Written evidence from the Scottish Government Bill team

STAGE 1 CONSIDERATION OF THE LONG LEASES (SCOTLAND) BILL

I attach a submission. This covers the following points:

- Changes to the Bill following the report by the Justice Committee on the previous Bill.
- Other changes from the previous Bill.
- Areas where a decision was taken not to amend the Bill.

Changes to the Bill following the report by the Justice Committee

Leases where the landlord retains a significant interest

1. The previous Bill excluded leases where the annual rental exceeded £100. Paragraph 91 of the Justice Committee’s report said: “The Committee draws the Minister’s attention to the issue of variable rent and the arguments made in favour of this being taken account of when setting the criteria for the exemption”. Variable rental might apply if, for example, rental is based on the turnover of the business leasing the property.

2. The current Bill still has an exemption for leases where the annual rental exceeds £100 (see section 1(4)(a) as read with section 2). Variable rental is not taken into account when considering if this exemption applies (see section 2(5)). However, the Bill now contains a provision (section 64) which allows the landlord to register an exemption if the annual rental in the 5 years before the Bill receives Royal Assent exceeds £100. This is designed to take account of variable rental.

Pipes and cables

3. Paragraph 104 of the Justice Committee’s report said on pipes and cables: “Given that this is a legally complex area, the Committee again welcomes the Minister’s commitment to further consider the evidence received and to seek to reach agreement on the way ahead”. The exemption (at section 1(4)(c)) has been retained and clarified. The Government considers it best to include the exemption to put the matter beyond doubt.

Harbours

4. The Justice Committee received written evidence on behalf of Peterhead Port Authority and the Government subsequently discussed the issues with those representing Peterhead Port Authority and other bodies representing ports. The particular point at Peterhead is that the south
breakwater has been leased for 999 years and converting it to ownership could impact adversely on the operation of the harbour.

5. Section 1(4)(b) now has an exemption where “the subjects of the lease include a harbour (either wholly or partly) in relation to which there is a harbour authority”. (“Harbour” and “harbour authority” are then defined in section 80).

Point raised by the Subordinate Legislation Committee: section 22 of the current Bill

6. Paragraphs 129 and 130 of the Justice Committee report noted a point raised by the Subordinate Legislation Committee on section 21 of the previous Bill, which related to applications to the Lands Tribunal. This is section 22 of the current Bill. Section 22 does not now contain provision allowing Ministers to prescribe a time period for opposing an application to the Lands Tribunal.

Other changes from the previous Bill (not as a direct consequence of comments by the Justice Committee).

Cumulo rental

7. Cumulo rent is a single rent payable in relation to two or more leases. Cumulo rent is not covered by the exemption at section 1(4)(a) for leases where the rental is over £100 (see section 2(3)). However, section 39 of the Bill now makes provision for cumulo rent to be allocated before the appointed day. When such allocation takes place and the annual rental for an individual lease is over £100, the landlord can then register an exemption under section 64

Section 70: the appointed day

8. The definition now just refers to Martinmas only, rather than Whitsunday as well.

Section 73: Extinction of right of irritancy in certain leases.

9. This no longer commences on Royal Assent.

Section 76: Keeper’s duty as regards documents

10. Minor amendments have been made to section 76 to reflect that some of the provisions of the Bill relate to notices and some to agreements. Consequential changes have also been made (see section 76(5)) to reflect new sections 64 and 69.
Section 78: Certain documents registrable despite initial rejection

11. Provision has been added to reflect the new section 64.

Schedule: minor and consequential amendments

12. Amendments to the Land Registration (Scotland) Act 1979 have been removed. The Land Registration (Scotland) Bill is currently going through Parliament and the Government expects to have to make consequential amendments to the Long Leases (Scotland) Bill at Stage 2.

Updating of the Land Register

13. This is not an amendment to the text of the Bill. However, Registers of Scotland has decided not to carry out a specific exercise to update the Land Register to reflect the conversion of ultra-long leases to ownership under the Bill.

Areas where the Bill has not been amended.

Common good

14. Paragraphs 60 and 61 of the Justice Committee’s Stage 1 report said: “In the case of disposal of a common good asset, it is the strong view of the Committee that the compensation received should be paid back in to the local authority’s common good land. The desirability for certainty from this legislation and the provisions for compensation provided in the Bill have led the Committee to conclude that it is not persuaded, at this time, that there is a compelling case for exempting leases of common good property from this Bill”.

15. No amendments have been made to the Bill. However, we have written to local authorities indicating that if the Bill should be passed by Parliament, we would intend to write again to authorities. This further letter would suggest that any compensatory or additional payments paid to local authorities as a result of ultra-long leases of common good funds converting to ownership should be allocated to common good funds or accounts.

Non-exclusive leases over private access roads

16. Paragraph 107 of the Justice Committee’s report said: “The Committee notes again that the Minister has undertaken to explore this issue further with the SRPBA and looks forward to hearing back from the Scottish Government in due course”. The Bill has not been amended. The Government considers that arrangements of this nature are not covered by the Bill as generally there has to be exclusive possession for a lease to exist.
Section 78: certain documents registrable despite initial rejection

17. This was section 75. Paragraphs 135 and 136 of the Justice Committee’s report said: “section 75(5) provides that the Scottish Ministers can by order specify a cut-off date after which notices and agreements cannot be registered. The Committee notes the recommendation of the Subordinate Legislation Committee that the Scottish Government should give further consideration to amending the Bill to prescribe the date or period on the face of the Bill. The Committee draws this to the attention of the Minister.”

18. The Bill has not been amended. The Government considers it preferable to lay down these dates or periods by SSI rather than on the face of the Bill as laying them down by SSI would enable the Government to consult on what provision should be made.

Justice Directorate
Scottish Government

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