
COMMUNITY*
LAND SCOTLAND

Towards Land Ownership Transparency in Scotland

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I. Introduction

This research provides an assessment of the state of transparency in land ownership in Scotland.

The Scotland report is part of a larger study which tested a country framework for assessing transparency in the ownership of land, using an interview-driven approach in Scotland and a literature-based approach in Sierra Leone¹. The framework primarily sought to understand policy around beneficial land ownership, but in doing so required a more fundamental examination of the broader state of transparency in land ownership.

The report first gives an overview of Scotland's land tenure system and policy context.

The following five sections then apply the framework to examine:

- the information collected about land ownership and control, and the way in which it is stored and updated;
- arrangements for access to information collected about land ownership and control;
- the information collected about legal entities which may own land;
- arrangements for access to information about those legal entities;
- the responsibilities imposed on those who own and control land to consider the wider impacts of their activities.

The final section summarises the framework's findings and evaluates the current state of transparency in land ownership and control in Scotland.

TRAFFIC-LIGHT CODING

Headlines from each of the sections of the research framework were considered against an "ideal", as roughly outlined by the framework (see Annex A). These are highlighted throughout Section III of the report.

-  A green rating indicates a positive or progressive element.
-  An amber rating indicates an element that is partially positive and could be built on, OR a progressive element which is as yet untested, unevaluated, or subject to considerable amount of uncertainty.
-  A red rating indicates a substantial departure from the ideal.

1 C. Pierce, N. Tagliarino, P. Daniel, M. MacInnes, JB. Tetka, L. Verstappen, AM. Jaitner, Towards Transparency in Land Ownership: A Framework to Research Beneficial Ownership, (Transparency International, 2018)

II. Background and context

SCOTLAND OVERVIEW

Scotland is a country which forms part of the United Kingdom. It has a population of around 5.5 million people, and a land area (excluding seabed) of around 80,000km²².

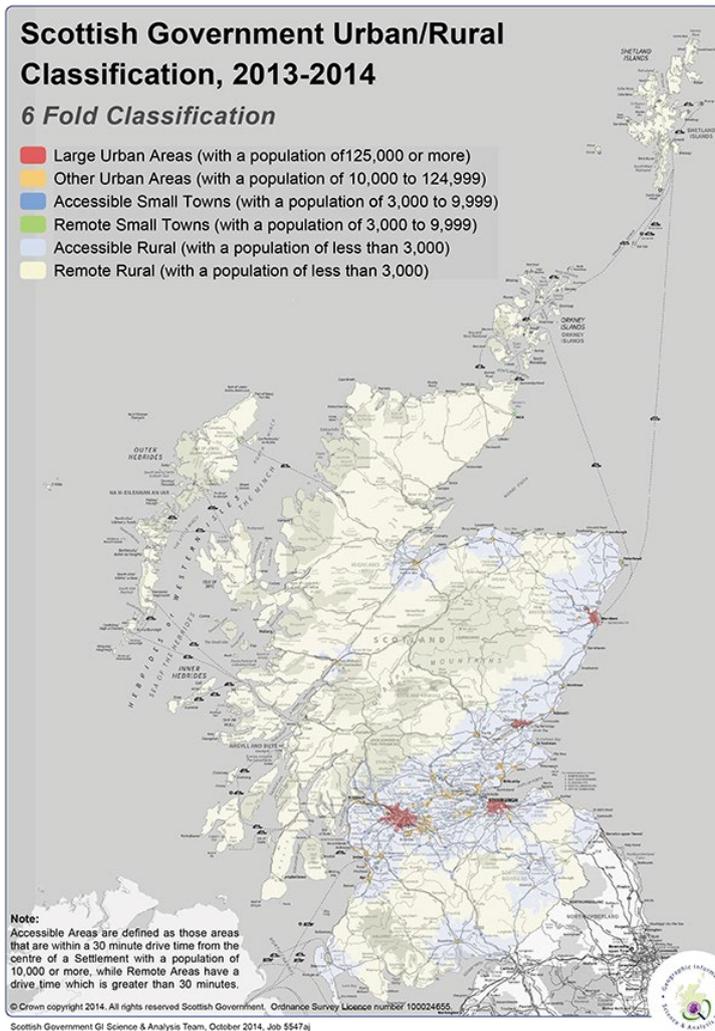


Figure 1. Distribution of population in Scotland (Scottish Government, Scottish Government Urban Rural Classifications 2013-2014)

Roughly 20 per cent of people live in rural Scotland, which includes 118 inhabited islands and covers 94 per cent of Scotland's land area. The remaining 6 per cent of land is urban and occupied by 82 per cent of the population³.

The UK is ranked 16 out of 188 ranked countries in the 2016 Human Development Index (HDI) Rankings⁴.

2 Land Reform Review Group, The Land of Scotland and the Common Good Report of the Land Reform Review Group, (Edinburgh: Scottish Government, 2014)

3 Land Reform Review Group, 2014: 20.

4 UNDP, Human Development Report, 2016

LEGISLATIVE AND JUSTICE FRAMEWORK

Responsibility for Scotland's system of land tenure (below) and administration lie largely with the Scottish Parliament. The Scottish Parliament has some responsibility for land-based taxes, although most tax-raising powers remain reserved to the UK Parliament. Anti-corruption laws are also reserved. The European Parliament has an important influence on land use regulation⁵.

Scotland has an independent judiciary. Disputes about land are usually resolved in the ordinary Scottish Courts and Tribunals System. Some matters may be dealt with by the Lands Tribunal, and some matters relating to agriculture and crofting may be dealt with in the Scottish Land Court⁶.

FREEDOM OF INFORMATION

Scotland has a comprehensive, strong set of Freedom of Information laws, set out in the Freedom of Information (Scotland) Act 2002 ("the FOI Act"). These laws provide a general right to any information held by public authorities. The Scottish Information Commissioner is an independent public official whose duties include the enforcement of the FOI Act. The Environmental Information (Scotland) Regulations 2004 implement an EU directive on access to environment information, including about the state of and factors affecting "air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components".

LAND TENURE

Scotland's system of land tenure has three main components⁷:

1. Property laws governing how land is owned;
2. Regulations governing how land is used;
3. Non-statutory public sector measures which try to influence how land is owned and used in the public interest.

Land and property rights can be conceptually divided into use rights, control rights and transfer rights⁸. Different people have (or share) different 'bundles of rights' over land, so that land tenure is often more complicated than the division above. For example, the public have access rights over most of Scotland's land, whether it is private or state-owned. The general principle in Scots Law is that "the owner of land owns everything above and below land"⁹. However, the Crown often retains certain mineral and salmon fishing rights over land which is privately owned, and certain below-ground rights can be 'reserved' by previous private owners when land is sold or transferred.

Scotland has two primary categories of land tenure:

- Private lands, whose owners may be private individuals or legal entities;
- State lands, whose owners are a public body of some description. That body could be national (for

5 Land Reform Review Group, 2014: 21.

6 The Lands Tribunal for Scotland, www.lands-tribunal-scotland.org.uk.

7 Land Reform Review Group, 2014: 16.

8 FAO, Land Tenure and Rural Development FAO Land Tenure Studies 3, (Rome: FAO, 2002).

9 Land Reform Review Group, 2014: 53.

example Forestry Commission Scotland) or local (for example local authorities).

- Some land is owned directly by the public body which manages it.
- Some land is owned by legal entities wholly owned by a public body.
- Some land is owned by a statutory officeholder (for example a Scottish Minister)¹⁰.

Crofting tenure is a third, distinct form of land tenure found mostly in the Highlands and Islands of Scotland, which provides tenancies with secure legal rights of occupation and use over land, and rights of succession and purchase¹¹. Around 25 per cent of land mass in the Highlands and Islands is under crofting tenure¹².

Very little remains of Scotland's historic common lands. Much has been incorporated into private estates, and evidence of former commons are often hard to find¹³. Common grazings, which are areas of land used by a number of crofters or others who have grazing rights on that land, are one of the few remaining examples¹⁴.

The Scottish Government acknowledges the United Nations' Voluntary Guidelines on the Responsible Governance of Tenure ("VGGT"). It was one of the first governments to reference them in statute, in sections 1 and 44 of the Land Reform (Scotland) Act 2016¹⁵.

HOW IS LAND ACQUIRED, TRANSFERRED OR DISPOSED OF?

The process by which land may be acquired, transferred or disposed of depends on the type of land. Generally, land can change hands through:

- Sale on the open market
- Lease (which may be short or long)¹⁶
- Inheritance
- Gifting
- Compulsory purchase by a public body¹⁷
- Exercising of a community's right to request the transfer of a public asset to that community, under recent legislation
- Exercising of a community's right to buy, which does not always require a willing seller, under existing and forthcoming legislation¹⁸

LAND REFORM

In the last 20 years, land reform has been on Scotland's policy agenda. Some key pieces of legislation introduced

10 Land Reform Review Group, 2014: 50.

11 Scottish Government, Crofting in Scotland, www.gov.scot/Topics/farmingrural/Rural/crofting-policy.

12 Scottish Crofting Federation, www.crofting.org.

13 A. Wightman, R. Callander and G. Boyd, Common Land in Scotland Securing the Commons No. 8, (Caledonia Centre for Social Development, 2003).

14 Wightman et al, 2003:9.

15 International Land Coalition, Legal Breakthrough on Land Rights and Ending Secrecy of Land Ownership [blog post], (ILC, 2016).

16 Including crofting 'assignments', where a crofting tenancy is permanently transferred over to someone else.

17 Under The Compulsory Purchase of Land (Scotland) Regulations 2003

18 Secondary legislation is expected before the Scottish Parliament's summer recess this year (2018).

include:

- The Abolition of Feudal Tenure etc (Scotland) Act 2000, which replaced a feudal system of land tenure with one of outright ownership.
- The Land Reform (Scotland) Act 2003 (“the 2003 Act”), which introduced a public right of responsible access over land (see Section E), a right to buy for crofting communities, and a community right to buy (with first right of refusal) for rural communities.
- The Agricultural Holdings (Scotland) Act 2003, which made changes to agricultural tenancies, and provided a right to buy for tenant farmers.
- The Land Registration etc (Scotland) Act 2012 (“the 2012 Act”), which reformed and restated the law around land registration in Scotland.
- The Community Empowerment (Scotland) Act 2015, which:
 - amended the 2003 Act to extend the community right to buy (with first right of refusal) to all rural and urban communities;
 - amended the 2003 Act to provide for a community right to buy abandoned, neglected or detrimental land, without a willing seller (not yet in force);
 - gave community bodies the right to “to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers”, with a presumption of agreement.
- The Land Reform (Scotland) Act 2016 (“the 2016 Act”), which (among other provisions):
 - Provided for a statement of Land Rights and Responsibilities (see Section E);
 - Established the Scottish Land Commission, whose purpose is “to conduct studies into the effect of law, policies and practices on rights in management and use of land in Scotland”, and report to Ministers;
 - Provided for a community right to buy to ‘further sustainable development’ (not yet in force);
 - Provided for a ‘register of controlling interests’, which will make information about people with control over land in Scotland publicly available.

BENEFICIAL OWNERSHIP, OR WHO CONTROLS DECISIONS ABOUT LAND?

Scotland's policy around transparency in land ownership is related to its wider agenda of land reform and community empowerment, briefly outlined above. The Scottish Government says that further land reform will “continue to prioritise transparency, accountability and community ownership”¹⁹.

The policy memorandum accompanying Stage 1 of the Land Reform Bill as introduced in Parliament gave three motivating reasons for increasing transparency in ownership and control of land²⁰:

1. Better information will enable better communication and help communities better influence land related decisions which affect them.
2. Better information on patterns of ownership will promote better understanding of inequalities relating to land, and help promote fair and equal access to land.

19 Scottish Government, Land Reform, <http://www.gov.scot/Topics/Environment/land-reform>.

20 Scottish Parliament, 2015:19.

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3. Better information on influences on land use, ownership and transfer will help design better land policy.

As discussed above, Scotland has limited jurisdiction over taxes, with most matters relating to tax evasion and avoidance reserved by the UK government. Scotland does have jurisdiction of most matters relating to land.

Discussion around 'beneficial ownership' in Scotland is focussed on land, concerned with uncovering who financially benefits from and/or exerts control over land (not always the same people). This is shaped by the Scottish Government's competency, and their vision for land ownership and use which "delivers greater public benefits through a democratically accountable and transparent system of land rights."²¹

At the UK level, discussion around 'beneficial ownership' is focussed on uncovering the person who ultimate controls a land-owning entity, motivated by issues around tax transparency, money laundering, and anti-corruption. The UK government, not the Scottish Government, is responsible for implementing EU Anti-Money Laundering Directives.

Sections A and C discuss these approaches, and how they interact, in more detail.

There is some complexity around the language of beneficial ownership (see Section C). The term 'controlling interests' is currently being used in Scotland, but the government is yet to define its precise meaning (See Section A).

21 Scottish Parliament, Policy Memorandum Land Reform (Scotland) Bill, (Edinburgh: Scottish Parliament, 2015).

III. Applying the Framework: Exploring transparency in land ownership

Sections A-E use a framework of questions (see Annex A) to assess transparency in land ownership and control in Scotland. A summary of the state of transparency can be found at the start of each section, with a brief concluding analysis at the end of the report.

A LAND REGISTRY STRUCTURE AND INFORMATION

- A central registry of land ownership information exists
- Information collected in central registry is fairly comprehensive. Information is required by law and title to land will not be registered if that information is not provided
- Information about most land exists somewhere, but stored by different bodies in different places and formats
- Only 65% of titles and 35% of land mass are recorded in the central registry
- The central registry is a 'record' of a snapshot in time, not a live data set of ownership information
- Primary legislation making provision for beneficial ownership information to be provided exists
- Questions remain around definitions of beneficial ownership, including who will be required to provide information, in what format, and how often

HOW IS THE LAND REGISTRY STRUCTURED?

There is no single centralised registry recording information about all types of ownership and control of land in Scotland. Not all ownership and control information is stored in the same register, and there may be overlap between registers.

There are two main registers of land:

1. The Register of Sasines ("the Sasines") is a deed-based register established in 1617. Around 35 per cent of titles (representing over 60 per cent of Scotland's land mass) are recorded in the Sasines²².
2. The Land Register is a map-based register established in 1979. Around 65 per cent of titles (around 30 per cent of land mass) are recorded in the Land Register²³.

22 It is no longer possible to register land in the Sasines, and since 2012, most events including taking out a mortgage or transferring ownership trigger migration to the Land Register (Registers of Scotland, Sasine Register, www.ros.gov.uk/services/registration/sasine-register).

23 Interview and communication between Registers of Scotland officials and author, Edinburgh, January 2018.

These registers are both held by the Keeper of the Registers of Scotland (“RoS”), which is a non-ministerial department of the Scottish Government.

Registration of land in the Land Register acts as a state-backed guarantee of title to that land, providing protection of property rights and access to the courts system.

Despite a long history of land registration, there is no blanket requirement on anyone to register all of Scotland's land. However, compulsory registration on the Land Register is triggered by most transactions over land. Since the Land Registration etc (Scotland) Act 2012, this includes the transfer of land for no monetary value, and the taking out of securities (a mortgage) over land.

There are specific cases where land may not appear on either register:

- Land held under udal tenure, under which ownership rights exist through occupation rather than registration²⁴.
- The Crown has presumed rights to the foreshore and below-ground and fishing rights, but title is not recorded or registered for this land²⁵.
- Some land predates the Sasines, for example land of the three ancient royal burghs which today are part of the City of Edinburgh.

Some information about ownership, control and other rights to land, some but not all of which land is registered on the Sasines or Land Register, is held in separate registers by RoS. For example, the Crofting Register contains information on land held under crofting tenure.

Other registers containing information about ownership and control of land are held by other bodies. These include information on:

- Publicly held land and assets. Section 95 (Part 5) of the Community Empowerment Act (Scotland) 2015 (“the 2015 Act”) requires ‘relevant authorities’ to keep and maintain a register of land which they own “to the best of [their] knowledge and belief”²⁶.
- Land used for agriculture, forestry and other rural activities. The Scottish Government via Rural Payments and Services, keeps a register of this land as part of the administration of rural payments and development programmes²⁷.
- Common Good Land. Part 8 of the 2015 Act (section 102, not yet in force) places a weak requirement on local authorities to publish and maintain a register of common good land.

