



The Scottish Parliament
Pàrlamaid na h-Alba
Delegated Powers and Law Reform Committee

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Via email

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Dear Cabinet Secretary

Land Reform (Scotland) Bill

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday, 18 June, and agreed to write to you to ask the following questions in relation to various delegated powers contained in the Bill.

1. Section 1(4) inserting section 44A into the Land Reform (Scotland) Act 2016 - Power to impose obligations on the owner of land

The Committee asks the Scottish Government whether it has considered including a requirement for a statutory consultation with stakeholders prior to making regulations under this power similar to the requirement to consult the Land and Communities Commissioner?

2. Section 1(4) inserting section 44M into the Land Reform (Scotland) Act 2016 - Power to modify community-engagement obligations for owners of large land holdings

The part of the power that permits the modification of the land to which the community land obligations apply is wide. It does not define any criteria or limitations upon its exercise and there is little detail in the DPM on why the power is necessary or how it will be exercised. Regulations made under this provision could substantially alter the land to which community responsibility obligations apply with no consultation requirement, despite the significance of the obligations to be imposed on landowners, who are also subject to penalties for failure to comply with the obligations. Modifications made under these regulations could represent a significant policy change and amend primary legislation.

As such, the Committee asks the Scottish Government:

- a) To provide further detail on why the power to modify the land to which the obligations would apply is deemed necessary?
- b) Why is this power to modify not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised?
- c) In what circumstances does the Scottish Government propose to use this power to modify and to what extent? How does the Scottish Government intend to assess Article 1 Protocol 1 (ECHR): Protection of Property (“A1P1”) compliance in the exercise of the power?
- d) Given the potential significant impact on landowners of any modification to the land to which the obligations would apply, has the Scottish Government considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power to modify the land? Further, has consideration been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power?
- e) Given this power is significant, why does the Scottish Government consider it appropriate to change the land to which the obligations would apply by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power?

3. Section 2(4) inserting section 46L into the Land Reform (Scotland) Act 2003 - Power to modify the extended opportunity to register interest in relation to large land holdings

The power is wide. It permits the modification of the land to which the prohibition will apply and the length of the prohibition without defining any criteria or limitations upon its exercise. There is little detail in the DPM on why the power is necessary or how it will be exercised. The exercise of this power could have a significant impact on landowners and creditors. It could lengthen the period of prohibition creating further delays to the sale or transfer of land. It could also result in more landowners being subject to a prohibition if the power is used to widen the definition of land in new section 46K. Further there is no consultation requirement on the face of the Bill despite the significance of the prohibition on landowners and creditors. Modifications made under these regulations could represent a substantial policy change and amend primary legislation.

As such, the Committee asks the Scottish Government:

- a) To provide further detail why the power to modify the length of the prohibition and the land to which the prohibition would apply is deemed necessary?
- b) Why is this power to modify not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?
- c) In what circumstances does the Scottish Government propose to use this power to modify and to what extent? How does the Scottish Government intend to assess A1P1 compliance in the exercise of the power?
- d) Given the potential significant impact on landowners and creditors of any modification to the land and the length of the prohibition, has the Scottish Government considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power? Further, has consideration been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power?
- e) Given this power is significant, why does the Scottish Government consider it appropriate to modify the land and the length of the prohibition by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power?

4. Section 4(2) inserting section 67S(6) into Land Reform (Scotland) Act 2003 – Power to make further provision about buying land under section 67P, including about how land is to be valued

The Committee asks the Scottish Government whether it has given any consideration to including a statutory consultation requirement with stakeholders and the Land and Communities Commissioner prior to making regulations under this power?

5. Section 4(2) inserting section 67V(4) into Land Reform (Scotland) Act 2003 to make further provision about compensation.

The Committee asks the Scottish Government:

- a) Whether it has considered that the power to make further provision about how the compensation payable is to be determined is more suitable to the affirmative procedure in order that the Parliament may have a sufficient degree of scrutiny over what is being proposed given the impact on landowners, creditors and the public purse?

