The Long Leases (Scotland) Bill is based on the recommendations for reform made by the Scottish Law Commission in 2006 and was introduced in the Scottish Parliament on 12 January 2012, having first been the subject of an online consultation by the Scottish Government in March 2010. An earlier version of the Bill was introduced in Session 3 of the Parliament but fell at the dissolution of Parliament.

Stage 3 proceedings on the Bill are scheduled for 28 June 2012. This briefing summarises the key proposals in the Bill and considers some of the issues raised during Stage 1 and 2 of the Bill.
CONTENTS

INTRODUCTION AND BACKGROUND 3
KEY PROPOSALS IN THE BILL 4
ISSUES ASSOCIATED WITH THE BILL AT STAGE 1 AND STAGE 2 4
SOURCES 10
RELATED BRIEFINGS 16
INTRODUCTION AND BACKGROUND

The Long Leases (Scotland) Bill (plus accompanying documents) (“the Bill”) was introduced in the Scottish Parliament on 12 January 2012 by Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and Environment. The Bill is based on recommendations of the Scottish Law Commission (‘SLC’) in its Report on Conversion of Long Leases (SLC 2006). An earlier version of the Bill was introduced in Session 3 of the Parliament but fell at the dissolution of Parliament.

The Parliament’s Rural Affairs, Climate Change and Environment Committee was designated the lead committee for the parliamentary consideration of the Bill. Its Stage 1 Report (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012e) was published on 26 March 2012. The Bill completed Stage 1 (consideration of the general principles) with the Stage 1 debate on 25 April 2012. The Scottish Government (2012a) published a written response to the Stage 1 Report on 19 April 2012.

Stage 2 consideration of the Bill took place on 16 May 2012; thereafter the Bill (as amended at Stage 2) was published, along with Revised Explanatory Notes.

Stage 3 proceedings on the Bill are scheduled for 28 June 2012. The Scottish Government (2012b) recently wrote to the Convener of the Rural Affairs, Climate Change and Environment Committee, responding to various points raised at Stage 2 of the Bill.

Key dates in the Parliament’s consideration of the Bill are set out in Table 1 below:

Table 1: Summary of parliamentary consideration

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill introduced</td>
<td>12 January 2012</td>
</tr>
<tr>
<td>Stage 1: Rural Affairs, Climate Change and Environment Committee evidence sessions</td>
<td>8 February, 22 February, 29 February, 7 March 2012</td>
</tr>
<tr>
<td>Stage 1: Finance Committee</td>
<td>25 January 2012</td>
</tr>
<tr>
<td>Stage 1: Subordinate Legislation Committee</td>
<td>7 February 2012</td>
</tr>
<tr>
<td>Stage 1: Rural Affairs, Climate Change and Environment Committee’s report published</td>
<td>26 March 2012</td>
</tr>
<tr>
<td>Stage 1: Plenary Debate</td>
<td>25 April 2012</td>
</tr>
<tr>
<td>Stage 2: Rural Affairs, Climate Change and Environment Committee</td>
<td>16 May 2012</td>
</tr>
</tbody>
</table>

The remainder of this briefing provides a summary of the key proposals in the Bill and consideration (in table format) of some of the issues arising during both Stage 1 and Stage 2 consideration of the Bill. The briefing does not seek to outline all of the issues raised or all of the changes made at Stage 2.

An earlier SPICe Briefing entitled Long Leases (Scotland) Bill (Harvie-Clark 2012a) provides information and analysis associated with the Bill as introduced.
KEY PROPOSALS IN THE BILL

The main policy rationale for the current Bill is that a tenant’s right under an ‘ultra-long lease’ is akin to a right of ownership and so the Bill provides for such a right to be automatically converted to a right of ownership on an appointed day, with compensation for the former landlord.

In the Bill as amended at Stage 2, an ultra-long lease (or a ‘qualifying lease’ as it is referred to in the Bill) is defined as a registered lease of over 175 years which has a) more than 100 years left to run, in the case of a lease of residential property; or b) more than 175 years left to run, in any other case (section 1).

Section 1(4) of the Bill exempts various types of leases from the scope of the conversion scheme, including leases where the annual rent payable under the lease is more than £100. This exemption is designed to exclude leases of property on commercial terms. If it is not clear from the lease itself that the annual rent is over £100, section 64 of the Bill allows leases to be exempted by agreement or following an order made by the Lands Tribunal. This provision was added following evidence taken on the Session 3 version of the Bill and reflects that annual rental may be variable.

