Delegated Powers and Law Reform Committee

Land Reform (Scotland) Bill as amended at Stage 2
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The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.

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Committee Membership

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<th>Deputy Convener</th>
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<td>Nigel Don</td>
<td>John Mason</td>
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Introduction

1. At its meeting on 10 March 2016 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Land Reform (Scotland) Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. This Bill was introduced by the Cabinet Secretary for Rural Affairs, Food & Environment on 22 June 2015. It is a large, multi-strand Bill which makes wide-ranging provision about land and agricultural holdings. It takes forward a number of recommendations made in the report of the Land Reform Review Group, published in May 2014. Part 10 of the Bill concerning agricultural holdings takes forward recommendations of the Agricultural Holdings Legislation Review Group, which published its final report in January 2015.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill².

4. The Committee previously reported on the delegated powers provisions in this Bill at Stage 1 in its 58th report of 2015³.
Delegated Powers and Law Reform Committee
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Delegated Powers Provisions

4. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

5. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the following new or substantially amended delegated powers provisions:

   • Section 25 – Tenant Farming Commissioner: codes of practice

   • Section 35A(2)(b) – inserting new section 7(4) of the Land Registration (Scotland) Act 2012 (“the 2012 Act”) – meaning of “a person of significant control”

   • Section 35A(2)(b) – inserting new section 7(5) of the 2012 Act – exceptional circumstances where information not to be included in title sheet

   • Section 35A(2)(b) – inserting new section 7(8) of the 2012 Act – time period for notification of name and designation of a person of significant control

   • Section 35A(2)(b) – inserting new section 7(10) of the 2012 Act – time period for notification of changed name and designation of a person of significant control

   • Section 36(2) – Power of Keeper to request information relating to proprietors of land etc.

   • Section 37 – Guidance on engaging communities in decisions relating to land

   • Section 79H(2) – inserting new section 59A into the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”)

   • Section 81(2) – inserting new section 38N into the 2003 Act – Sale to tenant or third party where landlord in breach of order or award

   • Section 82(3) – inserting new Schedule 1A, paragraph 8 into the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) and section 83(3) inserting new section 9B(3) into the 2003 Act – determination of rent – productive capacity

   • Section 82(3) – inserting new Schedule 1A, paragraph 9 into the 1991 Act and section 83(3) inserting new section 9C(6) into the 2003 Act - standard labour requirement

   • Section 89A – inserting new Part 3A of the 1991 Act – section 32D(1) – form and content of notice of intention to relinquish
- Section 89A – inserting new Part 3A of the 1991 Act – section 32G(3)(b) – appointment of valuer by Tenant Farming Commissioner

- Section 89A – inserting new Part 3A of the 1991 Act – section 32P(8) – landlord’s acceptance of notice of intention to relinquish

- Section 89B – inserting new section 74A of the 1991 Act – application of Part 3A of the 1991 Act
Recommendations

6. The Committee’s comments and recommendations on the remaining new delegated power in the Bill are as follows:

**Section 89A - New Part 3A of the 1991 Act – section 32B(1) – New entrants to farming and persons progressing in farming**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<td>Power exercisable by:</td>
<td>regulations</td>
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<td>Parliamentary procedure:</td>
<td>negative</td>
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<td>New or revised power:</td>
<td>new</td>
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**Provision**

7. The process of relinquishment as set out in the new Part 3A of the 1991 Act will enable the existing tenant of a 1991 Act tenancy to relinquish the tenancy to the landlord on payment of compensation if the landlord accepts the tenant’s notice of intention to relinquish. The landlord is not required to accept the notice of intention to relinquish and if this happens, the tenant may assign the tenancy to a person who is a new entrant to farming or who is a person who is progressing in farming. New section 32B of the 1991 Act provides that the Scottish Ministers may by regulations make further provision about the individuals who are new entrants to, or who are progressing in farming. This power is subject to the negative procedure.

**Comment**

8. The SDPM indicates that the Scottish Government considers that the negative procedure represents the appropriate level of parliamentary scrutiny over this power because the power cannot be used to modify or amend primary legislation. The Committee does not consider that the fact that a power does not permit the modification of primary legislation automatically means that the negative procedure represents the appropriate level of parliamentary scrutiny. The SDPM also explains that the negative procedure is appropriate on the basis that new section 5B of the 2003 Act as inserted by section 74(3) of the Bill permits the Scottish Ministers to make provision about new entrants to farming in connection with break clauses in the new modern limited duration tenancies, provision for which is included in Chapter 1 of Part 10 of the Bill.

9. The Committee considers that the present power, which permits the Scottish Ministers to make provision about new entrants to farming as well as persons progressing in farming, falls to be distinguished from the power in new section 5B of the 2003 Act for two main reasons.
10. Firstly, the Committee considers that the power in new section 32B(1) of the 1991 Act is wider than the power in new section 5B of the 2003 Act, in that it permits provision to be made in regulations about “persons progressing in farming” as well as new entrants. The power in new section 5B of the 2003 Act permits further provision to be made about new entrants only. The SDPM indicates that there is a significant level of debate among stakeholders as to the manner in which a person progressing in farming is to be defined. The Committee accordingly considers that the Parliament may wish to have a more active role in the scrutiny of the regulations made in exercise of this power than is provided for under the negative procedure.

11. Secondly, the Committee considers that this power falls to be distinguished from the power in new section 5B of the 2003 Act because of the implications that exercising the power could have for parties to existing 1991 Act tenancies. Defining the class of persons to whom a 1991 Act tenancy may be assigned where the landlord does not accept a tenant’s notice of intention to relinquish is central to the scope and application of the new process set out in Part 3A of the 1991 Act. The regulations made in exercise of this power are fundamental to the new policy regarding relinquishment which itself represents a significant change in the law which is capable of affecting existing 1991 Act tenancies and the parties to them. The Committee considers that this is different to the situation pertaining to modern limited duration tenancies, which are a new type of tenancy created by the Bill. Including a break clause in such a tenancy where the tenant is a new entrant will not affect the rights and obligations of parties in pre-existing contractual relationships. On this basis, the Committee is not persuaded that the fact that a similar power to define new entrants exists in respect of the new modern limited duration tenancies of itself supports the choice of negative procedure for the exercise of this power.

12. The Committee considers, for these reasons, that the Parliament may wish to have a more active role in the scrutiny of the regulations made in exercise of this power than is provided for under the negative procedure.

13. The Committee accordingly draws the power in new section 32B(1) of the Agricultural Holdings (Scotland) Act 1991, as inserted by section 89A of the Bill, to the attention of the Parliament on the basis that the Committee considers that the power would be more appropriately subject to the affirmative procedure.
Land Reform (Scotland) Bill as amended at Stage 2, 25th Report, 2016 (Session 4)

1 Land Reform (Scotland) Bill, as amended at Stage 2 (SP Bill 76A, Session 4 (2016)) is available at the following website:
http://www.scottish.parliament.uk/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBill76AS042016.pdf [accessed March 2016]

2 Land Reform (Scotland) Bill. Supplementary Delegated Powers Memorandum (SP Bill 76A-DPM, Session 4 (2016)) is available at the following website:
http://www.scottish.parliament.uk/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBill76ADPMS042016.pdf [accessed March 2016]

3 Delegated Powers and Law Reform Committee. 58th Report, 2015 (Session 4). Land Reform (Scotland) Bill at Stage 1 (SP Paper 807) is available at the following website: