

The Register of Persons Holding a Controlled Interest in Land

Summary

From **1 April 2024** those who are subject to, but have failed to comply with, duties imposed by the Land Reform Scotland (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 (the **Regulations**) could face criminal sanctions. Where a requirement to register in the Register of Persons Holding a Controlled Interest in Land (the **RCI**) arises but is not complied with, the offending party will be at risk of facing financial penalties of up to £5,000.

Criminal sanctions were previously due to be imposed from 1 April 2023, but this was delayed following the impact of the Covid-19 pandemic.

Individuals and organisations impacted by the legislation should familiarise themselves with the requirements and operation of the RCI as soon as possible (and in any event prior to 1 April 2024) in order to ensure that the relevant filings are made (and avoid incurring financial penalties).

Legislative background

The RCI came into effect on 1 April 2022 pursuant to the Regulations. The RCI is a public register showing the true controlling interest in land ownership (which includes leases of over 20 years).

In some instances, it may be the case that the legal owner as shown on the title to property is not in fact the true “controller” of the land. The rationale behind the Regulations (and the introduction of the RCI) is therefore to improve transparency and clarity regarding the true ownership of land and property in Scotland and in relation to the individuals who are making decisions in matters relating to such land and property.

This guide has been produced to familiarise our clients with the effect of the Regulations and the introduction of the RCI, so that those affected by the RCI can take the steps necessary in order to comply with their legal obligations under the Regulations and to avoid being liable for criminal penalties.

Who is a “Recorded person” and “Associate”?

The RCI introduced two new key terms - “Recorded Person” and “Associate”, both of which will be identified in the RCI, to reflect the fact that the Recorded Person may not actually be the person able to exercise control over dealings with the land and that there can be tiers of ownership and control.

- **Recorded Person:** the individual or entity who owns the land (or tenants the land under a long lease) and who is associated with an Associate.

- **Associate:** an individual or entity who has significant influence or control over a Recorded Person’s dealings with the land.

Significant influence is defined in the RCI as a situation whereby “a person is able to ensure that another person will typically adopt the approach that the first person desires”.

Who does this affect?

Any person or entity who owns land or property in Scotland needs to consider whether the provisions of the RCI apply to them and if any Associates need to be declared for registration in the RCI. This is particularly relevant for individuals, trusts, partnerships and overseas entities, who are those most likely to be affected by the introduction of the RCI. There are a number of entities who are exempt from the Regulations for the purpose of being a Recorded Person (see below).

Individuals or entities who are Associates by virtue of the Regulations also have verification and intimation obligations, and while the entities detailed below are out of scope as a Recorded Person, they may still be caught as an Associate of a Recorded Person.

Who is exempt?

Some entities who are already subject to pre-existing transparency regimes are exempt from being treated as a Recorded Person. These include:

- Those who are subject to the Persons with Significant Control Regime, including UK companies, limited liability partnerships, Scottish limited partnerships, European public limited liability companies (*Societas Europaea*) and certain other bodies corporate.

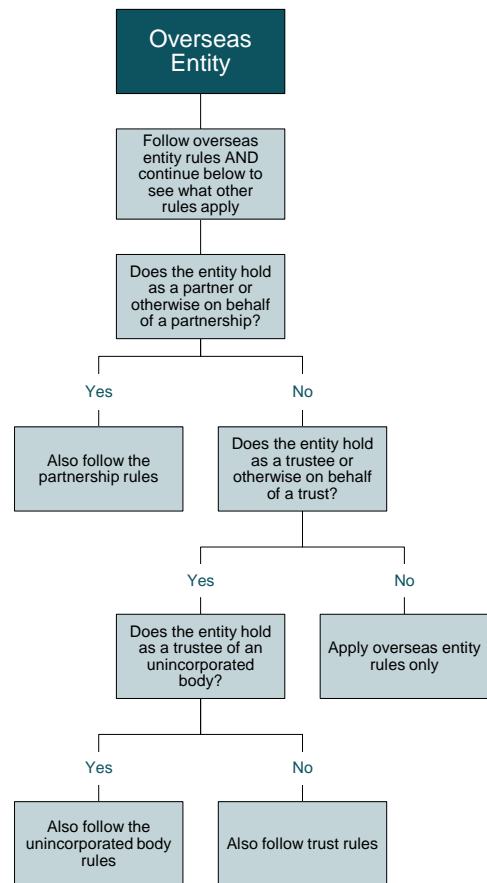
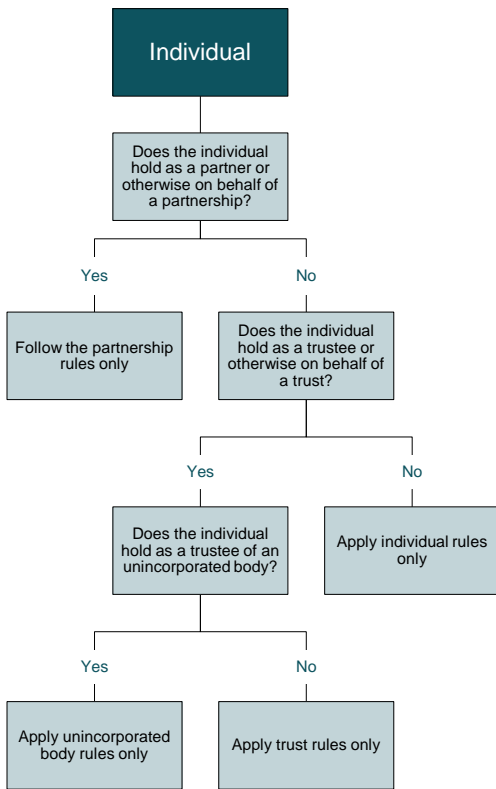
- Certain bodies who have a reporting obligation to the Financial Conduct Authority for publication in the Register of Mutuals.
- Charitable incorporated organisations.
- Public authorities covered by the Freedom of Information Regime.

It is important to note that these entities are **not** excluded from being Associates.

There are also provisions allowing for an Associate to apply for a Security Declaration, where inclusion of information in the RCI about them would put them at risk from violence or abuse, or from the threat of violence or abuse.

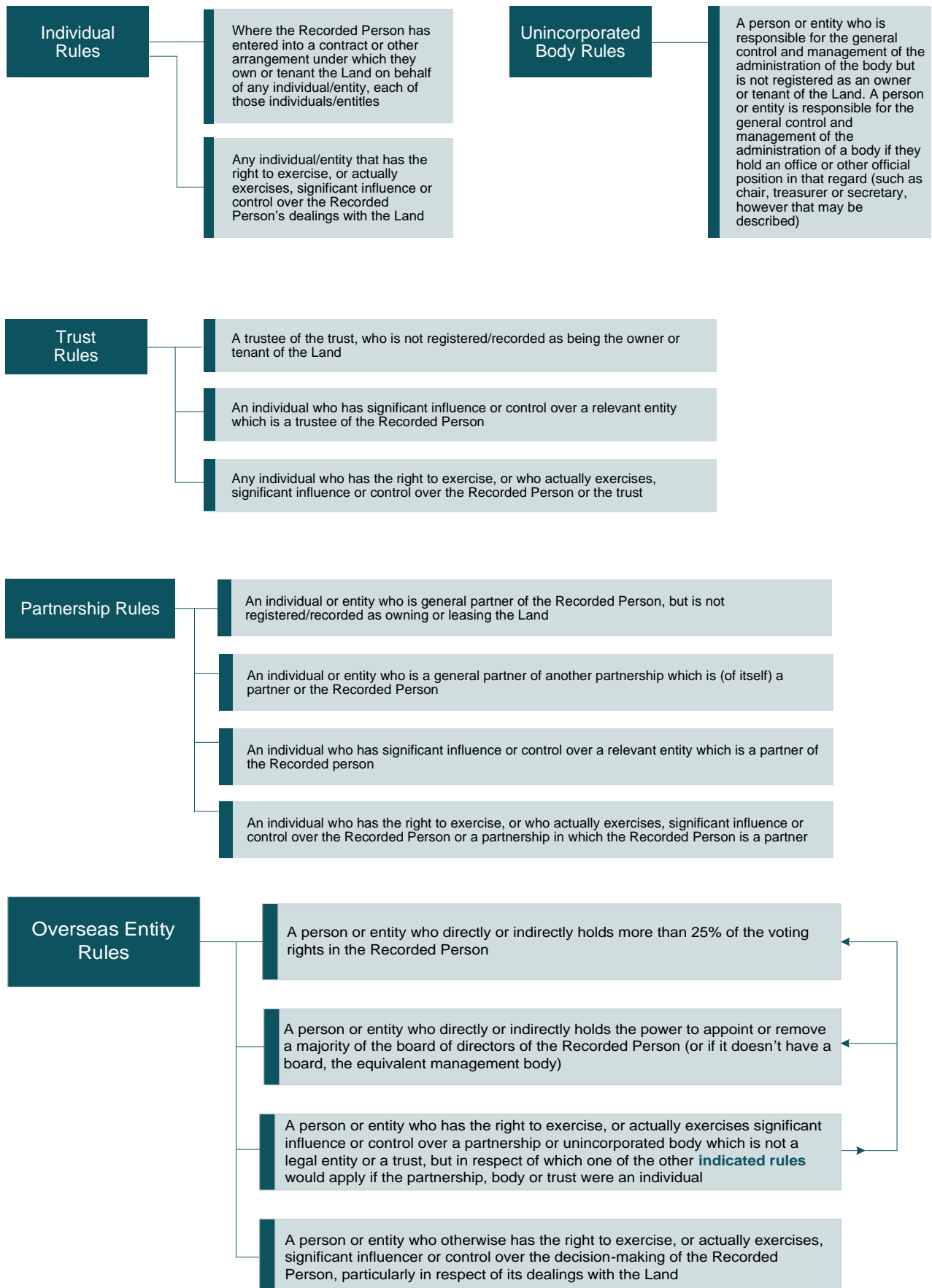
How does a landowner who is in scope of the Regulations work out who their Associates are?

Step one - an in-scope landowner should follow the flowchart below to see which set of rules apply*:



*In the unusual case of the title being held in the name of a non-exempt Scottish general partnership itself (rather than in the name of individuals as partners or trustees) apply the partnership rules only

Step two – the landowner should then apply each set of rules they have identified as applying to establish whether they have any Associates. They may have no Associates, one or many. Below is a summary of what each set of rules contains but reference should be made to the Regulations themselves for full details (including specific exemptions).



How do I know if I am an Associate?

If, as an individual or entity, you have a contractual or other relationship with a landowner (who is not exempt from the Regulations), that amounts to significant influence and control in terms of the rules outlined above, then you would be an Associate. Some key things to look out for which may indicate that you are an Associate:

1. Where you have controlling voting rights in an entity who owns land in Scotland.
2. Where you are a fellow trustee or partner of a trust or partnership who owns land in Scotland.
3. Where you have significant influence or control over an entity that owns land in Scotland by virtue of their corporate structure.
4. Where you have entered into a contract or arrangement with an individual or entity that owns land in Scotland which amounts to significant influence or control. Examples here could include purchase missives, option agreements and development agreements, depending on their terms.

What happens if you don't comply?

Non-compliance with the Regulations for both a Recorded Person and an Associate will be a **criminal offence** and will carry a fine up to £5,000. There is a 24 month "grace period" until 1 April 2024 during which no penalties will apply in respect of a failure to make a submission or a failure to make a submission within the timescales imposed by the Regulations.

We should also highlight that there are ongoing obligations on both the Recorded Person and their Associates to ensure that the RCI is up-to-date (including notification obligations when a person is no longer an Associate or Recorded Person or where there is a change in their details). Breaches of these obligations will also result in criminal penalties.

Practical points to note

The RCI is fully accessible by the public both for making submissions and for searching. Solicitors are able to make submissions on behalf of their clients, when instructed to do so.

A Recorded Person has initial and ongoing obligations to make submissions to the RCI (usually with a 60 day time limit).

Whilst an Associate has no obligations to make submissions directly to the RCI, they do have obligations to verify information, obligations to notify the Recorded Person that they are an Associate (if the Recorded Person fails to make a submission to this effect to the RCI on time) and obligations to intimate to the Recorded Person if their details change or if they are no longer an Associate.

What needs to be provided?

The Recorded Persons needs to provide certain information to Registers of Scotland and the Associate

has obligations to provide/verify this information to the Recorded Person.

What does a Recorded Person need to provide?

- Name and address;
- Details of the land;
- Details of the capacity in which the Recorded Person holds the land e.g. as a tenant or owner; and
- Registered number (companies only).

What does an Associate need to provide?

- Date on which the association was formed (or "unknown" if that is the case);
- Registered office or contact address;
- Registered number (companies only);
- Date of birth (individuals only); and
- Name and contact address.

If either the Recorded Person or the Associate is already in the RCI, they will already have a unique reference and that reference will require to be provided on all subsequent submissions.

General Comments

Landowners, individuals and businesses all need to be aware of these new Regulations which were effective from 1 April 2022. Whilst there is a grace period of 24 months before criminal penalties will apply, impacted organisations and individuals should familiarise themselves with the requirements and operation of the RCI.

This document is for general purposes and guidance only and does not constitute legal or professional advice and should not be relied on. For legal advice, please contact your main contact at CMS or one of the contacts below.

Who to contact



Mike McColl

Partner

T +44 141 304 6029

E mike.mccoll@cms-cmno.com



Karla Ritchie

Associate

T +44 1224 261997

E karla.ritchie@cms-cmno.com



Elaine Piggot

Professional Support Lawyer

T +44 131 200 7386

E elaine.piggot@cms-cmno.com