In another change to the version of the Bill introduced in Session 3 of the Parliament, there is also an exemption where the leased subjects include a harbour (either wholly or partly) in relation to which there is a harbour authority. Leases granted for the sole purpose of allowing the tenant to install pipes and cables and leases relating to the right to extract minerals are also excluded (section 1(4)).

Compensatory payments for a former landlord are based on the annual rent payable under the ultra-long lease in question. Additional payments to the former landlords are also payable in some circumstances (Part 4).

ISSUES ASSOCIATED WITH THE BILL AT STAGE 1 AND STAGE 2

Table 2 below outlines the policy issues associated with the Bill which received attention at Stages 1 and 2.
Table 2: Issues at Stage 1 and Stage 2

<table>
<thead>
<tr>
<th>Issue</th>
<th>The Bill as introduced</th>
<th>The Rural Affairs, Climate Change and Environment Committee’s recommendations and the Scottish Government’s response</th>
<th>Stage 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common good (see below regarding Waverley Market)</td>
<td>Like the version of the Bill introduced in Session 3, the Bill contains no specific provisions relating to common good land and property. However, one of the policy issues associated with the Bill which has attracted the most attention is the extent to which common good land and property will be affected by the conversion scheme for ultra-long leases contained in the Bill and, if it is affected, whether this is desirable in policy terms. The common good is a fund of money and assets owned and administered by a Scottish local authority in respect of a former burgh within the area of that local authority. The common good is subject to a range of statutory controls.</td>
<td>In its Stage 1 Report, the Committee stated that it did not think that the case for exempting ultra-long leases of common good land and property from the scope of the conversion scheme in the Bill had been made; however it also stated “neither is the case against this exemption a clear and compelling one”. Following the recommendation of the former Justice Committee in relation to the Session 3 version of the Bill, the Committee recommended that any compensation or additional payments received by local councils on the conversion of ultra-long leases of common good should be directed to the relevant common good funds (Scottish Parliament Rural Affairs, Climate Change and Environment)</td>
<td>Amendment 9, in the name of Jim Hume MSP, aimed to exclude ultra-long leases of common good land and property from the scope of the Bill. This amendment was disagreed to (by division).</td>
</tr>
</tbody>
</table>
All thirty-two local authorities in Scotland were asked to provide information to the Scottish Government regarding any ultra-long leases of common good land and property in the area. The information provided suggested that there are nine ultra-long leases of common good land and property in Scotland (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012e, para 94). In the Policy Memorandum to the Bill (at para 51) the Scottish Government states that if the Bill is passed by Parliament the Scottish Government will write to local councils recommending that any compensatory or additional payments received by local authorities as a result of ultra-long leases of common good land and property converting into ownership should be allocated to local authorities’ common good funds or accounts.

In its response to the Stage 1 Report, the Scottish Government stated that it did not support an exemption for ultra-long leases of common good land and property for a number of reasons, including a lack of evidence of an adverse impact on the former landlords in question (i.e. the councils) (Scottish Government 2012a, para 20).

A lot of the debate associated

| Committee 2012e, paras 127 and 134). |
| In its response to the Stage 1 Report, the Scottish Government stated that it did not support an exemption for ultra-long leases of common good land and property for a number of reasons, including a lack of evidence of an adverse impact on the former landlords in question (i.e. the councils) (Scottish Government 2012a, para 20). |
| The purpose of amendments 1 |

1Three have been identified in Glasgow, one in Edinburgh, one in Aberdeenshire, three in Dumfries and Galloway and one in South Ayrshire. The City of Edinburgh Council has never included the ultra-long lease of the Waverley Market site in their total as, during both Sessions 3 and 4 of Parliament, the Council took the view that the lease was not part of the Council’s common good fund. The Council’s historical approach to the site was raised during evidence sessions on the Bill. See, for example, Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012c, paras 638 – 639 and 657.
| Waverley Market | with the Bill has focused on the former Waverley Market site in Edinburgh (now the site of the Princes Mall Shopping Centre). Whether this site was part of Edinburgh’s common good fund was a matter of considerable debate during the evidence sessions on the Bill. However, in the version of the Bill as introduced, the ultra-long lease of this site appeared to satisfy the criteria for a qualifying lease set out in section 1 of the Bill, meaning that (without amendment to the Bill) ownership of the Waverley Market site would have passed from the City of Edinburgh Council to the current owner of the tenant’s interest under the lease (a private company) on the appointed day. exemption for the Waverley Market site (separate from any general exemption for common good) the Committee stated “the case…has still to be made” (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012e, para 158). In its response to the Stage 1 Report the Scottish Government stated it was not for it to reach a view on whether Waverley Market was part of the common good. It also noted the Committee’s comments on an exemption for Waverley Market without adding further comment (Scottish Government 2012a, paras 22 and 23). Amendments 1 and 2 (which were Scottish Government amendments) was to alter the definition of ‘qualifying lease’ for the purposes of the conversion scheme. The original definition contained in the Bill as introduced had not made a distinction between residential leases and other types of leases. Amendments 1 and 2 proposed such a distinction, increasing the required unexpired duration of a ‘qualifying’ ultra-long lease from 100 to 175 years in relation to all leases other than leases of residential property. An important effect of amendments 1 and 2 was to exclude the ultra-long lease associated with the Waverley Market from the scope of the conversion scheme contained in the Bill (Stockwell 2012). Amendments 1 and 2 were agreed to without division. |
| Registration issues | The Land Registration etc. (Scotland) Bill was passed by the Parliament on 31 May 2012, with one of its main policy objectives being the updating of land registration. Several witnesses who gave evidence on the Long Leases Bill expressed concern that a specific updating project associated with | No relevant amendments at Stage 2. |
the completion of the Land Register of Scotland so that accurate information about all land and property in Scotland appears on this public register.

If the Long Leases Bill is passed, then to be consistent with the principle of public land registration, the information about land ownership held by the Registers of Scotland (RoS) (in either the Land Register or the old ‘Register of Sasines’) requires to be amended at some stage after the appointed day. This is to reflect the changes of ownership resulting from the conversion of former tenants’ interest in qualifying ultra-long leases to outright ownership.

The former tenant can either do this in advance of a transaction affecting his or her property (e.g. a sale), in which case he or she will bear the costs of the update. Alternatively, he or she could wait until the registration or recording which forms the final step of the conveyancing process associated with the aforementioned transaction, in which case RoS will bear the costs of the update.

In relation to the Session 3 version of the Bill the intention the Bill would not be carried out by RoS. In its Stage 1 Report the Committee requested that the Scottish Government respond to the concerns expressed to the Committee in advance of consideration of the Bill at Stage 2 (Scottish Parliament Rural Affairs, Climate Change and Environment Committee 2012e, para 84).

In its response to the Stage 1 Report, the Scottish Government made a number of points in relation to this issue. These included that it was not necessary for the Land Register of Scotland to be updated for the Bill to work, due to the provision for automatic conversion on the appointed day contained in section 4 of the Bill (Scottish Government 2012a, para 10).

The Scottish Government also suggested that its proposed approach to updating “helps to smooth the workload over time” (Scottish Government 2012a, para 13).

Finally, the Scottish Government stated that both it and RoS recognise the value of keeping the Land Register as up to date as possible and “will take every
was that RoS would carry out a bespoke updating project associated with the Bill in respect of ultra-long leases registered in the Land Register (but not those recorded in the old Register of Sasines). However, the Financial Memorandum to the current Bill states that RoS has decided not to carry out this specific updating exercise (para 308).

reasonable opportunity” to achieve this aim. Officials in the Scottish Government are to work closely with RoS on implementing the Bill (Scottish Government 2012a, para 15).
SOURCES


Harvie-Clark, S. (2011b) *Land Registration etc. (Scotland) Bill*. SPICe Briefing 11-88. Edinburgh: Scottish Parliament. Available at:


Harvie-Clark, S. (2012b) *Land Registration etc. (Scotland) Bill: Stage 3*. SPICe Briefing 12-35. Edinburgh: Scottish Parliament. Available at:


*Long Leases (Scotland) Bill*. Session 3 (2010). Available at:

http://www.scottish.parliament.uk/parliamentarybusiness/Bills/22395.aspx

*Long Leases (Scotland) Bill*. Session 4(2012). Available at:

http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45695.aspx


http://www.scottish.parliament.uk/S4_Bills/Long%20Leases%20(Scotland)%20Bill/b7as4-stage2-amend.pdf


http://www.scottish.parliament.uk/S4_Bills/Long%20Leases%20(Scotland)%20Bill/b7as4-stage2-en-rev.pdf


http://www.scottish.parliament.uk/S4_Bills/Long%20Leases%20(Scotland)%20Bill/_as_introduced.pdf


THIS PAGE IS INTENTIONALLY BLANK.
RELATED BRIEFINGS

Long Leases (Scotland) Bill

Land Registration etc. (Scotland) Bill

Land Registration etc. (Scotland) Bill: Stage 3

Long Leases (Scotland) Bill (This briefing relates to the version of the Bill introduced in Stage 3 of the Parliament which fell at the dissolution of Parliament)

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Sarah Harvie-Clark on extension 85356 or email sarah.harvie-clark@scottish.parliament.uk.

Members of the public or external organisations may comment on this briefing by emailing us at spice@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament’s Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk