

Scottish Environment LINK Parliamentary Briefing

Land Reform (Scotland) Bill Stage 1 Debate

Wednesday 16th December 2015



Summary

LINK welcomes the thoroughness of the Rural Affairs, Climate Change and Environment (RACCE) Committee's Stage 1 scrutiny of the Bill and their Report. In this briefing, we outline the main areas of our concern with the Bill. Other concerns are covered in our written evidence at Stage 1.

Part 1

LINK members are in favour of Scotland having a statutory land rights and responsibilities statement – and we believe that it should contain a vision and principles. It should be a comprehensive and coherent statement of policy which will guide action. We hope that Parliament gives consideration to including provisions that:

- any final statement would include full definitions of community, community assets, sustainable development, land, land reform, land use, land rights and land responsibilities;
- the policy statement be specifically fitted into the structure of the National Performance Framework and the hierarchy of the strategic policy aims of the Scottish Government;
- it either include, or specifically refer to, all policy statements with regard to the full area of land reform and land use policy; and

In particular, we think land ownership and land use are inseparable and should not be considered in isolation, and it is important that the land rights and responsibilities statement should be specifically legislatively linked to the existing, statutory Land Use Strategy, established under the Climate Change (Scotland) Act. The Bill might be amended to ensure that the statement and the strategy are reviewed and consulted upon side-by-side at the same time within the proposed 5 year cycle. We believe, in addition, that as Scotland's biodiversity is so inseparably entwined with our shared land, sea and air that all of the other species of life must, too, be properly recognised within any statement of land rights and responsibilities.

LINK supports the recommendations in paragraph 137 of the RACCE Committee Report

LINK supports the establishment of a **Scottish Land Commission (SLC)** with the role of pursuing the proper calibration of rights and responsibilities over land ownership and management and land use.

Section 3 – Status of the SLC

We think that the best type of SLC would be based on the model of the Scottish Law Commission – as an authoritative, independent, advisory NDPB to the Scottish Government and Parliament. Land management functions should remain with land holders (including Government). Land policy functions should continue to be carried out by the Scottish Government. We believe it is important that the advisory function is not compromised by becoming entangled in any area where political or ministerial direction overshadows the advice given. We think that an SLC which did not possess the independence and authority outlined here could become a serious impediment to the progress of land reform.

Section 4 Functions of the Commission

We are of the view that it is essential that the SLC be given an advisory remit covering the whole field of land rights and responsibilities. This would include all matters of land holding and land use – and in our view, specifically including the provision of advice on the statutory Land Use Strategy. We are

concerned that, compared to the Law Commission model, the functions of the SLC are very general - whereas the administrative, strategic and reporting provisions are highly prescriptive.

LINK members noted that the Bill is very focused on rural land and believe it requires a greater emphasis in support of more urban communities gaining access to small pockets of urban land in relation to uses such as growing, allotments and recreation.

Section 6 Strategic plan and Section 7 Programme of work

We note that there are no prescriptive requirements legislatively requiring strategic plans or programmes of work of the Scottish Law Commission. We are, therefore, concerned to see these impositions on the SLC – and in particular those giving explicit control over the programme of work to Ministers. We believe these powers are the equivalent of “powers of direction”, seriously undermine the independence of the advice the Commission will be able to offer, and we recommend that Parliament considers removing them from the Bill.

Section 8 Membership

We believe strongly that the independence and authority of an SLC will be essential to its success, but that these qualities will be dependent, also, on a properly representative, expert membership, carefully appointed in a manner which meets the best public standards and achieves the acceptance of all of the major stakeholders in land matters within Scotland. A full suite of relevant knowledge, including legal, scientific, social, environmental and economic expertise would be required amongst members – and some expertise in urban land issues is required in addition.

Section 9 Eligibility for appointment

LINK members are of the view that the proposed list of areas where the Commission requires expertise or experience is too limited and weighted towards economic considerations and that sustainable development, social issues (both rural and urban) and land use should all be added to the list.

Sections 10 -18

We note that no equivalent to these sections was required in the Law Commissions Act 1965 and question whether all of these detailed prescriptions really need to be on the face of the legislation. We believe the SLC should not be overburdened with legislative constraints on its performance.

Section 20 Functions of the Land Commissioners

LINK members note the inclusion of “use of land” within the definition of any “matter relating to land in Scotland” in this section and suggests that it might be valuable to reinforce this by including also specific reference to the Land Use Strategy under the Climate Change (Scotland) Act.

LINK supports, broadly, the Stage 1 Report of the RACCE Committee with regard to the SLC.

Section 35 Right of access to information on persons in control of land

We are committed to achieving transparency in ownership in order to ensure that land rights and responsibilities are properly performed. We believe that this is an essential condition if the public interest is to be meaningful in relation to land use in Scotland. LINK supports, therefore, the thrust of the RACCE recommendations in paragraph 193 (and elsewhere) of their Stage 1 Report.

Section 37 Guidance on engaging communities in decisions relating to land

We express our serious concern that the definition of “sustainable development” used in the Policy Memorandum is “*derived from work of the Land Reform Policy Group, Sewel et al, 1998*” when a more recent and authoritative definition exists in the Shared Principles on Sustainable Development, as

agreed and used by the UK Government and the three devolved administrations. We are of the view that this latter statement should be the legislative underpinning of Parts 4 and 5 of the Bill.

LINK shares the broad view of RACCE that it is extremely difficult to assess clauses giving Ministers the power to issue “guidance” on a matter – but where there is very little by way of indication or explanation of what the guidance will contain. This is especially the case when the “consequences where guidance is not followed” is to be laid out in the primary legislation. We suggest that Parliament may wish to ask for clear indications from Ministers as to what the guidance will contain, if not to request an early draft of such guidance for consideration before Stage 2.

LINK members hope that the Parliament ascertains what is meant with regard to the complex definition of “community” in this section (and throughout the Bill). This is particularly required as several LINK members own land in the interests of communities of interest – as opposed to the communities of place referred to in the Bill. In addition to this, we note that the Scottish Government itself rejected a duty for Historic Environment Scotland to consult with local communities, during recent Stage 2 discussions of the Historic Environment (Scotland) Bill, on the basis that the local communities could not be easily defined in law. This suggests there is a serious difficulty here, and therefore, further detail and clarity is required.

Section 40 Eligible land: salmon fishings and mineral rights

We hope that Parliament will further investigate the reason why shooting rights are not included in this section of the Bill. It appears to be inconsistent that shooting rights should be divorced from fishing rights, as they are so similar in relation to land values and use.

Section 66 Repeal of exclusion of shootings and deer forests from valuation roll

We have long argued for rigorous regulation of shooting and stalking activities on land holdings, and in respect of wild deer matters we comment under Part 8 below. With regard to business rates, we have heard, for many years, claims that such exclusion of such land holdings is essential to local economies, but distinct from agricultural enterprises and local businesses. We have frequently questioned this position, and ask Parliament to consider it fully.

If the rate exemptions are to be ended, we suggest that careful consideration be given to the matter of rates relief being applied on a discretionary basis in circumstances where the land holder’s management practices were especially beneficial to the environment. An alternative to this might be to make continuing rates relief conditional on compliance with a set of conditions designed to ensure environmental sustainability. Such a regime might be analogous to the cross-compliance and greening conditions now attached to CAP payments.

PART 8 – Deer Management

We welcome the continuing interest of RACCE in deer management. We encourage this scrutiny to continue, as in our experience it is helping to deliver improvements to current deer management systems in practice. We support the proposals for new legislation and enhanced powers for SNH to deliver more effective deer management planning and for the wider use of deer panels for public engagement. Where public funding for deer management planning is in place, we think that it is appropriate that deer management plans undergo thorough and transparent public consultation, and final endorsement by SNH, to ensure that the public interest is supported. In considering these proposals, Parliament should assess SNH’s capacity to deliver the protected areas regime.

LINK supports, broadly, paragraphs 359-361 of the RACCE Stage 1 Report.

Conclusion

LINK supports the principles of the Land Reform Bill, and much of the RACCE Committee Stage 1 Report. Like RACCE, we hope to see a strengthening, in line with our stage 1 evidence, of many parts of the Bill through amendments brought forward at Stage 2.

This briefing was prepared by the LINK Land Reform (Scotland) Bill team

For further enquiries, please contact Diarmid Hearn (Head of Policy at National Trust for Scotland and Chair of the LINK Land Reform Bill Team) dhearns@nts.org.uk