



The Scottish Parliament
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Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 16 May 2012

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
14th Meeting 2012, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Graeme Dey (Angus South) (SNP)
Alex Fergusson (Galloway and West Dumfries) (Con)
*Jim Hume (South Scotland) (LD)
*Richard Lyle (Central Scotland) (SNP)
*Margaret McDougall (West Scotland) (Lab)
*Dennis Robertson (Aberdeenshire West) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stewart Stevenson (Minister for Environment and Climate Change)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 4

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 16 May 2012

[The Convener opened the meeting at 10:00]

Long Leases (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Good morning, everybody. Welcome to the 14th meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off mobile phones and BlackBerrys as leaving them in flight mode or on silent will affect the broadcasting system. We have apologies from Alex Fergusson. [*Interruption.*] It sounds like somebody will have to switch off their phone.

Agenda item 1 is stage 2 proceedings on the Long Leases (Scotland) Bill. I welcome the Minister for Environment and Climate Change, Stewart Stevenson, and his officials: Simon Stockwell, bill team leader; Sandra Jack, a policy officer; Annalee Murphy, a solicitor; and Matthew Lynch, assistant Scottish parliamentary counsel.

Members should have the bill, the marshalled list and the groupings. Our task is to consider all the amendments and also to agree to each section of and schedule to the bill.

I will call the member with the lead amendment in each group to open the debate on that group by moving the lead amendment and speaking to all amendments in the group. I will then call other members who wish to speak on the group, taking the minister last if he does not have an amendment in the group. Finally, I will invite the member who opened the debate to wind up and indicate whether they wish to press or withdraw the lead amendment.

Any member present may object to the withdrawal of an amendment. If there is an objection, we will proceed straight to the question on the amendment—there is no division on whether an amendment may be withdrawn. We will follow the normal procedure if a division is required.

When we reach amendments on the marshalled list that have already been debated, I will ask the relevant member to move the amendment. If the member who lodged the amendment does not move it, any other member present may do so.

Section 1—Meaning of “qualifying lease”

The Convener: The first group is on meaning of “qualifying lease”: unexpired portions. Amendment 1, in the name of the minister, is grouped with amendment 2.

The Minister for Environment and Climate Change (Stewart Stevenson): I will say a fair amount about the two amendments, as the issue was the subject of substantial debate earlier in the process.

As members are aware, a number of representations were made at stage 1 in relation to Waverley market. In particular, one point related to the length of time left on the lease.

We looked back at the Scottish Law Commission’s report and discussion paper, which was the genesis of the bill. Part 2 of the discussion paper outlined options on durational periods. Option A was that the unexpired portion of the lease had to be more than 175 years for the lease to convert under the bill. Option B was that the lease had to have an initial term of over 175 years coupled with an unexpired duration of more than 100 years.

The SLC favoured option B. It said in paragraph 2.19 of the discussion paper:

“Option B would bring in an additional 2.4% of leases,”

which would be mostly residential—our focus is, after all, on dealing with the feudal system and, in particular, residential leases—because they

“have an unexpired duration of between 100 and 175 years.”

When considering unexpired durations, the SLC received advice from the Royal Institution of Chartered Surveyors. The SLC noted, in footnote 25 to the discussion paper, on page 11:

“RICS were satisfied that, in relation to residential leases at least, 100 years was an appropriate measure for the purposes of conversion”.

In respect of commercial leases, however, the RICS is quoted in paragraph 2.20 of the SLC discussion paper as noting:

“While we accept that the residual value between 100 and 175 years may be nominal, we would argue that in ‘institutional perception’ terms, there could certainly be some value.”

In light of that evidence, the amendment retains the position that residential leases with more than 100 years left to run will convert on the appointed day. However, it will change the position for non-residential leases, which will need to have more than 175 years left to run on the appointed day in order to convert. We consider that that more closely reflects the arguments that were presented to the SLC about the residual value that landlords can have in non-residential leases.

Section 70 provides that the appointed day means the first Martinmas—28 November—two years after that section comes into force. We currently intend that the appointed day will be 28 November 2015. Therefore, non-residential leases will convert under the bill only if the lease is due to expire from 2190 onwards.

Although the amendment to the bill involves a material change, it will not dramatically reduce the number of leases that will convert under the bill. The SLC estimated that around 2.4 per cent of leases that have been let for more than 175 years have between 100 and 175 years to run. We estimate that there are around 9,000 leases let for more than 175 years, so 2.4 per cent comprises 216 leases. Most of the leases with an unexpired duration of between 100 and 175 years are residential, and so are not affected by the amendment. Therefore, we estimate that the amendment will remove fewer than 100 non-residential leases from the scope of the bill.

