

These draft Regulations supersede the draft of the same title which was laid before the Scottish Parliament and published on 2 November 2021 (ISBN 978-0-11-105199-3). It is being issued free of charge to all known recipients of those draft Regulations.

Draft Regulations laid before the Scottish Parliament under section 126(3)(b) of the Land Reform (Scotland) Act 2016, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

LAND REFORM

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

Made - - - - *2021*

Coming into force - - *1st April 2022*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 39(1) to (4) of the Land Reform (Scotland) Act 2016^(a) and all other powers enabling them to do so.

In accordance with section 39(7) of that Act, they have consulted the Keeper and such other persons as they consider appropriate.

In accordance with section 126(3)(b) of that Act, a draft of this instrument has been laid before, and approved by resolution of the Scottish Parliament.

Citation and Commencement

1. These Regulations may be cited as the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021 and come into force on 1 April 2022.

Amendment of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021

2.—(1) The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021^(b) are amended in accordance with paragraphs (2) to (6).

(2) After regulation 23 (notification of Keeper on event of death, winding up or dissolution), insert—

(a) 2016 asp 18.
(b) S.S.I. 2021/85.

“Provision where titles refer to former owner or tenant: trusts and unincorporated associations

23A.—(1) This regulation applies where—

- (a) land is owned or tenanted by a person as (as the case may be)—
 - (i) a trustee of, or otherwise on behalf of, a trust, or
 - (ii) a trustee of, or otherwise on behalf of, the members of an unincorporated body of persons,
- (b) the person who is registered or recorded as being the owner or tenant (as such trustee or, as the case may be, person holding on behalf of the members of an unincorporated body) has ceased to be a trustee or person holding on behalf of the members of an unincorporated body (for whatever reason), and
- (c) no other trustee or person holding otherwise on behalf of the trust or, as the case may be, unincorporated body is registered or recorded as being the owner or tenant of the land.

(2) Where this regulation applies—

- (a) for the purpose of regulation 3(2)(a), each trustee, or person who holds otherwise on behalf of, the trust or, as the case may be, unincorporated body is to be treated as an owner or tenant of land,
- (b) regulation 5(1)(b) does not apply if the reason for there being no associates of the recorded person is the application of this regulation,
- (c) the provisions of regulations 16, 17 and 18 are to apply to the person’s registration as a recorded person as they apply to the person’s registration as an associate.

(3) Where a person is a recorded person by virtue of this regulation (and not by virtue of being the owner or tenant of land within the meaning of regulation 2), the provisions applicable to that person as an associate will continue to apply, notwithstanding that the person is also recorded as a recorded person.

(4) Where there is a duty under regulation 12 to notify the Keeper of an event mentioned in column 1 of the table, a person who is registered as a recorded person under the provisions of this regulation will comply with their duty if one form is submitted to cover the person ceasing to be both a recorded person and an associate.”.

(3) In regulation 3—

- (a) after paragraph (2) insert—

“(2A) Paragraph (2) is subject to regulation 23A.”,
- (b) in paragraph (3)—
 - (i) at the end of sub-paragraph (d)(ii)(bb), omit “and”, and
 - (ii) after sub-paragraph (d) insert—

“(da) if regulation 23A applies, a statement to that effect, and”.

(4) In regulation 10 (duty to notify of controlled interest and associates)—

- (a) in paragraph (1) after “recorded person”, insert—

“(including a person who is a recorded person by virtue of regulation 23A)”,
- (b) after paragraph (3)(c) insert—

“(ca) if the person is a recorded person by virtue of regulation 23A, a statement of the person’s basis for registration under this regulation,”.

(5) After regulation 13(1) (notification of associates about registration) insert—

“(1A) But this regulation does not apply if there are no associates other than associates to whom regulation 23A applies.”.

(6) After regulation 16(3), insert—

“(3A) Where the person making the security declaration is doing so in terms of regulation 23A as a recorded person, the security declaration must—

- (a) be sent to—
 - (i) any other recorded person, and
 - (ii) any other person who would be required to register as a recorded person within the provisions of regulation 23A, and
- (b) include, in addition to the requirements of regulation 16(2)—
 - (i) a statement that the declaration is being made by a person to whom regulation 23A applies, and
 - (ii) details of the land, in respect of which the person is a recorded person under regulation 23A, to which the security declaration will apply.”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 (the ‘Principal Regulations’) and come into force on 1 April 2022.

Regulation 2(2) inserts a new regulation 23A into the Principal Regulations. Regulation 23A makes provision for cases where the land is held by trustees or on behalf of an unincorporated association and where, due to the passage of time, the Land Register or Register of Sasines lists as owners or tenants only persons who no longer have any legal connection with the property. In such cases, there are no persons falling within the definition of owners or tenants in the Principal Regulations. Regulation 23A provides that trustees or those holding on behalf of an unincorporated association are treated as owners or tenants for the purposes of the Principal Regulations.

Regulations 2(3) to 2(6) make consequential amendments to the Principal Regulations.

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