



Register of Persons Holding a Controlled Interest in Land ("RCI")

BRIEFING NOTE
(as at August
2023)

Register of Persons Holding a Controlled Interest in Land

August 2023

The new Register of Persons Holding a Controlled Interest in Land (the “**RCI**”) came into force on 1 April 2022 as a result of [The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) Regulations 2021](#) (“the **Regulations**”). The basis of the Regulations is contained in the [Land Reform \(Scotland\) Act 2016](#). There is also a useful [Scottish Government Explanatory Note](#) which summarises and provides further background to the Regulations and contains some useful flowcharts.

The purpose of the Regulations is to increase public transparency of individuals who have control over decision making in relation to land in Scotland. The RCI will show who has significant influence or control over the owner or tenant (of leases of over 20 years) of land and property in Scotland where such information may not be easily identifiable from the property registers. The aim of the Regulations is to ensure there can no longer be categories of owner or tenant where control of decision making is obscured whether that is deliberate or not. The RCI can be used to check behind the property registers particularly for certain types of arrangements including partnerships, trusts or overseas entities.

The Regulations are complex and it is necessary to consider them in the context of the published guidance which is now available. This briefing note is aimed at highlighting your duties and the offences under the Regulations and aims to assist you in identifying whether or not you are in scope of the Regulations.

You should note that the RCI is a public register for which there are no exceptions for the purpose of commercial confidentiality. If you are in scope you should register.

1 WHO IS IN SCOPE OF RCI? WHO IS EXEMPT?

To understand what is in scope it is necessary to consider the core concepts under the Regulations.

What it relates to:

- **Land** which includes land, buildings the sea bed and other land covered with water in Scotland.

Who it applies to – those who are either a:

- **Recorded Person** those who own or long term tenant land; or
- **Associate** those who influence or control owners or long term tenants of land.

When it applies – where there is:

- **Control** which is a reference to where a person can direct the activities of another; and
- **Significant influence** which is a reference to where a person is able to ensure that another person will typically adopt the approach that the person desires;

What it applies to

- **Dealings with the land** which is a reference to disposing, creating real rights over, leasing or changing the use of the land;

Are you in scope?

In order to identify when individuals and entities fall within scope of the Regulations and require to provide information to the RCI there are various questions and information to be considered including:

- **Are you a Recorded Person?** To be a Recorded Person you must own or tenant land in Scotland.
- **Do you have or are you an Associate?** Does someone or do you exercise significant influence or control over another's ability to make decisions in relation to land they own?
- If you are a Recorded Person or an Associate, do you fall into any of the categories referred to below?
- There are distinct categories for both a Recorded Person and an Associate. There are:
 - five categories of owner/tenant who can be a **Recorded Person**: (i) individuals, (ii) partnerships, (iii) trusts, (iv) unincorporated associations and (v) overseas entities; and

- five types of association which means there is an **Associate**: (i) a contract or arrangement giving the Associate influence or control where the owner is an individual (ii) partnerships (iii) trusts (iv) unincorporated associations and (v) overseas entities.
- Or are you exempt? In which case what are the exemptions?
All categories are subject to exceptions and Schedule 2 of the Regulations set out a full list of entities that are subject to other transparency regimes and to which the duty to provide details of controlled interests and Associates does not apply.

The main exemptions include:

- entities that report to the Register of People with Significant Control (“PSC”) held by Companies House including UK companies, LLPs, Scottish Limited Partnerships and others. The RCI does not require double reporting for entities subject to other transparency regimes.
- For example, if a UK company (being an exempt entity) is a Recorded Person they fall outwith the scope of the Regulations. This is irrespective of the capacity they act in. So if the UK company as the Recorded Person actually holds title to the property on behalf of a foreign entity or as a trustee or partner that will not bring them in scope of the Regulations.
- Charitable incorporated organisations and Scottish charitable incorporated organisations.
- Public authorities which are subject to Freedom of Information legislation, including ministers, local authorities, health boards etc.

Note1: that the fact some information regarding Associates is contained in the Land Register or other public property records **will not exclude** the person or entity from the scope of the Regulations.

Note 2: registration in the Register of Overseas Entities does not exempt the entity from registration in RCI.

2 ASSOCIATIONS

Having set out what is required to identify whether or not you could be a Recorded Person where you are not the owner or tenant of land we will now focus on identifying whether or not you have any relevant associations which means you are an Associate.