HOW COMPLETE IS THE LAND REGISTER?

By land mass, rural areas tend to have the lowest coverage of land on the Land Register. This is because land changes hands less frequently than in urban areas, and so registration is less frequently triggered²⁸. Publicly owned lands are also under-represented on the Land Register, for similar reasons.

In 2014, Scottish Ministers invited RoS to complete the Land Register by 2024, and to register all public land by

24 Land Reform Review Group, 2014: 28.

25 Registers of Scotland, Foreshore in 2012 Act Registration Manual, <https://rosdev.atlassian.net>. [Relevant authorities as listed in Schedule 3 of the 2015 Act](#).

26 Relevant authorities as listed in Schedule 3 of the 2015 Act.

27 Rural Payments and Services, Land Registration, www.ruralpayments.org.

28 Interview with Registers of Scotland officials, 2018.

2019²⁹. Interviewees all acknowledged that the scale of resources and political will necessary to complete the register is huge.

The most common triggers for registering land are buying, selling, and taking out a mortgage. The 2012 Act also gave RoS the power to register land itself (“keeper-induced registration”) and for landowners to register land voluntarily. Both of these tools are intended to speed up the completion of the register.

Though RoS have registered a considerable volume of titles using these provisions³⁰, progress is slow. The rate of progress has not increased substantially since 2014, when the Land Reform Review Group noted that it would take over 40 years to get 80 per cent of titles registered at the current rate³¹.

BY LAW, WHAT INFORMATION DOES THE LAND REGISTRY CONTAIN?

The information in this section relates specifically to the Land Register, since the aspiration is that all land will eventually be registered on it.

The 2012 Act details the information which is required to successfully register a title to land. The duty is on RoS to make sure those requirements are met, and reject the application if not³².

The Land Register has four parts, as per Section 2 of the 2012 Act. These are:

1. The title sheet record
2. The cadastral map³³
3. The archive record
4. The application record

The part in which information is stored affects the arrangements for access to that information (see Section B).

TABLE 1. WHAT INFORMATION DOES THE LAND REGISTRY CONTAIN?

	Required?	Comments
Map	Yes	Accurate boundary map is required
Type of land	No	In practice, can be deduced from map. RoS classifies into residential, commercial, land, agriculture, forestry or other.

29 Registers of Scotland, Completion of the Land Register: Report on the Public Consultation, (Edinburgh: Registers of Scotland, 2015)

30 Over 56,000 addresses via keeper-induced registration (as of January 2018) and 6,014 titles through voluntary registration between September 2016 and September 2017 (Communication with Registers of Scotland officials, 2018).

31 Land Reform Review Group, 2014: 29.

32 Interview with Registers of Scotland officials, 2018

33 The cadastral map was not an intention of the 1979 Act, but arose from the need to index and coordinate the individual cadastral units (Registers of Scotland Knowledge Base, The Cadastral Map, 2017). The 2012 Act gave it statutory standing. Section 11 of the Act defines the map as “showing the totality of registered geospatial data”, which means that the framework for a cadastre in Scotland exists.

	Required?	Comments
Valuation	Yes	Where title changes hands for money, amount must be given. Where there is a non-monetary transfer, an approximate valuation must be given (to determine fees payable)
Chain of past transactions	Yes	Title sheet records the date of the last change to the title. The archive and application records keep information on all previous applications relating to a title, and titles which have been superseded. A chain of past transactions exists in pieces.
Name of current owner	Yes	Could be a natural person or legal entity. Will not necessarily be accurate, if land last changed hands before 2012. See 'Updates' below.
Names of previous owners	Yes	In archive record. Will not necessarily be complete. See 'Updates' below.
Business ID of a corporate owner	Yes	Since the 2012 Act, a company ID must be disclosed.
Other information about corporate owners		Since the 2012 Act, the jurisdiction in which the land-owning entity is incorporated must be disclosed. Information is kept on the title sheet and the application record.
Start and end date of a lease or concession	Depends	Long leases (20+ years) are registrable and have their own title sheet. This is linked to the landowner's title sheet. Dates of the lease are listed on the title sheet, e.g. 185 years from 30 Aug 2013*
Beneficial ownership	No	See 'Laws, policies and standards addressing beneficial ownership' below.

* Registers of Scotland, Lease Title Sheet in 2012 Act Registration Manual, <https://rosdev.atlassian.net>.

HOW, AND BY WHO, IS THE LAND REGISTER UPDATED?

The Land Register is being continuously updated, in the sense that new transactions and registrations happen. However, RoS's primary role is to 'keep' titles to land. Each update is a new 'snapshot' of information, which will not be updated until another transaction triggers it.

This presents further frustrations to land ownership transparency, discussed in detail in Section B. For example, once a title is registered, there is no requirement to update an owner's address (whether a natural or legal person). If land transferred ownership by inheritance prior to the introduction of new registration triggers in the 2012 Act, the name on the title will be the original, pre-succession owner, who is not necessarily alive or traceable.

ARE THERE LAWS, POLICIES OR STANDARDS ADDRESSING CONTROLLING INTERESTS IN LAND?

There are no provisions requiring the disclosure of information about controlling interests in land currently in force. Only the 'first level' owner is recorded (whether a natural person or a legal entity), which limits the information available on those who financially benefit from or exert control over land. However, some progress has been made to develop policies and a legislative framework to address the issue.

Primary legislation exists which requires ministers to make regulations creating a public register of controlling

interests in landowners and tenants.

The regulations which will be created under Part 3 of the Land Reform (Scotland) Act 2016 will place a duty on certain people to provide information about controlling interests³⁴, and will require that information to be entered into a public register:

39 Information about persons with controlling interests in owners and tenants of land

(1) The Scottish Ministers must by regulations make provision—

(a) requiring information to be provided about persons who have controlling interests in owners and tenants of land, and

(b) about the publication of that information in a public register kept by the Keeper of the Registers of Scotland.

The legislation outlines items which the regulations may make provision about, including: who the regulations apply to; the definition of controlling interest; information to be required, and in what manner; the publication of that information; updates; sanctions; and fees payable in relation to provision of information.

The provisions in Part 3 were significantly changed during the passing of the bill through Parliament. The provision at Stage 1 of the bill was for a reactive power for an unspecified 'request authority' to investigate controlling interests in land on a case-by-case basis, on behalf of someone who could prove a legitimate interest in that land. This proposal followed a rejection of the Land Reform Review Group's recommendation to restrict land-ownership to EU member state registered legal entities³⁵.

Arguments were made by a wide range of stakeholders that these provisions were inadequate to meet the policy aims, and had to be strengthened. This was reflected in the Act as passed.

A broad consensus currently exists among stakeholders (both land-owning interests and civil society organisations) and in government over the principle of increased transparency in land ownership, including information about those with controlling interest in an owner or tenant of land.

THE REGULATIONS IN PRACTICE

Regulations under Part 3 of the Act are currently being drafted, and will be put before Parliament sometime in 2018. They will be laid in a single piece of secondary legislation, via an 'enhanced affirmative' procedure designed to increase parliamentary and public scrutiny over them³⁶.

Most interviewees acknowledged that 'the devil is in the detail', which is yet to be seen.

A public consultation launched in September 2016 (with analysis published in June 2017) sought views on some of the detail³⁷. Until the regulations are laid, some key questions remain unanswered:

- What is the definition of a controlling interest in land?

34 The power to impose the duty is given by s. 39(2)(d), (i) and (j) in particular.

35 Land Reform Review Group, 2014:240; Scottish Parliament, 2015:23.

36 Draft regulations are laid before Parliament for comment before the final regulations are laid in the usual way.

37 Scottish Government, Improving transparency in land ownership in Scotland: a consultation on controlling interests in land, (<http://consult.gov.scot>, 2016).

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- What is the extent of information to be provided, by who, and what will be the arrangements for ensuring that information is kept up to date?
 - How does any new register interact with existing databases which may contain information about land, and about controlling interests in legal entities? (see Section C)
 - What will be the arrangements for public access to this information? (see discussion in Section B)

The answers to these questions will determine the extent to which Part 3 of the Act contributes towards increasing transparency in land ownership and uncovering influences on the control, use and transfer of land specifically.

B ACCESS TO INFORMATION ON LAND OWNERSHIP AND CONTROL

- There is a principle of public access: no-one needs to prove a 'legitimate interest' to access information
- All information collected in all registers of land can be accessed by some means
- Access to information on land ownership (and other land information) is very fragmented
- No ownership information held in the Land Register can be accessed by citizens for free
- Citizens pay more than commercial users for the same information
- The Land Register can be searched by different criteria, but only by commercial users, not by citizens
- Access to ownership information on public assets, where it exists, is free
- Information accessed often requires legal training to interpret
- Information on beneficial ownership will be held in 'a public register', but what this looks like in practice is yet to be determined
- There is no publicly scrutinised framework which outlines the principles of provision of land information, nor a plan to implement those principles

HOW IS INFORMATION ON THE LAND REGISTER ACCESSED IN PRINCIPLE?

Section 1(1) of the Land Registration (Scotland) Act 2012 describes the Land Register as a "public register of rights in land in Scotland". The Registers of Scotland (Information and Access) Order 2014 (secondary legislation) is a short statutory instrument describing what information the Keeper must make available to the public, subject to fees³⁸.

There is a presumption of public access: no-one has to prove a 'legitimate interest' in a particular piece of land to access information about it. There is no provision in legislation for anyone to be denied access to ownership information. As far as RoS is aware, no individual or organisation has ever been denied access to ownership information, nor has information on the register been redacted in any way³⁹.

However, this is more or less the extent of the principle of public access. A person wanting to access information about land ownership faces at least a financial hurdle, and likely a hurdle in interpretation too.

Table 2 (next page) describes access to information for an individual citizen, for a business user of RoS's Registers Direct service⁴⁰, and more generally for an organisation who enters into a commercial services agreement with

38 Provided for in Schedule 1 Part 7 of The Registers of Scotland (Fees) Order 2014.

39 Interview with Registers of Scotland officials, 2018.

40 Gradually being replaced by ScotLIS.

RoS.

It demonstrates two main points:

1. That there is essentially no discrimination in the type of information which can be accessed - the same information available to a business or commercial user is also available to a citizen. The full list of information which can be accessed matches the list of information which RoS is required to keep⁴¹.
2. That access to the same information is:
 - a. considerably more expensive for a citizen than for a business
 - b. substantially different in the way it must be searched for, and the method of provision.

TABLE 2. WHAT INFORMATION CAN BE ACCESSED BY WHO, AND IN WHAT FORM?

Type of information	Type of user		
	Citizen	Business user	Commercial arrangement
Owner	●	●	●
Valuation	●	●	●
Last buy/sell date	●	●	●
Previous owners	●	●	●
Map of single cadastral unit	●	●	●
Whole cadastral map		●	●
Beneficial owner		Information not collected	
Method of search			
Online		●	
By specific request*	●	●	Bespoke
Cost (per search, title sheet)**	£20-30	£3	Bespoke
Timeframe			
Within specified time-frame	●	●	
On demand		●	Bespoke

41 Subject to slightly different procedures for requesting access, if it forms part of the archive or application record, for example.

Search	Type of user		
	Citizen	Business user	Commercial arrangement
By postcode/address	●	●	
By land owner		●	Bespoke
The cadastral map		●	
Beneficial owner		Information not collected	
By individual title***	●	●	●
In aggregate			●

* In person at Registers of Scotland, by email or web-form enquiry, by letter.

** Freedom of Information laws exclude information for which a fee is payable. Fees for public access are set out in The Registers of Scotland (Fees) Order 2014.

*** s 3. of The Registers of Scotland (Information and Access) Order 2014.

HOW IS INFORMATION ON OTHER REGISTERS ACCESSED?

As outlined in Section A, not all information about land is recorded in the Land Register, and arrangements for access and the method of provision vary. Some examples, which demonstrate the disparate nature of access to land ownership information:

- The Register of Sasines, held by RoS and still recording around 35 per cent of titles in Scotland. Access arrangements are similar to the Land Register, though there is no map available.
- The Crofting Register and the Register of Community Interest in Land (both held by RoS). Access is free and open, although both attract a fee to see a copy of full registration documents.
- Registers of council assets, as required under the Community Empowerment Act, must be available for the public to inspect free of charge. No specific rules or guidelines are given for the format of this information. Some local authorities (such as the Highland Council, and Midlothian Council) provide a searchable map which can be clicked to find information about a particular asset, while others (such as Glasgow and Edinburgh City Councils) provide a spreadsheet for download⁴².
- Register of agricultural land held by the Rural Payments Service. This is not available for inspection online, but information about land registered with them is available under FOI.

HOW IS INFORMATION ON THE LAND REGISTER ACCESSED IN PRACTICE?

The way in which land ownership information is currently available in Scotland presents significant hurdles for citizens trying to understand the influences which shape the land around them. These hurdles also affect community groups who may be trying to acquire or get permission to use land under the Community Empowerment (Scotland) Act 2015 or other pieces of land reform legislation.

42 For example, Midlothian Council (https://www.midlothian.gov.uk/info/200284/your_community/487/council_properties) vs Glasgow City Council (<https://www.glasgow.gov.uk/index.aspx?articleid=20590>).

Under the current public-access version of ScotLIS, citizens can search (for free) for a property or land by postcode or address⁴³. If the property or land is on the Land Register, some basic information will be returned (see Figure 2):

- title number
- date of last sale
- price of last sale
- map showing the unit's boundary
- list of historic transactions.

The basic search does not reveal any ownership information. If the property or land is not on the Land Register, no information will be returned (Figure 3).

Property details

Information held on the Land Register for this property

Title Number	GLA77886
Land Register Status	Registered
Last purchase date	11-12-2015
Last purchase price	£181,500.00

[▶ Historical prices](#)

Map view

The boundary outline is not a precise representation



Figure 2. What a citizen sees when the property searched for is recorded on the Land Register.

THE SCOTTISH PARLIAMENT, EDINBURGH, EH99 1SP

[Search again](#)

Property details

Information held on the Land Register for this property

Land Register Status	Unknown
Last purchase date	No date available
Last purchase price	No price available

Related guidance
[Why is there no information appearing in the search results?](#)
[Property boundaries](#)
[What you can do next](#)

Figure 3. What a citizen sees when a property searched for is not on the Land Register.

A citizen, unlike a business user, and even for a fee, cannot start by examining the cadastral map of Scotland and drill down to an area of an interest. A citizen also cannot return a list of all properties or land owned by a particular individual or legal entity⁴⁴. If a citizen is looking for information about a specific property, they can (subject to a fee) submit a request for a RoS employee to search the register, application or archive record for information relating to that title.

There is no central place a citizen or community group can go to easily access information about the ownership

