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**LAND REFORM (SCOTLAND) BILL 2015**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 The Land Reform (Scotland) Bill was introduced to the Scottish Parliament on 22nd June 2015. The Bill is intended to be the flagship piece of legislation in the Scottish Government's land reform programme. The Bill will be subject to the usual 3 stage parliamentary procedure (i.e. consideration by the full parliament and the relevant committees). Therefore the provisions as commented on in this report may be subject to change. It is understood that the Scottish Government wish to see the Bill enacted prior to the next Scottish Parliament election in 2016.
- 1.2 The Bill represents a further advance in community ownership in Scotland and seeks to ensure that additional restrictions are made on private land ownership. The Bill contains provisions inter alia relating to the formation of a Scottish Land Commission, information about the control of land, community engagement, the right to buy to further sustainable development, common good land and access rights.
- 1.3 There are a number of provisions contained in the Bill which, if enacted, may have significant implications for the Council, particularly with regard to the right to buy land to further sustainable development, community engagement, access rights and path codes, common good land and changes in valuation for non-domestic rates purposes of shootings and deer forests.
- 1.4 It should be noted that a number of the measures that were proposed preceding the Bill's introduction have not made it into the Bill including:
- 1.3.1 Restriction on foreign ownership – there are no provisions which limit or restrict foreign owners from owning land in Scotland which was an objective of the Land Reform Review Group [LRRG]. The LRRG ultimately recommended that it should be incompetent for any legal entity not registered in a member state of the EU to register title to land in the register of Scotland in order to improve traceability and accountability in the public interest. Instead of this policy, the Bill contains provisions in relation to information about those who control land.
- 1.3.2 There is no upper limit on the amount of land that may be owned by a private owner or single beneficial interest. In response to the LRRG's

recommendation the Scottish Government indicated the requirement for significant evidence in order to ensure ECHR compliance in terms of Article 1, Protocol 1. It may be considered that the view of the Scottish Government was that such a proposal would be contrary to ECHR requirements.

- 1.5 It should be noted that much of the detail of the Bill remains to be established by regulations. It is clear that there is a continuing trend for the detail in primary legislation to be established by secondary legislation in the form of regulations enacted by the Scottish Ministers. There is potential for the level of scrutiny of secondary legislation to be less rigorous than full parliamentary scrutiny. This is especially prescient where a single party has an outright majority.
- 1.7 The Scottish Parliament have issued 2 separate Calls for Evidence from both the Rural Affairs Committee, which has the closing date of 14th August, and the Finance Committee, with a closing date in September.
- 1.6 This report outlines some of the main provisions contained within the Bill and identifies some potential implications for the Council in respect of these. It should be noted that this report does not concentrate on all aspects of the Bill but those which are germane to the local authority.

## **Recommendations**

- 1.7 It is recommended that Members note the content of this report.
- 1.8 It is recommended that Members make representations to the Scottish Government in relation to the provisions contained within the Bill and decide on the nature and content of those representations.

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**2.0 INTRODUCTION**

- 2.1 The Land Reform (Scotland) Bill was introduced to the Scottish Parliament on 22nd June 2015. The Bill is intended to be the flagship piece of legislation in the Scottish Government's land reform programme. The Bill will be subject to the usual 3 stage parliamentary procedure (i.e. consideration by the full parliament and the relevant committees). Therefore the provisions as commented on in this report may be subject to change. It is understood that the Scottish Government wish to see the Bill enacted prior to the next Scottish Parliament election in 2016.
- 2.2 The Bill represents a further advance in community ownership in Scotland and seeks to ensure that additional restrictions are made on private land ownership. The Bill contains provisions inter alia relating to the formation of a Scottish Land Commission, information about the control of land, community engagement, the right to buy to further sustainable development, common good land and access rights.
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recommendation the Scottish Government indicated the requirement for significant evidence in order to ensure ECHR compliance in terms of Article 1, Protocol 1. It may be considered that the view of the Scottish Government was that such a proposal would be contrary to ECHR requirements.

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- 2.6 The Scottish Parliament have issued 2 separate Calls for Evidence from both the Rural Affairs Committee, which has the closing date of 14th August, and the Finance Committee, with a closing date in September.
- 2.7 This report outlines some of the main provisions contained within the Bill and identifies some potential implications for the Council in respect of these. It should be noted that this report does not concentrate on all aspects of the Bill but those which are germane to the local authority.

### **3.0 RECOMMENDATIONS**

- 3.1 It is recommended that Members note the content of this report
- 3.2 It is recommended that Members make representations to the Scottish Government in relation to the provisions contained within the Bill and decide on the nature and content of those representations.

