



Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform
Committee

By email only: DPLR.Committee@parliament.scot

26 September 2024

Dear Convener

Land Reform (Scotland) Bill

Thank you for the opportunity to give evidence to the Committee last week. As I said in my previous letter of 31 July, I want to ensure that the Bill provides the correct balance between implementing the policy provisions with suitable engagement and appropriate parliamentary scrutiny.

Thank you too for your letter of 18 September seeking further information regarding four powers. I will respond to each in turn, but it might be helpful if I give some initial context to small landholding legislation.

Small landholding legislation has not been amended since the 1930's, with the result that small landholders have not had the same opportunities as agricultural tenants and crofters, which has contributed to a declining small landholding sector.

The changes being brought forward through the Land Reform Bill will make small landholdings a more attractive option, and so encourage more vibrant rural communities. This will help enable the Scottish Government to meet its aim of diversity in agriculture as set out in the Vision for Agriculture and provide a just transition for this group of individuals.

The changes provide similar protection for their landlords in a similar way to tenant farming and crofting landlords.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

Schedule, paragraph 49(5)

Why the Scottish Government considers such wide powers to be appropriate

The power enables Scottish Ministers to modify any of sub-paragraphs (1) to (4) of paragraph 49 of the schedule.

Paragraph 49(1) to (4) makes provision for exempt transfers where the owner (or an eligible creditor) does not require to give notice of a proposed transfer to a small landholder who has registered an interest in buying the land.

Sub-paragraph (1) applies the exemption to transfers other than for value, to transfers on divorce, to transfers within groups of companies, to transfers in implement of legal obligations, and to other similar types of transfer. Sub-paragraphs (2) to (4) supplement that measure so that for example sub-paragraph (4) sets out the meaning of a group of companies for that purpose.

The scope of the power needs to be understood in that context, and I do not consider that it is any wider than is appropriate to the purpose for which it is intended it would be exercised.

It would in particular enable Ministers to exempt other transfers where doing so is considered necessary or appropriate for the purpose for which the powers have been conferred, including exempting other types of statutory transfer.

In addition to that, the power would be subject to the affirmative procedure, and Parliament could refuse consent to a proposed exemption that it considered to be unexpected or otherwise inappropriate.

How it anticipates these powers will be exercised

In practice, I would expect issues to be identified by working together with the:

- Tenant Farming Forum Advisory Group,
- Keeper of the Registers,
- Small landholders, or
- United Kingdom Government, say in respect of a proposed change in the meaning of a group of companies.

Whether, and how, analogous powers have been used

The power in paragraph 49(5) is equivalent to the affirmative power in section 27(5) of the Agricultural Holdings (Scotland) Act 2003, which provides for exempt transfers in the case of secure 1991 act agricultural tenancies.

The power in the 2003 Act has not been used.

If not used, why these powers are necessary

The right to buy strongly engages the rights of landlords and third parties, and it is therefore appropriate that certain transfers are exempted where doing so is considered necessary or appropriate for the purpose for which the powers have been conferred.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The power to modify the 'list' of exemptions is necessary to ensure that the right to buy measures continue to operation in a flexible manner consistent with the policy objectives, and affirmative procedure provides the appropriate level of scrutiny for any proposed modification to the exemption rules.

The power is also necessary to ensure that the equivalent provisions for small landholdings and agricultural holdings can be modified as a package, where that is either appropriate or necessary.

Schedule, paragraph 50(7)

Why the Scottish Government considers such wide powers to be appropriate

Paragraph 50 of the schedule provides for the tenant to buy land which is proposed to be transferred. The power enables Scottish Ministers to modify any of sub-paragraphs (3) and (4) of that paragraph 50.

The right arises where notice of the proposed transfer has been given (paragraph 50(1)(a)), or should have been given and the owner or a creditor takes steps with a view to transfer of the land (paragraph 50(1)(b))

Paragraph 50(3) lists those steps, which include advertising the land or entering into negotiations for a transfer. This paragraph helps ensure that the right of the tenant to buy the land is not defeated because they have not been given due notice of a proposed transfer.