43 RoS's Land Information Service, www.ros.gov.uk/services/online-services/scotlis.

44 Interview with Registers of Scotland officials, 2018.

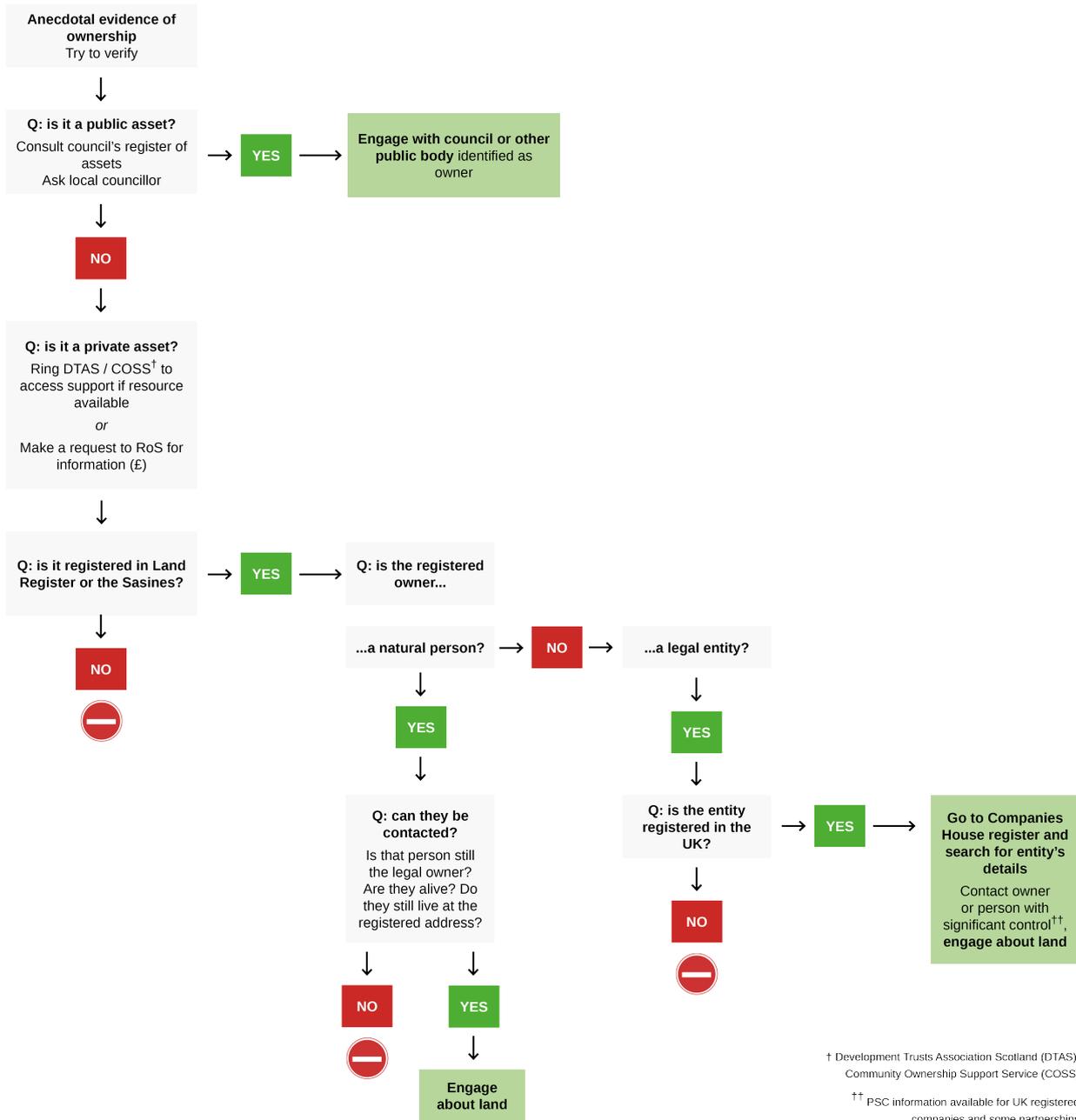


Figure 4. What the process of looking for ownership information might look like for a community group (Author's own, based on interview between Ian Cooke (DTAS) and author, Edinburgh, January 2018).

and control of land for free.

Once 'accessed', the format of information can also be a considerable barrier to transparency. Title sheets, particularly the 'burdens' section, are written in legal rather than plain language. A citizen who is not legally trained may require the assistance of a legally trained person to help interpret the information.

Figure 4 shows an example of the kind of process a community group (or individual, or small business) might have to go through in order to access information on land ownership, and therefore make or try to influence decisions relating to land.

It can take a considerable amount of time, money, legal and investigative skills to uncover basic information,

all of which is available in principle. Currently, the Community Ownership Support Service (COSS), part of the Development Trusts Association Scotland (DTAS) plays an important intermediary role. They have a limited amount of qualified legal resource, which can help search for and decode ownership information. Perceiving this limitation, the Scottish University Land Unit (SULU) has also recently been set up, which will see student lawyers work in partnership with DTAS and COSS to provide practical support to communities wishing to exercise new land rights⁴⁵.

HOW WILL INFORMATION ON CONTROLLING INTERESTS IN LAND BE ACCESSED?

Part 3 of the Land Reform (Scotland) Act 2016 deals largely with the keeping of the information on controlling interests in owners and tenants of land, except at (2)(f) and (2)(l) of Section 39, where the legislation mentions publication of information, and fees payable.

The scope of the legislation, and of forthcoming regulations, is necessarily limited to discussion of the Register of Controlling Interests itself (whether that forms part of an existing register, or is a new, separate register).

There is currently no publicly scrutinised framework of principles for the provision of information about land in Scotland (including but not limited to ownership information), which outlines timescales and a budget.

The public consultation did not address in any detail questions of information access⁴⁶. The regulations themselves will mostly be silent on the mechanics of information access, with many outstanding questions only answered at the implementation stage. However, the government is required to publish an explanatory document along with the regulations, which we can expect to set out the vision for how the register will work in practice. We can also expect the regulations to be drafted in such a way as to not inhibit the development of a framework for accessing the information⁴⁷.

Unless other information access arrangements also change, the Register of Controlling Interests may not significantly change the picture of land ownership transparency in Scotland for the average citizen.

45 Scottish Legal News, New land reform initiative opens to law students in Aberdeen, <http://www.scottishlegal.com/2018/02/01/new-land-reform-initiative-opens-law-students-aberdeen/>

46 Scottish Government, 2016: 25.

47 Interview and communications between officials in the Scottish Government Land Reform team and author, Edinburgh, January 2018.

C LEGAL ENTITY REGISTRY AND INFORMATION COLLECTION

- Reporting requirements for domestic entities are strong and information is regularly updated
- There is no information available on the distribution of different entities which own land in Scotland
- Some domestic entities are required to disclose beneficial ownership information, including LLPs and SLPs
- Third parties have responsibility for providing beneficial ownership information
- Criminal and civil sanctions are used to encourage disclosure
- Overseas entities are not required to disclose beneficial ownership information
- The UK is drafting legislation will require overseas entities to provide beneficial ownership information before buying land in the UK
- A definition of beneficial ownership based on the EU directive definition has been transposed into UK law

WHAT KINDS OF LEGAL ENTITIES OPERATE AND OWN LAND IN SCOTLAND?

A range of different legal entities and arrangements, both foreign and domestic, operate in Scotland. Entities and arrangements include (but are not limited to):

- Companies (limited by shares; limited by guarantee; Community Interest Companies)
- Partnerships, including:
 - General Partnerships
 - Limited Partnerships
 - Limited Liability Partnerships (LLPs)
 - Scottish Limited Partnerships (SLPs)⁴⁸
- Trusts
- Scottish Charitable Incorporated Organisations
- Cooperatives
- Overseas legal entities including overseas companies

All of these entities can own land in Scotland, either directly (having legal personality themselves) or indirectly (land held by partners in a partnership). Given the limitations of access to information about land, there are no publicly available, there are no accurate statistics on the distribution of different entities owning land in

⁴⁸ Scottish Limited Partnerships have separate legal personality, meaning that the partnership itself (separate from its partners) can “enter into contracts, sue or be sued, own property, borrow money and grant certain types of security” (Brodies LLP, Scottish Limited Partnerships, (Brodies LLP, September 2014).

Scotland⁴⁹.

Land can also be owned by statutory officeholders, for example by Scottish Ministers, who are legal persons defined by statute.

If a foreign entity wants to do business in the UK, they can either establish a subsidiary, establish a branch, set up a joint venture, general partnership or limited liability partnership with a domestic company, or appoint an agent⁵⁰. Where a foreign company has a 'physical presence' in the UK, they must register with Companies House as an overseas company⁵¹. Where a foreign company simply holds land, there are no registration requirements⁵².

Table 3 below outlines broad regulatory, registration and disclosure requirements for legal entities operating in the UK.

TABLE 3. BROAD REGISTRATION AND DISCLOSURE REQUIREMENTS FOR UK-INCORPORATED LEGAL ENTITIES

	Legal personality?	Regulated at?	Registered with?	Disclosure requirements	Controlling interests
Domestic entities					
Companies (limited by shares or by guarantee)	Yes	UK level	Companies House (UK)	Regular, comprehensive disclosure	Persons of Significant Control must be disclosed, as per the Small Business Enterprise and Employment Act 2015
Partnerships	Depends	UK level	Companies House (UK)	Depends	Disclosure of PSC for LLPs, SLPs and Scottish General Partnerships where all partners are UK companies limited by guarantee*

49 Though RoS would be theoretically able to produce a dataset of land-owning legal entities in the Land Register, this would have to be a bespoke data request, and would reflect ownership as recorded on titles at a particular moment in time only (see Section A, 'Updates to the Land Register').

50 Brodies LLP, Establishing a business in UK (Scotland), (Thomson Reuters, 2014).

51 This does not apply to partnerships; Companies House, Overseas companies registered in the UK, (Companies House, 2015).

52 If that land is to be developed or rented, the company must register with HMRC for corporation tax.

	Legal personality?	Regulated at?	Registered with?	Disclosure requirements	Controlling interests
Trusts	Insufficient to register title to land	Not regulated by external regulator	Private register of 'relevant taxable trusts' held by HMRC as of Summer 2017	Details of trustees, settlors, protectors, beneficiaries and assets	Yes, of potential beneficiary or beneficial owner
Charitable Incorporated Organisations	Yes	Scotland** level, by the Office of the Scottish Charity Regulator	OSCR register, and the Registrar's Register of Company Names, maintained	To OSCR, not to Companies House (only name is disclosed to CH)	No
Foreign entities operating in the UK	Yes	In the home jurisdiction	Requirement to register with HMRC if there is taxable UK income. May have to register with Companies House if entity has a base in the UK***.	Depends on whether it is required to register with HMRC or Companies House	No

* General partnerships and limited partnerships under English Law, and Scottish General Partnerships where at least one partner is a natural person are not covered by the regulations.

** The Charities and Trustee Investment (Scotland) Act 2005 (as amended) ('the 2005 Act').

*** Covered by the Overseas Companies Regulations 2009.

WHAT ARE THE ARRANGEMENTS FOR DISCLOSURE OF INFORMATION ABOUT CONTROLLING INTERESTS IN LEGAL ENTITIES?

DEFINITION

Article 3 (6) of the Third EU Money Laundering Directive (2005/60/EC) provides a distinct, functional definition of beneficial ownership which deals with the concept of ultimate control⁵³:

(6) 'beneficial owner' means the natural person(s) who ultimately owns or controls the customer and / or the natural person on whose behalf a transaction or activity is being conducted.

This definition has been transposed into UK law in the Money Laundering Regulations 2007.

⁵³ This is distinct from the historic definition in English law (Balfour & Manson LLP, Response to Consultation on the Future of Land Reform in Scotland, (Edinburgh, 2015)). The English law concept of beneficial ownership does not exist in Scots Law.

The UK introduced disclosure requirements for companies regarding persons of significant control in Small Business Enterprise and Employment Act 2015 (“the SBEE Act”). The law applies to UK-registered companies, limited liability partnerships (LLPs), and as of June 2017, Scottish limited partnerships (SLPs).

As a result, there is an active definition of ‘persons of significant control’ (PSC) at the UK level. A person is deemed to have ‘significant control’ if any of the conditions set out in Schedule 3 of the SBEE Act are met. These are:

1. An individual who holds more than 25% of shares in the company
2. An individual who holds more than 25% of voting rights in the company
3. An individual who holds the right to appoint or remove the majority of the board of directors of the company
4. An individual who has the right to exercise, or actually exercises, significant influence or control over the company
5. Where a trust or firm would satisfy one of the first four conditions if it were an individual.

UK Company Law applies in Scotland, so a definition of ‘beneficial ownership’ as transposed from the EU directive already exists in practice in Scotland, even if it has yet to be formally used in legislation from the Scottish Parliament.

For the purpose of the forthcoming regulations under Part 3 of the 2016 Act, a definition of ‘controlling interests’ has not yet been publicly proposed.

DISCLOSURE BY UK-REGISTERED COMPANIES, LLPS AND SLPS

Under this Act, companies and some partnerships are required to keep a register of people who have direct or indirect significant control, and to report that information to Companies House, who make it publicly available (see Section D).

If the registering entity cannot be expected to have knowledge of someone with indirect significant control, this person with significant control is themselves required to disclose the information⁵⁴.

There is an active duty on UK companies to ‘take reasonable steps’ to provide information about persons of significant control. For example, if they do not know the information, and the PSC (or ‘registrable legal entity’) does not volunteer the information, they are under a duty to write to the PSC to request the information, within a month of them being aware that this person is or might be a PSC⁵⁵. They are also under a duty to write to anyone who can be reasonably expected to know who the PSC is, or their details, and this person is obliged to respond:

A company to which this Part applies may also give notice to a person under this section if it knows or has reasonable cause to believe that the person—

- (a) knows the identity of someone who falls within subsection (6), or
- (b) knows the identity of someone likely to have that knowledge⁵⁶

In the context of land-owning legal entities, this might include a land agent, lawyer, factor, or other professional

54 Companies House, PSC Register Summary Guidance, (Companies House, 2016a).

55 Companies House, PSC Register Statutory Guidance, (Companies House, 2016b).

56 s. 790D of the Companies Act 2006, as amended by the Small Business, Enterprise and Employment Act 2015.

intermediary.

Not reporting or keeping up to date information on persons of significant control can be a criminal offence, with a possible custodial sentence. These are new rules and it will take some time for Companies House to assess compliance and enforcement.

DISCLOSURE BY OVERSEAS-REGISTERED ENTITIES

The UK is also in the process of making legislation which will require foreign companies to disclose the ultimate beneficial owner in order to own land or property or enter into government contracts in the UK. It is likely that the definition of 'persons of significant control' used in the SBEE Act 2015 will inform the definition used in the forthcoming legislation.

The current timetable for the UK foreign entities legislation suggests that provisions would not be operational before 2021 (ministers have committed to introducing new legislation before the end of this parliamentary session, which is Summer 2019).

The forthcoming regulations under Part 3 of the 2016 Act will seek to cover both domestic and foreign entities owning land in Scotland.

Both pieces of forthcoming legislation deal with uncovering ultimate control in foreign companies who own land in the UK (of which Scotland is a part). Both the Scottish and UK governments have publicly stated their intention that both proposals be complementary, in particular to avoid imposing two new sets of reporting requirements on legal entities⁵⁷.

DISCLOSURE OF CONTROLLING INTERESTS IN LAND IN SCOTLAND

As discussed in Section A, only information about first-tier ownership is required by Registers of Scotland to register title to land. The combined effect of the UK PSC register and the Land Registration (Scotland) Act 2012⁵⁸ means that there is a subset - not quantifiable - of domestic entities who own land in Scotland for whom corresponding information about PSCs should be held at the UK level.

As outlined in Section D, there is no direct communication between registers held by RoS and registers held by Companies House.

⁵⁷ Department for Business, Energy & Industrial Strategy, Property ownership and public contracting by overseas companies and legal entities: beneficial ownership register (Call for Evidence), (BEIS: London, 2017).

⁵⁸ Which requires a company ID to be provided.

D ACCESS TO INFORMATION ABOUT LEGAL ENTITIES

- For some domestic entities, ownership information is comprehensive, free and easily accessible to citizens
- For most domestic entities beneficial ownership information, where collected, is free and easily accessible
- There is no public register of trusts, and beneficial ownership information, where collected, is only available to law enforcement
- Access to information on foreign entities operating in the UK is entirely dependent on the jurisdiction in which they are incorporated
- There is no formal communication between registers of land in Scotland and legal entity registry in Scotland and the UK. Citizens must search multiple, unconnected sources

TABLE 4. ACCESS TO INFORMATION ON DIFFERENT LEGAL ENTITIES

	Public access to register?	On what basis?	Public access to beneficial ownership information?
Domestic entities			
Companies	Yes, via Companies House	Free, online	Yes
Partnerships	Yes, via Companies House	Free, online	Yes*
Trusts	No	Law enforcement only	No
SCIOs	Yes, via OSCR	Free, online	n/a

Foreign entities operating in UK Dependent on jurisdiction

* As in Table 3, applies to SLPs, LLPs, and a subset of Scottish General Partnerships.

For entities registered at Companies House, information is very easily accessible by a citizen, at no cost.

An online search should reveal:

- The registered office address
- Company type
- Incorporation date
- Filing history (which will vary by company type)

-
- People / officers - including correspondence addresses, role, date of birth, nationality, country of residence and occupation
 - Persons of significant control - including correspondence addresses, date of birth, nationality, country of residence, and nature of control

There are very limited circumstances under which a company can ask for beneficial ownership information to be withheld, mostly relating to a real threat of serious violence or intimidation⁵⁹.

HOW DO LAND AND LEGAL ENTITY REGISTRIES COMMUNICATE?

There is no map or list-based register of legal entities which own land in Scotland. There is no interaction between the Land Register in Scotland and registers of legal entities held in Scotland, at the UK level, or elsewhere.

If a citizen is searching for information about land, and search results reveal that the entity is a legal person, then other registers held in different places by different administrative bodies will need to be consulted to find out any further information.

If the land was entered into the Land Register after 2012, or a transaction involving that land took place after 2012, then (as per Section B), the jurisdiction in which the legal entity is incorporated, and its identifying number, should appear in the Proprietorship section of its title sheet.

In summary, there are two key hurdles to transparency specifically relevant to land owned or controlled by non-natural persons:

- By no means all legal entities which own land are required to be registered in any publicly accessible register. This is true of foreign entities and some types of domestic entity (see Table 4)
- The lack of interaction between the Land Register and registers of legal entities which do exist put a practical barrier in the way of citizens trying to link up available information.

59 Companies House, 2016a:5.

E RESPONSIBILITIES OF LAND-OWNING ENTITIES

- Laws and regulations exist covering environmental standards for agricultural land
- EIA rules require public bodies to take decisions with full knowledge of likely environmental impacts
- Primary legislation about land acknowledges the VGGT guidelines and other relevant human rights
- A Land Rights and Responsibilities Statement exists, but it has no statutory force
- New guidance will be issued around engaging communities in decisions around land, but it will have no statutory force
- A landowner can be charged for offences committed on her land by an employee or agent, but a lack of transparent ownership information has so far limited enforceability

The rationale for increasing transparency of land ownership and control in Scotland has been focused on accountability of those who own, control, manage, use or access land to Scotland's public (as outlined in the introduction).

To hold someone accountable, the responsibilities of that person towards the land need to be well-defined. This section explores land responsibilities as currently defined in Scotland.

WHAT RESPONSIBILITIES ARE IMPOSED ON ENTITIES WHICH OWN AND CONTROL LAND TO CONSIDER ENVIRONMENTAL AND SOCIAL IMPACTS OF THEIR ACTIVITIES?

Laws, regulations, and voluntary guidance regarding environmental and social impacts do exist, though they are not yet comprehensive.

Compared to land rights, which are well-known and legally enforced by the courts, the conversation around land responsibilities in Scotland is relatively young.

Laws and regulations tend to govern a specific activity which takes place on land at a specific moment in time, rather than encompassing ongoing environmental and social responsibilities of land-owners. Guidance tends to encompass these broader principles of land stewardship and use, but lacks statutory standing and enforceability. Below are some key laws, regulations and guidance.

ACTIVELY FARMED LAND

A landowner must meet requirements to farm in a sustainable way in order to access public farming subsidies. Receipt of payments under the Basic Payment Scheme (part of the EU's Common Agricultural Policy) and some other rural payment schemes require 'cross-compliance' with various farming standards. These are:

- Good Environmental and Agricultural Condition (GEAC), covering safeguardings of soils, habitats and landscape features⁶⁰.
- Statutory Management Requirements (SMRs), covering animal welfare, the use of pesticides, wildlife

60 Rural Payments and Services, Good Agricultural and Environmental Conditions (GAECs) 2018, (Scottish Government, 2018)

protection, and water pollution⁶¹.

- “Greening”, covering protection of grassland, crop diversity, and biodiversity areas⁶².

These standards are enforced by inspection. If land is found to be in breach of these standards, public subsidy may be reduced or stopped⁶³.

ENVIRONMENTAL IMPACT ASSESSMENTS (EIAS)

Under a European Directive⁶⁴, translated into Scottish law by various pieces of legislation and regulation, relevant public authorities must take decisions regarding proposals in “full knowledge of the likely significant effects on the environment”⁶⁵. These laws and regulations therefore indirectly cover decisions entities which own or control land make regarding that land, where a relevant authority’s consent is required.

For example, consent (and therefore an EIA) is required where:

- There are proposals involving a motorway or trunk roads
- Proposals involve forestry and agriculture
- Proposals involve marine works

Where a proposal requires planning permission, it is generally the role of the planning authority to decide whether an EIA is required⁶⁶.

EIAs do not apply to ongoing use and management of land where consent is not required from a relevant authority.

RIGHTS OF RESPONSIBLE ACCESS

Under Part 1 of the Land Reform (Scotland) Act 2003, a ‘right of responsible access’ was established across public and privately owned land in Scotland. This legislation (and the Scottish Outdoor Access Code which it created) places responsibility on land-owners to allow access within this framework. Disagreements about access rights may be reconciled in the courts.

WILDLIFE CRIME

Section 24 of the Wildlife and Natural Environment (Scotland) Act 2011 introduces vicarious liability for wildlife crimes. Where an employee or agent of a land owner (such as a gamekeeper) commits an offence under the Act, the ultimate owner of that land (who directly or indirectly employs the offender) can be charged with the same offence. To defend herself against the charge, the owner must demonstrate that she:

- (a) Did not know that the offence was being committed by her employee; and
- (b) “all reasonable steps and exercised all due diligence to prevent the offence being committed”.

Indirectly, this places responsibilities on the landowner for active involvement in the management of their land.

61 Rural Payments and Services, Statutory Management Requirements (SMRs) 2018, (Scottish Government, 2018).

62 Rural Payments and Services, Greening Guidance (2018), (Scottish Government, 2018).

63 Rural Payments and Services, Inspection Outcomes, (Scottish Government, 2015).

64 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

65 Policy Note, The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

66 Scottish Government, EIA Screening, www.gov.scot.

The failure of one vicarious liability prosecution highlights how enforcement of land responsibilities can be dependent on a level of transparency in land ownership which is not currently met in Scotland.

A custodial sentence was handed to a gamekeeper on a Scottish estate for wildlife crimes. A claim for vicarious liability of the owner could not be pursued, because the police had insufficient evidence to proceed, a factor linked to opacity regarding the ultimate ownership of the estate^{67,68}.

LAND RIGHTS AND RESPONSIBILITIES STATEMENT

The Scottish Land Rights and Responsibilities Statement was created under Part 1 of the Land Reform Act (Scotland) 2016. This represents a step forward in the policy framework around the responsibilities of landowners, acknowledging that land responsibilities play an important role in wider Scottish Government goals of “inclusive and sustainable economic growth and social justice”⁶⁹.

However, the statement has no statutory force. At this point in time, aside from in the context of public subsidy, no statutory, enforceable statement of the responsibilities of land-owning and controlling entities exists.

Principles outlined in the statement include (1) a human-rights approach to land rights and responsibilities, (2) promotion of more diversity in land tenure, (3) promotion of community ownership and use of buildings and land, (4) promotion of high standards of sustainable land management and use, (5) improved transparency in use and ownership of land and (6) greater collaboration and community involvement in decisions regarding land⁷⁰.

ENGAGING COMMUNITIES IN DECISIONS AROUND LAND

Part 4 of the Land Reform (Scotland) Act 2016 requires Scottish Ministers to make guidance relating to engaging communities in decisions around land. It also makes provision for the effectiveness of this guidance to be assessed. As with the Rights and Responsibilities Statement (above), the guidance should be underpinned by a respect for human rights. The guidance should also have regard to internationally agreed standards for responsible land practices, including the United Nations' Voluntary Guidelines on the Responsible Governance of Tenure (“VGGT”) guidelines.

As with the Statement, this guidance will have no statutory force. However, there is potential interaction with the forthcoming Part 5 of the Land Reform (Scotland) Act 2016 - introducing a community right to buy for sustainable development. If a community wishes to use these provisions, and they can show that a land owning entity did not comply with the Guidance, they may be better placed to successfully secure the right to buy⁷¹.