### **4.0 DETAIL – THE CONTENT OF THE BILL**

#### **Land Rights and Responsibilities Statement**

- 4.1 Part 1 of the Bill requires Scottish Ministers to prepare a land rights and responsibilities statement outlining their objectives for land reform. They will be required to do this not later than 12 months following this part of the Bill coming into force and will be required to review this, and publish a new statement every 5 years.
- 4.2 It is not possible to comment further on any possible implications for the Council in the absence of any such statement.

#### **Scottish Land Commission**

- 4.3 Part 2 of the Bill contains provision for establishing a Scottish Land Commission, which will compose of five Land Commissioners together with the Tenant Farming Commissioner and is to have wide ranging functions on “*any matter relating to land in Scotland*” including but not limited to reviewing law and policy, recommending changes in the law and policy and gathering evidence. The Scottish Ministers are to be responsible for appointing the Land Commissioners.

- 4.4 It is clear the Scottish Land Commission will have a remit to deliver an ambitious land reform agenda and this may have implications for the Council. However, prior to the Commission being operational it is difficult to comment further on what the implications might be. Broadly, removing some of the issues relating to land ownership in Scotland from direct political activity or influence may be considered advantageous. However, there is significant potential for the Commission to regularly introduce new measures or reform, and consequently, a risk of a continually evolving and confusing legal environment in so far as it relates to Scottish land law.

### **Information about the Control of Land**

- 4.5 Part 3 of the Bill contains provisions relating to information about the control of land. It should be noted that while much of the detail in relation to these provisions remains to be determined and will be provided by secondary legislation, there are two aspects to these provisions:
- 4.6 The Bill provides for a right of access to information on *persons in control of land*, however does not provide a definition. The provisions also make reference to a person requiring to be *affected* by that land. The term affected is not defined, however it seems likely that there will be a requirement to establish an identifiable link to between the person and the land. This being the case, the provisions do not allow any member of the public to obtain ownership details. However, there appear to be no provisions within the Bill which prohibit information being passed on to third parties and nor does the Bill place a limit on who it may be passed to.
- 4.7 In addition, a new power to be held by the Registers of Scotland will enable the Keeper to request information about those in control of land. The provisions also contain a power to request information relating to individuals having a controlling interest in land. It is presumed that should the Keeper receive such information, it would come into the public domain. It should be noted, however that the Bill does not appear to contain provisions compelling parties subject to such a request to comply with it.
- 4.8 As the detail of these provisions will be provided by secondary legislation it is not currently possible to comment on the implications for the Council.

### **Community Engagement**

- 4.9 Part 4 of the Bill states that Scottish Ministers must issue guidance about engaging communities in decisions relating to land which may affect communities. The guidance must have regard to the desirability of furthering the achievement of sustainable development, set out the types of land and types of decision in relation to which community engagement should be carried out, the circumstances in which persons with control over land should carry out community engagement and the ways in which community engagement should be carried out.

- 4.10 The detail of such guidance will only be known if and when the Scottish Ministers issue said guidance. Therefore it is not possible to comment on these provisions substantively. It is considered that the guidance should include information about the types of land and decisions whereby community engagement should be carried out, a definition of what constitutes a community, the circumstances in which persons in control of land should engage with the community, and the ways in which such engagement should be carried out (e.g. consultation or community involvement).
- 4.11 The policy note accompanying the Bill sets out potentially significant consequences in relation to an owner of land failing to comply with the guidance. It states at 166-168 that failure to comply could be a factor that Scottish Ministers would consider as part of the evidence provided by a community body to support an application for the right to buy land to further sustainable development, as it may assist in evidencing why the transfer of the land to the community body is the only way of achieving the desired benefit to the community; failure to comply could also affect future awards of land related grants. There are clearly potential implications for the Council in relation to failure to comply with future guidance issued.
- 4.12 It should be noted that Guidance is not law and cannot legally be enforced while the Bill, which will be the law, currently contains nothing relating to the consequences of failing to comply with any guidance issued. If the intention of Scottish Ministers is for there to be serious/significant consequences for failing to comply with community engagement guidance then this should be set out in the legislation.
- 4.13 Additionally, further clarity is required on what is meant by engage with the community and the consequences, if any, of a land owner ignoring the wishes of those they had engaged.