Paragraph 50(4) clarifies that a reference in paragraph 50(3) to the owner of land includes a reference to a person in whom land has vested for any of the purposes specified in paragraph 49(1)(f)(vii) of the schedule, which includes vesting of land for the purposes of an insolvency or incapacity.

The power in paragraph 50(7) will enable the Scottish Ministers to make further provision in respect of the steps that are taken with a view to transfer of land, and in respect of persons who are the owner of land for the purposes of paragraph 50.

The scope of the power needs to be understood in that context, and I do not consider that is any wider than is appropriate to the purpose for which it is intended it would be exercised.

It would in particular enable Ministers to amend the approach to transfers, where doing so is considered necessary or appropriate for the purpose for which the powers have been conferred, including exempting other types of statutory transfer.

How it anticipates these powers will be exercised

In practice, I would expect issues to be identified by working together with the:

- Tenant Farming Forum Advisory Group,
- Keeper of the Registers,
- Small landholders, or
- United Kingdom Government, say in respect of a proposed change in the meaning of a group of companies.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Whether, and how, analogous powers have been used

The power in paragraph 50(7) is equivalent of the power set out in section 28(5) of the Agricultural Holdings (Scotland) Act 2003, which provides a power for Scottish Ministers to modify by order subsections 27(3) and(4) of the 2003 Act relating to transfers.

The power in the 2003 Act has not been used.

If not used, why these powers are necessary

The right to buy engages the rights of the landlords and third parties and it is therefore appropriate that a consistent and fair approach is taken.

The power to make further provision in respect of transfers of land where the owner has not given due notice of a proposed transfer, and to clarify whether a person owns land for that purpose, is necessary to ensure that the right to buy measures continue to operate in a flexible manner consistent with the policy objectives, and the affirmative procedure provides the appropriate level of scrutiny for any proposed modifications.

The power is also necessary to ensure that the equivalent provisions for small landholdings and agricultural holdings can be modified as a package, where that is either appropriate or necessary.

Section 11

Why the Scottish Government considers such wide powers are appropriate

Section 11(2) and (4) insert a new Part 3ZA and a new schedule 2A respectively into the Agriculture Holdings (Scotland) Act 1991 (the “1991 Act”). They make provision for notices of resumption in relation to land subject to a 1991 Act tenancy, and for compensation for the tenant in respect of the resumed land.

New section 32ZA and new schedule 2A (compensation) provide the following powers for Scottish Ministers.

Section 32ZA(3)(a)

Section 32ZA provides for the landlord to give written notice of a resumption, and to send a copy of that notice to the Tenant Farming Commissioner.

This power enables the Scottish Ministers to prescribe the form and content of such a notice.

Paragraph 1(3)(b)

Paragraph 1 has the effect that the Tenant Farming Commissioner must appoint a valuer within the period of 28 days after the date the Commissioner receives a copy of the notice of resumption.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver



α

This power enables the Scottish Ministers to prescribe a different period.

Paragraph 4(5)

This power enables the Scottish Ministers to modify any of sub-paragraphs (2) and (3) of paragraph 4 of Schedule 2A.

Those sub-paragraphs provide for the matters to which a valuer is when assessing compensation to have regard, or to take into account, or to take no account of. The power enables Ministers to make regulations to add, remove or vary any of those matters.

The powers in section 32ZA(3) and paragraph 1(3)9b) relate to detailed matters, and are considered modest in scope.

The power in paragraph 4(5) is wider, but is necessary to ensure that matter are taken into – or left out – of account in a manner that ensures fairness to both parties. It is also subject to affirmative procedure, and is therefore considered to strike the appropriate balance between flexibility and Parliamentary scrutiny.