2.1 Recorded person is an individual

- Concerns persons with contractual or other arrangements with an individual who owns land or property.
- Associates could be any person on whose behalf the Recorded Person owns or leases the property or anyone with significant influence or control as a result of any contract or other arrangement.

If you have a contract or other arrangement with a Recorded Person who is an individual which contains prohibitions on that landowner from transferring title to their land, or restricts their ability to grant leases, or restricts or prohibits use of the land without reference to you, then the contract terms could amount to you having **significant influence** or **control** over **dealings with that land**.

For contracts with individuals, there is a specific carve out in the Regulations which excludes certain contracts from the scope of the RCI. This exclusion is:

“the person’s contract ... with the individual is in the form of concluded missives for the sale of the land by the individual to the person where the title to the land has not been transferred to the person,”

The term “missives” is used in Scotland and applies to the series of formal letters exchanged between the seller’s and purchaser’s solicitors on behalf of their clients which constitute the sale contract. It is likely that this exclusion has been drafted to deal with contracts for the sale of residential dwellings.

As matters stand:

- the literal interpretation is that this exclusion would cover a conditional contract, put in place through missives such that a **conditional contract entered into as missives with a landowner who is an individual would not trigger registration of an association in the RCI**. The position is not certain and given the ambiguity if the provisions contained in

the conditional missives amount to purchaser/tenant having significant influence and control it would be prudent to assume the Regulations apply and registration is required.

- if the conditional contract had been or is to be entered into as an agreement rather than by missives, then on a literal interpretation that contract is not covered by this exclusion and so would be in scope of the RCI. **A conditional agreement (as distinct from missives) entered into with a landowner who is an individual which contains provisions restricting dealings with the land to a relevant degree should be assumed to trigger registration of an association in the RCI;**
- If the contract was an option or other type of agreement, rather than a conditional contract, the generally accepted view is that it would not be covered by this exclusion if it contains provisions restricting dealings with the land to a relevant degree and so would be in scope of the RCI. **A conditional option entered into with a landowner who is an individual which contains provisions restricting dealings with the land to a relevant degree will trigger the need to register in the RCI.**
- Joint venture and other types of agreements would need to be considered on their individual terms as to whether they would trigger registration of an association in the RCI.

2.2 Partnerships

- Concerns land held by or on behalf of a partnership (excluding LLPs or a Scottish partnership where all members/partners are limited companies)
- Associates could be any general partner (not registered as owner/tenant), any general partner of another partnership which is a partner of the Recorded Person, any individual with significant influence or control over a party which is a partner or any individual who has the right or actually exercises significant control over the Recorded Person of a partnership in which they are a partner.

If the title holding partners are UK limited companies then they are outwith the scope of the Regulations and this would not trigger registration. However, if the title holding partners are individuals or Overseas Entities then any relevant associations would have to be reported and registered in the RCI.

2.3 Trusts

- Concerns land held by a person as a trustee of or otherwise on behalf of a trust

- Associates could be (regardless of the jurisdiction in which the trust is set up) any trustee who is not named in the title or lease, any individual with significant influence or control which is a partner or any individual who has the right or actually exercises significant control over the Recorded Person or a trust.
- Control/Influence relative to a trust could be some with the right to appoint/remove a trustee, direct distribution of assets/funds or investments, amend the trust deed, revoke the trust or influence/control decision making of a trustee/trust especially in relation to dealings with land.

If the title holding trustees are UK limited companies then they are outwith the scope of the Regulations and this would not trigger registration. However, if the title holding trustees are individuals or Overseas Entities then any relevant associations would have to be reported and registered in the RCI.

Any individual who has the right to exercise, or who actually exercises, significant influence or control over the Recorded Person where that is an individual or the trust, is an Associate. This provision is intended to catch any *other* individual who has significant influence or control but who is not a trustee. It is not intended to catch a Schedule 2 entity, disclosed as a trustee, who is already subject to another transparency regime.

2.4 Unincorporated Associations

It is worth setting out what an **Unincorporated Association** typically is. They are often a small body that may be a voluntary or community group e.g. village hall associations, sports clubs and faith and belief groups. As unincorporated bodies do not have legal personality, title or tenant's interests are usually held for them by trustees.

- Concerns land held by a trustee of or on behalf of the members of an unincorporated association.
- Associates could be any person (not among the title or lease interest holders) who is responsible for the general control and management of the administration of the unincorporated body. The Regulations provide that a person is responsible for the general control and management of the administration of the body if they hold an office or other official position in that regard (such as chair, treasurer or secretary).

2.5 Overseas Entities

- Concerns land held by an Overseas Entity, whose name will be on the property register as the owner or tenant of land. They are not holding the land for any undisclosed party such as a trust or partnership it is the fact that they are not yet subject to reporting requirements and control is opaque.
- Associates could be any person who directly or indirectly (i) holds more than 25% of the voting rights of the OE or (ii) holds the power to appoint or remove a majority of the directors or management body of the OE (iii) has the right to exercise significant influence or control over a partnership/unincorporated body which is not a legal entity/trust but which (i) and (ii) could apply to if the partnership/body was an individual or otherwise has the right to exercise significant control/influence over decision making in respect of dealings with the land
- Significant Influence/Control in relation to an Overseas Entity typically means person(s) with absolute decision or veto rights over decisions relating to the running of the Overseas Entities' business or a person whose recommendations are always/almost always followed by shareholders who hold the majority of voting rights in the OE or a person significantly involved in the management and direction of the Overseas Entity.

You should be aware that the [Economic Crime \(Transparency and Enforcement\) Act 2022](#) came into force on 1 August 2022. This Act established a register of overseas entities and their beneficial owners to be held by Companies House. The beneficial owner of foreign owned property In Scotland would required to be registered in **both** the UK Register of Beneficial Owners of Overseas Entities and in the RCI. Registration under this new UK regime sits alongside the Regulations and RCI and will impact on registration of title in the Land Register which will not be able to proceed unless the Overseas Entity is properly registered or is exempt.

3 DUTIES AND OFFENCES UNDER THE REGULATIONS

Duties:

- The initial obligation to register in the RCI is imposed on the **Recorded Person** (the owner) where they have an **Associate** and to do so within **60 days** of the start of the association. This involves the owner advising, an **Associate** that they are about to make an application to register in the RCI.

The Regulations coming into force will trigger a need to register for all existing associations as at 1 April 2022 subject to the grace period referred to below.

- There are duties on the **Associate** (a party with control and influence) to provide information to the register so if you could be an Associate and think that a owner should have registered in the RCI but have not, then there is an obligation on you to contact the owner.
- Both parties have ongoing obligations to keep the RCI accurate so may need to update the information from time to time in the event either a Recorded Person or Associate ceases the association or if they become aware any information submitted to the RCI has changed.

Offences

- It is a criminal offence not to comply with the duties under the Regulations, punishable by a fine.
- The main offences are failure to notify a controlled interest/Associate/event/association OR to provide information on request OR Regulation 20 offences being the provision of false or misleading information OR failure to disclose material information.

Although the Regulations comes into force on 1 April 2022 there was a grace period of one year until 1 April 2023 in which specified offences are postponed. Regulations have been passed extending this grace period until 1 April 2024. As at July 2023 this allows persons and entities 9 months in which to register should they be required to do so.

Defence:

- In relation to Regulation 20 offences there is a defence that the person took all reasonable precautions and exercised all due diligence.

4 SECURITY DECLARATIONS

There is an ability to make an application to the Keeper to have a security declaration made if there is a legitimate reason for non disclosure of an associate details.

5 SUBMITTING TO THE REGISTER

You can create an account with Registers of Scotland and proceed to complete relevant notifications and details to the Keeper for inclusion in RCI. In order to do that you require to have specific information relating to the following:

- Details of the land including the title number if it is in the Land Register or an address or description if it is not
- Details of the owner/tenant who is the Recorded Person including how they own it, the name and contact details and any registered number.
- Details of any Associate(s) including the name and contact details, if an individual their date of birth or if a non natural entity their registered number, the date on which the association began or state it is not known and any transparency regime which applies under Schedule 2.

Once an application is made it will appear on the Register 30 days after submission. The Register is free to submit to and search.

Alternatively, please contact your usual Burness Paull contact to discuss the application of the Regulations to your circumstances or to complete notifications and registrations on your behalf.

Contact us:

This briefing note sets out a very brief summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact: [John Sinclair](#), [Scott Peterkin](#) or [Richard Rennie](#).

If there are any aspects that you would like expanded or if you wish to discuss any aspect of the RCI and its impact on you then please get in touch with your usual Burness Paull contact.

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