### **The Right to Buy Land to Further Sustainable Development**

- 4.14 Part 5 of the Bill contains an extension of the existing community right to buy to a right to buy land to “further sustainable development”. This is a new form of right to buy in addition to the existing Community Right to Buy and Crofting Community Right to Buy introduced by the Land Reform (Scotland) Act 2003 and the new Community Right to Buy Abandoned or Neglected Land (introduced by the Community Empowerment Bill).
- 4.15 These provisions apply to all types of Scottish land and property both urban and rural. The land that may be bought is termed “*eligible land*” and can comprise any land unless it falls under the exclusions contained in the Bill. Land that falls under these exclusions includes an individual’s home (except where occupied by a tenant); land pertaining to an individual’s home as may be set out in regulations by the Scottish Ministers; croft land; land owned by the Crown; and any other land the Scottish Ministers may set out in secondary legislation.
- 4.16 Therefore, the Scottish Ministers will have substantial discretion to decide, in effect, how large an area of garden or policy ground should be excluded and

also what, if any, other types of land should be exempt. The Bill also provides that the Scottish Ministers may prescribe the buildings and structures that are to be treated as a “home” and the types of occupation to be treated as a tenancy.

- 4.17 The right to buy also includes salmon fishings and mineral rights however, these can only be bought where *the community body is also applying, or has applied, to buy the land to which [they] relate, or the application is made during the relevant period*. Mineral rights do not include rights to oil, coal, gas, gold or silver.
- 4.18 The right to buy may only be exercised by a community body (or a nominated third party) with the consent of the Scottish Ministers. The right may be exercised in relation to an owner’s interest and a tenant’s interest in the same land but separate applications for consent are required and they may be decided differently. Accordingly, you could have a situation where the community body becomes the landlord of a current tenant.
- 4.19 There are provisions relating to the constitution of community bodies for the purpose of exercising the right to buy and also a requirement for the Registers of Scotland to keep a Register of Land for Sustainable Development containing details and information relating to the proposed exercise of the right to buy.
- 4.20 It is significant that the new right to buy can be utilised even where the landowner does not want to sell as long as the statutory procedure is followed. The Bill allows a hostile right to buy if sustainable development conditions are met. The Bill attempts to provide some explanation of the meaning of sustainable development. It states that *.....transfer of land is likely to further the achievement of sustainable development in relation to the land if: the transfer of the land is in the public interest, the transfer of the land is likely to result in significant benefit to the relevant community...to which the application relates and is the only practical way of achieving the significant benefit and; not granting consent to the transfer is likely to result in significant harm to that community*.
- 4.21 There are significant implications for the Council in relation to the forced transfer/sale of land. The provisions within the Bill which seek to establish an absolute right to buy for Sustainable Development for Community Bodies are a material change to property owning rights that currently exist in the UK. There is potential conflict with existing property law and Article 1, Protocol 1 of the European Convention on Human Rights which guarantees the right to property.
- 4.22 It should be noted that what constitutes ‘*sustainable development*’ is unclear from the wording in the Bill. Although the Bill provides for sustainable development conditions that need to be met in respect of right to buy, an actual definition of “*sustainable development*” is absent. Before issuing the guidance, it is considered that the Scottish Ministers should consult such persons or organisations as they consider appropriate. There is potential for the meaning to change over time, and such ambiguity is likely to be an obstacle to long term investment in the rural economy by landowners who will be unclear as to whether their plans will be deemed ‘*sustainable*’. This has implications for the future economic health of Argyll and Bute and the Council.

- 4.23 In addition a Community Body may also nominate a third party purchaser and there is a lack of clarity about who can be a third party purchaser and on what terms they are able to purchase land on behalf of a community body.

#### **Re-introduction of Sporting Rates**

- 4.24 Part 6 of the Bill proposes an end to the non-domestic rates exemptions for shootings and deer forests. Properties are to be valued as at 1st April 2015 with the proposed change taking effect on 1st April 2017. The Scottish Government forecast that this will potentially generate revenues of £4m each year, although that figure is before reliefs are applied.
- 4.25 It will be necessary for each local authority to value each shoot and then attend to the relevant accounting. It would then be necessary to establish which shoots are exempt because of existing reliefs (for example the Scottish Government anticipate that a high number of small scale shoots will qualify for the Small Business Bonus Scheme). There is a high possibility of valuation appeals.
- 4.26 Once all relevant costs are taken into account, and once the exemptions are subtracted from the headline figure of £4m each year, the cost/benefit analysis of imposing rates is possibly not something that will generate significant additional resource for the Scottish Government. The Bill's reintroduction of Sporting Rates will potentially have a negative impact on fragile rural economies including Argyll and Bute. Indeed the rural sector as a whole is already economically fragile and has little capacity for an increased tax burden.

#### **Common Good Land**

- 4.26 At present the local authority can only dispose of such land after obtaining the consent of the Court of Session or the Sheriff. The Bill amends S75 of the Local Government (Scotland) Act 1973 and extends this power to cases where the local authority wishes to appropriate common good land for another purpose.
- 4.27 It is considered that this measure is introduced as a result of concerns which arose from *Portobello Park Action Group Association v City of Edinburgh Council* 2012 SLT 1994 where it was held by the Court of Session that the local authority were not acting lawfully in appropriating part of a park to build a school. As was highlighted in the LRRG report the *Land of Scotland and the Common Good*, the Law Society of Scotland commented that there [was] currently no mechanism whatsoever for the appropriation by an authority of inalienable property for a necessary public purpose. The introduction of this amendment puts in place such a statutory mechanism thereby removing a barrier to effective use of common good land.

#### **Access Rights - Core Paths**

- 4.28 The Land Reform (Scotland) Act 2003 made provisions for the creation of a core paths plan within each local authority area. Part 9 of the Bill contains provisions



to amend the 2003 Act to provide for the review and amendment of the core paths plan if the Scottish Ministers direct them to do so, or if it is considered appropriate to do so for the purpose of ensuring that the core paths plan continues to give the public reasonable access throughout their area.

- 4.29 The 2003 Act will be amended to insert S20A setting out the procedure for review and amendment of core path plans and the notification and consultation requirements. It should be noted that where there is an objection, the local authority must not adopt the amended plan unless directed to do so by the Scottish Ministers. Where an objection remains, Ministers cannot make a such a direction without a public inquiry first being held into whether the amended plan will be sufficient for the purpose of giving the public reasonable access throughout the local authority area.
- 4.30 There are implications for the Council relating to amending the core path plans in terms of the notifications requirements and the procedure where objections remain unwithdrawn to any proposed amendments where the power to determine whether any proposed change should be adopted is transferred to the Scottish Ministers.

#### **Other Measures**

- 4.31 The Bill introduces a range of provisions which will have an impact on Agricultural holdings including inter alia, the appointment of a Tenant Farming Commissioner (TFC) who will be a member of The Scottish Land Commission, the creation of a new "Modern Limited Duration Tenancy" (MLDT), the removal of the requirement for a tenant to register an interest in land in order to activate the pre-emptive right to buy, provisions relating to fair rent, assignation and succession, compensation for tenants improvements and improvements by landlords.
- 4.32 There are also provisions in the Bill relating to the management of deer which allows for Scottish Natural Heritage to be given powers to require deer management plans and an additional role for Deer panels promoting community involvement in deer management.
- 4.33 It is not considered that these provisions will have a significant impact on the Council.

#### **5.0 CONCLUSION**

- 5.1 The Land Reform Bill provides a wide range of provisions in relation a number of areas of land ownership and community rights. It is likely that a number of these will have implications for the Council for example in the forced sale of land and further layers of regulation and bureaucracy in relation to access rights and community engagement.
- 5.2 Although the implications as set out above have been identified, there is a lack of clarity surrounding the detail of many of the provisions in the Bill where only outline measures are currently known. Scottish Ministers are required to set -

out further legislation in due course and it may be that further implications arise as regulations are developed. Additionally, while there is parliamentary scrutiny of the Scottish Government, it is of concern that the level of scrutiny of secondary legislation is not always as rigorous as full parliamentary scrutiny. This is especially prescient where the government has an outright majority.

- 10.3 In addition, the Bill fails to clarify concepts such as *community ownership* and *sustainable development* which have the potential to have a significant impact on all local authority areas. The Council will be required consider the various community rights to buy land in terms of the management of their estate, while there is further significant potential for potential purchasers of land in the local authority area to buy elsewhere.
- 10.4 It should be noted however that the Bill contains no provisions relating to limiting foreign ownership of land or placing limits on the amount of land which could be owned. It is clear that there was significant potential for such policies to be contrary to ECHR Article 1, Protocol 1.
- 10.4 The Bill will present both opportunities and challenges for the communities of Argyll and Bute. The Bill has the potential to further empower local communities to take ownership of and develop opportunities for their community. However, for this to be successful these proposals should be supported by a robust sustainable business plan.

## **6.0 IMPLICATIONS**

6.1 Policy - None

6.2 Financial - None

6.3 Legal – Potential future legal implications contained within Land Reform (Scotland) Bill.

6.4 HR - None

6.5 Equalities - None

6.6 Risk - None

6.7 Customer Service - None

## **Executive Director of Customer Services**

**For further information contact:** Michael Nicol, 01546 604468