I hope that those relatively lengthy remarks provide adequate rationale for the amendment and its impact, but I am happy to respond to the committee's comments.

I move amendment 1.

The Convener: I see that, having heard that explanation, no other member wishes to speak. I therefore invite the minister to wind up.

Stewart Stevenson: Given that the committee has no further remarks, I will pass on that.

Amendment 1 agreed to.

The Convener: The next group is on meaning of “qualifying lease”: exclusion of common good land. Amendment 9, in the name of Jim Hume, is the only amendment in the group.

Jim Hume (South Scotland) (LD): Amendment 9 is fairly simple. There have been quite a lot of concerns, around the committee table and from some of the witnesses, about common good land. The amendment would simply exempt common good land from the provisions in the bill that convert long leases to ownership.

At the start of the bill process, it was suggested that four common good property leases would be affected by the bill. That figure has now been revised to nine, which, although a small number, is already more than double the original figure. There are concerns that more leases may well be affected, as there is no audit of common good land throughout Scotland.

I recognise that identifying common good land is complex—there is no question about that—but I do not view that as a reason not to protect common good assets.

Stewart Stevenson: It would be helpful to the debate and to me in formulating a response to know whether the member has identified a concern about any particular lease.

Jim Hume: I was coming to that. Keeping common good land for the public interest is a matter of principle. We know that nine leases will be affected, which is more than double the original figure of four. There are concerns that 10, 11 or 12 leases might be affected—we do not know.

The news that the Scottish Government and local authorities will work together to identify better ways of gathering, verifying, recording and maintaining information on common good assets is welcome. However, as I said, we need to look again at the case for exempting common good land and assets in order to protect the public interest in that land.

The minister has previously said that there could be issues over legal costs and so on for local authorities. I suggest that local authorities would take legal action only if that were in the public interest and for the public good. However, if common good land is not exempted, there is no course for any local authority to pursue in order to protect the land.

I move amendment 9.

Claudia Beamish (South Scotland) (Lab): Good morning, minister. I speak in support of Jim Hume's amendment. I will be brief. Following discussion, I feel that it is important to protect the public interest, and the amendment would provide an effective way of doing that in relation to those parcels of common good land with long leases that have been identified. Although, as we have acknowledged, the majority of them would transfer to other public bodies, there is a question mark over one of them in South Scotland that, as I understand it, would transfer to Buccleuch Estates. I reiterate Jim Hume's point that it is possible that there will be more such pieces of land in view of the vagueness of the register at the moment, which I acknowledge is a separate issue. I therefore ask the minister to clarify what the legal implications might be. We appear to have quite clear responses from local authorities on where things would be going. I support the amendment as a means of protecting the greater public good.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am afraid that I do not support the amendment. I have been reading the committee's stage 1 report—although, of course, when one looks for something specific, one never seems to find the right paragraph—and at stage 1 the committee did not favour an approach such as the one that Jim Hume proposes. Indeed, in paragraph 112, we stated:

"The Committee recommends that the Scottish Government works together with local councils and relevant professionals to identify better ways in which this information"—

about the common good—

"could be gathered, verified, recorded and maintained."

We also stated, in paragraph 110:

"The Committee acknowledges that common good is an extremely complex area and understands that to compile an accurate register of all common good property under an ultra-long lease would be an expensive and time-consuming exercise and may not result in the identification of a significant number of leases which would convert to ownership under this Bill."

That was the committee's position in its stage 1 report.

I agree entirely with those paragraphs and think that we reached the right conclusion. If we cannot clearly define what common good is throughout the 32 councils in Scotland, to introduce such a level of legal uncertainty into a piece of legislation would not be particularly helpful.

We will perhaps hear more about this from the minister this morning, but I imagine that the cost implications could be significant for local authorities at a time when everybody's budget is subject to significant pressure.

The bill makes provision for compensatory payments to be made, and the Scottish Government has already indicated that it would like local authorities that are in receipt of any such payments to put them into the common good fund. As far as is possible, given the legal uncertainty about the definition of common good land, provisions have been put in place to protect the public interest.

10:15

Margaret McDougall (West Scotland) (Lab): My concern is that, if common good land is not excluded, common good land and assets will pass to others over time and the common good will be lost to communities forever. For that reason, I support Jim Hume's amendment 9.

Graeme Dey (Angus South) (SNP): My recollection of our discussions on the issue is that we concluded that the case for exempting common good land had not been made, as I think the previous Justice Committee concluded when it considered the matter. On that basis, I am not minded to support the amendment.

The Convener: As no other member wishes to speak, I ask the minister to comment, if he wishes to do so.

Stewart Stevenson: Yes, I do.

