26 March 2015

Dear Rob

At the Committee meeting on 4 March, I offered to write to the Committee to confirm two points. These are addressed below.

Your first query related to the discussions about an amendment, which was agreed to by the Committee, which means that the Scottish Land Court will have 8 weeks rather than 4 to issue its written statement of reasons in response to an appeal under the crofting community right to buy. The amendment also provides that, where the Land Court considers it will not be able to meet that 8 week timescale, it will be able to set a new date by which it will issue its written statement of reasons. During that discussion you asked whether or not the Land Court has the capacity to cope with any appeals that may arise in relation to the crofting community right to buy.

I have been in contact with the Land Court on the question of whether or not they have enough members of the bench to cope with the work in hand. Whether the Court will need more members to allow it to deal timeously with appeals or references under the provisions of the Land Reform (Scotland) Act 2003 (“2003 Act”) as amended by the Community Empowerment (Scotland) Bill will very much depend on how many appeals there are.

Since the 2003 Act came into force, the Land Court has dealt with only one reference in relation to the crofting community right to buy under section 81 of the 2003 Act (Scottish Ministers v Pairc Trust Ltd and Others 2007 SLCR 166) and there have been no appeals to the Land Court about valuations for the crofting community right to buy under section 92.

The Land Court keep their workload under review and, whilst appointing new members to the Land Court could take a minimum of 6 months, they would have no hesitation in asking for more resources if they were needed.
Secondly, an amendment was agreed at Committee on 4 March to exclude certain separate tenements from the definition of “registrable land” for the purposes of the community right to buy in Part 2 of the Land Reform (Scotland) Act 2003. Mr Russell asked me to update the Committee with a list of the types of separate tenements that exist in Scotland.

There are two types of separate tenements in Scotland: legal separate tenements and conventional separate tenements.

Legal separate tenements include rights to salmon fishings, rights to gather mussels and oysters, rights to port and ferry, rights to hold fairs and markets, rights to mine minerals (gold, silver, petroleum, natural gas and coal), rights to “teinds” (which relates to the rights of churches to parts of land), and rights to unclaimed wrecks. Conventional separate tenements arise expressly in conveyancing transactions, and include rights to minerals and individual tenement flats.

Therefore, the effect of the amendment is that all separate tenements are excluded from the right to buy in Part 2, with the exception of the rights to salmon fishing and rights to minerals (other than rights to oil, gas, gold or silver).

I hope that answers your queries in full.

With kindest regards

AILEEN MCLEOD