

LAND REFORM (SCOTLAND) BILL - ANDERSON STRATHERN UPDATE

The long awaited Land Reform (Scotland) Bill was introduced to the Scottish Parliament on 27 November. This follows a lengthy consultation period and the Bill as introduced has been changed in many ways in the light of submissions received by the Executive as part of the consultation process. The Bill will, of course, be subject to amendment as it proceeds towards the statute book.

Although there has already been extensive consultation on land reform, it must be stressed that previous consultation is to be viewed separately from the legislative process now underway. Holyrood will examine the Bill at three 'Stages' and MSPs will welcome constructive input from interested parties.

Stage One is handled by a lead Parliamentary Committee, supported by other committees and involves an analysis of the Bill in broad terms. Evidence will be taken from interested parties. Already, the Justice II Committee has issued a call for evidence at Stage One, with a rather tight deadline of 21 December for submissions. The Committee will then prepare a Stage One report to the full Parliament, with a recommendation that Parliament either approves or rejects the general principles of the Bill. Should the Bill pass this vote then it will proceed to Stage Two, where the Committee will examine it line by line, together with amendments proposed by MSPs. It is possible to make further amendments to the Bill at Stage Three.

It should also be stressed that the legislative process of the Scottish Parliament is open to input by interested parties, via a number of avenues. Organisations and others can feed into the process any concern, at any level of detail, now, and the Committee may note it for discussion at the appropriate legislative stage. Individual MSPs will be interested to receive constructive comments on the Bill and can be contacted at any time with any level of detail.

We outline below in summary the broad changes to the Bill compared to the draft Bill, and our specialists in Agricultural and Parliamentary law will be happy to provide such further information as may be required. **Please contact Alasdair Fox on 0131 625 7227 or Morag Ross on 0131 625 7296.**

Justice Minister Jim Wallace, when introducing the Bill, stated that 'the main principles of the Bill have not changed [from those of the draft Bill]- and those are to create a right of responsible access to land, that rural communities should be able to buy land when it is put on the market and that crofting communities should be able to buy land at any time.'

The structure of the Bill does indeed remain the same. Access, community right to buy and crofting community right to buy are covered in specific parts. The key changes are:-

Access

- A person is only to have access rights if they are exercised responsibly.
- Obligations are to be imposed on owners of land to use and manage land and to conduct ownership of it in a manner which is responsible, with regard to the exercise of access rights.
- Clarification has been given that, in determining whether a member of the public or a landowner is acting responsibly, regard should be had to the Access Code currently being re-drafted by SNH. In other words, the Code will have evidential status in determining responsible behaviour.
- The issue of liability has been revised. It is now specifically provided that an owner's duty of care (liability to a third party for injury) is not to be affected by the exercise of access rights.
- The section dealing with land on which access rights are not exercisable has been amended. This section now also excludes:-
 - (a) land on which there is a structure, works, plant or fixed equipment
 - (b) land contiguous to and used for the purposes of a school
 - (c) land to which two or more persons have rights in common and which is used as a private garden.
 - (d) land on which works are carried out by a statutory undertaker and
 - (e) land used for the working of minerals by surface workings (including quarrying).
- Sports and playing fields, and ground developed or set out for particular recreational use, are only excluded whilst in use as such, although access may still be taken provided it does not interfere with the particular recreational use.
- Crops now include those which have been sown and grass grown for hay and silage. They do not, however, include pasture.
- The list of actings which were not permitted in the exercise of access rights has been cut. Eg. killing animals etc, lighting fires and leaving litter have been omitted. These are, however, covered by other legislation.
- The right of landowners to suspend access rights has been removed, as has the right of local authorities to suspend access rights in emergencies.
- There is now a duty on SNH to publicise the Access Code and to promote compliance with it.