Significant points have been raised in relation to a matter of general principle. We have worked with local authorities to establish how many leases of common good land might be affected—we have gone to local authorities formally twice and informally at other times. Probably, there is not absolute certainty, but there is as high a degree of certainty as it is possible to obtain that there are nine such leases.

Claudia Beamish referred to the Duke of Buccleuch's leases, of which there are actually three, albeit that they are all in the same area of Sanquhar. It is worth making the point that those leases were originally to another party, between 1800 and 1810, and were subsequently acquired, some 10 years later, by the Duke of Buccleuch. They have been in the dukes' hands for 200 years and they will remain so for a further 800 years or thereby, as they are 999-year leases. Therefore, de facto, they are in any event lost to public use. They are tradeable. Therefore, as an asset for the public, they are in effect gone. We are trying to abolish the feudal system. It just happens that, in this particular case, the beneficiary is the Duke of Buccleuch, although to no particular practical effect.

The other six leases are in essence ones that involve transfers within public use, in one way or another. Therefore, in relation to the identified leases, I have not heard any particular concerns being expressed. From that point of view, we need not allow the issue to concern us greatly. There are certainly no great financial implications that could be used to argue either for or against the measures.

The bill is about clarifying ownership and responsibility. Compensatory payments are available under the bill, although they are not particularly big. By the way, it has been said that the payment in relation to the Waverley market would be 40p, but actually that is wrong as, the last time that we looked, it was 23.6p. That gives members a sense of what the compensatory payments might be. There certainly should not be concern about the conversion of the long lease at Balloch country park from Glasgow to West Dunbartonshire, as it remains with a local authority.

Although amendment 9 is competently drafted, there is a wider context that creates significant uncertainties. It is not clear what would happen should it be discovered after the appointed day, which I have suggested will be 28 November 2015, that an ultra-long lease that has been converted under the bill is actually part of a common good fund. As the bill stands, it would be possible for any compensatory and additional payments that are received by the authority to be transferred to the common good fund. That is fine.

However, if the land converts and it is then discovered that it should have been exempt, it is not clear who would own the land.

The fundamental rationale of the bill is that ultra-long leases such as the Duke of Buccleuch's 999-year leases, are in essence equivalent to ownership. That applies regardless of who the tenant and landlord are.

I suggest that if Mr Hume presses amendment 9, the committee does not agree to it. While I am prepared to look at the matter further and write to the committee in relation to what we might consider doing at stage 3, I do not wish to raise expectations unduly.

It is worth pointing out that the beneficiaries of the bill include local authorities, which are tenants whose tenancy will convert to ownership. I leave that as a further point to consider.

Jim Hume: I thank members for their useful contributions.

Annabelle Ewing mentioned the expense of compiling a register. However, I am not asking local authorities to provide a register. If common good land was affected by the bill it would be costly only if the local authority decided to take legal action, and the local authority would take legal action only if it thought that it was in the public interest to do so. As I said in my opening remarks, if we do not exempt common good land it leaves local authorities unable to protect the common good land that the bill may or may not affect.

The minister said that he cannot be 100 per cent certain about the number of leases that would be affected. Amendment 9 is an amendment on a principle. There may be no further pieces of land than the nine that are known about but, as the minister has more or less said, there may be more than nine.

He also mentioned 28 November 2015—three and a half years that might be useful for local authorities or holders of common good land or assets.

I am minded to press amendment 9.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Hume, Jim (South Scotland) (LD)
McDougall, Margaret (West Scotland) (Lab)

Against

Dey, Graeme (Angus South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)

Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Lyle, Richard (Central Scotland) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 9 disagreed to.

Amendment 2 moved—[Stewart Stevenson]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Further provision about annual rent

The Convener: The next group is on annual rent. Amendment 3, in the name of the minister, is the only amendment in the group.

Stewart Stevenson: Amendment 3 provides clarity to section 2. A number of bodies that gave evidence at stage 1 raised questions about variable rental. In particular, in its written submission, Dundas & Wilson raised concerns that section 2(2) did not cover cases in which rent payable under lease had been varied. We looked at that again and have accepted that point. Amendment 3 reflects that the amount of the rental can be varied by a minute of variation or agreement. Under the amendment, the minute of variation or agreement has to be registered. That ensures that the Registers of Scotland can see that the rent as varied is more than £100 and the lease is therefore exempt.

If an agreement amending the rent paid under the lease has not been registered, it would still be open to the landlord, under section 64, to exempt the lease. That could be done by registering an agreement with the tenant or an order by the Lands Tribunal for Scotland that the rent being paid is more than £100 a year.

We have sought to respond to an issue that was raised and to give the necessary clarity.

I move amendment 3.

Amendment 3 agreed to.

Section 2, as amended, agreed to.

Sections 3 to 19 agreed to.