- b) Whether it has given any consideration to including a statutory consultation requirement with stakeholders and the Land and Communities Commissioner prior to making regulations under this power?

6. Section 4(2) inserting section 67Y into the Land Reform (Scotland) Act 2003 to modify various provisions

The power is wide. It permits the modification of what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision without defining any criteria or limitations to be placed upon its exercise and with little detail on why the power is necessary or how it will be exercised.

This power permits the modification of several central definitions and integral aspects of this part of the Bill through regulations. The result is that regulations could be made which alter these definitions and could mean that lotting decisions could be applied to a different range of landowners and creditors who are not currently captured by the Bill's provisions. Such regulations could have a significant impact on landowners and creditors by widening those affected by the lotting decisions and narrowing those affected by exemptions; by creating further delays to the sale or transfer of land as well as widening the pool for compensation or for land purchases. Further there is no consultation requirement despite the significance that any modifications could have on landowners and creditors. Modifications made under these regulations could represent a substantial policy change and amend primary legislation.

As such, the Committee asks the Scottish Government:

- a) For further details on why the power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision, is deemed necessary?
- b) Why is this power to modify not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?
- c) In what circumstances does the Scottish Government propose to use this power to modify and to what extent? How does the Scottish Government intend to assess A1P1 compliance in the exercise of the power?
- d) Given the potential significant impact on landowners and creditors of any modifications, has the Scottish Government considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power to modify these various provisions? Further, has consideration been given to including a requirement to lay consultation documents

or reports on any consultation carried out alongside regulations made under this power?

- e) Given the impact of this power is potentially significant, why does the Scottish Government consider it appropriate to modify these provisions by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power?

7. Schedule: paragraph 40(4) Assessment of compensation

The power is described as providing further detail, however, there is little detail on the face of the Bill as to how compensation is to be assessed by a valuer. There is no detail provided as to what a valuer is and is not to consider, although, there is some specification in relation to other aspects of the Bill. The power does provide some level of protection as it limits its exercise to making modifications to specify certain matters only, so the power cannot be exercised more widely than that. However, the decision on how compensation is to be calculated is being left to further policy development at a later date.

The DPM states that the Scottish Government considers it very important that how compensation is calculated is clearly set out and that it is appropriate that the level of “further detail” required is set out in subordinate legislation. However, the type of provision to be made in regulations by this power is not clear from the information in the DPM, as all the detail is to be left to subsequent regulations. The power is also discretionary, in that the Scottish Ministers “may” make regulations.

As such, the Committee asks the Scottish Government:

- a) If it considered making provision on the face of the Bill in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision being made by this power on those involved in the compensation claims?
- b) What policy development and discussion with stakeholders has taken place to date on what these provisions may include?
- c) Given the potential significant impact on stakeholders involved in compensation claims, has the Scottish Government considered including a requirement to consult with stakeholders before exercising this power?
- d) Given the importance of clarity for valuers and those making claims for compensation, what consideration has the Scottish Government given to making this power an obligation on Ministers to specify these matters, rather than an option to do so?

8. Schedule: paragraph 49(5): Transfers not requiring notice

The power, as currently drafted, is wide in that it permits modification of all sub-paragraphs in paragraph 49 of the schedule without any consultation taking place. It is permitting the amendment of primary legislation which could significantly affect the interests of landlords and creditors as it will change the types of transfers that will give rise to a pre-emptive right to buy. This could be considered to be an integral provision in this part of the Bill and the power has the ability to effect significant policy changes to how a pre-emptive right to buy is engaged.

Further, despite the references to consideration of stakeholder views in relation to the exercise of this power, there is no consultation requirement before exercising the power and no requirement to lay any consultation documents before the Parliament to allow consideration of those views.

As such, the Committee asks the Scottish Government:

- a) For further detail on why this power is considered necessary?
- b) What policy development and discussion with stakeholders has taken place to date on what these provisions may include?
- c) Given the potential significant impact on stakeholders, has it considered including a requirement to consult with stakeholders before exercising this power?
- d) Why is this power not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?

