JA
01573 224862

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From: [redacted]
Sent: 14 June 2022 16:30
To: [redacted]
Cc: [redacted] Communications First Minister [redacted]
Subject: RE: Request for Briefing Contribution - by COP Friday

Thanks [redacted],

[redacted]

From: [redacted]
Sent: 14 June 2022 14:16
To: [redacted]
Cc: [redacted] Communications First Minister [redacted]
Subject: RE: Request for Briefing Contribution - by COP Friday

[redacted]

Thanks,
[redacted]
[redacted]



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From: [redacted]
Sent: 14 June 2022 12:36
To: [redacted]
Cc: [redacted]
Subject: Request for Briefing Contribution - by COP Friday
Importance: High

Dear Colleagues,

This is a request for briefing contributions for the annual meeting between the First Minister and the new Moderator of the Church of Scotland. [redacted]

[redacted]

[redacted]

Many thanks for your help,

[redacted]
[redacted]



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From: [redacted]

Sent: 17 June 2022 10:44

To: [redacted]

Cc: [redacted]

Subject: RE: Request for Briefing Contribution - by COP Friday - REMINDER

Hi [redacted],

[redacted]

Many thanks,

[redacted]

[redacted]

From: [redacted]

Sent: 17 June 2022 08:29

To: [redacted]

Cc: [redacted]

Subject: RE: Request for Briefing Contribution - by COP Friday - REMINDER

Morning all,

[redacted]

Many thanks,

[redacted]

[redacted]



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From: [redacted]

Sent: 17 June 2022 14:29

To: First Minister <firstminister@gov.scot>

Cc: Communications First Minister <CommunicationsFirstMinister@gov.scot>; [redacted]; Marshall R (Robert) [redacted] [redacted] Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>[redacted]

Subject: Ministerial Briefing - FM and Moderator Meeting

P/S First Minister

Cc: P/S Deputy First Minister – [redacted]

Please find attached the briefing for the First Minister's meeting with the new Moderator of the General Assembly of the Church of Scotland, taking place next Thursday at 2pm.

With thanks to colleagues for their contributions.

Kind regards,

[redacted]

[redacted]



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From: [redacted]

Sent: 22 June 2022 17:00

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: [redacted]; Harrison F (Fiona) <[redacted]>

Subject: RE: MiCase 202200301988 (official sensitive)

Hi [redacted],

Thank you for sending through the Minister's comments, please see below some additional information which hopefully addresses her queries:

RCI and the impact on religious organisations

An EQIA was carried out in 2019 to underpin further development of the Regulations, and this did identify a disproportionate impact on some large religious organisations, but not all:

"Engagement with large religious organisations has shown that the requirements of the register will have a significant impact on a few of them due to the nature of their organisational structures, which require large numbers of associates to be entered on the register, and the scale of their land holdings. [...]

Most religious bodies are not significantly impacted since they either do not hold controlling interests in as many areas of land or are organised in structures that fall under other transparency regimes so are exempt. Due to the significant impact on some large religious organisations, consideration must be given to actions to mitigate the impact while not compromising the transparency aim of the register."

As noted in the Micase reply, following this assessment the regulations were amended to put in place three mitigations to significantly reduce the number of associates that would be in scope for large religious organisations like Church of Scotland. [redacted]

[redacted]

[redacted]

For awareness, the First Minister has an annual meeting with the Moderator of the Church of Scotland, which is taking place tomorrow at 2pm. RCI is on the agenda, and is covered in the briefing pack for the meeting, I have attached the relevant section to this e-mail.

Please let us know if the Minister has any further queries, and of course happy to discuss any of the above.

Many thanks,

[redacted]

[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 21 June 2022 17:53

To: [redacted]

Subject: MiCase 202200301988

Hi [redacted],

Hope you're keeping well.

[redacted] The Minister had some comments/questions regarding it, I'd be grateful if you're able to come back on them.

[redacted]

[redacted]

Kind regards

[redacted]

[redacted]

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- **Issue:** Church of Scotland and the Council of Churches are seeking an exemption to the RCI for religious bodies and charities. They assert that there is a significant administrative burden resulting from the RCI. Mitigations are in place to reduce this following the EQIA carried out as part of developing the regulations.
- Scottish Government position has been clear from the outset that an exemption would undermine the efficacy of the register.
- CoS have a meeting scheduled with Minister Environment and Land Reform to discuss the issues in more detail on 7 September.
- The RCI went live on 1 April 2022, and there is a 12 month transition period before criminal penalties come into force for non-compliance. CoS have indicated they are holding off on registration in hopes of a last minute exemption.

[redacted]

[redacted]

[redacted]

[redacted]

- [redacted]
[redacted]
[redacted]

- [redacted]

From: [redacted] **On Behalf Of** Minister for Environment and Land Reform

Sent: 24 June 2022 09:53

To: [redacted]

Cc: [redacted] Harrison F (Fiona) [redacted] Minister for Environment and Land Reform

<MinisterELR@gov.scot>; McFarlane J (John) (Special Adviser) [redacted]

Subject: RE: MiCase 202200301988 (official sensitive)

Hi [redacted],

Thanks for this.

[redacted]

[redacted]

Hope this helps, I will return the MiCase on the system for you.

Kind regards

[redacted]

[redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From: [redacted]
Sent: 24 June 2022 14:31
To: [redacted]
Cc: [redacted]
Subject: RE: MiCase 202200301988 (official sensitive)

Thanks [redacted]

Some suggested changes to soften slightly [redacted]

[redacted]

[redacted] Please cc Fiona H in to this when it goes back to PO

Ta

[redacted]

From: [redacted]
Sent: 24 June 2022 13:43
To: [redacted]
Cc: [redacted]
Subject: FW: MiCase 202200301988 (official sensitive)

Hi [redacted]

As discussed, faith colleagues have advised no commitments were made by FM (other than to try to discuss it with MM prior to her meeting CoS). [redacted]

Thanks,
[redacted]
[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform
Sent: 24 June 2022 09:53
To: [redacted]
Cc: [redacted] Harrison F (Fiona) <[redacted] Minister for Environment and Land Reform <MinisterELR@gov.scot>; McFarlane J (John) (Special Adviser) [redacted]
Subject: RE: MiCase 202200301988 (official sensitive)

Hi [redacted],

Thanks for this.

[redacted]

[redacted]

Hope this helps, I will return the MiCase on the system for you.

Kind regards

[redacted]

[redacted]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From: [redacted]

Sent: 24 June 2022 14:50

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: [redacted] Harrison F (Fiona[redacted] McFarlane J (John) (Special Adviser) [redacted]

Subject: RE: MiCase 202200301988 (official sensitive)

Hi [redacted]

Thanks again for sending through the Minister's response to our additional information. I have made the requested edits and sent the amended draft back up for approval. [redacted] It is certainly something we can look at for the September 7 meeting.

As noted, Faith colleagues have advised no significant commitments were made in FMs meeting with CoS, and a note will be send through on Monday.

Best wishes,

[redacted]

[redacted]

From: [redacted]
Sent: 01 July 2022 12:28
To: [redacted]
Cc: [redacted] Harrison F (Fiona) [redacted]
Subject: RE: RCI - Church of Scotland

Hi [redacted]

Very happy to have a chat through about all this once you're back from leave. We will do whatever we can to support. [redacted]

[redacted]

Just also for awareness, at our stakeholder meeting yesterday, this came up again in a different context. [redacted]

Hope you have a lovely holiday and we'll pick up again on the 19th.

Best wishes,

[redacted]

[redacted]



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From: [redacted]
Sent: 01 July 2022 12:00
To: [redacted]
Cc: [redacted] Harrison F (Fiona) [redacted]
Subject: RE: RCI - Church of Scotland

[redacted]

Many thanks for this. Just picking up in [redacted] absence.

This is a helpful readout, thank you.

[redacted]

There is guidance on compliance, which we should send to them directly with a link. I emailed them a short while ago and have had no response – I can follow that up this afternoon with links to the guidance (will copy you in) .

[redacted]

with thanks

[redacted]

From: [redacted]

Sent: 28 June 2022 13:31
To: [redacted]
Cc:[redacted]
Subject: RCI - Church of Scotland

Hi [redacted]

Following our conversation the other day about the meeting between FM and the C of Scotland Moderator, the issue of RCI came up briefly, but no commitments were made. The section from the minute is here:

- The church also discussed an issue they have with the register of controlled interest of land (they have over 5,000 properties). They felt that the EQIA for this did not adequately reflect religion and belief in the decision making and questioned if there could be an impact review? FM asked if they had a meeting with the portfolio minister and they do in September.
- FM committed to speaking to Ms McAllan to raise awareness ahead of the meeting. FM also said possibly an impact review or guidance could be considered as a way to deal with this. **Action:** Officials to pick up with lead policy team.

As you and I discussed, the focus now is on encouraging compliance [redacted]

I also wonder if the urgency for compliance needs to be made more explicit to them, as the planned meeting with the Minister is not until Sept? [redacted]

Also am I right in thinking there already exists some guidance on compliance? I'm sure if there is, they must already have this, but I just wanted to check.

Thanks and kind regards,

[redacted]

[redacted]



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From: [redacted]
Sent: 28 July 2022 09:04
To: [redacted]
Cc: [redacted]
Subject: RE: Official sensitive: RCI and Church of Scotland/charities catch up

Hi [redacted],

That's great! [redacted] our Minister is meeting with CoS on 7 September and we'll be putting a briefing up well in advance so there is a wee bit of time pressure. I'll pop a calendar invite across!

Thanks,
[redacted]
[redacted]

From: [redacted]
Sent: 28 July 2022 08:48
To: [redacted]
Cc: [redacted]
Subject: RE: Official sensitive: RCI and Church of Scotland/charities catch up

Hi [redacted]

Very happy to meet up, copying in [redacted] from the team as it would be good to have them involved to. [redacted]

Many thanks

[redacted]
[redacted]

From: [redacted]
Sent: 27 July 2022 17:32
To: [redacted]
Cc: [redacted]
Subject: Official sensitive: RCI and Church of Scotland/charities catch up

Hi [redacted]

Wondering if you would be free next week or so to catch up on how things have been going with RCI and the Church of Scotland, and how things are going on your side? [redacted]

[redacted]

Thanks,
[redacted]
[redacted]

From: [redacted]
Sent: 09 August 2022 12:25
To: [redacted]
Cc: [redacted]
Subject: RE: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

And he definitely wrote in his capacity as CoS, not Scottish Churches Committee.

[redacted]

From: [redacted]
Sent: 09 August 2022 12:24
To: [redacted]
Cc: [redacted]
Subject: RE: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Last line refers to discussing availability for a meeting between you, the Solicitor of the Church of Scotland, Mary Macleod, and representatives of other Churches that are likely to be facing a similar situation

But agree it wasn't very clear.

Thanks, [redacted]

[redacted]

From: [redacted]
Sent: 08 August 2022 15:32
To: [redacted]
Cc: [redacted]
Subject: FW: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

For reference, this was the original request to meet with the Minister from CoS, and it is clear from the e-mail and badging that it was definitely Church of Scotland, not other churches, requesting the meeting. [redacted]

[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform
Sent: 03 May 2022 07:48
To: Public Engagement Unit <CorrespondenceUnit@gov.scot>
Subject: FW: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

MR please

From: Bradwell, David <dbradwell@churchofscotland.org.uk>
Sent: 02 May 2022 08:16
To: Minister for Environment and Land Reform <MinisterELR@gov.scot>
Cc: [redacted]
Subject: FAO Màiri McAllan MSP, Minister for Environment, Biodiversity and Land Reform

Dear Sir/Madam

Please find attached a letter to the Minister for Land Reform regarding the Register of Controlled Interest in Land, with a request to meet with representatives from the Church of Scotland.

With kind regards,

David

David Bradwell | Policy and Public Affairs & Scottish Churches Parliamentary Officer | Faith Action Staff | The Church of Scotland

121 George Street, Edinburgh EH2 4YN | Tel: 0131 376 9104 | Email: dbradwell@churchofscotland.org.uk
Working Pattern: Monday afternoon, Tuesday, Wednesday, Thursday



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Due to the current Coronavirus concerns, we are operating with most staff working from home in accordance with advice issued by the UK and Scottish Governments. We confirm that we will reply to your message as soon as we are able to do so. Our departmental email address faithimpact@churchofscotland.org.uk continues to be monitored.

Further information and advice on a number of topics is available on the Church of Scotland website www.churchofscotland.org.uk including specific advice on various matters relating to the Coronavirus pandemic which can be found at <https://www.churchofscotland.org.uk/resources/covid-19-coronavirus-advice>

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From: [redacted]

Sent: 10 August 2022 17:07

To: [redacted]

Cc: [redacted]

Subject: RE: Land - register of controlling interests - church of scotland - persons who are associates - legal rural

Great, thanks [redacted], I will get that sent out now!

[redacted]

From: [redacted]

Sent: 10 August 2022 17:04

To: [redacted]

Cc: [redacted]

Subject: RE: Land - register of controlling interests - church of scotland - persons who are associates - legal rural

Thanks [redacted] – some minor changes below. [redacted]

[redacted]

From: [redacted]

Sent: 10 August 2022 12:40

To: [redacted]

Cc: [redacted]

Subject: Land - register of controlling interests - church of scotland - persons who are associates - legal rural

[redacted]

[redacted]

[redacted]

[redacted]

Happy of course to speak!

[redacted]

[redacted]

[redacted]

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From: [redacted]
Sent: 10 August 2022 08:25
To: [redacted]
Cc: [redacted]
Subject: FW: Official sensitive: RCI CoS draft e-mail

Hi [redacted]

[redacted]

Many thanks,
[redacted]
[redacted]

From: [redacted]
Sent: 09 August 2022 09:26
To: [redacted]
Subject: Official sensitive: RCI CoS draft e-mail
Importance: High

Hi [redacted]

It's taken a wee bit of crafting, [redacted], but below is my draft email to Mary and David. Let me know what you think [redacted]

Thanks,
[redacted]

From: [redacted]

Sent: 10 August 2022 17:20

To: mmacleod@churchofscotland.org.uk; dbradwell@churchofscotland.org.uk

Cc: [redacted]

Subject: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Dear Mary and David,

Thank you for your correspondence to date on the impact of the Register of Controlled Interest on your organisation and for the briefing paper you have sent through.

