



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 17 March 2020

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
8th Meeting 2020, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

Finlay Carson (Galloway and West Dumfries) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Angus MacDonald (Falkirk East) (SNP)

Mark Ruskell (Mid Scotland and Fife) (Green)

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mairi Gougeon (Minister for Rural Affairs and the Natural Environment)

Fiona Harrison (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 17 March 2020

[The Convener opened the meeting at 09:31]

Subordinate Legislation

Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020 [Draft]

The Convener (Gillian Martin): Welcome to the Environment, Climate Change and Land Reform Committee's eighth meeting of 2020. I remind everyone to switch off mobile phones, as they may affect the broadcasting system.

We have apologies from Mark Ruskell, Stewart Stevenson, Finlay Carson and Annie Wells.

Agenda item 1 is to take evidence on the draft regulations providing a right to buy land to further sustainable development. I welcome the Minister for Rural Affairs and the Natural Environment, Mairi Gougeon. The minister is joined by the Scottish Government officials Fiona Harrison, deputy director, sustainable land use and rural policy, and Chris Bierley, land reform policy officer.

The minister will make an opening statement.

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): Before I do, I should say that our Scottish Government legal directorate representative, Julia Burgham Pearson, cannot be with us today in the light of the health advice given yesterday. If there are any technical or legal points, she is watching and we can phone her if necessary. I hope that we will be able to answer most of the committee's questions.

The Convener: Thank you.

Mairi Gougeon: The regulations, if approved by the committee, are part of a package of instruments that will bring into force and implement part 5 of the Land Reform (Scotland) Act 2016, which provides for the new right to buy to further sustainable development. The regulations will come into force on 26 April. They will give local, place-based communities a new power to seek to acquire land to support sustainable development to benefit the local community and the wider public interest. Where land is purchased, a community may also seek to acquire a tenant's interest in the land

As with part 3A of the Land Reform (Scotland) Act 2003—on the community right to buy land that is abandoned, neglected or detrimental—where an application is successful the new power is a compulsory purchase power. Unlike part 3A of the 2003 act, which is dependent on the state of the land, part 5 of the 2016 act is focused on the needs of the local community, whether they be economic, social or environmental. The sustainable development conditions against which an application will be assessed are clearly set out in the 2016 act.

The affirmative regulations that are before you deal with certain matters to do with the implementation of part 5, such as the types of land to be excluded from part 5, the definitions of community areas and the prohibition during the application process.

The Scottish Government consultation on the regulations ran from 26 June 2019 to 19 September 2019. It was a largely technical consultation and focused on bringing into force and implementing part 5. Perhaps because of its technical nature, there were only 20 responses to the consultation. Those responses reflected a range of views on land reform issues, not all of them in agreement. However we were pleased that, for all but one of the questions, at least 50 per cent of respondents supported the Scottish Government's proposals.

In making the regulations, which create a process by which a compulsory purchase power may be acquired by communities, we have at all times recognised the need to balance private and public interests. For example, there are important safeguards to protect from the right to buy process any land on which there is a home and land that is necessary for the life of the home in its fullest social as well as utilitarian sense.

The regulations and the 2016 act describe a process in which the Scottish ministers can exercise a reasonable amount of discretion, and in which all who are involved, whether landowner, community body, tenant or other party, can make their case.

I reiterate an important point that was made in the recent letter to the committee from the Cabinet Secretary for Environment, Climate Change and Land Reform. In many areas, the regulations and the issues that were raised by stakeholders are bound by the provisions of the Land Reform (Scotland) Act 2016 and, in the case of land that is held by the Crown or a Government department, the current devolution settlement. We simply do not have the legislative competence to amend them. However, the regulations represent a full use of the powers that we have available and will ensure that communities have another important

tool at their disposal to unlock the full potential of the land that they live and work on.

The Convener: Thank you. You mentioned the letter that came from the cabinet secretary, which we found very helpful and comprehensive. It answered a lot of our questions. Members will recall that we considered the instrument on 3 March and then wrote to the cabinet secretary. Her very full response is included in the committee papers for anyone who wants to look at it.

We have questions on some minor points. First, we want to look at the concept of sustainable development. What is your view on whether that concept is well understood and adequately defined? Looking ahead, do you think that it can be addressed and nailed down in the guidance that goes out to people?

Mairi Gougeon: Although the regulations do not elaborate on sustainable development, it is an understood term that has been used in previous legislation. I echo the comments on the matter that the committee heard in its previous evidence session. I know that a few of the stakeholders who were there said that it is probably more helpful not to have a specific definition of sustainable development, so that we do not box it in and exclude certain things that we would not necessarily want to exclude.

We have experience in using the term “sustainable development” from other pieces of legislation, so we have no particular concerns about the way in which it is expressed in the regulations.

The Convener: I guess that we do not want to put people off applying because they think that they will not conform to a certain definition.

Mairi Gougeon: Absolutely. The real fear is that we might exclude things that we would not necessarily want to exclude. It is therefore important that we look at each individual application on a case-by-case basis.

The Convener: Thank you.

Claudia Beamish (South Scotland) (Lab): Good morning to you, minister, and to those who are accompanying you.

I will ask about defining the term “community”, which is always a challenge. During the previous parliamentary session, I was on the committee that scrutinised the Land Reform (Scotland) Act 2016. That certainly was a challenge.

When we had the stakeholder session on 3 March, I asked a question about communities of interest, and I have reflected as much as I can on the answers that were given then and also on the cabinet secretary’s letter. What the cabinet secretary says under the heading “Specified types

of area for defining a community” is very helpful. She says:

“the definition of community is one of a local, place based community.”

I found it particularly heartening that she went on to say:

“In many areas of Scotland, communities can have a deficit of power in relation to land.”

To be absolutely clear, I do not find it heartening because communities have a deficit of power but because there is a recognition of the challenge. In that context, do you think that defining a community only as a place-based community is the right decision?

Mairi Gougeon: I think so. A positive aspect of the regulations is that a third party, such as a business or other organisation, could take forward a sustainable development on behalf of a local community. I think that that covers those issues. As much as communities can take forward a sustainable development on their own behalf, a third party will be able to do so for them. Therefore, I think that we strike the right balance in the regulations.

Angus MacDonald (Falkirk East) (SNP): Good morning, minister. Like the convener, I am broadly content with the cabinet secretary’s response to the committee’s letter. It addressed a number of concerns that were raised in the evidence session earlier this month. Can you tell us whether the Scottish Government has a sufficiently rigorous and transparent process for assessing whether a community body’s application will further sustainable development?

Mairi Gougeon: I believe that we do. As I said earlier, the regulations strike the right balance. If a compulsory purchase under the right to buy is to proceed, we want to make sure as far as possible that the process will be a success for the local community and it will be able to deliver sustainable development.

The tests in the regulations are quite rigorous because they need to be, and a number of safeguards are also built into the process. Whether you are a landowner, a tenant, or the community itself, there are numerous points in that process for raising questions, as well as numerous rights to appeal. The regulations clearly set out the tests that have to be met for someone to proceed, as well as including the safeguards.

Angus MacDonald: Thank you.

Claudia Beamish: In a recent evidence session, it was pointed out that community capacity can sometimes be an issue. Calum MacLeod of Community Land Scotland also talked about the importance of taking control of land and

other assets as a possible means of creating jobs, housing and services in remote and rural areas.

Will extensive guidance be provided to communities and to landowners in relation to the application and execution of the right-to-buy process? The new process has not been passed yet, but I know that that is sometimes hard for some communities, because land reform legislation can be onerous and many of those involved are volunteers.

Mairi Gougeon: Absolutely, and that is where I think that it is important that people have support through that process.

Fiona Harrison (Scottish Government): The community land team will develop guidance. There is a lot of guidance on the website on the existing right to buy and the team tries to help people through the process by answering questions. There are of course organisations such as Community Land Scotland to help. The process is onerous because it leads to a compulsory purchase, but we do everything to try to support communities through the process to ensure that they are making a strong application and following all due process.

Claudia Beamish: Thank you. That is helpful. How will the guidance be developed, and when is it likely to be available? I have put you on the spot there.

Fiona Harrison: Other events might mean that things do not happen quite as quickly as we thought. We are already thinking about the development of the guidance and we will certainly be talking to organisations such as Community Land Scotland. It is in everybody's interests to make sure that the guidance meets their needs. I would not like to commit to a date when the guidance will be online, given the other things that are going on in the world. We will be doing everything we can to ensure that it is there as soon as possible.

Mairi Gougeon: I will be happy to keep the committee updated on that as we progress.

The Convener: As no one has any further questions for the minister, we will move to the next item. I invite the minister to move the motion.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020 [draft] be approved.—[*Mairi Gougeon*]

The Convener: Are there any other comments?

Claudia Beamish: Very briefly convener, I welcome the regulations. They are important for rural communities.

Motion agreed to.

09:44

Meeting suspended.

09:46

On resuming—

Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020 (SSI 2020/21)

The Convener: As there are no comments on the regulations, do we agree that the committee does not want to make any recommendations in relation to the regulations?

Members indicated agreement.

The Convener: That concludes the committee's business in public, so we now move into private session. I ask that the public gallery be cleared.

09:46

Meeting continued in private until 10:02.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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