Improving transparency in land ownership in Scotland: 
a consultation on controlling interests in land

Response by the Council of Mortgage Lenders 
to the Scottish Government

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 139 members currently hold around 97% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets. CML members use legal professionals in the course of their mortgage business.

2. We welcome the opportunity to respond to this consultation. This response has been prepared by the CML on behalf of its members. We are restricting our comments to the elements of the paper that relate to residential mortgage lenders.

Executive Summary

3. We welcome the Scottish Government’s intention to bring greater transparency of land ownership in Scotland to improve accountability of land owners and tenants, but if inadequately addressed, the proposals could disproportionately burden current and future property owners in Scotland.

4. We suggest the development of comprehensive guidance to assist land owners and interested parties implement their obligations under the proposals. The Scottish Government should recognise the diversity of affected stakeholders and their varying level of knowledge.

Consultation Questions

Question 1: Do you have any comments about making information about persons with controlling interests in owners and tenants of land available?

5. We agree with the proposals to improve transparency of land ownership in Scotland however we require more information in order to understand how they may impact the conveyancing process. Additional steps in the conveyancing process may increase delays and costs to consumers.

6. Any new procedures and related costs should be proportionate to the aim of improving interactions between land users, those wishing to purchase land and those providing finance, including mortgage lenders, without unduly burdening them.

Question 2: In your view, taking in to consideration the contents of this chapter and the associated annex C, what are the key considerations that Scottish Ministers should take in to account in defining a controlling interest or persons with controlling interests in land owners and tenants for the purposes of these regulations?

7. It seems likely that ‘controlling interest’ will be defined by reference to those persons who have control of decision making in relation to the property and who benefit financially from the property. It seems likely that mortgage lenders taking enforcement action might fall within the definition.

8. Additional obligations on lenders to provide information for properties which, for example, become subject to possession proceedings, would ultimately increase the cost to the borrower and may have a negative impact on the conveyancing process by causing delay.
9. If the duty to disclose applies to persons who already have a controlling interest at the time when the regulations come into force, lenders might be required to provide information in respect of all properties which are at that time the subject of possession proceedings or a decree for repossession.

10. We propose that if necessary, mortgage lenders should be specifically excluded from the definition of a person with a controlling interest and/or from the obligation to disclose a controlling interest.

Question 3: In your opinion, should the regulations apply to all types and uses of land?

11. We agree that the regulations should apply to all types and uses of land as defined by the Land Register and there should be no exemptions.

Question 7: In your opinion, should the regulations also apply where the proprietor of land that is not recorded in the Register of Sasines or registered in the Land Register because either:

   I. The property was acquired prior to the Register of Sasines commencing in 1617; or
   II. They have acquired a personal right to property but have not yet registered the deed in their favour in the Land Register?

12. Yes, we agree however there should only be an obligation to record the data when a person becomes a person with a controlling interest after the regulations come into force to avoid unnecessary burden.

Question 8: In your opinion, should the regulations apply where a tenant in a high value lease that is not a long lease (a lease of 20 years or fewer) falls within the definition of persons with controlling interests in land owners and tenants?

13. Yes, we agree if a tenant has a ‘controlling interest’ as defined by the regulations.

Question 11: In your opinion, should a new register of persons with controlling interests in land owners and tenants be created?

14. We believe that creating a new register would increase the burden on stakeholders and generally on conveyancing transactions by creating an additional step in the process.

15. In order to help ease the burden on stakeholders, a suitable electronic system should be implemented to improve efficiencies for those having to register data, and help ensure information is accurately filed and retained. We would suggest including these proposals in the ScotLIS project.

Question 14: In your view, in addition to the names of persons with controlling interests in land owners and tenants should other information about them be disclosed?

16. The aim of the proposals is to improve transparency and allow persons with controlling interests to be identified in order to facilitate communication when issues arise with the property. Contact details of the persons with controlling interests should be available on the register otherwise the aim of proposals would not be achieved.

17. The information detailed on the PSC register appears to go beyond the aim of the current proposals and would place unnecessary burden on those that must register data.

Question 17: In your view, should information about the nature and extent of a person’s controlling interest be disclosed?

18. No, we do not agree that information about the nature and extent of a person’s controlling interest should be disclosed. It is unclear as to how this would be relevant or beneficial to the aims of the proposals. There are also commercial sensitivities which must be considered.
Question 18: In your view, should the nature and extent of a person's controlling interest be disclosed on a public register?

19. No, see paragraph 18.

Question 27: In your view, should a duty to provide information about persons with controlling interests in land owners and tenants apply to land owners and tenants with titles in the Land Register or Register of Sasines and:

I. Land owners and tenants where the property was acquired prior to the Register of Sasines commencing in 1617;
II. Land owners or tenants who have acquired a personal right to property, but have not yet registered the deed in their favour in the Land Register; or
III. Tenants in a high value lease that is not a long lease (a lease of 20 years or fewer)?

20. Yes, we agree. To ensure that any register of persons with a controlling interest in land is credible it is important that there are suitable requirements to submit and maintain this information at appropriate times.

21. Whilst we agree that there should be a duty to keep the relevant information up to date, there should not, for example, be a mandatory annual review.

Question 31: In your view, should a duty to provide information apply to the person with the controlling interest?

22. Yes. There may be instances where the proprietor is unaware of changes to persons with controlling interests and we would suggest that the Scottish Government considers a requirement for persons with controlling interests to notify the proprietor and the owner of the register with appropriate penalties for non-compliance.

Question 42: In your view, should the duty to disclose information about any person with a controlling interest in a land owner or tenant apply either when a person is a person with a controlling interest in a land owner or tenant when the regulations come into force, or becomes a person with a controlling interest in a land owner or tenant when the regulations are in force?

23. We do not think that the duty to disclose information should apply when the regulations come into force, but when a person becomes a person with a controlling interest after the regulations come into force. This should reduce the burden on those that must disclose the information.

Question 47: In your view, should an application for land registration be rejected if the applicant fails to supply information about any person with controlling interest?

24. No. This would cause delay to the conveyancing process which would have an adverse affect on consumers and lenders who will view it negatively if there is a delay in protecting their interest.

Question 48: In your view, should an application for land registration be rejected if the applicant fails to certify that no such person with controlling interest exists?

25. No. This would cause delay to the conveyancing process which would have an adverse affect on consumers and lenders who will view it negatively if there is a delay in protecting their interest.

Question 49: In your view, taking in to consideration all of the sanctions and enforcement options set out in this chapter, what mechanisms would be most appropriate to enforce the duty to provide information? Please explain your answer.

26. We do not agree that failure to provide the required information should prevent the legal owner selling the land. The decision not to provide the required information may not ultimately be that of the legal owner and it is unreasonable to punish the legal owner and potential lenders for this.
27. Preventing a new owner from registering a title would also be detrimental to lenders as their interest would not be able to be protected. Lenders may become reluctant to lend if there is fear that there may be restrictions in registering and protecting their interest.

**Question 50: In your view, are there instances in which there should be exemptions?**

28. We propose that if necessary, mortgage lenders should be specifically excluded from the definition of a person with a controlling interest and/or from the obligation to disclose a controlling interest.

29. Any increase in the costs, complexity or delays in the residential conveyancing process caused by the new regulations would of course have an adverse effect on consumers.

**Question 54: Please tell us about any potential costs and burdens that may arise as a result of the proposals within this consultation, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.**

30. The issues which may have potential impacts on the conveyancing process:

   a) Lenders would look to their panel solicitors to ensure that any new conveyancing procedures were complied with, including any appropriate disclosure on completion of a purchase or in advance of a mortgage.

   b) Lenders are likely to be concerned about changes which might affect the priority and enforceability of mortgages/standard securities; again they would look to their panel solicitors to ensure that there was no risk to their security.

December 2016.