It would be very helpful for us to get a really thorough understanding of the practical difficulties you are running into ahead of your meeting with the Minister of 7 September. We have of course carefully considered your briefing paper, but I think it would be helpful to pin down what on a practical level is generating the impacts you are concerned about. I am newly on loan to the Land Reform team and am picking up the RCI and related policy advice and briefing with a fresh pair of eyes, so please bear with me if I ask any questions you have already covered in the April 2021 workshop I understand you previously had with Registers of Scotland.

Perhaps a beneficial first step would be to come to a more detailed mutual understanding of what is required in practical terms for your organisation under the Regulations. I must stress that this is in no way intended as legal advice, we can only speak for the policy intent behind the Regulations, but I have gone back through the legislation and our understanding in policy terms of what would be required in practice for Church of Scotland property is as follows:

1. We understand that for the majority of Church of Scotland property, title is held by the General Trustees on behalf of the local congregation.
2. As the General Trustees are constituted as a body corporate under the *Church of Scotland (General Trustees) Order Confirmation Act 1921*, they can register as the Recorded Person as a single entity (i.e. as 'the General Trustees of the Church of Scotland' rather than as each Trustee individual).
3. As the Church itself is an unincorporated body, registration would follow *Schedule 1 Part 4* requirements of the RCI regulations, in line with mitigations brought in after the 2019 EQIA that enable organisations to register following the unincorporated requirements rather than the trust requirement if they are in scope for both.
4. Section 9(b)(i) under *Schedule 1 Part 4* states that associates in these circumstances are responsible for the general control and management of the administration of the body, and section 11 makes clear that this is to be interpreted as those who "*hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described)*".
5. Conscious that there may be some difference in office holders for property held by quoad omnia and quoad sacra congregations - as far as the policy intent goes we would take that to mean functions like the Minister, the Session Clerk, the Chair of the congressional board where there is one and the Treasurer.

6. Our understanding is each of these associates would register as an associate for the General Trustees, who as noted would be the recorded person as a single entity.
7. Our view is that the individual General Trustees would not have to register as associates.
8. Similarly, our view is that a member of the congregation or the Presbytery would not have to register as an associate.
9. Taken together, we estimate per Church of Scotland property one registration as Recorded Person of the General Trustees, and three or four associates depending on the structure of the local congregation. This we would consider to be broadly in line with requirements placed on other organisations and charities.

So my first question is whether the points set out above align with your understanding of the requirements for you under the RCI regulations? Is there anything we are overlooking, either in the particulars of your governance arrangements or in the regulations, that would be greatly increasing the number of associates you consider you need to register? I think it really will be vital to get this as clear as we can ahead of the meeting, to avoid any risk we could each be working to different understandings.

If this is also your understanding of what the requirements mean for the Church of Scotland in practical terms, then my second question is can you set out in greater detail what specific issues are concerning you about the impact in practical terms on the Church of Scotland?

If, as we understand, each property would come with only a handful of registrations of associates on RCI, is the issue that given the scale and long history of your property holdings there is difficulty in ascertaining what is held exactly on behalf of each congregation and in what form? At this stage I think our policy team can only guess at what other issues might be, so as I say, if we have a shared understanding of what is required but there is some other practical problem generating concerns for you in complying with the legislation, please let us know so we can get a better grasp of the issues you're faced with.

I have reviewed the points you make in your briefing paper with regard to the 2019 EQIA assessment, and also had another look at the EQIA itself and the mitigations put in place. Based on our understanding of the requirements as set out above, it would seem that the 'residual' impact, after the mitigations that have been put in place, results primarily from the amount of property held by the Church of Scotland, not from its protected characteristic. In other words, the Register impacts on your organisation as a large landowner, not as a religious organisation, as any other (secular) entity with similar property holdings would face a similar administrative responsibility. As noted above though, if there is anything in your structure or in the regulations we are overlooking in our understanding as set out above in points 1-9, please let us know and we can consider if and how that might alter our understanding of the impact on your organisation.

In addition to clarifying our understanding of the requirements on the Church of Scotland, it would be helpful if you are aware of other religious organisations raising

similar concerns to let us know what they consider the requirements for them are and again, at a very practical level, what difficulties they believe this generates for them. I am aware for example that other churches might not have a body corporate like the General Trustees that can register as recorded person as a single entity – so it would be very helpful to work through in a bit more detail, once we've agreed what is required for your organisation, what is required of other religious organisations and how theirs might be a different experience from yourselves due to different internal structures.

I believe it could be very beneficial to discuss some of this over the phone, prior to us putting advice up to the Minister ahead of your meeting with her. Would both of you have availability early next week to set up a call with our policy team? Our preference in the first instance would be to discuss this just with yourselves, we can include any other attendees at a subsequent meeting if necessary.

Many thanks and looking forward to hearing from you,
[redacted]

From: Bradwell, David <dbradwell@churchofscotland.org.uk>
Sent: 11 August 2022 11:35
To: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>; [redacted]
Cc: [redacted] Annan, Elspeth <EANNAN@churchofscotland.org.uk>
Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Thank you; I regret I will not be able to join this call on Tuesday, but please go ahead without me, and I'll catch up with Mary and Elspeth and yourselves in due course.
Kind regards
David

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>
Sent: 11 August 2022 10:26
To: [redacted] Bradwell, David <dbradwell@churchofscotland.org.uk>
Cc: [redacted] Annan, Elspeth <EANNAN@churchofscotland.org.uk>
Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

That's fine, thanks.

Mary

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The Church of Scotland
Law Department

From: [redacted]
Sent: 11 August 2022 10:25
To: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>; Bradwell, David <dbradwell@churchofscotland.org.uk>
Cc: [redacted], Elspeth <EANNAN@churchofscotland.org.uk>
Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Hi Mary,

Thanks for coming back to us so swiftly to firm up a meeting, we probably have best availability across the team for 1pm to 2pm on Tuesday. If you are happy with those timings I will send across a Teams meeting link.

Many thanks,
[redacted]
[redacted]

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>
Sent: 11 August 2022 09:45
To: [redacted] Bradwell, David <dbradwell@churchofscotland.org.uk>

Cc: [redacted] Annan, Elspeth <EANNAN@churchofscotland.org.uk>

Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Dear [redacted]

Thanks for your email.

I'll reply to the specific questions you raise but in the meantime, to try to get a date in the diary for an early meeting, can I suggest either Monday morning or Tuesday (other than between 11 and 12.30) next week? I've copied in my colleague Elspeth Annan, who leads our Property team and has experience of working with the private beta website set up by the Registers prior to test the system before it went live, as I think it will be helpful for her to join the discussion.

Kind regards

Mary

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The Church of Scotland

Law Department

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>

Sent: 15 August 2022 10:57

To: [redacted] Bradwell, David <dbradwell@churchofscotland.org.uk>

Cc: [redacted] Annan, Elspeth <EANNAN@churchofscotland.org.uk>

Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Dear [redacted]

Ahead of our meeting on Tuesday, I'm setting out our response to the various points you raise, and apologise in advance for the length of this email.

Your assessment, in numbered paragraphs 1-9 of your email, of the compliance requirements of the Regulations vis-à-vis properties for which title is held by the Church of Scotland General Trustees is correct.

Impact of "mitigations"

You refer in paragraph 3 and later in your email to "mitigations" brought in as a result of the EQIA to "enable" organisations to register under Part 4 rather than Part 3 of Schedule 1. My briefing note makes it plain that the three "mitigations" referred to by the EQIA have, in practice, no mitigatory impact but **have in fact made matters considerably more difficult for churches**, as they bring into scope bodies – and thus individuals – who would not otherwise fall within the definitions of "control" or "significant influence" set out in Regulation 2 (2), reproduced here for ease of reference:

(2) For the purposes of these Regulations, a reference to—

(a) control is a reference to where a person can direct the activities of another,

(b) dealings with the land is a reference to disposing, creating real rights over, leasing or changing the use of the land,

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

It is therefore essential that our discussions take account of this reality, which has been glossed over in responses issued by the Minister to date.

As was explained to your colleagues in 2018, in the course of engagement with us around the impact of the prospective Regulations (copy email to Graham Watson dated 8 November 2018 is attached), office-bearers in congregations are simply not in a position to direct the activities of the congregation or to ensure that the congregation (far less the General Trustees) will adopt the approach that the office-bearer desires. Despite this, they are brought into scope by virtue of Part 4, which **obliges** (rather than **enables**) certain named office-holders to register by the declaratory provision that such individuals are responsible for the general control and management of the administration of a body – regardless of whether this is in fact the reality.

Church governance is designed to preclude individual control

So far as the Church of Scotland is concerned, not all members of congregations are charity trustees. The charity trustees of each congregation are the members of its governing body or bodies, as they are deemed in terms of charity law to be the people who have “general control and management of the administration of the congregation”, as per the 2005 Act. Some congregations have two such bodies: (a) a Congregational Board, which is responsible for all “temporal” matters affecting the life of the congregation and (b) a Kirk Session, which is responsible for all “spiritual” matters. The size of the Board and Session varies from congregation to congregation: each may have as few as ten members, or there can be upwards of 30 people on each. Some congregations operate with only a Kirk Session, in which case it will tend to be a larger body.

None of these individuals have the powers referred to in Regulation 2(2). All decisions about “dealings with land” as defined in the Regulations are taken corporately, by the Board or Session. There are specific rules and regulations which congregations must follow about this, as set down by the General Assembly, which is the Church’s supreme court. These require that (for example) a proposal to sell a property has to be approved by the General Trustees, and has to proceed by way of a formal application to the General Trustees, accompanied by extract minutes of meetings of the Board or Session, and the congregation, and the Presbytery, all approving the proposal. So it is factually wrong to say that a minister, session clerk and treasurer in any congregation can direct the activities of that congregation (or the General Trustees) or ensure that the congregation (or the General Trustees) will adopt a particular approach in this respect. These individuals – particularly the session clerk and treasurer – have certain circumscribed duties as set out in a congregation’s constitution, but these duties don’t extend to the exertion of influence over such dealings with land.

Even where title to property is held in the name of local trustees, whether three named office-holders, the named individuals are holding title in their *ex officio*s capacity only and have no more authority to deal with the property than any other member of the Board/Session. They are instructed by the Board/Session in such dealings, and the mere fact that title is vested in them does not of itself give them power, in terms of a congregational constitution, to have any control over decision making. They could not, for example, refuse to sign a disposition conveying title to a third party even if they personally were opposed to the transfer of title.

A copy of the standard congregational constitution can be found here:

https://www.churchofscotland.org.uk/_data/assets/pdf_file/0005/38444/Unitary_Constitution-Sample-updated_May_2017.pdf

You will see that clause Ninth also requires the approval of the Presbytery if a congregation proposes to borrow money (which might entail the creation of a real right over land, in the shape of a Standard Security). I would also direct you to clause Fourth, which says that a Session Clerk need not be a member of the Kirk Session i.e. need not be a charity trustee; and Clause Fifth, which says that a Treasurer need not even be a member of the congregation. Neither individual, in such circumstances can, to any degree at all, have control over the property and it is simply wrong for the RCI to direct an enquirer to these office-bearers as being people who have control over dealings with the land. The Regulations may fit the model of a stand-alone club, but they do not fit the governance of religious organisations.

Practical difficulties

The practical difficulties of compliance are not primarily related to difficulty in establishing what properties are held for each congregation. You refer to each property requiring “only a handful” of registrations but that is to overlook the complexity inherent in each set of registrations and the sheer numbers of properties involved. We have approximately 4,500 properties in the ownership of

the General Trustees and perhaps another 1,500 held in the name of local trustees. It is not realistic to expect local congregational office-bearers to be able to navigate the website without input from staff at the Church office, as it is not intuitive and will in any event require them to have information about the property titles which they are unlikely to have, as most titles are held here in Edinburgh for safe-keeping. We anticipate, therefore, that each entry will require input from our central resources.

Our experience of the RCI website has brought home to us the enormous logistical task of grappling with it for potentially 6,000 entries. For example:

- The first question is “what describes the owner or tenant- individual or organisation?” People might expect to have to put the congregation name here but it is the individual name that is required.
- If you put the person in as an individual, the website tells you to also register the same person as an Associate; if you put them as Trustee you don’t have to register as an Associate
- Each office bearer (with personal details) has to be added separately as a recorded person
- Once you submit an entry for an Associate they get a unique reference. When this is then used in another entry, the system doesn’t pre-populate with their details – you still need to add their name and date of birth. This results in multiple recorded persons having to re-input the addresses and dates of birth of multiple associates, for the same property
- Where there are several trustees who all have to register as recorded persons, each of them has to individually create their own separate entries, so that the first trustee to do this inputs all the information regarding all Associates, and then all the other recorded persons have to create their own separate entries and duplicate what the first trustee has already done as regards details of Associates, i.e. re-enter all the information about the Associates that has already been entered by one or more other trustees/recorded persons
- When you enter a recorded person, it is not obvious on the face of the system who would be an Associate (I don’t think the average person attempting an entry would know what to add there)
- Long names do not fit in the space e.g. congregation names like Penicuik South and Howgate Parish Church of Scotland, despite the fact that their OSCR-registered names should be correct in the system.
- Property registered in the Sasine Register needs at least a post code to identify it on the Registers of Scotland map.
- The recorded person is the new office bearer or trustee for the entry i.e. the person who is NOT named on the title - this is counter-intuitive and it will be confusing for people who are not familiar with title deeds
- General Trustees - their details are easy to add as a recorded person, but the next question asks are they owner and gives 5 options, of which only the last two could potentially apply, namely either (a) an organisation that is a trustee or other role **in** an unincorporated body (my emphasis) or (b) an organisation that is a trustee or other role **in** a trust. Neither in fact applies, as the GTs are trustees **on behalf of** an unincorporated body not a trustee **in** an unincorporated body. If you enter that the GTs are trustee, it asks if they are trustee or office bearer – this doesn’t make sense for the GTs.
- For locally vested titles where the title is held in the name of individuals as office bearers and the recorded or registered title states that they are holding on behalf of the congregation of X, the Keeper’s guidance suggests that if the offices are named on the title, nothing further is required but encourages unincorporated bodies to update or “rectify”

their titles. This is simply wrong, in terms of Scots property law: the title is perfectly valid as it stands and doesn't require rectification.

SCIOs/other forms of charity

The exemption provided for SCIOs should, logically, be extended to all charities. SCIOs are obliged to supply the names and addresses of their trustees when asked to do so, thus providing publicly available information and grounding an exemption from the RCI Regulations. The same obligation is, however, imposed on charities constituted in other ways and the Regulations fail to take this into account. Section 23 of the Charities and Trustee Investment (Scotland) Act 2005 obliges a charity to provide to any person who requests it a copy of (a) its constitution and (b) its latest statement of account. The relevant charity SORP requires charities with annual income over £250,000 to include the names of all trustees within their audited accounts; those charities with annual income under this figure who only require to submit Receipts & Payments accounts must disclose the names of up to 50 trustees in their accounts. A contact address for every charity in Scotland is also available on the OSCR Charity Register. The information sought by the new Regulations is therefore already publicly available for all charities, not just for SCIOs. The particular form of constitution of a charity (i.e. whether an unincorporated association, trust etc) is not the material factor: rather, it is the charitable status of the entity, which brings with it the relevant compliance obligations, which matters.

As highlighted in my briefing note, changes to Scottish charity law are in prospect which focus on increasing transparency, accountability and trust in the sector. A new register of trustees, in two parts, is proposed: (1) an internal database for OSCR's use including name, DOB and address of trustees and (2) an external register for public use containing trustee names and a principal office/contact address. It makes no sense to fail to "join the dots" between these two exercises in transparency. It benefits no-one for charity trustees to be compelled to comply with two separate transparency regimes, or for a charity such as the Church of Scotland, which is in many areas the only functioning community body, to be put to huge administrative inconvenience and cost (to say nothing of criminalisation for failure to comply) in a compliance regime from which it can be anticipated that it will shortly be exempted via changes in charity law.

EQIA

The EQIA itself records (first paragraph at the top of page 5, although the pages are not actually numbered) that *"the protected characteristic of religion and belief is indirectly impacted by the regulations"*. This is because although the Register impacts on individuals by virtue of their controlling interest in land, this interest arises due to the fact that the individual belongs to a specific type of land-owning organisation representing those with this protected characteristic. It goes on to say: *"Religious belief can affect decisions on the structure of some land owning organisations, which determines who is deemed to have a controlling interest. For example, the structure of some religious organisations may require them to register a high number of people per property as decisions about their land are taken by multiple peoples within the organisation. Some such structures are historic and the introduction of the register may have a significant impact on them due to the number of properties they own and the number of people they have to register"*.

So the EQIA recognised the disproportionate impact on churches arising from their structure and internal governance (in our case, our Presbyterian governance, which determines that all decisions are taken by the Church court/body in question, and not by individuals). It is ironic that in attempting to mitigate this disproportionate impact the Regulations have in effect ignored the

existence of this internal structure and imposed on churches *de facto* rules as to who has significant influence or control which are in direct conflict with our ecclesiology.

Other churches

These difficulties are broadly similar for other churches, and the briefing note was submitted both on behalf of the Church of Scotland and the other main Christian denominations in Scotland, under the umbrella of the Scottish Churches Committee, of which I am the secretary.

Summary

To sum up:

1. The EQIA recognises a disproportionate impact on churches.
2. The imposition of an extremely cumbersome compliance regime is grossly disproportionate to any possible benefit in terms of increased transparency.
3. The mitigations narrated in the EQIA fail to reduce this impact, and have in fact made it worse.
4. The Regulations fail to recognise the distinctive governance context of churches.
5. The RCI will contain misleading information, since the persons named as associates will not in fact have control or significant influence on the body which owns the land.
6. The information disclosed in the RCI can easily be found elsewhere, for charities.
7. A change in charity law is anticipated shortly which will lead to all charities being exempted from compliance with the Regulations. It is oppressive to require compliance with two transparency regimes at this point.

I'll look forward to discussing all of this with you tomorrow.

Kind regards

Mary

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The Church of Scotland

Law Department

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>

Sent: 08 November 2018 12:00

To: [redacted]

Subject: Land Reform - Register of Controlling Interests

Dear [redacted]

I refer again to the above and to our meeting in July at which we discussed the potential impact of the draft Regulations so far as they related to land owned by the Church of Scotland.

I now attach a copy of the formal Consultation Response which, in my role as its Secretary, I have submitted on behalf of the Scottish Churches Committee. This is an inter-denominational body on which are represented the main Christian denominations in Scotland, namely the Church of Scotland, the Roman Catholic Church in Scotland, the Scottish Episcopal Church, the Associated Presbyterian Churches, the Baptist Union, the Free Church of Scotland, the Free Presbyterian Church, the Methodist Church, the United Free Church of Scotland, the United Reformed Church (Scottish Synod) and the Salvation Army. The Committee also maintains links with the Scottish Council of Jewish Communities.

Separately, I thought that it might be helpful if I were to be in touch to highlight a few matters from the particular perspective of the Church of Scotland, which is one of the larger landowners in the country in terms of numbers of properties owned, whether by the Church of Scotland General Trustees or by local congregational trustees.

1. We are extremely concerned about the potential impact which the administration of the new Register will have on the core work of the Keeper and her staff in maintaining an accurate Land Register. It has been our experience that in recent years there has been a significant reduction in the quality of the service provided by the Keeper, as staff with expertise in property law and practice have left and are not replaced, the conveyancing profession is held at arm's length rather than seen as partners in the enterprise of ensuring an accurate title register, the internal training function has been lost, and the focus has moved away from the technical detail – and thus the accuracy – of the service itself. The changes introduced by the Land Registration (Scotland) Act 2012 have exacerbated these problems, so that we are now in the unhappy position where it is generally acknowledged within the legal profession that the accuracy of the Land Register is reducing with each passing year and a legacy of claims is inevitably building up.

To add to these woes, the push towards the completion of the Land Register and the lack of suitably qualified personnel to achieve this has resulted in an enormous backlog of first registrations.

The General Trustees are keen to engage with this process but it is difficult to do so when we are told that the titles which we submit to the Keeper to accompany an application for first registration are likely to remain with her for a year or more whilst the application is processed, and that if we require the titles back in the interim, we will have to pay for the privilege!

In this context, it would be little short of disastrous for Scotland's land registration system were the Keeper's staff to be diverted from their core tasks by the purely administrative tasks envisaged by the Regulations.

2. Our second main concern is related to this, and that is the enormous impact in terms of time and money which the Regulations will have both on the Registers and the Church, as against the minimal benefit secured in terms of the stated aims of the Regulations. To put it bluntly, local faith-based organisations are not the root of the problems which the Regulations hope to address and yet, as currently drafted, they will be disproportionately impacted by the new regime.

The Church of Scotland will typically own three types of property in a community: (a) church/hall; (b) manse and (c) glebe land. So far as (a) churches/halls are concerned, and has been said in the Response, they have notice boards attached to them which publicly state that they are Church of Scotland buildings and which typically also contain contact details for the Minister and Session Clerk. It is difficult to see any transparency issues arising in relation to such properties.

So far as (b) manses are concerned, it is hard to see why there should be any “community” interest in knowing the names and addresses (far less month/year of birth) of every member of a Kirk Session and/or Congregational Board of the relevant congregation. These are simply single residential dwellings which are unlikely to have any significance at community level.

In the case of (c) glebes, these are invariably let on various types of agricultural tenancy to small local farmers. Glebes are always owned by the General Trustees and accordingly it is a very straightforward matter to ascertain ownership and make contact with the Secretariat here at the Church Offices in Edinburgh should there be any issues arising.

Set against the reality that ownership of these properties is already pretty transparent, the compliance obligations flowing from the draft Regulations are enormous and quite disproportionate to any perceived benefit. It is impossible to be precise about the number of properties owned by the Church of Scotland. The General Trustees own approximately 4,500; roughly another 1,500 are owned by local trustees; and the central Councils and Committees own another 100 or so properties. This gives a best guesstimate of 6,000 or so separate properties. If each of these individual properties triggers a tsunami of registrations (I have estimated in the example given in the Response that a single property in Edinburgh is likely to have c190 “associates” although this number will go up or down depending on the size of the congregation and the size of the Presbytery in which it is situated) then the Church of Scotland alone will produce more than one million separate register entries.

3. As you will see from the attached Response, the members of the Committee, and the General Trustees, disagree with the underlying premise of Part 4 of Schedule 1 as to how unincorporated associations are run, at least in the context of the mainstream religious denominations in Scotland. I appreciate that for a small club or community group, it is likely that the office-bearers will indeed take a lot of the day to day administrative decisions affecting the club/group, but I don't think that it is accurate to say that the office-bearers have control of the body in the sense intended by the Regulations.

In any event, and certainly in the case of the Church of Scotland, our Presbyterian system of governance means that congregational office-bearers in the lowest court of the Church (i.e. the local Kirk Session, the Session Clerk usually being one of *the ex officio*s property-holding trustees where title is vested in local trustees rather than in the General Trustees) are in no meaningful sense in “control” of the congregation. They, and the congregation, are subject to a panoply of ecclesiastical regulations and to supervision by the superior courts i.e. the local Presbytery and, ultimately, the General Assembly, particularly when it comes to

decisions affecting congregational buildings. Many congregational titles, even if they are not held in the name of the General Trustees, will contain what is known as an “Assembly control” clause which directs that the congregational trustees are in all matters affecting the disposal and management of the property subject to the direction of the General Assembly. The Assembly has delegated its functions in this respect to the General Trustees. This system of “checks and balances” is not only fundamental to Presbyterian governance, it is also one of the essential elements in the Church (along with other denominations such as the Episcopal Church, the Roman Catholic Church, the Free Church and the United Free Church, amongst others) having the status of a “Designated Religious Charity” (“DRC”) in terms of section 65 of the Charities and Trustee Investment (Scotland) Act 2005. This requires a degree of internal organisation such that one or more authorities in Scotland exercise supervisory and disciplinary functions in relation to the component elements of the charity. Individual congregations form component elements of each denomination, with the whole denomination being recognised as a DRC.

4. Title to all Church of Scotland properties, regardless of whether this is held by the General Trustees or by local trustees, will in any event be held in trust for the congregation concerned, so that the potentially helpful provisions of Part 4 of Schedule 1 will not apply, as the proprietors will have to comply with the provisions of Part 3. This will be the case for most if not all religious bodies.

The most straightforward option for avoiding the undesirable consequences of the Regulations as currently framed would seem to be to widen the exemption for SCIOs to include all registered Scottish charities regardless of their form of constitution, and I hope that serious consideration will be given to this. Failing that, and given the internal supervisory functions which OSCR is already satisfied exist for DRCs, combined with OSCR’s regulatory role in relation to such bodies, the impact of the Regulations would be considerably lessened were DRCs to be exempted. If neither options is, for whatever reason, deemed to be possible then the General Trustees would be keen to engage with the Scottish Government to discuss the possibility that the General Trustees be specifically exempted, by virtue of their status as the statutory property-holding corporation of the body recognised by the State as being the national Church.

I trust that further discussion in relation to all of this will flow from the Consultation exercise, and shall look forward to hearing from you again in due course as your thinking develops. In the meantime, if I can provide any further information which will assist your deliberations, I will of course be happy to do so.

Kind regards.

Mary

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The Church of Scotland
Law Department

From: [redacted]

Sent: 16 August 2022 10:11

To: [redacted]

Cc: [redacted]

Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Hi [redacted]

[redacted]

[redacted]

From: [redacted]

Sent: 15 August 2022 16:05

To: [redacted]

Cc: [redacted]

Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Hi [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

I have pasted Part 4 and Part 3 below, from this link: [The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Regulations 2021 \(legislation.gov.uk\)](#)

PART 4 Unincorporated bodies

Application

9. This Part applies to a person (the associate) where—

(a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, the members of an unincorporated body of persons, and

(b) the associate—

(i) is responsible for the general control and management of the administration of the body, and

(ii) is not registered as owning or leasing the land.

Commencement Information

19 Sch. 1 para. 9 in force at 1.4.2022, see [reg. 1](#)

Exceptions

10. This Part does not apply to a person where that person's relationship to the body is only that of—

(a) a paid professional advisor to the body (such as a solicitor or an accountant),

(b) a creditor of the body (such as the holder of a standard security),

(c) a member of the judiciary presiding over proceedings to remove a member of the body from any trust established to hold property on the body's behalf.

Commencement Information

I10 Sch. 1 para. 10 in force at 1.4.2022, see [reg. 1](#)

Interpretation of Part 4

11. For the purposes of this Part a person is responsible for the general control and management of the administration of a body if they hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described).

PART 3 Trusts

Application

6. This Part applies to a person (the associate) where—

(a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, a trust, and

(b) the associate—

(i) is a trustee of the trust, but is not registered as being the owner or tenant of the land,

(ii) is an individual who has significant influence or control over a relevant entity which is a trustee of the recorded person,

(iii) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or the trust.

Commencement Information

I6 Sch. 1 para. 6 in force at 1.4.2022, see [reg. 1](#)

Exceptions

7.—(1) This Part does not apply where—

(a) the recorded person owns or tenants the land as a trustee of a trust created for the purposes of insolvency or sequestration,

(b) the recorded person owns or tenants the land for or on behalf of a partnership to which Part 2 of this schedule applies,

(c) the recorded person owns or tenants the land for or on behalf of the members of an unincorporated body of persons to which Part 4 of this schedule applies.

(2) This Part does not apply where a person's relationship to the trust is only that of—

(a) a paid professional advisor to the trust (such as a solicitor or an accountant),

- (b) a creditor of the trust (such as the holder of a standard security), or
- (c) a member of the judiciary presiding over proceedings in connection with the trust,
- (d) a member of a body which has the right to exercise, or actually exercises significant influence or control over the trust by virtue of a function conferred by an enactment.

Commencement Information

17Sch. 1 para. 7 in force at 1.4.2022, see [reg. 1](#)

Interpretation of this Part

8.—(1) For the purposes of this Part—

- (a) “relevant entity” means any body corporate or other entity (whether incorporated or not) that is a legal person under the law by which it is governed, other than a person of a type listed in schedule 2,
- (b) examples of significant influence and control include, in particular, where a person—
 - (i) has the right to appoint or remove a trustee of a trust (other than by application to a court),
 - (ii) has the right to direct the distribution of assets or funds of a trust,
 - (iii) has the right to direct investment decisions of a trust,
 - (iv) has the right to amend a trust deed,
 - (v) has the right to revoke a trust, or
 - (vi) otherwise has significant influence or control over the decision-making of a trustee or trust, particularly in respect of the trustee’s or trust’s dealings with the land.

(2) For the purposes of paragraph 6(b)(iii), a person (A) does not exercise significant influence and control over a recorded person or the trust if A is also a recorded person in accordance with paragraph 6(a).

Thanks,
[redacted]
[redacted]

From: [redacted]

Sent: 15 August 2022 11:20

To: Crawley A (Andrew) <Andrew.Crawley@gov.scot>

Cc: [redacted]

Subject: FW: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Hi [redacted], I am forwarding on an email we have just received from Church of Scotland in advance of our [redacted] teams meeting with them tomorrow [redacted]

Thanks, [redacted]
[redacted]

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>
Sent: 15 August 2022 10:57
To: [redacted] Bradwell, David <dbradwell@churchofscotland.org.uk>
Cc: [redacted] Annan, Elspeth <EANNAN@churchofscotland.org.uk>
Subject: RE: Phonecall to discuss RCI and Church of Scotland ahead of meeting with Minister ELR

Dear [redacted]

Ahead of our meeting on Tuesday, I'm setting out our response to the various points you raise, and apologise in advance for the length of this email.

Your assessment, in numbered paragraphs 1-9 of your email, of the compliance requirements of the Regulations vis-à-vis properties for which title is held by the Church of Scotland General Trustees is correct.

Impact of "mitigations"

You refer in paragraph 3 and later in your email to "mitigations" brought in as a result of the EQIA to "enable" organisations to register under Part 4 rather than Part 3 of Schedule 1. My briefing note makes it plain that the three "mitigations" referred to by the EQIA have, in practice, no mitigatory impact but **have in fact made matters considerably more difficult for churches**, as they bring into scope bodies – and thus individuals – who would not otherwise fall within the definitions of "control" or "significant influence" set out in Regulation 2 (2), reproduced here for ease of reference:

(2) For the purposes of these Regulations, a reference to—

- (a) control is a reference to where a person can direct the activities of another,
- (b) dealings with the land is a reference to disposing, creating real rights over, leasing or changing the use of the land,
- (c) significant influence is a reference to where a person is able to ensure that another person will typically adopt the approach that the person desires.

It is therefore essential that our discussions take account of this reality, which has been glossed over in responses issued by the Minister to date.

As was explained to your colleagues in 2018, in the course of engagement with us around the impact of the prospective Regulations (copy email to Graham Watson dated 8 November 2018 is attached), office-bearers in congregations are simply not in a position to direct the activities of the congregation or to ensure that the congregation (far less the General Trustees) will adopt the approach that the office-bearer desires. Despite this, they are brought into scope by virtue of Part 4, which **obliges** (rather than **enables**) certain named office-holders to register by the declaratory provision that such individuals are responsible for the general control and management of the administration of a body – regardless of whether this is in fact the reality.

Church governance is designed to preclude individual control

So far as the Church of Scotland is concerned, not all members of congregations are charity trustees. The charity trustees of each congregation are the members of its governing body or

bodies, as they are deemed in terms of charity law to be the people who have “general control and management of the administration of the congregation”, as per the 2005 Act. Some congregations have two such bodies: (a) a Congregational Board, which is responsible for all “temporal” matters affecting the life of the congregation and (b) a Kirk Session, which is responsible for all “spiritual” matters. The size of the Board and Session varies from congregation to congregation: each may have as few as ten members, or there can be upwards of 30 people on each. Some congregations operate with only a Kirk Session, in which case it will tend to be a larger body.

None of these individuals have the powers referred to in Regulation 2(2). All decisions about “dealings with land” as defined in the Regulations are taken corporately, by the Board or Session. There are specific rules and regulations which congregations must follow about this, as set down by the General Assembly, which is the Church’s supreme court. These require that (for example) a proposal to sell a property has to be approved by the General Trustees, and has to proceed by way of a formal application to the General Trustees, accompanied by extract minutes of meetings of the Board or Session, and the congregation, and the Presbytery, all approving the proposal. So it is factually wrong to say that a minister, session clerk and treasurer in any congregation can direct the activities of that congregation (or the General Trustees) or ensure that the congregation (or the General Trustees) will adopt a particular approach in this respect. These individuals – particularly the session clerk and treasurer – have certain circumscribed duties as set out in a congregation’s constitution, but these duties don’t extend to the exertion of influence over such dealings with land.

Even where title to property is held in the name of local trustees, whether three named office-holders, the named individuals are holding title in their *ex officio*s capacity only and have no more authority to deal with the property than any other member of the Board/Session. They are instructed by the Board/Session in such dealings, and the mere fact that title is vested in them does not of itself give them power, in terms of a congregational constitution, to have any control over decision making. They could not, for example, refuse to sign a disposition conveying title to a third party even if they personally were opposed to the transfer of title.

A copy of the standard congregational constitution can be found here:

https://www.churchofscotland.org.uk/_data/assets/pdf_file/0005/38444/Unitary_Constitution-Sample-updated_May_2017.pdf

You will see that clause Ninth also requires the approval of the Presbytery if a congregation proposes to borrow money (which might entail the creation of a real right over land, in the shape of a Standard Security). I would also direct you to clause Fourth, which says that a Session Clerk need not be a member of the Kirk Session i.e. need not be a charity trustee; and Clause Fifth, which says that a Treasurer need not even be a member of the congregation. Neither individual, in such circumstances can, to any degree at all, have control over the property and it is simply wrong for the RCI to direct an enquirer to these office-bearers as being people who have control over dealings with the land. The Regulations may fit the model of a stand-alone club, but they do not fit the governance of religious organisations.

Practical difficulties

The practical difficulties of compliance are not primarily related to difficulty in establishing what properties are held for each congregation. You refer to each property requiring “only a handful” of registrations but that is to overlook the complexity inherent in each set of registrations and the sheer numbers of properties involved. We have approximately 4,500 properties in the ownership of the General Trustees and perhaps another 1,500 held in the name of local trustees. It is not realistic to expect local congregational office-bearers to be able to navigate the website without input from

staff at the Church office, as it is not intuitive and will in any event require them to have information about the property titles which they are unlikely to have, as most titles are held here in Edinburgh for safe-keeping. We anticipate, therefore, that each entry will require input from our central resources.

Our experience of the RCI website has brought home to us the enormous logistical task of grappling with it for potentially 6,000 entries. For example:

- The first question is “what describes the owner or tenant- individual or organisation?” People might expect to have to put the congregation name here but it is the individual name that is required.
- If you put the person in as an individual, the website tells you to also register the same person as an Associate; if you put them as Trustee you don’t have to register as an Associate
- Each office bearer (with personal details) has to be added separately as a recorded person
- Once you submit an entry for an Associate they get a unique reference. When this is then used in another entry, the system doesn’t pre-populate with their details – you still need to add their name and date of birth. This results in multiple recorded persons having to re-input the addresses and dates of birth of multiple associates, for the same property
- Where there are several trustees who all have to register as recorded persons, each of them has to individually create their own separate entries, so that the first trustee to do this inputs all the information regarding all Associates, and then all the other recorded persons have to create their own separate entries and duplicate what the first trustee has already done as regards details of Associates, i.e. re-enter all the information about the Associates that has already been entered by one or more other trustees/recorded persons
- When you enter a recorded person, it is not obvious on the face of the system who would be an Associate (I don’t think the average person attempting an entry would know what to add there)
- Long names do not fit in the space e.g. congregation names like Penicuik South and Howgate Parish Church of Scotland, despite the fact that their OSCR-registered names should be correct in the system.
- Property registered in the Sasine Register needs at least a post code to identify it on the Registers of Scotland map.
- The recorded person is the new office bearer or trustee for the entry i.e. the person who is NOT named on the title - this is counter-intuitive and it will be confusing for people who are not familiar with title deeds
- General Trustees - their details are easy to add as a recorded person, but the next question asks are they owner and gives 5 options, of which only the last two could potentially apply, namely either (a) an organisation that is a trustee or other role **in** an unincorporated body (my emphasis) or (b) an organisation that is a trustee or other role **in** a trust. Neither in fact applies, as the GTs are trustees **on behalf of** an unincorporated body not a trustee **in** an unincorporated body. If you enter that the GTs are trustee, it asks if they are trustee or office bearer – this doesn’t make sense for the GTs.
- For locally vested titles where the title is held in the name of individuals as office bearers and the recorded or registered title states that they are holding on behalf of the congregation of X, the Keeper’s guidance suggests that if the offices are named on the title, nothing further is required but encourages unincorporated bodies to update or “rectify” their titles. This is simply wrong, in terms of Scots property law: the title is perfectly valid as it stands and doesn’t require rectification.

SCIOs/other forms of charity

The exemption provided for SCIOs should, logically, be extended to all charities. SCIOs are obliged to supply the names and addresses of their trustees when asked to do so, thus providing publicly available information and grounding an exemption from the RCI Regulations. The same obligation is, however, imposed on charities constituted in other ways and the Regulations fail to take this into account. Section 23 of the Charities and Trustee Investment (Scotland) Act 2005 obliges a charity to provide to any person who requests it a copy of (a) its constitution and (b) its latest statement of account. The relevant charity SORP requires charities with annual income over £250,000 to include the names of all trustees within their audited accounts; those charities with annual income under this figure who only require to submit Receipts & Payments accounts must disclose the names of up to 50 trustees in their accounts. A contact address for every charity in Scotland is also available on the OSCR Charity Register. The information sought by the new Regulations is therefore already publicly available for all charities, not just for SCIOs. The particular form of constitution of a charity (i.e whether an unincorporated association, trust etc) is not the material factor: rather, it is the charitable status of the entity, which brings with it the relevant compliance obligations, which matters.

As highlighted in my briefing note, changes to Scottish charity law are in prospect which focus on increasing transparency, accountability and trust in the sector. A new register of trustees, in two parts, is proposed: (1) an internal database for OSCR's use including name, DOB and address of trustees and (2) an external register for public use containing trustee names and a principal office/contact address. It makes no sense to fail to "join the dots" between these two exercises in transparency. It benefits no-one for charity trustees to be compelled to comply with two separate transparency regimes, or for a charity such as the Church of Scotland, which is in many areas the only functioning community body, to be put to huge administrative inconvenience and cost (to say nothing of criminalisation for failure to comply) in a compliance regime from which it can be anticipated that it will shortly be exempted via changes in charity law.

EQIA

The EQIA itself records (first paragraph at the top of page 5, although the pages are not actually numbered) that *"the protected characteristic of religion and belief is indirectly impacted by the regulations"*. This is because although the Register impacts on individuals by virtue of their controlling interest in land, this interest arises due to the fact that the individual belongs to a specific type of land-owning organisation representing those with this protected characteristic. It goes on to say: *"Religious belief can affect decisions on the structure of some land owning organisations, which determines who is deemed to have a controlling interest. For example, the structure of some religious organisations may require them to register a high number of people per property as decisions about their land are taken by multiple peoples within the organisation. Some such structures are historic and the introduction of the register may have a significant impact on them due to the number of properties they own and the number of people they have to register"*.

So the EQIA recognised the disproportionate impact on churches arising from their structure and internal governance (in our case, our Presbyterian governance, which determines that all decisions are taken by the Church court/body in question, and not by individuals). It is ironic that in attempting to mitigate this disproportionate impact the Regulations have in effect ignored the existence of this internal structure and imposed on churches *de facto* rules as to who has significant influence or control which are in direct conflict with our ecclesiology.

Other churches

These difficulties are broadly similar for other churches, and the briefing note was submitted both on behalf of the Church of Scotland and the other main Christian denominations in Scotland, under the umbrella of the Scottish Churches Committee, of which I am the secretary.

Summary

To sum up:

1. The EQIA recognises a disproportionate impact on churches.
2. The imposition of an extremely cumbersome compliance regime is grossly disproportionate to any possible benefit in terms of increased transparency.
3. The mitigations narrated in the EQIA fail to reduce this impact, and have in fact made it worse.
4. The Regulations fail to recognise the distinctive governance context of churches.
5. The RCI will contain misleading information, since the persons named as associates will not in fact have control or significant influence on the body which owns the land.
6. The information disclosed in the RCI can easily be found elsewhere, for charities.
7. A change in charity law is anticipated shortly which will lead to all charities being exempted from compliance with the Regulations. It is oppressive to require compliance with two transparency regimes at this point.

I'll look forward to discussing all of this with you tomorrow.

Kind regards

Mary

Mary Macleod | Solicitor of the Church | Church of Scotland Law Department
121 George Street, Edinburgh, EH2 4YN | DX ED144 : LP 121 EDIN 2
Direct Dial 0131 240 2209 | Fax 0131 240 2246



The Church of Scotland
Law Department

-----Original Message-----

From: [redacted]

Sent: 16 August 2022 18:15

To: [redacted]

Subject: OFFSEN: Draft read out RCI CoS meeting

Hi [redacted]

[redacted]

[redacted]

[redacted]

PS: I've mentioned this in passing to [redacted] as well, but I am actually quite worried about sending the Minister in to a meeting with them on this basis, given how little scope for a resolution there seems to be.

From: Harrison F (Fiona) [redacted]
Sent: 18 August 2022 16:59
To: [redacted]
Cc: [redacted]
Subject: RE: RCI - Cof S - handling

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 18 August 2022 16:52
To: Harrison F (Fiona) [redacted]
Subject: RE: RCI - Cof S - handling

Grand, will do!

From: Harrison F (Fiona) [redacted]
Sent: 18 August 2022 16:50
To: [redacted]
Cc: [redacted]
Subject: RE: RCI - Cof S - handling

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 18 August 2022 16:24
To: Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: RE: RCI - Cof S - handling

Hi Fiona,

[redacted]

[redacted]
[redacted]

From: Harrison F (Fiona) [redacted]
Sent: 18 August 2022 16:19
To: [redacted]
Cc: [redacted]
Subject: RE: RCI - Cof S - handling

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | **[redacted]**

From: **[redacted]**

Sent: 18 August 2022 16:12

To: Harrison F (Fiona) **[redacted]**

Cc: **[redacted]**

Subject: RCI - Cof S - handling

Fiona

[redacted] We are aiming to send that up next Friday. She will then develop the briefing for the meeting.

[redacted]

Thanks,
[redacted]

From: [redacted]
Sent: 19 August 2022 14:04
To: [redacted]
Cc: [redacted] Harrison F (Fiona) [redacted]
Subject: Key points RCI and CoS

Hi [redacted]

As discussed, a brief overview of the key points relating to RCI and the Church of Scotland to inform your update to your DD. [redacted] You have mentioned that your DD has a legal background, if he would like to look at any of the legislation in detail, the link is here: [The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Regulations 2021 \(legislation.gov.uk\)](#)

1. What is CoS required to do under RCI?

We have now reached a shared understanding with CoS on what is required of them in terms of the legislation as it stands:

- CoS hold title to an estimated 6000 properties across Scotland. Around 4500 of these are held by the General Trustees on behalf of local congregations.
- The General Trustees are an incorporated body under a 1921 Act. While companies and SCIOs are exempt from the RCI legislation (because they comply with other transparency regimes) , we understand that not-for-profit corporate bodies are in scope.
- As a result, for those 4500 properties, the General Trustees would be registered as a single recorded person (ie the owner) on RCI.
- The local office bearers of each congregation would be the associates for those properties. We estimate that this would be around 3 or 4 persons per property (Minister, Treasurer, Chairman of Congressional board if there is one, potentially the Session Clerk). This number is in line with what is expected of other charitable organisations and unincorporated bodies.
- As the burden of registration is on the recorded person, CoS head office will be responsible for registering these properties on the RCI and liaising with local congregations to get the details of the local officebearers (this includes name, a contact address – which can be any address where they can be contacted, not a home address – and date of birth for internal identification, but this last will not be published on the register).
- For the remaining 1500 properties where title is held by the local office bearers, the requirements will depend on how exactly the title is held (for example ex officio or named trustees), but the responsibility for registering on RCI will be with the local office bearers. It is anticipated this will still require liaising with CoS head office, as the actual title deeds will be on file in Edinburgh in most cases, and local congregations will not necessarily know how their title is held.

2. What is the impact on them?

- We also have a shared understanding with CoS that the administrative responsibility resulting from RCI arises primarily from the number of properties they hold. We estimate that they are the largest land-owner by volume of property titles held that is in scope for RCI.

- As noted above, the required registrations per property are in line with what is expected of other bodies – it is the multiplying factor of the number of properties held that is the issue.
- The volume of property owned, from our perspective, makes it very important the CoS complies with the legislation, [redacted] Many bodies that would have comparable land holdings (NHS trusts, local councils, Scottish Ministers) are out of scope for RCI because they come under the Freedom of Information (FOI) transparency regime.
- CoS have stated that they expect the financial cost of compliance and maintenance of the register to be significant, and they will have to recruit additional staff. It is worth noting in this context that CoS have been engaged in developing the RCI since its inception in 2016, so have had more than five years to prepare.
- Failure to comply with RCI duties risks criminal penalties, which will come in to force once the transition period ends on 1 April 2023
- [redacted]

3. Existing mitigations and diverging understandings

- In 2019 an EQIA [redacted] was carried out, and identified that the draft regulations at the time risked generating hundreds of registration for each church property because of a requirement to both register under Part 4 provisions for unincorporated bodies and Part 3 provisions for Trusts.
- Among other measures, a provision was introduced to stipulate that where bodies fit under either category, Part 4 is to be followed.
- The reason behind this is that Part 4 is much narrower in scope as to who can be an associate. Under Part 4, it is clarified that for the purposes of RCI, the office bearers with significant control or influence on the administration of the body are to be registered as associates. [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

4. Legislation

- [redacted].
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Let me know if I have missed out anything or you have any further questions!
[redacted]

From: [redacted]

Sent: 19 August 2022 20:01

To: [redacted]

Cc: [redacted]

Subject: Official sensitive: read-out of Land Reform officials meeting with Church of Scotland

Hi [redacted]

It was good to catch up today! Attached is the read-out of our meeting with Church of Scotland last Tuesday – [redacted]

Many thanks and have a good weekend!

[redacted]

[redacted]

Read-out of meeting with Church of Scotland representatives regarding Register of Persons Holding a Controlled Interest in Land

Date: 16 August 2022

Attendees:

Church of Scotland

Mary McLeod, Solicitor of the Church of Scotland

Elspeth Annan, Team Leader Property, Church of Scotland

SG

[redacted] Team Leader Land Reform Policy and Legislation Team

[redacted] Senior Policy Lead Land Use and Land Reform

Format: Teams meeting

1. Please note that discussions focused primarily on the approx. 4500 Church of Scotland properties held in the name of the General Trustees, and not the approx. 1500 properties held locally.

Impact of mitigations

2. Following a round of introductions, officials started off the meeting by inviting attendees to discuss in more detail their statement (as set out by e-mail (from Mary McLeod, 15 August 2022) prior to the meeting) that the mitigations put in place after the 2019 EQIA, following 2 or 3 meetings with SG officials in 2018, were in fact counter-productive.
3. Church of Scotland (CoS) representatives clarified that this pertains to the mitigating provisions that enable organisations which are both an unincorporated body and a Trust to register on RCI following just the provisions unincorporated associations (Schedule 1, Part 4), and not for both as they would have had to do originally.
4. While the removal of this duplication was welcome at the time, the Church of Scotland furthermore set out that as they understand the regulations under Part 3 of Schedule 1 (provisions relating to Trusts), **no single individual in their organisation would meet the definitions of significant control or influence**, as all decisions are made in committees/shared decision making processes. Therefore the ability to follow Part 3, rather than Part 4, would have meant that they would not have been required to register properties under the RCI.

[redacted]

5. They hold that the Regulations as they are, oblige them to follow Part 4, the definitions of which bring into scope office holders within the church for registration purposes. They take with issue with this for two reasons, firstly because, as noted above, they state that had they been allowed to self-select or be made to follow part 3 of the Regulations, they would not have to Register on RCI at all. Secondly, they find it factually inaccurate to list office bearers on the RCI as having significant control or influence – they consider this to be

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misleading, because office bearers do not have the kind of control implied by registration on RCI. Officials queried if this was because there are other people within CoS who should be registered instead, and CoS clarified that the office bearers are the most appropriate point of contact, but it is the factual inaccuracy of implying they have control by being listed on the register that they take issue with, rather than the actual listing of the names.

6. SG officials set out the SG understanding of Part 3 and Part 4 of Schedule 1: that under Part 3 everyone who shared in the decision making within the Church would have to register as an associate, resulting in hundreds of registrations per property. Part 4 significantly narrows that scope by focussing on office-bearers instead, which would be 3-4 associates requiring registration per property. CoS representatives agreed that this may have been the intent behind the mitigation, but that as they deem that the definitions of individuals with significant power and control as per Part 3 do not capture anyone in their organisation and bringing office bearers into scope creates a duty to register they would not otherwise have.
7. Officials were unable to resolve the difference in understanding, which hinges on the interpretation of the Regulations and whether they only apply to single individuals with (sufficient) control or influence to direct/oppose decisions versus applying to anyone who shares in the decision making, for example by being a member of the Presbytery – which as a body within the Church influences decisions about land.

[redacted]

8. In light of CoS interpretation, CoS representatives suggested that an amendment could be made that would allow organisation to self-select whether Part 3 or Part 4 would best apply to their situation. Officials made it clear that while this could potentially be considered (noting significant caveats in the feasibility of any legislative solution – more details in paragraph 15), in the SG's understanding of the Regulations as they stand following Part 3 would make the impact on CoS far worse, as they would have to register everyone.

Proportionality and transparency

9. CoS representatives were very critical of the policy aims of the RCI, arguing that the impact on them was completely disproportionate to the benefit of increased transparency. Their arguments were:
 - That there is already sufficient transparency (and wanted to know what transparency problem in relation to churches the RCI was addressing). They set out that an individual wanting to find out more about CoS property could check the details on the Land Register for a small fee (£3), find contact details on the OSCR charity register, or contact the Church's head office with any queries – and they already receive and respond to plenty such queries every day.

[redacted]

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- That they would have to invest tens to hundreds of thousands of pounds and recruit staff to achieve compliance, process all the registrations and continue maintaining records for the register on a rolling basis ever after, for the benefit of a few individual accessing information online they can already have access to for a small fee currently via Land Register and contacting their Head Office, or looking up the contact details on the OSCR charity register.
 - That in many areas of Scotland CoS is the only functioning community body, and to put such a burden on them is not proportionate to the benefit of improved transparency.
10. They queried how transparency would be served by office bearers being registered on the RCI, who would most likely only refer any queries back to the head office anyway.
11. SG policy officials pointed out that transparency in this issue had been deemed important enough by Parliament to pass the RCI legislation unanimously with cross party support – in addition the existing ability to access information on the land register. CoS asserted that Parliament will not have understood the full impact of the legislation on the CoS, but conceded that they had not submitted evidence to Parliament highlighting the impact on them as they had felt there was no point in doing so.

Nature of the impact

12. CoS representatives agreed that the impact on them arises from the large number of properties they own, and that were they only to own one property they would not have an issue with complying. Their view is that the volume of property owned by them, puts them in a unique position in their view and makes the impact on them significant magnitudes larger than other bodies – sufficient to merit either special provisions in the legislation exempting Church of Scotland specifically, or if that is not possible a wholesale exemption for charities. They asserted no other body holds a similar amount of property titles.

[redacted]

Frustrations

13. CoS asserted that the Scottish Government had an obligation to listen to the concerns of its citizens, and that its citizens are members of the Church of Scotland. They expressed deep frustration with the engagement with Scottish Government to date, noting that they had had been engaged with SG on this since the start (approx. 5 years) and that they felt their concerns were not, or inadequately, taken into account.

Changes to charity law

14. CoS representatives set out that with regards to the upcoming changes to charity law, they are deeply concerned they would invest time and resources into compliance with RCI, only to be exempted a few years down the line by the introduction of another transparency regime. SG officials set out that any potential overlap between transparency regimes could only be assessed once both were operational – as is the case with the newly introduced UK Register of Overseas Entities. Since any potential changes to charity law would have to

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follow the legislative Parliamentary process, they may change during the process and therefore no consideration of similarity could begin until after this process was complete.

15. CoS representatives queried whether there was any join-up between the policy areas. Officials confirmed that they were in contact with charity law colleagues, and that no details could be given at this time with regards to a timetable for the changes to charity law. CoS representatives suggested more transparency on this from SG would be helpful.

Legislative options

16. CoS representatives asked whether there was any scope for amendment of the legislation and stated that if there was not, there would be no point in having any further meetings. Officials explained that while it would be for the Minister to decide whether legislative amendment would be an appropriate solution this would -
 - a) require a very strong case to justify the changes (i.e. there had been a significant change in circumstances, were there unintended consequences)
 - b) the Minister would likely and rightly query if all other avenues of resolution or compromise had been explored, as legislation is an option of last resort
 - c) that even if the only solution were to be a legislative one, it would be very challenging to introduce and implement this ahead of the transition period ending and criminal offences coming into force for non-compliance on 1 April 2023.
17. CoS representatives responded by pointing out that they felt they had set out a strong enough case, that legislative change was the only option in their opinion, and that they had accepted that they would not be able to comply with the regulations in time [*i.e. ahead of 1 April 2023*]. They indicated that they would need to recruit a member of staff to work on this, but that they had not yet started this process. They noted that they accepted the risk of criminal prosecution. SG officials asked if they could provide an estimate of the time it would take them to comply with the Regulations, and they agreed to provide this. Officials also requested data on the volume of queries about property they already handle through their head office, and they agreed to provide this also.
18. CoS representatives queried why the Regulations had exempted corporate bodies but had brought not-for-profit corporate bodies back into scope. Officials noted this was decided before their time but they could take it away and look at what the policy rationale had been at the time.
19. CoS also queried why SCIOs were exempt but not other charities, which they had also noted in their preceding e-mail. Officials pointed out that SCIOs have reporting and transparency requirements over and above those set out for charities in general.

Practical difficulties in the process of registration

20. In the e-mail preceding the meeting CoS had set out various points of the online system of registering entries on RCI they found difficult to use, and these were discussed in a bit more detail. Officials highlighted that while this was not

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something the policy team could address, they would be very happy to set up and facilitate another workshop with Registers of Scotland to work through some of this feedback and see what improvements could be made.

21. CoS representatives did not seem to see much point in such an exercise and were not particularly welcoming of the suggestion but agreed it would probably be “not unhelpful”.

[redacted]

Next steps

22. Officials agreed to look again at the interpretation of the Part 3/Part 4 issue and how the Regulations bite on an individual taking part in corporate decision making.

23. Officials undertook to research the policy rational behind the decision to exempt corporate bodies but bring not-for-profit corporate bodies back into scope.

24. CoS agreed to supply best estimates of the time it would take them to comply with the Register, and volume of property queries they currently handle based on the contact details for the Church already available.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Harrison F (Fiona) [redacted]

Sent: 24 August 2022 09:47

To: [redacted]

Cc: [redacted]

Subject: RE: Read-out of meeting with CoS and legislative options paper

[redacted]

Many thanks for these, I have tracked some edits/queries [redacted]

[redacted]

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform |
Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]

Sent: 19 August 2022 19:53

To: Harrison F (Fiona) [redacted]

Cc: [redacted]

Subject: Read-out of meeting with CoS and legislative options paper

Hi Fiona,

Attached is the read-out of the meeting with Church of Scotland for your awareness.
[redacted]

[redacted]

Thanks,

[redacted]

[redacted]

From: John Stuart <secgen@scotland.anglican.org>
Sent: 22 August 2022 16:18
To: [redacted]
Cc: [redacted]
Subject: Register of Persons Holding a Controlled Interest in Land

Dear [redacted]

[redacted] has kindly given me your contact details in connection with the above regulations.

I'm aware that David Bradwell of the Church of Scotland has set up a meeting on 7 September with the Minister and invited me to join that meeting since the Scottish Episcopal Church has very considerable concerns about the impact of the Regulations.

We are members of the Scottish Churches Committee which, through the Church of Scotland, made representations during the consultation process but, unfortunately, as adopted, the modifications made to the draft regulations are simply insufficient to address the difficulties which the regulations pose for the churches.

In the Scottish Episcopal Church, which is divided into seven dioceses, most heritable property is held by diocesan trustees. Church buildings, rectories (tied housing for clergy) and church halls are held by the diocesan trustees on behalf of the local congregation (or "charge"). Charges are constituted as unincorporated associations, the management committees of which are known as "vestries". The local clergyperson would normally be the chair of the vestry, and vestry officers would include a treasurer and a secretary, whom the regulations view as "associates".

You will understand that it is very rare for church property to change hands and so there has been no cause to consider the title-holding arrangements of most church properties for many, many years – they might last have been looked at sometime in the 19th century. The trustees into whose names such property was originally taken will be long dead but under conveyancing legislation, title will have passed, without the need for formal documents of transfer, to the current diocesan trustees.