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- The duties of local authorities to regulate and uphold access rights are strengthened. They now include the right to serve notice on the owner of land requiring remedial action in the event that the local authority takes the view that the owner is taking action on his land to prevent or deter anyone from exercising access rights. The owner's right of appeal is now to the Sheriff Court.
- The proposal of the draft Bill to allow a police officer or authorised officer of the local authority to require someone to leave or not to enter land has been removed. Likewise, the power of local authorities to make an Exclusion Order has been dropped.
- Local authorities' duties with regard to the planning and establishment of networks of core paths have been more clearly defined but there appears to be no obligation on local authorities to create or maintain core paths.
- Landowners are given power to plough up paths which cross their land, provided they replace them within eight weeks - or longer, if allowed by the local authority.
- Rangers, appointed by the local authority, are no longer under a duty to secure compliance with the provisions of the Bill but are still to perform such duties as the local authority may determine.
- SNH has been given power to take steps to protect the natural heritage of land over which access rights are exercisable.

Community Right to Buy

- The Bill has been amended to reduce the minimum size of a community body from 30 to 20 people, though this would appear a minor change given that Ministerial discretion for very small communities remains. This should help more communities to register their interest in land.
- There are further controls on how the right to buy will operate. The community body has no right to buy land in which it has not registered an interest. It cannot buy part only of the registered land offered for sale.
- Where the 'right to buy' land forms part only of the land which the owner proposes to transfer, the valuation of the land to be transferred has to take account of any diminution in value of the remainder of the land which the owner proposes to transfer (but not the diminution in value of any other land owned by the seller). There is therefore an element of protection for owners against 'cherry picking'.
- Creditors in standard securities have been given limited protection. The right to be involved in the registration processes (and the prohibition on transfer except in accordance with the provisions of the legislation) only apply to a creditor in a standard security with a right to sell (not defined). However, where a notice of proposed transfer is deemed to have been given, the ordinary secured creditor could find the security disapplied, leaving only a personal right against the landowner to be repaid from the sale proceeds.
- The much criticised compulsory purchase powers available to Ministers, in the event of a transfer in breach of the provisions

of the legislation, have been dropped. Instead the community right to buy is deemed to be triggered when the Lands Tribunal confirms to Ministers that a breach has occurred. Only the community body which has registered an interest can make application to the Lands Tribunal within ten years of the alleged breach. The "penalty" for a confirmed breach is that the then current landowner is deemed to have given notice of proposed transfer.

- A right to the landowner to pull out of a proposed sale has been introduced.
- The Bill has been amended to broaden the scope for appeals so that they can relate to any relevant issue, and not just points of procedure.
- Controls on the disposal of land by a community body have been dropped leaving community bodies free to sell property purchased by exercise of the right to buy, in its entirety, on the open market, from day one.

Crofting Community Right to Buy

- Once more, the minimum size for a Crofting Community body has been reduced from 30 to 20, again, however, with Ministerial discretion and the definition of Crofting Community has been extended to include all croft tenants in a Crofting township who are resident within 16 kilometres of that township.
- Crofting communities are to be given the right to buy the salmon fishings associated with their croft land. The period during which a crofting community can apply to buy salmon fishings following the purchase of croft land is reduced to one year.
- Salmon fishings and minerals pertaining to eligible additional land may not now be purchased by a Crofting Community body.
- The time allowed for each of the main stages of the application process has been increased from 21 to 60 days, but Ministers no longer have a discretion to extend the deadlines.
- The requirement that more than 50 per cent of a community must vote in a ballot has been removed. The Bill now provides that the outcome of ballots will be determined by a simple majority for or against. But the application to buy land can only go ahead if the majority of croft tenants who vote in the ballot agree. This could potentially mean that, in the event of a low turn out of eligible voters, a small number of votes could result in a purchase. But the wider community cannot have the right to buy without the support of the croft tenants.
- The restrictions on re-sales has been dropped from the Bill.

We shall be happy to provide you with further advice and assistance at any stage of the process.

Please contact Alasdair Fox on 0131 625 7227 or Morag Ross on 0131 625 7296.

The foregoing is not intended to be a comprehensive statement of law.

No liability is accepted for errors or opinions. No action should be taken based on this information without seeking professional advice.



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