The consultation document states that “Lack of regard to the Guidance would not, in and of itself, be sufficient grounds for Scottish Ministers to approve a transfer of land, nor would it be a necessary condition for such a transfer.”⁷² The draft guidance itself does not explicitly mention links to provisions under Part 5 of the 2016 Act. Several consultation responses note this missing link⁷³, and that it will be important to ensure that adherence to

67 Raptor Persecution UK, Police Scotland explain failure of vicarious liability in Kildrummy case, (www.raptorpersecutionscotland.wordpress.com, 2015).

68 Scottish Parliament, Official Report of the Environment, Climate Change and Land Reform Committee 10 January 2017, (Edinburgh: Scottish Parliament, 2017).

69 Scottish Government, Scottish Land Rights and Responsibilities Statement, Edinburgh: (Scottish Government, 2017).

70 Scottish Government, 2017:9.

71 Under s. 56(4) of the 2016 Act.

72 Scottish Government, Guidance on Engaging Communities in Decisions Relating to Land Consultation on Draft Guidance, (consult.gov.uk, 2017).

73 Scottish Government, Guidance on Engaging Communities in Decisions Relating to Land Published Responses, (consult.gov.uk,

the guidance does not in itself 'protect' land-owning entities from the provisions of these new community rights.

2017).

CONCLUSIONS: THE STATE OF TRANSPARENCY IN SCOTLAND

The sections above outline the current state of transparency in land ownership and control in Scotland. Each section highlights strengths and weaknesses in that area.

The Scottish Government has committed to increasing transparency in general, and in the control of land specifically⁷⁴.

Part 3 of the Land Reform (Scotland) Act 2016 represents legislative progress towards this goal, by making provision for a Register of Controlling Interests.

There is a long history of land registration in Scotland and a presumption of public access to information about land ownership.

However, there are some key factors which are compromising land ownership transparency in practice. The main, centralised register of land is incomplete and not integrated with other sources containing information about (for example) legal entities which own land.

There is currently a gap between the desire for a 'publicly accessible' land registry and the reality. Access for citizens to anything other than the most basic information is fragmented, expensive and complicated. The apparatus of land registration is focused on keeping information regarding title to land, rather than on the collection and provision of information to enable citizens to hold decision-makers and those who own or control land to account.

If the provisions in Part 3 of the 2016 Act are implemented within this existing framework, the benefits to transparency risk being limited.

Below is a summary evaluation of Scotland's overall position relative to three criteria for transparency in land ownership and control.

THE INFORMATION NEEDS TO BE COLLECTED AND COLLATED

- A structure exists for centralised information collection, though the register is incomplete, and progress towards completion is slow.
- Legislation exists which enables the collection of information on the beneficial ownership of land.
- Information on domestic legal entities, including some beneficial ownership information, is already collected at the UK level.
- Land registers and registers of legal entities do not 'talk' to each other.

⁷⁴ Scottish Government, A Nation With Ambition: the Government's Programme for Scotland 2017-18, (Edinburgh: Scottish Government, 2017:112)

THE INFORMATION NEEDS TO BE KEPT UP TO DATE

The focus is on keeping information regarding title to land.

- Records provide only a snapshot of information at the time when the title was registered, or last changed. Where land last changed hands before 2012, there is no guarantee that the owner named on the title sheet is the current legal owner.

THE INFORMATION NEEDS TO BE MADE ACCESSIBLE

- There is a principle of public access to information held by public authorities, including information on the Land Register.
- But, the underlying framework for disclosing information about land does not work to promote its transparency: it is expensive and fragmented for a citizen.
- The benefit to transparency of Scotland's legislative progress on requiring beneficial ownership information to be collected risks being limited if this information collection is implemented within the existing, flawed framework.

ANNEX A: FRAMEWORK

For each section of investigation (A-E in Section III of the report) the framework used for this research outlined what 'best practice' might look like, focusing on how transparency in land ownership can support citizens and governments to hold legal entities accountable for decisions they make in relation to land⁷⁵. This 'best practice' (below) is used as the basis for the traffic light coding in the report.

A. LAND REGISTRY STRUCTURE AND INFORMATION COLLECTION

There is no one internationally agreed best practice for land registries. However, in the interest of transparency and collecting information which can be used to identify owners and hold them accountable, countries might have centralized land registries that contain information on the real beneficial owners (foreign and domestic) of all types of land; basic mapping coordinates; and any specific limitations on that land's use.

B. ACCESS TO INFORMATION ON LAND OWNERSHIP AND CONTROL, INCLUDING LONG-TERM LEASES AND CONCESSIONS

For the purpose of enabling communities or governments to hold land owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria.

C. LEGAL ENTITY/ARRANGEMENT REGISTRY AND INFORMATION COLLECTION

All legal entities (national and international) would need to provide information to the government on their beneficial owners; beneficial ownership information would need to be provided before land acquisition; third parties have responsibilities for providing beneficial ownership information, and sanctions and incentives are used to encourage disclosure.

D. ACCESS TO LEGAL ENTITY/ARRANGEMENT REGISTRY INFORMATION

For the purpose of enabling communities or governments to hold beneficial owners accountable, countries might have registries open to the general public without a fee; make registries available online; and searchable by different criteria.

E. RESPONSIBILITIES OF STEWARDSHIP/USE BY ENTITIES WITH OWNERSHIP OR CONTROL

Researchers should consider both required and voluntary actions that land owners are required/encouraged to undertake. Ideally a country would have clear, legally enforced requirements for social and environmental stewardship by land-owners; the second best alternative would be to have national or international guidelines that are promoted by pro-active incentives.

75 C. Pierce et al, 2018

ANNEX B: GLOSSARY OF TERMS

Beneficial owner/person of significant control: The natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates. The term is used to underscore the contrast with the legal or nominee company owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits.

Croft: Crofts exist in the Highlands and Islands of Scotland and are units of agricultural land traditionally used to raise animals and grow vegetables. People who live and work on the croft land are 'crofters'. The croft is not usually their main source of income.

Legal entity: Any entities other than natural persons that have legal capacity to (for example) enter into agreements or contracts, assume obligations or own property. This includes companies, trusts, foundations, partnerships and associations.

Land tenure: Rules of land tenure define how rights of access, use, control and transfer of land are allocated.

Ownership: An entity "owns" land if their tenure is unlimited in duration; they have legal right to exclude outsiders from using their resources (within limits); and they are entitled to due process and compensation in the face of potential extinguishment by the state of some or all of their rights.

Primary legislation, secondary legislation and regulations: Primary legislation refers to Bills and Acts of Parliament. A Bill is a proposed law which is debated in Parliament and scrutinised by committees, before passing into law - if approved - as an Act. Acts often delegate power to the executive (or another agency of government) to make orders, regulations or rules which deal with the requirements of that Act. These orders, regulations or rules are secondary legislation.

Registers of Scotland ("RoS"): The non-ministerial department of the Scottish Government which keeps the Land Register, the Register of Sasines, and several other registers largely related to land and property.

"Reserved" matters vs "devolved" matters: Some areas of decision-making are delegated by the UK Parliament to the Scottish Parliament. These are 'devolved' matters, and include most matters related to land. Other areas of decision-making are retained by the UK Parliament. These are 'reserved' matters, and include many (but not all) matters related to tax.

ANNEX C: INTERVIEWEES

For this research, I spoke to the following people, and am grateful to them for their time and comments.

- Rob Gibson, former MSP and former convenor of the Rural Affairs, Environment and Climate Change Committee
- Graeme Dey, MSP and current convenor of the Environment, Climate and Land Reform Committee
- Andy Wightman, MSP
- Officials at Registers of Scotland
- Officials in the Scottish Government Land Reform team
- Alasdair Reid, senior researcher at the Scottish Parliament Information Centre (SPICe)
- Ian Cooke, director of the Development Trusts Association Scotland (DTAS)
- Linda Gillespie, programme manager at the Community Ownership Support Service (COSS)
- Steve Goodrich, from Transparency International UK
- Megan MacInnes, Land Advisor at Global Witness