The effect of the regulations, in our context, is to require a wholly disproportionate, and hugely costly, exercise. We have been advised that, for each property, the regulations require notification by each individual trustee, in relation to each "associate". Our dioceses vary in size but if one takes the example of a diocese with five diocesan trustees, 50 congregations (comprising, say, 50 church buildings, 40 rectories and 25 church halls – 105 properties in total) with each congregation having a minimum of three associates, the number of registrations required would be $5 \times 115 \times 3 = 1725$. Multiplying that across seven dioceses produces a very significant figure.

The registration process itself is not straightforward – qualified lawyers themselves are struggling to interpret certain parts of the regulations – and so any registration process in relation to church properties is going to have to be dealt with by legally qualified personnel. The Scottish Episcopal Church is too small a body to have internal legal resource and therefore relies on solicitors in private practice to handle property matters for them. I am aware that one diocese has already had a quotation indicating that registration for the diocese will cost "tens of thousands" of pounds. Our dioceses simply do not have the financial resource to fund this at a time when churches are already under considerable financial pressures with, in many places, falling membership as well as the general financial challenges facing society as a whole at this time. Expenditure of that magnitude

would be totally out of proportion to the expenditure by dioceses on their proper charitable purposes.

The concerns voiced in this email are shared by our seven diocesan registrars (the external legal officers appointed by each diocese). We have formal legal opinion from Prof Kenneth Reid which supports the basic analysis outlined above of the effect of the regulations on the church.

In short, we believe that the effect of the regulations on a body such as ourselves is wholly disproportionate. The Scottish Episcopal Church is not well-endowed and we do not hold tracts of land for investment or other similar purposes – the kinds of properties owned are those outlined above. Consequently, the policy objective of the regulations, to improve transparency of land ownership in Scotland is not achieved in a proportionate way. In any event, our church buildings already have notices on their exteriors proclaiming precisely that they are "Scottish Episcopal" churches – so the question of ownership is already more than transparent.

The regulations do provide exemptions for bodies such as Scottish Charitable Incorporated Organisations or limited companies. Unfortunately, they are of no benefit to ourselves since we are structured differently. Our dioceses and congregations are, of course, registered charities and that is transparent from the publicly available OSCR register. All charities are already subject to a requirement to provide their accounts if asked to members of the public and such accounts would normally disclose the names of the trustees.

The regulations already accept the principle of exemption and I would ask that some means be found to expand the existing exemptions to include the likes of ourselves and other denominations who are affected similarly.

Kind regards

John

John F Stuart
Secretary General

Scottish Episcopal Church
21 Grosvenor Crescent
Edinburgh
EH12 5EE

Tel: 0131-225-6357
fax: 0131-346-7247

www.scotland.anglican.org

General Synod of the Scottish Episcopal Church Scottish Charity No SC015962

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From: Harrison F (Fiona [redacted])
Sent: 24 August 2022 17:07
To: [redacted]
Cc: [redacted]
Subject: RE: Register of Persons Holding a Controlled Interest in Land

[redacted]
Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform |
Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 24 August 2022 16:20
To: Harrison F (Fiona) [redacted]
Subject: RE: Register of Persons Holding a Controlled Interest in Land

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Harrison F (Fiona) [redacted]
Sent: 24 August 2022 16:01
To: [redacted]
Cc: [redacted]
Subject: RE: Register of Persons Holding a Controlled Interest in Land

[redacted]

Thanks [redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform |
Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]
Sent: 24 August 2022 15:10
To: Harrison F (Fiona) [redacted]
Cc: [redacted]
Subject: FW: Register of Persons Holding a Controlled Interest in Land

Fiona, below is the e-mail from the Episcopal Church. We know the United Reform Church are also intending to attend the meeting with the Minister on the 7th, I will reach out to them today to get a better understanding of the issues they are facing.
[redacted]

From: Paul Whittle <moderator@urcscotland.org.uk>
Sent: 29 August 2022 10:24
To: [redacted]
Cc: [redacted] Bob Christie <convenor@urcscotland.org.uk>
Subject: RE: Register of Persons Holding a Controlled Interest in Land

Dear [redacted]

Thank you for your email. I regret that I am not able to be present at this meeting, but will be represented by Bob Christie, our Convenor of Finance and Property, also copied in to this email. He will contact you with some of our concerns.

Best wishes

Paul

Revd. Paul Whittle
Synod Moderator
National Synod of Scotland
The United Reformed Church
3/2 Atlantic Chambers
45 Hope Street
Glasgow G2 6AE

0141 248 5382 moderator@urcscotland.org.uk Scottish Charity Reference Number SCO11907
<http://www.urcscotland.org.uk> <http://gettingthechurchsorted.blogspot.com> @p_whittle

From: [redacted]
Sent: 25 August 2022 15:02
To: Paul Whittle <moderator@urcscotland.org.uk>
Cc: [redacted]
Subject: Register of Persons Holding a Controlled Interest in Land

Dear Reverend Canon Whittle,

I am reaching out to you in your role as Moderator for the United Reform Church, with regards to concerns you may have about the Register of Persons Holding Controlled Interest in Land (the RCI). I work in the Scottish Government Land Reform policy team responsible for RCI, and my understanding is that you are intending to attend the meeting on 7 September with the Minister for Environment and Land Reform alongside, set up by the Church of Scotland to discuss these concerns.

Ahead of the meeting, we are trying to get a more thorough understanding on how the RCI regulations are impacting organisations like yours. While we have a lot of detail about how the regulations affect the Church of Scotland, it would be helpful for us to know a bit more about what you understand the requirements to be for your organisation. Would you be willing to set out for us in reply to this e-mail your

concerns with the Register and an estimate of what persons for each property and how many properties overall you are anticipating you will need to register entries for on RCI?

As decision-making and governance arrangement are so different for each faith group, we are trying to get a more complete picture on how the Regulations impact different organisations, so we would be very grateful if you could help us better understand your concerns.

Many thanks and looking forward to your reply,
[redacted]
[redacted]

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-----Original Message-----

From: **[redacted]**

Sent: 26 August 2022 14:05

To: **[redacted]**

Cc: **[redacted]**

Subject: RE: Submission - URGENT - Minister ELR - RCI and meeting with Church of Scotland (A40402182)

Thanks **[redacted]**

I have been into this really quickly and fired in some suggested changes and added some comments. **[redacted]**

On reflection, I think we facilitate the meeting going ahead with MMc setting out the imperative of transparency, and the process undertaken to date. **[redacted]**

[redacted]

[redacted]

[redacted]

[redacted]

-----Original Message-----

From: **[redacted]**

Sent: 26 August 2022 13:28

To: **[redacted]**

Cc: **[redacted]**

Subject: Submission - URGENT - Minister ELR - RCI and meeting with Church of Scotland (A40402182)

Hello,

[redacted]

Let me know what you think!

[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 05 September 2022 12:29

To: [redacted]

Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Communications Net Zero & Rural Affairs [redacted] McFarlane J (John) (Special Adviser) [redacted]

Subject: RE: Submission - ROUTINE - RCI and Church of Scotland concerns

Hi [redacted]

Ms McAllan has noted with some comments on the attached and below :

[redacted]

[redacted]

Many thanks

[redacted]

[redacted]

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From: [redacted]

Sent: 29 August 2022 09:51

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Communications Net Zero & Rural Affairs <CommunicationsNetZero&RuralAffairs@gov.scot>; McFarlane J (John) (Special Adviser) [redacted]

Subject: RE: Submission - ROUTINE - RCI and Church of Scotland concerns

With apologies, please disregard my previous e-mail. A clean version of the document is attached.

Many thanks,

[redacted]

[redacted]

From: [redacted]

Sent: 29 August 2022 09:32

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Marshall R (Robert) [redacted] Communications Net Zero & Rural Affairs

<CommunicationsNetZero&RuralAffairs@gov.scot>; McFarlane J (John) (Special Adviser) [redacted]

Subject: Submission - ROUTINE - RCI and Church of Scotland concerns

Good morning Amy,

Ahead of the Minister's scheduled meeting with Church of Scotland on 7 September we have put together a submission to update the Minister on engagement by officials with CoS over the summer and agree handling of the meeting. A further engagement briefing will be submitted closer to the meeting. As noted in header, it is marked routine – given the meeting is drawing near an early nod would help us in developing the detailed briefing pack.

Many thanks,

[redacted]

[redacted]

From: [redacted]

Sent: 08 September 2022 17:42

To: [redacted]

Cc: [redacted]

Subject: Submission and briefing pack Minister ELR CoS RCI - Due Friday CoP

Importance: High

Hi [redacted]

Attached are the draft briefing pack for the Minister's meeting with CoS next week,
[redacted]

One final comment outstanding, [redacted]

Thanks,
[redacted]
[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 12 September 2022 15:12

To: [redacted] Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Marshall R (Robert)

[redacted] Communications Net Zero & Rural Affairs

<CommunicationsNetZero&RuralAffairs@gov.scot>; McFarlane J (John) (Special Adviser) [redacted]

Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Hi [redacted]

Ms McAllan [redacted] should like to consider finally after meeting with CoS. [redacted]

Many thanks

[redacted]

[redacted]

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From: [redacted]

Sent: 09 September 2022 16:07

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Marshall R (Robert) [redacted]

Communications Net Zero & Rural Affairs <CommunicationsNetZero&RuralAffairs@gov.scot>;

McFarlane J (John) (Special Adviser) [redacted] Cabinet Secretary for Net Zero, Energy and Transport

<CabSecNetZET@gov.scot>

Subject: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Dear Private Office

On behalf of [redacted] please find attached a briefing pack for the Minister's meeting with Church of Scotland scheduled for 13 September, along with a separate submission [redacted] Although the submission is routine, it would be helpful for the Minister to have sight of it in advance of the meeting.

Kind regards,

[redacted]

[redacted]

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>

Sent: 08 September 2022 15:51

To: [redacted]

Cc: [redacted] John Stuart <secgen@scotland.anglican.org>; Bob Christie [redacted]
Bradwell, David <dbradwell@churchofscotland.org.uk>

Subject: RCI - Meeting with Minister ELR

Dear [redacted]

I had hoped to be in touch before now, following our recent meeting, to provide an estimate of the costs which are likely to be incurred by the Church of Scotland in connection with the Regulations. The enormity of the task is proving to be a barrier to coming up with a meaningful figure but I attach a paper setting out the practical difficulties, and an estimate of cost, in achieving compliance and hope that this will be useful in anticipation of our meeting with the Minister (now re-scheduled for 13 September). Without understanding these practicalities and the problems which flow from the very nature of our landownership as guardians of the largest proportion of Scotland's historic buildings, it is difficult to grasp the enormity of the task facing the churches.

I understand that you have been in touch direct with John Stuart and Bob Christie (who will also be attending this meeting) representing the Scottish Episcopal Church and the United Reformed Church, respectively and that they have confirmed the considerable costs of compliance for their denominations and echoed the concerns which have been brought out in our communications. We all continue to seek an exemption from the Regulations as our preferred position and hope that in the light of what you have heard from us, this can be agreed.

If a total exemption is going to represent an insurmountable hurdle, a possible alternative solution may be an amendment to the Regulations which delivers the policy aim of public transparency in relation to decision-making in relation to land, whilst diminishing the disproportionate compliance burden on the churches. This would involve:

- Adding a new paragraph to Schedule 2 (the list of persons subject to other transparency regimes, who are exempted from the obligations in the Regulations) which would list the main Scottish churches – details to be agreed but this would be a small number comprising those bodies who, because of their long history, own a large number of properties. Of the membership of the Scottish Churches Committee, the following bodies so far have expressed a wish to be exempted:
 - The Church of Scotland
 - The Roman Catholic Church in Scotland
 - The Scottish Episcopal Church
 - The United Reformed Church
 - The Methodist Church
 - The Free Church of Scotland
- Including in this new paragraph an obligation on these churches to (1) provide the Keeper of the Register with contact details for an individual whose name can be included in the Register; (2) update this information as and when it changes and (3) respond within a specified period to any request for information about the ownership of land
- Inserting a provision in Reg 20 (offences) making it an offence for the church, or individual, to fail to disclose the relevant information timeously

This would to all intents and purposes (other than the criminalisation of a failure to respond) replicate the current situation, in which queries relating to the ownership of land are overwhelmingly directed to and answered by the central administrative function of the church involved.

I'll be happy to try to answer any questions you may have about this, or anything in the attached paper, and will look forward to seeing you again next week.

Kind regards

Mary

Mary Macleod | Solicitor of the Church | Church of Scotland Law Department
121 George Street, Edinburgh, EH2 4YN | DX ED144 : LP 121 EDIN 2
Direct Dial 0131 240 2209 | Fax 0131 240 2246



The Church of Scotland

Law Department

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Church of Scotland

Projected costs of initial compliance with RCI Regulations

It is not possible to provide an exact number of properties owned by the Church of Scotland, but there are approximately 4,500 properties with title held by the Church of Scotland General Trustees (“GTs”) and 1,500 properties with title in the name of local trustees.

There exists a database of titles, but this is historic and cannot be treated as an accurate up-to-date property register. Title deeds are stored in large safes in the basement of the Church Offices in 121 George Street, Edinburgh. A paralegal will carry out a search for the title deeds. This may take her approximately 15 minutes BUT on the other hand it may take her days to track them down.

It may of assistance to describe what happens in practice when it becomes necessary to check title deeds. This would arise if, for example, it is decided to sell or lease a property, or if there is a query concerning boundaries, or if a request is made for the grant of rights of access.

Here are a couple of recent case studies illustrating the difficulties that are sometimes experienced:

Case study 1

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Case Study 2

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Such scenarios are not an infrequent occurrence.

It has long been recognised as being desirable to create an up-to-date property register but set against the larger mission of the Church of Scotland, those other important aspects of the church's religious and charity activities have been, and continue to be, prioritised over the creation of such a register.

Even with a property register, the titles themselves then have to be looked at and interpreted. The historic nature of many of the Church's properties means that this is no simple task.

A brief outline of the tasks involved is, therefore:-

- Identifying properties by congregation (using current property database and insurance spreadsheets) for c1,100 congregations
- Locating title deeds
- Obtaining copies of any missing titles
- Identifying title-holders
- Writing to congregations to check and update details of office-bearers (plus dates of birth)
- Designing and creating spreadsheets to contain information
- Inputting relevant details (not transferrable automatically) to spreadsheet
- Inputting details to Register

Cost and priorities

It is impossible to give an accurate estimate of the costs of compliance with the Regulations, but it is not unrealistic to project a figure of c £100,000 to achieve initial compliance. Future administration to keep pace with changes of congregational office-bearers due to resignation, retiral and death would be a continuing burden in terms of time and cost. It is recognised that an additional role of paralegal/ data inputter would have to be recruited but input of solicitors would also be required.

In addition to its work within the local communities which it serves, the Church delivers and supports a range of social care programmes through its Social Care Council (CrossReach). As one of Scotland's largest providers of social care, CrossReach services include care for older people, those suffering from various addictions and mental health problems and assistance for homeless people and those with special learning needs. Its range of services are available to people of all faiths or none at all and the cost of services is subsidised by the Church.

To have to divert significant resources from such vital services (particularly in the current cost of living crisis) to supplying largely meaningless information to a Register which will only very rarely be consulted cannot be said to be in the wider interests of the people of Scotland.

It will also be deeply demoralising for those involved in the task of carrying out such unrewarding work, which will involve not only the initial title research, but follow up to obtain up-to-date names, addresses and dates of birth (in respect of the provision of which information we anticipate pushback) from local office-bearers – and then all of this will have to be laboriously entered online.

The Church of Scotland – and other churches – have no reason to want to make it difficult for members of the public to find out where decision-making power lies in relation to the treatment of their properties, most of which have a board outside them stating their ownership and providing contact details. There is no reason to think that this is currently a problem which

needs to be fixed, and it is a very straightforward matter for a person making a telephone or email enquiry to the Church Offices to receive a full answer to their query.

We therefore urge the Scottish Government urgently to make provision for an appropriate exemption from the Regulations for the Church of Scotland and other churches whose mission in and service to their communities will suffer as a result of the costs of compliance, with no discernible balancing public benefit in terms of the policy aim of the Regulations.

Mary Macleod
Solicitor of the Church of Scotland
8 September 2022

From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>

Sent: 17 September 2022 17:14

To: [redacted]

Cc: [redacted] John Stuart <secgen@scotland.anglican.org>; 'Bob Christie' [redacted]; Bradwell, David <dbradwell@churchofscotland.org.uk>

Subject: RE: RCI - Meeting with Minister ELR

Dear [redacted]

Further to my email of 8 September, I note from the Scottish Government's recently published Legislative Programme that a Charities Bill is to be introduced this parliamentary year, with the aim of increasing transparency and accountability in the charity sector. This will, presumably, legislate in terms of the 2019 Consultation to give OSCR the power to collect certain information about all charity trustees, and to publish names of trustees in a public register.

This would appear to be a material change of circumstances which will, I hope, be taken into account in our ongoing discussions about the RCI. If a regime of enhanced transparency for all Scottish charities is shortly to be put in place, it would seem to be appropriate for all charities to be exempt from the registration requirements of the Regulations.

I shall look forward to hearing from you with such further information as you are able to provide about the Charities Bill, and I hope that it will be possible to fix a new date for an in-person meeting with the Minister very shortly.

Kind regards

Mary

Mary Macleod | Solicitor of the Church | Church of Scotland Law Department
121 George Street, Edinburgh, EH2 4YN | DX ED144 : LP 121 EDIN 2
Direct Dial 0131 240 2209 | Fax 0131 240 2246



The Church of Scotland

Law Department

From: [redacted]

Sent: 26 September 2022 14:06

To: Harrison F (Fiona) [redacted]

Cc: [redacted]

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Hi Fiona,

Thanks for the offer, I think [redacted] and I can cover it between us. [redacted]

[redacted]

[redacted]

From: Harrison F (Fiona) [redacted]

Sent: 26 September 2022 14:02

To: [redacted]

Cc: [redacted]

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

[redacted]

Happy to join if you think needed [redacted]

[redacted]

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted]

Sent: 26 September 2022 14:00

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>; Harrison F (Fiona)

[redacted]

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Thanks for confirming [redacted] The briefing will not need to be substantially updated, however, we will add a short note on most recent CoS communications [redacted]

Official attendance and updated briefing will be with you CoP today.

[redacted]

[redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 26 September 2022 13:58

To: Harrison F (Fiona) [redacted]

Minister for Environment and Land Reform <MinisterELR@gov.scot>

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Hi Fiona,

Thanks a million for the quick response.

Yes, it'll be on teams.

Kind regards

[redacted]

[redacted]

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From: Harrison F (Fiona) [redacted]

Sent: 26 September 2022 13:56

To: [redacted] Minister for Environment and Land Reform <MinisterELR@gov.scot>

Subject: FW: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

[redacted]

Will it be an online meeting?

Dr Fiona Harrison | Deputy Director, Future Rural Policy Frameworks, Land Use and Land Reform | Directorate for Agriculture and Rural Economy | The Scottish Government | [redacted]

From: [redacted] On Behalf Of Minister for Environment and Land Reform

Sent: 26 September 2022 13:51

To: [redacted] Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted] Marshall R (Robert)

[redacted] Communications Net Zero & Rural Affairs

<CommunicationsNetZero&RuralAffairs@gov.scot> McFarlane J (John) (Special Adviser) [redacted]

Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Hi all,

Hope you're keeping well.

Following the postponement of this meeting due to the period of national mourning, we've managed to rearrange a date to meet with CoS. This is tomorrow, 27 September at 14:30. Apologies for the short notice, we received confirmation this lunchtime.

Will the briefing / submission require any updates, and if so, could we get this back by COP today?

I'd be grateful if official attendance can be confirmed also.

Kind regards

[redacted]

[redacted]

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From: [redacted]

Sent: 26 September 2022 14:21

To: [redacted]

Cc: [redacted]

Subject: RE: Rescheduled churches meeting RCI - Briefing COP today

Hi [redacted]

Thanks for confirming, much appreciated!

[redacted]

[redacted]

From: [redacted]

Sent: 26 September 2022 14:17

To: [redacted]

Cc: [redacted]

Subject: RE: Rescheduled churches meeting RCI - Briefing COP today

Hi [redacted]

No changes from us at this point

Many thanks

[redacted]

[redacted]

From: [redacted]

Sent: 26 September 2022 14:12

To: [redacted]

Cc: [redacted]

Subject: Rescheduled churches meeting RCI - Briefing COP today

Importance: High

Hi [redacted]

We've just heard, slightly short notice ahem, that the meeting between the Minister and Church of Scotland/other churches has been rescheduled for 2.30pm **tomorrow**. We are not making any major changes to the briefing pack, but I just wanted to double check if the top lines you gave us ahead of the 13 September are still the most up to date ones? I am assuming nothing much will have changed between PfG and then the period of national mourning, but let me know if there's anything new we should include!

Updated briefing will have to COP today.

Thanks,

[redacted]

[redacted]

From: [redacted]

Sent: 26 September 2022 16:47

To: Minister for Environment and Land Reform <MinisterELR@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Harrison F (Fiona) [redacted]

Marshall R (Robert) [redacted] Harrison F (Fiona) [redacted] Communications Net Zero & Rural Affairs <CommunicationsNetZero&RuralAffairs@gov.scot>; McFarlane J (John) (Special Adviser)

[redacted] Cabinet Secretary for Net Zero, Energy and Transport <CabSecNetZET@gov.scot>

Subject: RE: URGENT - RCI and Church of Scotland concerns - submission and briefing for meeting with Churches on Tuesday 13 September

Hi [redacted]

Please find attached the updated engagement briefing. Attending officials will be myself and my team leader [redacted], as discussed [redacted] from SGLD is on standby awaiting confirmation from the Minister if she would like SGLD to attend the meeting.

I will be available from early tomorrow morning in case there are any further queries/briefing requests.

Many thanks,

[redacted]

[redacted]

From: [redacted]

Sent: 04 October 2022 13:18

To: [redacted]

Cc: [redacted]

Subject: Updated read-out of meeting CoS

Hi [redacted]

I've now shortened and tidied up the read-out of the meeting with Church of Scotland (attached). [redacted]

Thanks,
[redacted]

[redacted]

From: [redacted]

Sent: 10 October 2022 16:07

To: [redacted]

Cc: [redacted]

Subject: RE: Read-out meeting Minister & CoS and catch-up request

Hi [redacted]

[redacted]

Many thanks

[redacted]

[redacted]

From: [redacted]

Sent: 10 October 2022 11:38

To: [redacted]

Cc: [redacted]

Subject: Read-out meeting Minister & CoS and catch-up request

Hi [redacted],

Attached is a short read-out note of the meeting between the Minister for Environment and Land Reform and representatives of the Church of Scotland and two other denominations. Please do not share this beyond your immediate team at this time.

[redacted]

Thanks,

[redacted]

[redacted]

From: [redacted]
Sent: 10 October 2022 16:16
To: [redacted]
Cc: [redacted]
Subject: RE: RCI - Ministerial meeting with Church of Scotland

Hi [redacted]

Thanks for getting back to me so quickly, and for the readout from the meeting. [redacted]. A catch-up would be very useful. [redacted]

Thanks

[redacted]
[redacted]

From: [redacted]
Sent: 10 October 2022 11:33
To: [redacted]
Cc: [redacted]
Subject: RE: RCI - Ministerial meeting with Church of Scotland

Hi [redacted]

Thanks for getting in touch, I don't think we've met before? I've attached our draft read-out of the Minister, this is of course not for sharing outwith SG. [redacted]

[redacted] it would be really helpful to have a catch-up with yourselves, and get a better sense of what you're hearing and from which other faith groups aside from the ones we have already engaged with directly are raising concerns. We can give an update for our side and perhaps colour in a bit more detail regarding the meeting with the Minister.

[redacted]

Thank,
[redacted]
[redacted]

From: [redacted]
Sent: 07 October 2022 10:09
To: [redacted]
Subject: RCI - Ministerial meeting with Church of Scotland

Hi [redacted]

I was just following up the Ministerial meeting between Ms. McAllan and the Church of Scotland re the implications of RCI, which I think happened last week (Tuesday?).

If there is a readout from the meeting, that would be really helpful for our team as we are in regular contact with faith groups and this issue is regularly discussed

Many thanks

[redacted]

[redacted]

From: John Stuart <secgen@scotland.anglican.org>
Sent: 05 August 2022 16:10
To: [redacted]
Subject: RE: Register of Persons Holding a Controlled Interest in Land

Thanks, [redacted]

As far as I'm aware, the meeting with the Minister (on 7 Sept) has been organised through the Scottish Churches Parliamentary Officer – David Bradwell. I believe that the United Reformed Church are also to be involved in the discussions. I don't know if this is an issue for other denominations. It essentially arises for us because our congregations are unincorporated associations and heritable property tends to be held by diocesan trustees on behalf of local churches.

There isn't really anyone else I can hand this on to in my office so it will need to wait till I'm back from holiday – back a week on Monday.

Kind regards

John

John F Stuart
Secretary General

Scottish Episcopal Church
21 Grosvenor Crescent
Edinburgh
EH12 5EE

Tel: 0131-225-6357
fax: 0131-346-7247

www.scotland.anglican.org

General Synod of the Scottish Episcopal Church Scottish Charity No SC015962

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From: Sara.Thorpe@gov.scot <Sara.Thorpe@gov.scot>
Sent: 05 August 2022 16:05
To: John Stuart <secgen@scotland.anglican.org>
Cc: Lara.Cook@gov.scot
Subject: RE: Register of Persons Holding a Controlled Interest in Land

John – so sorry to have intruded on your holiday! Ok, so it's good to know this, but I think there's been some miscommunication, as the policy team (and also ourselves) are only aware currently that the Church of Scotland has issues with this. I didn't realise that you were also meeting with the Minister on this, so glad I checked!

Is there anyone in your absence who can pick this up, as I think the Land Reform team are keen to try and iron out issues before the Ministerial meeting if possible.

Also, sorry but do you know if any other churches are impacted?

Thank you!

[redacted]

[redacted]



From: John Stuart <secgen@scotland.anglican.org>

Sent: 05 August 2022 15:59

To: [redacted]

Subject: RE: Register of Persons Holding a Controlled Interest in Land

Thanks, [redacted]

I'm actually on holiday at the moment but having to attend to that a few work issues at present.

The Regulations do pose a very serious administrative burden on the SEC. We are actually in the process of receiving a formal legal opinion on the subject and I'm due to be attending a meeting along with representatives of the Church of Scotland with government minister Mairi McAllan in early September.

The effect of the regulations is to impose on the SEC a need to make tens of thousands of individual notifications under the Regulations with costs likely to exceed £100,000. It is, I regret, completely unmanageable in terms of our human and financial resources. The properties which the church owns are basically church buildings at, church halls and rectories (tied housing for priests). One further ridiculous aspect of all of this is that if the intention of the regulations is to improve transparency in land ownership, our churches actually have a notice outside their door saying that they are "Scottish Episcopal churches" – so we already tell the world who owns the property!

We really need an exemption from the regulations of some kind.

We will be making these points to the Minister next month but happy to engage with you more fully once I'm back from holiday if that would be helpful.

Kind regards

John

John F Stuart
Secretary General

Scottish Episcopal Church
21 Grosvenor Crescent
Edinburgh
EH12 5EE

Tel: 0131-225-6357
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From: [redacted]

Sent: 05 August 2022 15:50

To: John Stuart <secgen@scotland.anglican.org>

Subject: Register of Persons Holding a Controlled Interest in Land

Hi John,

Hope you're keeping well and enjoying the summer?

I just wanted to check in with you about where the SEC is in relation to the Register of Persons Holding a Controlled Interest in Land (RCI) in terms of compliance with the requirements. You might be aware the Church of Scotland have raised some issues with this legislation and I know you've also mentioned it in passing – I think more in relation to the increasing administrative burden upon volunteers / office bearers in churches. But in practical terms, do you know if the SEC has any issues complying with the requirements of the register? Has the accompanying guidance been sufficient and clear? Are they likely to comply by the deadline (01 April 2023 I think?)

Do feel free to give me a call if easier to discuss over the phone, but otherwise just a brief update would be useful.

Many thanks,
[redacted]
[redacted]

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From: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>
Sent: 05 July 2022 17:34
To: [redacted]
Cc: [redacted]
Subject: RE: Land Reform and Rented Properties

Dear [redacted]

Thanks for this, and I'm sorry to be slow in acknowledging receipt and coming back to you.

It appears from the terms of the correspondence which has been issued by the Minister, and from your email, that the terms of my Briefing Note on the RCI have not been taken into account. I attach a further copy and would refer in particular to numbered paragraph 12 on page 3 of the note. There seems to be a misunderstanding regarding the success of the mitigations which were incorporated into the Regulations following consultation with the Church of Scotland and others. Three mitigations were noted in the relevant Equalities Impact Assessment, and have been referred to by the Minister, namely:-

- exempting bodies that exert influence through a function conferred by an enactment
- allowing bodies that are both trusts and unincorporated associations to register following only the provisions for an unincorporated association
- exempting individuals that are both recorded persons and associates for the same piece of land from having to register as both

For the reasons set out in paragraph 12 of my Briefing Note, none of these so-called mitigations operate to any degree so as to reduce the compliance burden on the Church of Scotland. Whilst it is true to say, therefore, that we were involved in extensive discussions around the huge compliance burden which the legislation places on us, it is not true to say that these discussions resulted in any amelioration of that burden. In particular, there was no recognition of the reality that in the Presbyterian church structure, no single individuals actually control decision-making.

I appreciate the need for transparency in land ownership and control but it does seem to me that it is quite clear from the Land Register who owns Church property, and the effort of finding out who to speak to is minor compared to the cost in money and time in having to make so many thousands of entries in the RCI. Anyone wanting to know who to contact with regard to church property can find that out very quickly, and probably with a maximum of 2 or 3 phone calls. Whilst there may be a small number of individuals wanting to do that I suspect that there will not be many, and certainly the additional burden is out of all proportion to any perceived or actual benefit.

I note your reference to the invasion of Ukraine as being of relevance in the specific context of landownership by the Church of Scotland. It is not, however, difficult from the face of the Land Register to distinguish between land held by clearly identified bodies or individuals on behalf of the Church and land held by nominee offshore companies. To suggest that a distinction cannot be drawn between the two types of landholding and that the two must be treated in the same way is simply not a tenable position to adopt.

I shall look forward to hearing from you further once you have had the opportunity to review the efficacy of the mitigations, as referred to above, and consider the matter again.

Kind regards

Mary

Mary Macleod | Solicitor of the Church | Church of Scotland Law Department
121 George Street, Edinburgh, EH2 4YN | DX ED144 : LP 121 EDIN 2
Direct Dial 0131 240 2209 | Fax 0131 240 2246



The Church of Scotland

Law Department

From: [redacted]
Sent: 01 July 2022 16:23
To: Macleod, Mary <MMACLEOD@churchofscotland.org.uk>
Cc: [redacted]
Subject: RE: Land Reform and Rented Properties

Good afternoon Mary

I hope this email finds you well.

Further to my email below, I understand that you met with the First Minister last week, and that she indicated that the compliance guidance may be helpful, here is a link:- [RCI - RoS Knowledge Base](#)

I understand that you meet with Ms McAllan in September. Meantime, we are urging all stakeholders to take the necessary steps to ensure compliance with the RCI requirements ahead of the criminal penalties coming into force on 1 April 2023

Again, please do not hesitate to get in touch if there is any other support over and above the guidance supplied by RoS to assist in meeting the statutory requirements.

With thanks
[redacted]

From: [redacted]
Sent: 06 June 2022 14:20
To: 'MMACLEOD@churchofscotland.org.uk' <MMACLEOD@churchofscotland.org.uk>
Cc: [redacted]
Subject: FW: Land Reform and Rented Properties

Dear Mary,

Thank you for getting in touch with colleagues regarding the Register of Persons Holding a Controlled Interest in Land (RCI). I lead the land reform unit, including managing the team responsible for the RCI. We have noted your upcoming meeting with the First Minister, and I

understand that arrangements are being made for a meeting with Minister for Environment and Land Reform.

Ahead of these discussions, I would like to note that Scottish Government has offered extensive engagement to the Church of Scotland in particular, and as well as other religious organisations, from the beginning of the development of the legislation underpinning the RCI. Significant effort has been made to mitigate and ease the administrative burden on religious organisations and other charities during the legislative process and more recently Registers of Scotland have also involved stakeholders in the IT development of the system.

Improving transparency of land ownership is a key objective for the Scottish Government, and following the recent invasion of Ukraine there is a heightened public interest in transparency. We have been very clear that any form of exemption for any form of body, including religious organisations or charities, would undermine the efficacy of the Register.

I hope that this is a helpful summary of the Scottish Government's position, and please do not hesitate to get in touch if there is any other support over and above the guidance supplied by RoS to assist in meeting the statutory requirements.

With thanks,

[redacted]

[redacted]

Head of Land Reform

[redacted]

THE IMPACT ON THE CHURCHES OF THE LAND REFORM (SCOTLAND) ACT 2016 (REGISTER OF PERSONS HOLDING A CONTROLLED INTEREST IN LAND) REGULATIONS 2021

1. The Regulations will have a huge impact on the churches, both in cost and time resource. This impact is wholly disproportionate to any possible benefit resulting from compliance. The stated policy aim of the Register is to increase public transparency in relation to individuals who have control over decision-making in relation to land, so as to help communities and individuals to identify who they should engage with over decisions about land where that person cannot be identified already. When applied to the churches, the Regulations are attempting to remedy a problem which does not exist, since the identity of the owner is not opaque but is plainly declared either on the face of a building itself or in the property registers. They are also actively misleading when they result in the names of congregational office-bearers being given as those persons who have “control” or “significant influence” in relation to the land, as those expressions are defined in the Regulations.
2. The requirements for making entries in the Register are laborious and will require considerable resource to be dedicated to compliance. For example, the Church of Scotland General Trustees hold title to approximately 5,000 properties on behalf of local congregations. This requires 5,000 separate entries in the Register, each involving three office-bearers in (a) supplying their personal details at the outset and (b) intimating any changes to that information on an ongoing basis to the General Trustees. In practical terms, it will simply be impossible for larger denominations to achieve compliance. Also, many congregations in the Church of Scotland and other denominations hold title to properties in the names of local trustees, but titles are usually physically located in a national office rather than locally. Most congregations will not even know whose names are in their deeds without consulting a central resource, who would then have to check the titles for all congregations and complete entries in the Register. This is an enormous task.
3. The Equality Impact Assessment which has been carried out notes that certain religious organisations are disproportionately impacted by the Regulations but does not provide adequate mitigations: the three mitigations which are listed as having been applied do not in practice achieve the intended effect.
4. **We therefore propose as a solution that Scottish registered charities are exempted from the Regulations, in light of the pending implementation of reforms to Scottish charity law which would introduce an equivalent transparency regime.**

What the Regulations require

5. The Register is a record of persons who are owners of land (a “recorded person”) and in relation to that land are “associated with” a person (an “associate”) to whom a Part of Schedule 1 applies.

The recorded person must provide the Keeper of the Register with:

- i. Their name & address
- ii. The title number of the land, or a description sufficient for it to be identified
- iii. Details of the capacity in which the land is owned
- iv. For each associate, the “required details”

The required details for each associate are:

- i. Name
 - ii. Contact address
 - iii. Date of birth
 - iv. Date on which association formed OR a statement that such date is not known
6. An associate has a duty to notify the recorded person of the fact that he/she is an associate. An associate must provide the required details to the recorded person and also inform the recorded person of any changes. The recorded person must take reasonable steps to verify the accuracy of the associate’s required details with the associate and inform the associate about timescales for responding. It is possible to make a security declaration in certain circumstances, which will result in the information not appearing in the public register.
 7. If a recorded person becomes aware that an associate ceases to be an associate, he/she must give notice of this to the Keeper. On the death of an associate, the executor must notify the recorded person.
 8. If a recorded person ceases to own the property, he must give notice to the Keeper. On the death of a recorded person, the executor must notify the Keeper of this and of title number/address of the land.
 9. It is an offence to fail to comply with these various duties.
 10. It is not difficult to see just how enormous the compliance obligations will be on an organisation which owns thousands of properties which are caught by the Regulations. When that body is named in the property titles as being a part of the national church in Scotland, with a national office which can readily be contacted to provide further information, it cannot in any sense be said that ownership is “opaque” or that there is any meaningful benefit flowing from the imposition of such a laborious transparency regime.

The Equality Impact Assessment

11. An Equality Impact Assessment was issued in December 2020. This noted that:

“Engagement with large religious organisations has shown that the requirements of the register will have a significant impact on a few of them due to the nature of their organisational structures, which require large numbers of associates to be entered on the register, and the scale of their land holdings. These organisational structures are historical and based on belief, and result in a significant number of individuals falling within the register’s definition of significant influence. Most religious bodies are not significantly impacted since they either do not hold controlling interests in as many areas of land or are organised in structures that fall under other transparency regimes so are exempt. Due to the significant impact on some large religious organisations, consideration must be given to actions to mitigate the impact while not compromising the transparency aim of the register”.

12. The EIA went on to refer to three provisions which were developed to mitigate this impact. Unfortunately, these provisions do not have the desired effect. They are:

- Bodies who exert control through a statutory function were exempted from having to register

This provision in the Regulations only applies to Part 3 – trusts – and does not apply to unincorporated bodies. It does not therefore operate so as to exempt any properties owned by the Church of Scotland (for example) from the scope of the Register, as all of its congregations are constituted as unincorporated associations.

- If a body is captured by both Parts 3 and 4 of Schedule 1, then they are only required to register following the provisions in Part 4

This simply removed what would otherwise have been an otiose requirement to register the same property twice. The provisions of Part 4 bring into scope individuals who would not in fact be in scope under Part 3, as they would not otherwise be characterised as having significant influence or control over the congregation.

- Where an associate has more than one association to a recorded person for a piece of land, they are only required to be listed as an associate once for that piece of land

But as noted above, such a person would in most if not all cases not otherwise be classified as an associate.

13. Accordingly, adequate mitigations have not been implemented to address the disproportionate impact of the Regulations on organisations with the protected characteristic of religion or belief.

Companies and other bodies corporate

14. Section 2 of Schedule 2 lists a number of corporate entities which are exempt, as being subject to other transparency regimes. None of the exemptions encompass the Church of Scotland General Trustees.

Significant influence or control

15. The effect of Part 4 of Schedule 1 of the Regulations is to bring into scope all of the properties of religious organisations such as the Church of Scotland, who would otherwise be out of the scope of Part 3 of that Schedule. Part 4, Section 11 says:

“For the purposes of this Part a person is responsible for the general control and management of the administration of a body if they hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described)”.

16. This assumes that such office-bearers have significant influence or control over the land. In reality, this is not the case and Section 11 does not reflect how unincorporated associations operate in the context of the mainstream Christian denominations in Scotland.
17. It is possible that in a small club or other type of community group, the office-bearers may take a lot of the day to day administrative decisions affecting the club/group, but this does not mean that the office-bearers have *control* of the body in the sense intended by the Regulations. More importantly, in the case of the Church of Scotland and other Presbyterian denominations, our governance system means that congregational office-bearers are not in any meaningful sense in *control* of the congregation.
18. A Church of Scotland congregation is governed by a Kirk Session, which is the lowest court of the Church and depending on the size of the congregation can vary in numbers from half a dozen to 50 or 60 people. It is subject to a panoply of ecclesiastical regulations and to supervision by the superior courts of the Church i.e. the local Presbytery and, ultimately, the General Assembly, particularly when it comes to decisions affecting congregational buildings. Many congregational titles, even if they are not held in the name of the General Trustees, will contain what is known as an “Assembly control” clause which directs that the congregational trustees are in all matters affecting the disposal and management of the property subject to the direction of the General Assembly. The Assembly has delegated its functions in this respect to the General Trustees.
19. This system of “checks and balances” is not only fundamental to Presbyterian governance, it is also one of the essential elements in the Church (along with other denominations such as the Roman Catholic Church, the Free Church and the United Free Church, amongst others) having the status of a “Designated Religious Charity” (“DRC”) in terms of section 65 of the Charities and Trustee Investment (Scotland) Act 2005. This requires a degree of internal organisation such that one or more authorities in Scotland exercise supervisory and disciplinary functions in relation to the component elements of the charity. Individual congregations form component elements of each denomination, with the whole denomination being recognised as a DRC.
20. A congregation simply does not fit easily into the classifications of organisation provided for in the Regulations, and there has not been adequate recognition of this fact.

Prospective changes to Scottish charity law

21. The outcomes of the Consultation on changes to Scottish charity law, which closed on 1 April 2019, are still awaited. A majority of responses were in favour of a change to the law to give OSCR the power to collect certain information to be held internally about all charity trustees:
 - Title
 - First Name
 - Last name
 - Date of Birth
 - Charity Number
 - Charity Name
 - Home Address
 - Date appointed
 - Date Resigned
22. The Consultation also included proposals to publish names of trustees on the charity's register entry. This information is already listed in a charity's annual report and accounts, which are available on request from the charity. The proposal was to make this information more easily accessible by listing the trustees on the charity's register entry. Strong support was noted for a proposed public register of charity trustees, with suitable safeguards against privacy breaches and fraud.
23. We have been unable to find out when these proposals are likely to be implemented. We have enquired of OSCR but have had no response. The Scottish Government website says that *"collaborative work with the third sector and other key stakeholders will continue as we develop and refine the proposals"* but no further information is publicly available.
24. Given that a regime of enhanced transparency for all Scottish charities is anticipated, and given that persons and organisations which are currently subject to other transparency regimes are exempt from the registration requirements of the Regulations, an obvious mitigation of the disproportionate impact of the Regulations on religious organisations such as the Church of Scotland would be to include all Scottish charities, regardless of their structural form, within the exemptions and bring forward legislation to implement the current charity law consultation proposals. If the immediate exemption of all charities was considered to be undesirable, this could perhaps be limited to properties held by or under the auspices of a parent charity which has (for example) more than 50 "branches" in Scotland. This would target the mitigation at those charities suffering the greatest impact.
25. The alternative is that organisations such as the Church of Scotland are required to invest huge amounts of time and money in the hopeless task of attempting to achieve compliance with the Regulations over the next 12 months, only to find that within another year or two they will be exempt, as they will be subject to another transparency regime. Such an outcome would not meet a basic test of proportionality, as it would favour the – largely notional – benefit of transparency to a hypothetical inquirer over the enormous negative, and immediate, known impact on religious organisations.
26. There is some urgency around this, as we are now in the transition period of one year leading up to 1 April 2023, when criminal penalties attach to non-compliance. We would therefore welcome engagement with the Scottish Government on the proposal that a proportionate

approach be adopted so as to lessen the currently discriminatory impact of the Regulations without any dilution of the policy aim of transparency around land-holding in Scotland.

Mary Macleod
Secretary, Scottish Churches Committee
4 April 2022
