

Net Zero, Energy and Transport Committee 12th Meeting, 2021 (session 6), Tuesday, 30 November 2021

Subordinate Legislation - The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021:

Evidence session with Màiri McAllan MSP, Minister for
for Environment, Biodiversity and Land Reform

Note by the Clerk

Overview of instrument

1. The following Scottish Statutory Instrument (SSI), subject to affirmative procedure, is being considered at today's meeting:

[The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Amendment Regulations 2021](#)
2. This instrument amends the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021. The 2021 Regulations set out extensive provision for the establishment of a Register of controlled interests in land. A Register is to be established which registers the owners of land, known as "recorded persons", and persons or entities which have control over how the recorded person uses the land, known as "associates".
3. The Minister for Environment, Biodiversity and Land Reform has lodged motion S6M-02176 (as set out in the agenda) that the Committee should recommend the approval of these regulations.
4. The instrument, if approved, will come into force on 1 April 2022.

Purpose of the instrument

5. The amendments in the instrument apply to certain trusts and unincorporated associations where the persons listed as owner on the Land Register or Register of Sasines are either deceased or have resigned. The instrument provides that, in those circumstances, the obligations of a recorded person will fall on the those who are legally owners but not registered as such on the Land Register or

Register of Sasines (a situation which can only arise with these particular entities).

6. When a trustee noted as the owner in either the Land Register or the Registers of Sasines is either deceased or has resigned as a trustee, they no longer have an interest in the trust, and there is no-one on whom the obligations to register as a recorded person and to list associates can fall. The Scottish Government considers that the instrument prevents a loophole whereby a gap in public visibility of the controlling interests in these situations is created.
7. The instrument will require each trustee or person who holds the land otherwise on behalf of the trust or unincorporated body to be treated as an owner or tenant of the land for the purposes of the requirements of the Register. It provides for them to be registered as the recorded person and confers the duties of the recorded person on them, addressing the identified loophole.
8. The Policy Note provides further detail on the instrument and is attached at **Annexe A**.

Delegated Powers and Law Reform Committee consideration

9. The Delegated Powers and Law Reform Committee considered this instrument at its [meeting on 16 November 2021](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. Read the [official report for the meeting on 16 November 2021](#).

Procedure

10. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
11. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (i.e. the Committee within whose remit the subject matter of the instrument falls).
12. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of the motion for approval being formally moved. The committee can use this evidence session to ask the minister and their officials questions about the SSI.
13. Once the motion is moved, the Comm may debate the instrument. Only Committee Members and the relevant Minister may take part in the debate and, if there is a vote, only Committee Members may vote on the motion. The debate is on whether the lead committee recommend that the instrument or draft instrument be approved.

14. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

For decision

15. The Committee must decide whether to agree the motion, and then must report to Parliament accordingly by 11 December 2021.

POLICY NOTE

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

The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021 were made in exercise of the powers conferred under The Land Reform (Scotland) Act 2016. The instrument is subject to affirmative procedure.

Summary

Purpose of the Instrument

Purpose of the Instrument The purpose of the instrument is to amend The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021. The 2021 Regulations set out extensive provision for the establishment of a Register of controlled interests in land. A Register is to be established which registers the owners of land, known as recorded persons, and persons or entities which have control over how the recorded person uses the land, known as associates.

This instrument amends the 2021 Regulations in so far as they apply to certain trusts and unincorporated associations where the persons listed as owner on the Land Register or Register of Sasines are either deceased or have resigned. The instrument provides that in those circumstances, the obligations of a recorded person will fall on the those who are legally owners but not registered as such on the Land Register or Register of Sasines (a situation which can only arise with these particular entities).

Policy Objectives

The purpose of the Register of Persons Holding a Controlled Interest in Land (“the Register”) is to increase public transparency in relation to individuals who have control over decision-making in relation to land.

The 2021 Regulations followed the super-affirmative procedure, and were subject to significant policy development, two public consultations, consultation with key

stakeholders and Parliamentary scrutiny, including multiple Committee evidence sessions, over the course of three Parliamentary laying periods.

Notwithstanding this extensive scrutiny, during the development of the Register a loophole was identified in relation to trusts where the owner is deceased or has resigned as a Trustee. When a trustee noted as the owner in either the Land Register or the Sasine Registers is either deceased or has resigned as a trustee, they no longer have an interest in the trust, and there is no-one on whom the obligations to register as a recorded person and to list associates can fall. Consequently, without this amending instrument there would remain a gap in public visibility of the controlling interests in these situations. It was identified that unincorporated associations can be affected by the same issue.

The overriding policy objective of the 2021 Regulations and consequentially the Register is to increase transparency of those who have control of decision-making in relation to land where their identity is not clear from the existing public registers. The loophole identified prevents the Register from fully delivering the objective. The circumstance of the issue is within scope of the policy intention behind the 2021 Regulations to improve transparency, and the intention had been to capture it in those Regulations.

The amending instrument will require each trustee or person who holds the land otherwise on behalf of the trust or unincorporated body to be treated as an owner or tenant of the land for the purposes of the requirements of the Register. It provides for them to be registered as the recorded person and confers the duties of the recorded person on them, addressing the identified loophole.

Consultation

The instrument was prepared in consultation with key stakeholders, including the Keeper of the Registers of Scotland, who were representative of a range of interests and identified through previous involvement with the development of the 2021 Regulations.

They were broadly supportive of the amendment and questions they raised were addressed.

Impact Assessments

The circumstance that this instrument addresses had been intended to be captured as part of the Regulations for the Register, and so it is accounted for in the impact assessments carried out for those Regulations. The following impact assessments for the Regulations for the Register have been published:

- The Data Protection Impact Assessment (DPIA)
- The Business and Regulatory Impact Assessment (BRIA)
- The Equalities Impact Assessment (EQIA)

Financial Effects

The circumstance that this instrument addresses had been intended to be captured as part of The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021, and so it is accounted for in the Business and Regulatory Impact Assessment (BRIA) completed for the Regulations for the Register.

Scottish Government officials were in contact with key stakeholders throughout the development of The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 and also met with them during the consultation on those Regulations. These were broadly representative of potential business interests.

Scottish Government

Directorate for Agriculture and Rural Economy

November 2021