The scope of the powers needs to be understood in their context, and I do not consider that any power is wider than is appropriate to the purpose for which it is intended it would be exercised.

How it anticipates these powers will be exercised

In practice, I would expect issues to be identified by working together with the Tenant Farming Forum Advisory Group and in particular representatives and valuers from RICS, the Scottish Agricultural Arbiters & Valuers Association (SAAVA) and the Central Association for Agricultural Valuers (CAAV), along with members of the Scottish Agricultural Law Association.

Whether, and how, analogous powers have been used

Across agricultural holdings legislation, there are a range of powers to enable Scottish Ministers to define the range of content and information required for various notices.

For example, section 110 of the Land Reform (Scotland) Act 2016 Provides for tenants to able to relinquish a 1991 Act tenancy. It provides in particular for a new Part 3A of the 1991 Act, which inserts sections 32A to 32W of that Act.

Section 32D(1) provides a similar negative power to prescribe the form and content of a notice, in that case a notice of relinquishment.

Section 32G(3)(b) provides a similar negative power to specify the period during which the Tenant Farming Commissioner must appoint a valuer, in that case to assess compensation in respect of the relinquished land.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver



α

Section 32J(5) provides a similar affirmative power to add, remove or modify matters to which the valuer must have regard or take into account (or not take into account) when assessing compensation.

The powers in the 2016 Act have not been used.

If not used, why these powers are necessary

Providing consistency across the agricultural holding legislation when assessing the valuations of resumptions is important to provide clarity to land valuers and will provide transparency to both landlords and secure 1991 Act agricultural tenant farmers.

The powers will be used to make amendments to the process if practical issues arise in the future from valuers and other users of the process, which cannot be resolved in discussion between parties.

This approach helps to ensure that the provisions remain fit for purpose and provides the Scottish Parliament with the ability to scrutinise the SSIs.

As part of the Bill process, I am actively listening to the range of views on the proposals from stakeholders and individuals on these provisions, including evidence submitted in the call for views.

Section 12

Why the Scottish Government considers such wide powers to be appropriate

Section 12 makes the equivalent provision in respect of limited duration tenancies under the Agricultural Holdings (Scotland) Act 2003 (the “2003 Act”) as section 11 makes in respect of 1991 Act tenancies.

In particular, section 12 inserts a new schedule 2 into the 2003 Act, which provides for the determination of compensation of value for land resumed.

Paragraph 1(3)(b) of schedule 2 provides for the Scottish Ministers to be able to prescribe the period after receiving a copy of a notice of resumption during which the Tenant Farming Commissioner must appoint a valuer.

Paragraph 4(5) provides for the Scottish Ministers to be able to add, remove or modify matters to which the valuer must have regard or take into account (or not take into account) when assessing compensation.

The same considerations apply to these powers as they do to the equivalent powers introduced by section 11.

How it anticipates these powers will be exercised

In practice, I would expect issues to be identified by working together with the Tenant Farming Forum Advisory Group and in particular representatives and valuers from RICS, the Scottish Agricultural Arbiters & Valuers Association (SAAVA) and the Central Association for

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Agricultural Valuers (CAAV), along with members of the Scottish Agricultural Law Association.

Whether, and how analogous powers have been used

The powers are analogous to those introduced by section 11, and for the same reasons. Those powers have not been used.

Considerations apply to these powers as they do to the equivalent powers introduced by section 11.

If not used, why these powers are necessary

Providing consistency across the agricultural holding legislation when assessing the valuations of resumptions provides transparency and fairness to both landlords and tenant farmers of limited duration tenancies and in the future repairing tenancies.

As part of the Bill process, I am actively listening to the range of views on the proposals from stakeholders and individuals on these provisions, including evidence submitted in the call for views.

Conclusion

I hope you find this response helpful and I look forward to considering the Committee's views on the delegated powers in the Bill.

Yours sincerely,

MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver



α