Section 20—Conversion by agreement: title not completed

The Convener: The next group is on minor and technical amendments. Amendment 4, in the name of the minister, is grouped with amendments 5 and 6.

Stewart Stevenson: Amendments 4, 5 and 6 will amend sections 20 and 23, which refer to section 15(3) of the Land Registration (Scotland) Act 1979. The references need to be updated to

refer to the Land Registration etc (Scotland) Bill, which is going through Parliament. The amendments will therefore remove the references to the 1979 act and replace them with references to section

“97 of the Land Registration etc. (Scotland) Act 2012”

—of course, the 2012 act does not yet exist, but it will do if the Parliament agrees.

If changes are made to the section numbers of the Land Registration etc (Scotland) Bill as it goes through Parliament, we might need to revisit the position at stage 3 of the Long Leases (Scotland) Bill, to check that we get our cross-references right. I have confirmed with officials that there will be sufficient time in the timetable to enable us to do that.

I move amendment 4.

The Convener: We are keen for the land registration system to be modernised and for the process to be smooth. I welcome the opportunity to clarify the situation.

Amendment 4 agreed to.

Amendment 5 moved—[Stewart Stevenson]—and agreed to.

Section 20, as amended, agreed to.

Sections 21 and 22 agreed to.

Section 23—Conversion to personal pre-emption or redemption burden

Amendment 6 moved—[Stewart Stevenson]—and agreed to.

Section 23, as amended, agreed to.

Sections 24 to 79 agreed to.

Schedule agreed to.

Section 80—Interpretation

The Convener: The next group is on meaning of “registered”. Amendment 7, in the name of the minister, is grouped with amendment 8.

Stewart Stevenson: Registers of sasines that record land deeds in Scotland have been in existence since 1617. At one time, there were local burgh registers and particular sasine registers, as well as the general register of sasines. Some ultra-long leases might still be recorded on those older registers.

Amendment 7 means that the bill will use the definition of “register of sasines” that is in section 2 of the Conveyancing (Scotland) Act 1924. The definition covers the general register of sasines, particular registers of sasines, burgh registers of sasines and the register of booking in the burgh of Paisley. The amendment will put beyond doubt

that the definition of “register of sasines” includes the older registers.

Amendment 8 is partly related and is a minor technical amendment, to replace the definition of “registering” with a definition of “registered”, which takes a more straightforward approach. The new definition will read:

“‘registered’ means registered in the Land Register of Scotland or (as the case may be) recorded in the Register of Sasines; and cognate expressions are to be construed accordingly”.

The revised and simplified definition reflects the approach that is being taken in the Land Registration etc (Scotland) Bill, which is going through Parliament.

I move amendment 7.

10:30

The Convener: Thank you for that. Do members have any questions?

Annabelle Ewing: Yes, I have a question. *[Interruption.]* I am being congratulated on having a question; perhaps my fellow members should wait and see what it is.

Following on from what was said about a previous amendment, it may be that the answer lies in the very first line of section 80, which says:

“unless the context otherwise requires”.

By defining the lease to include minutes of variation and so forth, what we have done is to refer to registration, but the minutes of variation may be registered in the books of council and session. I am looking at one of the minister’s officials, in particular. I take it that that element is duly taken into account in this definitional section, which says:

“unless the context otherwise requires”.

Is that the case?

The Convener: We will await a reply.

Stewart Stevenson: No. *[Laughter.]*

The bottom line is that documents have to be registered in the register of sasines or the land register.

Annabelle Ewing: Including minutes of variation?

Stewart Stevenson: Yes.

Annabelle Ewing: Okay. That is clear. Thank you, minister.

Stewart Stevenson: I am so glad that I brought Annalee Murphy with me.

The Convener: Do you wish to wind up, minister?

Stewart Stevenson: No.

Amendment 7 agreed to.

*Amendment 8 moved—[Stewart Stevenson]—
and agreed to.*

Section 80, as amended, agreed to.

Sections 81 to 84 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Thank you very much for that interesting excursion into law. I will allow a little time for people to move.

Subordinate Legislation

Snares (Training) (Scotland) Order 2012 (SSI 2012/124)

10:33

The Convener: Agenda item 2 is consideration of a negative instrument on snares. Members should note the letter from the minister, in which he has indicated his intention to revoke the order. Therefore, the committee will defer consideration of the order and will consider the new order at a future meeting. Do members have any comments?

There being no comments, are we happy to defer consideration of the order?

Members *indicated agreement.*

Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No 3) Order 2012 (SSI 2012/116)

The Convener: Agenda item 3 is consideration of an instrument that is not subject to any parliamentary procedure. Do members agree to note the order?

Members *indicated agreement.*

Meeting closed at 10:34.

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