Long Leases (Scotland) Bill

Bill Number: SP Bill 7
 Introduced on: 12 January 2012
Introduced by: Richard Lochhead MSP
Passed: 28 June 2012
Royal Assent: 7 August 2012

Passage of the Bill
The Long Leases (Scotland) Bill [SP Bill 7] was introduced in the Scottish Parliament on 12 January 2012 and the Rural Affairs, Climate Change and Environment Committee was designated as the lead committee.

Stage 1 oral evidence on the general principles of the Bill was taken in February and March 2012 with the Stage 1 debate taking place on 25 April 2012. The Bill was passed following the Stage 3 parliamentary debate on 28 June 2012.

The Bill was the same bill, with some amendments, as the Long Leases (Scotland) Bill (SP Bill 61) introduced on 10 November 2010 in Session 3 of the Parliament and which fell at the dissolution of Parliament (see the separate bill summary for the Session 3 bill). In taking Stage 1 oral evidence the Rural Affairs, Climate Change and Environment Committee agreed to take account of the evidence taken by the former Justice Committee and its Stage 1 Report on the Session 3 bill.

Purpose and objectives of the Bill
The purpose of the Bill was to convert tenants’ rights under very long leases into ownership and, in so doing, implement the recommendations of a report of the Scottish Law Commission (SLC) on long leases. It was the final part of a series of recent legislative reforms to the system of property law in Scotland based on reports published by the SLC.

Provisions of the Bill
The automatic conversion scheme under the Bill applied to ‘qualifying’ long leases (see below under ‘Stage 2’ for more details). As well as the conversion scheme, the other key feature of the Bill was the compensation scheme for former landlords relating to the loss of their rights of ownership on the appointed day (Part 4).

The Bill also made provision for the tenant’s right to opt-out of the conversion scheme for qualifying long leases (Part 5). Additionally, the Bill made provision for other exceptions relating to the scope of the conversion scheme (see, for example, section 1(4) which includes an exception for long leases where the annual rent is more than £100 and an exception for long leases relating to pipes and cables).

Finally, the Bill sought to give opportunities to former landlords to preserve sporting rights associated with qualifying leases (sections 8–9) and made provision for a framework for the conversion of certain conditions in a qualifying lease to real burdens (Part 2). A real burden is a form of title condition affecting land which survives changes of ownership of the affected land. The Bill provided for the leasehold conditions converted to real burdens to be enforceable by various parties, including, in some instances, neighbours to the former tenants.

Parliamentary consideration

Stage 1

The Rural Affairs, Climate Change and Environment Committee supported the general principles of the Bill in its Stage 1 Report.

One of the main issues considered in the Stage 1 Report was the extent to which land and buildings forming part of the common good fund may be affected by the conversion scheme for ultra-long leases contained in the Bill and, if affected, whether this is desirable in policy terms. Ultimately 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 had been made.

Much of the debate at Stage 1 focused on the 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, on which the Committee did not think it was appropriate to comment. The Committee considered whether a specific exemption should be included in this Bill relating to the site and decided the case still had to be made for such an exemption.

The Committee also considered the Bill’s relationship with the Land Registration etc. (Scotland) Bill (see the separate bill summary associated with this bill). The Committee asked the Scottish Government to respond to concerns expressed that there was not a specific project to update the property registers as a result of the provisions in the Bill. The Government did
this in its response to the Stage 1 Report, making a number of points in support of its approach.

**Stage 2**

A non-Government amendment with the aim of excluding ultra-long leases of common good land and property from the scope of the Bill was lodged at stage 2. However, this amendment was disagreed to.

Scottish Government amendments which amended the definition of a ‘qualifying lease’ for the purpose of the conversion scheme were agreed to. A ‘qualifying lease’ became 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). An important effect of these amendments was to exclude the ultra-long lease associated with Waverley Market from the scope of the conversion scheme contained in the Bill.

**Stage 3**

As at Stage 2, a non-Government amendment aimed to exclude ultra-long leases of common good land and property from the scope of the Bill. This amendment was disagreed to.

Sarah Harvie-Clark
Senior Researcher
Justice and Social Affairs Research Unit