



The Register of Persons holding a Controlled Interest in Land: A Guide to Registration



Will you need to register in the Register of Controlled Interests in Land?

The **Register of Persons holding a Controlled Interest in Land** (RCI) is a new register, intended to improve transparency about ownership and overall control of land and buildings in Scotland, and became operational on **1 April 2022**.

Despite the connection to land, it is **not** a property register: it is to be a register of **persons** – in particular, persons who, while not holding title to the land, actually influence or control decision-making about the use, management or development of that land ("land" includes buildings and other structures, land covered with water, and the seabed).

Tenants under long leases of land could be affected as well, but not all owners or tenants of land will be required to register – there are a number of exemptions.

This Briefing Note will tell you if your ownership (or tenancy) could be in scope of the Regulations¹ that govern this new Register. The registration requirements apply to existing relationships, not just those created after 1 April 2022.

It is important that you **identify** whether you could be affected by the duties that the Regulations impose on owners and tenants (known as the "**recorded person**") about persons who may exercise control or influence over them (known as "**associates**"), and **register** their details in the RCI, particularly as failure to comply with the duties is a criminal offence and could incur significant **financial penalties**.

Who is affected?	The RCI seeks information about associates of recorded persons who are: <ul style="list-style-type: none"> ❖ Individuals ❖ Partnerships ❖ Trusts ❖ Unincorporated bodies ❖ Overseas entities.
Who is an associate?	Not all recorded persons who are in scope will have an associate, in which case there is no duty to register in the RCI. Who is an associate will depend on the type of recorded person. See the Table of Associates for more information. An associate may be a person holding a similar position e.g. another partner or trustee, or someone else who has the right to exercise or actually exercises significant interest or control over the recorded person's dealings with the land.

¹ The Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021.

<p>Who is exempt?</p>	<p>An entity that is already subject to another transparency regime is exempt from being a <i>recorded person</i>, and so if they are the owner or the tenant, there is no duty to register in the RCI. However an exempt entity may still be an <i>associate</i>, in which case, their details will require to be notified to the RCI by the recorded person.</p> <p>An exempt entity that is an associate will also have duties in connection with the RCI, as well as other types of associate. See What are the duties of an associate?</p> <p>A full list of exempt persons who are subject to other transparency regimes is set out in Schedule 2 of the Regulations. Broadly these are:</p> <ul style="list-style-type: none"> ❖ Charitable incorporated associations (Part 11 Charities Act 2011) ❖ UK Companies and other bodies corporate ❖ Public authorities ❖ Scottish Limited Partnerships and Scottish Qualifying Partnerships² ❖ Limited Liability Partnerships.
<p>What are the duties of the recorded person?</p>	<p>The principal duty is on the recorded person to notify the RCI that they have an associate (or associates – there may be more than one) and provide details of the associates. In addition the recorded person must:</p> <ul style="list-style-type: none"> ❖ Take reasonable steps to verify the associate's information with the associate before sending that information to the RCI, and advise the associate: of compliance timescales; that there are offences for failure to comply; that they may make a security declaration in some circumstances; and they must tell the recorded person about any changes in their details ❖ Notify the RCI when they cease to be a recorded person ❖ Notify the RCI when an associate ceases to be an associate ❖ Notify the associate when the recorded person has given their details to the RCI (within 7 days of doing so). <p>The recorded person must provide details of an associate to the RCI within 60 days of the association starting.</p>
<p>What information has to be given to the RCI?</p>	<p>Information about the recorded person:</p> <ul style="list-style-type: none"> ❖ The recorded person's name and address ❖ The Title Number, or a description of the land ❖ The capacity in which the recorded person holds the land <p>Information about the associate:</p> <ul style="list-style-type: none"> ❖ The associate's name, address and date of birth (for individuals) ❖ The associate's name, registered number and registered office ❖ If the associate is an exempt entity, the paragraph of Schedule 2 that applies ❖ The date on which they became an associate (if known) ❖ The unique reference number for the RCI allocated to the associate (this will be allocated the first time a person is registered as an associate).

² These are partnerships who require to register at Companies House under the Scottish Partnerships (Register of People with Significant Control) Regulations 2017

<p>How is information sent to the RCI?</p>	<p>The RCI will be hosted by the Registers of Scotland, who will also publish Guidance to assist recorded persons and associates.</p> <p>Submission of the required information will be via an online portal.</p> <p>Making submissions to the RCI will be open to the public, so that a recorded person can complete the online form and submit details of their associates directly to the RCI. There is no need for a recorded person to instruct a solicitor or other adviser to submit the information on their behalf, although some recorded persons may wish to instruct their solicitor or other adviser to do this for them, particularly if the ownership or control structure is complex, to avoid making mistakes. See Offences and Penalties.</p> <p>There will be no registration fee for submitting information to the RCI, although an adviser may charge a fee for submitting the information on behalf of a client.</p> <p>The RCI will be a public register so that persons can search the register for information about who to contact about decisions concerning the use, management and development of land.</p>
<p>What are the duties of an associate?</p>	<p>If a person knows they are an associate, but have not received notification from the recorded person within 67 days of the association starting, they must notify the recorded person that they are an associate of theirs, and provide the required information for the RCI.</p> <p>Associates also have duties:</p> <ul style="list-style-type: none"> ❖ to provide information on request from a recorded person ❖ to respond to requests from a recorded person for verification of their details ❖ if appropriate to indicate if they intend to make a security declaration (or have already made one) ❖ to advise a recorded person of any changes in their details, as soon as reasonably practicable ❖ to revoke a security declaration which subsequently becomes invalid.
<p>Duty to notify on death or dissolution</p>	<p>If a recorded person dies, their executor has a duty to notify the RCI of that fact as soon as reasonably practicable.</p> <p>If an associate dies, their executor has a duty to notify the recorded person of that fact.</p> <p>If a recorded person is wound up or dissolved the person dealing with the winding up must notify the RCI.</p> <p>If an associate is wound up or dissolved, the person dealing with the winding up must notify the recorded person.</p>
<p>Offences and Penalties</p> <p>(Originally, there was a 12-month period of grace until 1 April 2023 before penalties are applied. This period has now been extended to 1 April 2024)</p>	<p>Virtually all of the duties (but not the duty to notify on death or dissolution) carry a penalty for failure to comply. Such failure will be an offence which could lead to prosecution with a potential maximum fine of £5,000 (level 5 on the standard scale). It will be a defence if the person concerned can provide a reasonable excuse why they were unable to comply.</p> <p>There are also general offences of giving false or misleading information, knowing or being reckless as to whether the statement is false or misleading; and failing to disclose material information or being reckless as to whether all material information is disclosed. These offences carry the same penalty.</p> <p>Where an organisation commits an offence there could also be individual culpability affecting directors, managers etc. if the offence involves the consent or connivance of an individual holding a particular office in that organisation, or is caused by that individual's negligence.</p>

<p>Security Declarations</p>	<p>It is acknowledged that some individuals might be at genuine risk of harm if their details, including where they live, were to be available in a public register. In such cases an associate may submit a security declaration, if they can demonstrate that they are at risk of violence or abuse, or the threat of violence or abuse or intimidation.</p> <p>The evidential threshold is high, and security declarations will only be available for those at risk of harm if their details are publicly available on the open register.</p> <p>If the security declaration is accepted, some or all of the associate's details will not appear on the RCI. There is a right of appeal to the Lands Tribunal against a refusal by the RCI to accept a security declaration.</p> <p>The declaration must be accompanied by suitable evidence or attestation or must state that such evidence is being obtained, in which case it must be submitted within 60 days of the security declaration being made.</p> <p>Schedule 3 of the Regulations lists the types of evidence required such as a court order. Alternatively, the associate can supply attestation from appropriate persons including a senior police officer, a chief social worker, a medical practitioner, or the manager of a refuge.</p>
<p>"significant interest or control"</p>	<p>There is no detailed definition of what is meant by "significant influence" or "control", and it will often be necessary to assess the particular circumstances on a case by case basis.</p> <p>In general:</p> <ul style="list-style-type: none"> ❖ "control" refers to a situation where a person can direct the activities of another ❖ "significant influence" is likely to apply where a person is able to ensure that another person will typically adopt the approach that the person desires.
<p>UK Register of Overseas Entities</p>	<p>The UK Government has introduced a Register of Overseas Entities that applies to the whole of the UK.³</p> <p>Although introduced for a different purpose (to crack down on foreign criminals using UK property to launder money), there are overlaps in the registration requirements which are likely to lead to duplication.</p> <p>At the time of writing, the Scottish Government has not given any indication of an amendment to the RCI requirements for overseas entities.</p>

³

Under Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022.

Table of Associates

Recorded Person	Associate
Individual	<p>The recorded person is an individual but:</p> <ul style="list-style-type: none"> ❖ there is a contract or some other arrangement with another entity to the effect that the individual is holding title on behalf of that entity, or ❖ another entity has the right to exercise or actually exercises significant influence or control over the recorded person's dealings with the land. <p>Exceptions: These are listed in Schedule 1 Part 1 of the Regulations and <i>include</i> missives for the sale of land; landlord and tenant relationships; common ownership; joint tenancies and paid professional advisers.</p>
Partnership	<p>The recorded person holds title (or is the tenant) as a partner, or a partnership. Associates are:</p> <ul style="list-style-type: none"> ❖ another partner or partners in the partnership who are not registered as owners or tenant ❖ a partner in a partnership that is a partner of the recorded person, or ❖ another person with significant interest or control over an entity that is a partner or over the recorded person or a partnership in which the recorded person is a partner <p>Exceptions: These are listed in Schedule 1 Part 2 of the Regulations and <i>include</i> paid professional advisers, creditors, an administrator, and a member of the judiciary in proceedings concerning the partnership.</p>
Trust	<p>The recorded person holds title (or is the tenant) as a trustee. Associates are:</p> <ul style="list-style-type: none"> ❖ another trustee who is not registered as an owner or tenant on the title ❖ an individual who has significant interest or control over a relevant entity which is a trustee of the recorded person, or ❖ an individual who has significant influence or control over the trustee or the trust. <p>Exceptions: These are listed in Schedule 1 Part 3 of the Regulations and <i>include</i> paid professional advisers, creditors, a member of the judiciary in proceedings concerning the trust, and a member of a body that exercises control by virtue of a legislative function.</p>
Unincorporated body	<p>The recorded person either owns or tenants the land on behalf of an unincorporated body, or is deemed to own or tenant that land by virtue of being current trustees or holders of the land on behalf of the unincorporated body.</p> <p>Associates are anyone else responsible for the general control and management of the administration of the body, but who are not registered as owner or tenant.</p> <p>Exceptions: These are listed in Schedule 1 Part 4 of the Regulations and <i>include</i> paid professional advisers, creditors, and a member of the judiciary in proceedings concerning removal of a member of the body from any trust holding property on its behalf.</p>
Overseas entity	<p>The recorded person is the overseas entity that owns or tenants the land. Associates are anyone who:</p> <ul style="list-style-type: none"> ❖ directly or indirectly holds more than 25% of the voting rights in the recorded person ❖ can appoint or remove a majority of the board of directors (or equivalent) of the recorded person ❖ can exercise significant influence or control over a partnership or unincorporated body which is not a legal entity or a trust, but in respect of which the first two bullets would apply if the partnership, body or trust were an individual, or ❖ otherwise can exercise significant influence or control over the decision-making of the recorded person, particularly in respect of its dealings with the land. <p>Exceptions: These are listed in Schedule 1 Part 5 of the Regulations and <i>include</i> directors and employees, creditors, paid professional advisers, customers and suppliers, and anyone exercising a legislative function such as a regulator, liquidator or receiver.</p>

This note is a high level overview of The Register of Controlled Interests in Land (updated as at May 2023). If you wish to have further detail, or discuss how these changes will affect you, please get in touch with your usual Shepherd and Wedderburn contact.