

Briefing Note

Register of Persons Holding a Controlled
Interest in Land (“the Register”)



What is the Register?

The Land Reform (Scotland) Act 2016 placed an obligation on the Scottish Ministers to introduce regulations for the keeping of a register containing information on who controls interests in land. In implementation of this, new regulations were created and came into force on 1 April 2022. Landowners who are obliged to comply with the regulations must do so by 31 March 2024. Failure to comply is an offence.

The main purpose of the Register is to make public information on who can influence decisions concerning land and property. There will be an entry in the Register for each controlled person (i.e. each owner or tenant) and for each person who is in the position to influence them.

What is a ‘Controlling Interest’?

People with a controlling interest can influence the decisions made about property in relation to any sale, lease or change of use.

In many cases, the owner or tenant may not be the only one who makes the decisions. For example, property may be owned by one partner in a partnership, but that property is a partnership asset and controlled by the partnership. Property may be owned by an organisation such as a sports club or community group, in which case the property would be owned on behalf of their stakeholders.

What is a ‘Recorded Person’?

A Recorded Person is someone who:

- ▶ is the legal owner or the tenant of property in terms of a lease for at least 20 years. Where they are the owner, they will be recorded as the owner in the publicly available registers of land ownership in Scotland; and
- ▶ has at least one other person who has influence or control over the decisions relating to dealings with the property.

There are occasions where the Recorded Person's name may not show on the title to the property, for example where the property is owned or tenanted by trustees of a Trust and all the named trustees have ceased to be trustees.

What is an 'Associate'?

An Associate is someone who holds a Controlling Interest. They are associated with a Recorded Person but do not own or lease the property. They will also have the right to exercise a Controlling Interest over the Recorded Person's dealings with the property.

It is possible to have multiple Associates as well as multiple Recorded Persons who each have their own Associates.

Are there any cases where a Recorded Person does not need to enter their details in the Register?

Any Recorded Persons who are already required to register as part of another transparency regime do not need to register. Examples include companies who report into the Register of People with Significant Control regime held by Companies House and most Charitable Incorporated Organisations which are subject to separate registration requirements.

Where an Associate is required to comply with another transparency regime but the Recorded Person is not, both the Recorded Person and Associate are required to register.

How does the RCI affect Partnerships?

The RCIL regulations affect partnerships in various ways. For example, if the title to property is held by a Partnership and not all current partners of the Partnership are shown as owners, registration in the Register will be required. Any partners who are not shown as owners must be registered as an Associate of each other partner who is shown on the title. Similarly, if the property is owned by one partner but is treated as a Partnership asset, the title holder has a duty to register. The remaining partners will need to be registered as Associates.

How does the RCI affect Trusts?

The RCIL regulations can also affect Trust in various ways. For example, if the title to property is held by a Trust but not all current trustees of the Trust are shown as owners, registration in the Register will be required. Any trustees who are not shown as owners must be registered as an Associate of each other trustee who is shown.

There may be occasions where a property is held in a Trust and the trustees are those in a certain role. They are known as ex officio trustees. If none of the trustees named in the title are still connected with the Trust, the current trustees must each be registered as a Recorded Person. They must also be registered as an Associate of all other trustees.

As a general rule, beneficiaries of a trust are not required to register in the Register.

How does the RCI affect Unincorporated Bodies?

If the title to property is held by an unincorporated association, such as a club, but the current office bearers are not all named as owners in the title, registration will be required. Any office bearers who have control over decision making and are not shown as owners must be registered as an Associate of each other office bearer who is named in the title.

It is common for title to properties owned by unincorporated associations to be held by specific office bearers and not stated individuals. For example, title may be in the name of the President or the Treasurer of the unincorporated association. If none of the office bearers named in the title are still in the stated role, the current office bearers must each be registered as a Recorded Person. They must also be registered as an Associate of all other office bearers.

What are my obligations?

If you are a Recorded Person, your duties are:

To provide:

- ▶ your own details;
- ▶ details of the property; and
- ▶ details of all Associates.

To verify the Associate details with the Associate and inform the Associate about their rights and duties, including:

- ▶ the timescales for responding;
- ▶ the offences for failure to comply;
- ▶ the right to make a security declaration; and
- ▶ the duty to inform the Recorded Person about any changes to their details.

To inform the Keeper of the Register of any changes to the information provided.