9. Schedule: paragraph 50(7): Right to Buy

The DPM says very little about why this power is necessary. As currently drafted, the power is wide in scope in that it permits modification of sub-paragraphs 50(3) and 50(4) in the schedule without any consultation taking place. It is permitting the amendment of primary legislation which could significantly affect the interests of landlords and creditors as it could change the circumstances which give rise to a pre-emptive right to buy. This could be considered to be an integral provision in this part of the Bill and the power has the ability to effect significant policy changes to how a pre-emptive right to buy is engaged.

Further, despite the references to consideration of stakeholder views in relation to the exercise of this power, there is no consultation requirement before exercising the power and no requirement to lay any consultation documents before the Parliament to allow consideration of those views.

As such, the Committee asks the Scottish Government:

- a) For further detail on why this power is considered necessary?
- b) What policy development and discussion with stakeholders has taken place to date on what these provisions may include?
- c) Given the potential significant impact on stakeholders, has the Scottish Government considered including a requirement to consult with stakeholders before exercising this power?
- d) Why is the power not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised, for example, to add or remove matters from the list?

10. Schedule: paragraph 59: Registration of small landholder's interest: power to modify provisions; and

Section 10: Registration of interest and right to buy

The above powers are wide and permit the amendment of primary legislation which could significantly affect the interests of landlords and third parties who may acquire the land. They could be exercised in a manner that change the circumstances where an interest is registered.

The Bill does not specify any aspect of the process of registering an interest in land. It only provides non-exhaustive lists of some things which may be done through regulations. While it is not expected that the full detail of how to register an interest would appear on the face of the Bill, there is little to indicate at this stage what that may look like and operate and there is no explanation as to why the power requires to be so wide, being able to modify several paragraphs of the schedule. The result could be very significant policy changes being made to the Bill over time through subordinate legislation with potentially significant real-life consequences. Given how widely the power is currently drafted it could be exercised in any number of ways which may not be anticipated by the Parliament at this time.

As such, the Committee asks the Scottish Government:

- a) If it considered making some provision and detail about the registration process on the face of the Bill in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision being made by these powers on landlords and third parties?
- b) What policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- c) Whether consideration has been given to applying a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under these powers?
- d) Why are these powers not more narrowly drafted to allow the Parliament to understand how the powers are likely to be exercised?

11. Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act; and

Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 4(5), schedule 2 to the 2003 Act

The DPM says very little about why these powers are considered necessary. How resumed land is valued, and what is and is not to be considered when calculating that, can have significant consequences for landowners, bears directly on the interests of the parties to the lease and can be expected to affect the amount of compensation payable.

What valuers are to consider when making these calculations is outlined on the face of the Bill so parties to the leases can see how that will be calculated. However, changes to that through subordinate legislation can have significant consequences for those involved with the regulations also being able to effect significant policy changes in how these calculations are carried out and there is no requirement to consult with valuers, or anyone else involved in this process.

As such, the Committee asks the Scottish Government:

- a) For further detail on the necessity of these powers?
- b) How it is anticipated that these powers will be exercised?
- c) What policy development and discussion with stakeholders has taken place to date on what these provisions may include?
- d) Given the potential significant impact on stakeholders, has the Scottish Government considered including a requirement to consult with stakeholders before exercising these powers?
- e) Why are these powers not more narrowly drafted to allow the Parliament to understand how they are likely to be exercised?

12. Section 14: Compensation for improvements – section 73(1A) and 3(A)

The Committee asks the Scottish Government for further detail as to why it considers the negative procedure to be appropriate in this instance given it is permitting the

amendment of primary legislation and whether the affirmative procedure would afford a better level of parliamentary scrutiny?

I would be grateful if you could please email your response to the questions above to: dplr.committee@parliament.scot, by **Friday, 9 August**.

Finally, given the breadth and number of questions being asking on the delegated powers in the Bill, the Committee would also like to invite you to give evidence at its meeting on **Tuesday, 10 September**. That session will provide the Committee with the opportunity to discuss your response, and to ask any further questions.

Yours sincerely

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with a long tail on the 't'.

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee