Long Leases (Scotland) Bill

Bill Number: SP Bill 61
Introduced on: 10 November 2010
Introduced by: Kenneth MacAskill (Executive Bill)
Fell: 22 March 2011

Passage of the Bill

The Long Leases (Scotland) Bill [SP Bill 61] was introduced in the Parliament on 10 November 2010. Stage 1 commenced on 18 January 2011 with the Justice Committee as the lead committee. A Stage 1 report was published by that Committee on 3 March 201. However, the Stage 1 (general principles) debate did not take place and the Bill fell at the dissolution of Parliament.

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. If the Bill had successfully completed its parliamentary passage it would have been 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. Broadly speaking, a ‘qualifying’ long lease was defined as a registered lease of over 175 years which had more than 100 years left to run (section 1). 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 3).

The Bill also made provision for the tenant’s right to opt-out of the conversion scheme for qualifying long leases (Part 4). 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 (section 7) and would have created 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**

The report of the Justice Committee recommended approval of the general principles of the Bill. However, its report also highlighted a number of issues which had arisen during consideration of the Bill at Stage 1.

One of the main issues which the Justice Committee had to consider was whether long leases of common good property should be exempted from the scope of the Bill. The common good is a fund of money and assets owned and administered by each Scottish local authority in respect of each former burgh within the area of that local authority. In many council areas, it consists of a substantial portfolio of land, buildings, other assets and investments. The Committee ultimately was not persuaded by the arguments advanced in favour of such an exemption but noted its disappointment that there was still not an accurate and complete record of common good property in Scotland.

The Committee also had to consider a number of issues relating to the scope of the exemption for leases where the annual rent was £100 or more (section 1(4)). This exemption was intended to exclude from the scope of the Bill leases which were negotiated on commercial terms. However, some stakeholders argued that the exemption was not wide enough to serve this purpose. In its report the Committee welcomed the Scottish Government’s undertaking to consider the scope of this particular exemption again.

The Committee also had to consider the scope of the exemption relating to pipes and cables, as again, some stakeholders felt the scope of the exemption was not wide enough. In its report the Committee welcomed the Scottish Government’s undertaking to consider the evidence received at Stage 1 and to seek to reach agreement with stakeholders on the way forward.

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