If you are an Associate, your duties are:

When contacted by a Recorded Person about the Register, to:

- ▶ confirm you are an Associate with a Controlling Interest; and
- ▶ supply any details required by the Recorded Person such as your current address and date of birth.

If you have not been notified of the Register, to contact the Recorded Person to make sure they are aware of your controlling interest.

To advise the Recorded Person as soon as possible of any changes to your details or if you cease to be an Associate.

If you fail to comply with any of your duties in terms of the Register without reasonable excuse, you will be committing an offence which is punishable by a fine of up to £5,000. The same fine can also be issued if you make a false or misleading statement or fail to disclose material information to the Keeper.

What are the timescales for compliance?

All Recorded Persons and Associates currently benefit from a grace period where the offences do not apply. This ends on 31 March 2024. Any Recorded Persons or Associates who have not complied with their duties before then, commits an offence and could face a fine of up to £5,000.

For any circumstances arising after 1 April 2024 – for example as a result of purchasing property which will be affected by a Controlling Interest, a change of office bearers or assumption of a new partner or trustee – entries to the Register will need to be completed within 60 days of the event, after which the Recorded Persons will have committed an offence.

How do I register?

If you have all of the necessary information, it is possible to complete the registration directly with [Registers of Scotland](#) although you will require to sign up for an account. There is no charge from Registers of Scotland for completing an entry.

Before you can do register, you will need your Title Number where land is registered in the Land Register of Scotland. If your title is still recorded in the older “Sasine” Register, the address will be sufficient. If there is no postal address, it must be identified by a description that is clear enough to allow the property to be identified and using a map function.

You also require the full name, address and date of birth for all Associates as well as the date each Associate was granted the right to exercise significant influence or control.

The registration process could become complex depending on the circumstances. Thorntons can assist with queries relating to the Register and the registration proceed. For straightforward cases where title is registered in the Land Register, we offer a fixed fee service starting from £350 plus VAT. For more complex cases, please get in touch with your usual Thorntons contact or with a member of the Land and Rural Business Team to discuss your circumstances. We can conduct a review of your title deeds to establish what might be required to ensure you comply with your duties in respect of the Register.

Frequently Asked Questions

How are Agricultural Tenancies treated for the Register?

In most cases, there will be no requirement to register where a property is affected by a agricultural tenancy, including a Secure Agricultural Tenancy. The tenant in terms of a lease only requires to register as a Recorded Person where a lease is both over 20 years in duration and either recorded in the General Register of Sasines or registered in the Land Register of Scotland. As the majority of tenancies are initially for a duration of less than 20 years, the tenant is unlikely to meet the requirements.

If you own property which is subject to an Agricultural Tenancy, it is unlikely that you will have to register the tenant as an Associate. Associates are those with a controlling interest who can influence the decisions made about a property in relation to the sale, leasing or changing the use of land. Although the owner will have to take account of an existing Agricultural Tenancy, they still make the decisions about the land. A tenant cannot generally force the sale of a property or otherwise determine the decision making in relation to a property.

I am an Executor. Do I need to register?

As an Executor, you are not required to register as a Recorded Person or Associate. You will have a duty, however, to update the Register for any property if the deceased was registered as a Recorded Person or Associate. The duty is to advise the Keeper of the Register of the death. You will also have to provide a copy of the deceased's death certificate and any other information which might be required to allow the Register to be updated.

I am the beneficiary of land in terms of a Deed of Gift. Do I need to register?

Although a Deed of Gift is not a formal transfer of property, it will transfer the 'beneficial interest', usual for tax reasons. In other words, you will be treated as the owner and can make the decisions regarding the property. This means you will technically have to be registered as an Associate of the current owner who is the Recorded Person. Very often property is sold shortly after a Deed of Gift is signed so there is no need to register. If the transfer is not expected to complete within 60 days of the Deed of Gift being signed, then registration is required.

The property was transferred to me by a docket transfer. Does this mean I need to register?

A docket transfer is treated the same way as a formal transfer. Provided there are no parties who could be considered as holding a controlling interest, i.e. no Associates, registration is not required.

Get in Touch

Our experienced team have been advising land owners and farmers in Scotland for over 150 years. Please do not hesitate to contact a member of the Land and Rural Business team today for specialist advice on the Register and how it might affect you.

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