

Rob Gibson MSP

Convener

Rural Affairs, Environment and Climate Change Committee

Committee Room T3.40

The Scottish Parliament

Edinburgh

EH99 1SP

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13 January 2016

Dear Rob

### **Land Reform (Scotland) Bill: Part 3 – Transparency of landownership**

I write to update the Committee on the approach the Scottish Government plans to take to Part 3 of the Land Reform (Scotland) Bill during Stages 2 and 3 which will include the setting up of a register of those who have a controlling interest in landowners.

#### *Context*

From the evidence that has been submitted to Parliament during Stage 1, the detail of the Committee's Stage 1 Report on the Bill, and the debate in the Chamber on 16 December it is clear that Parliament, the majority of stakeholders, and the public would like Part 3 of the Bill to be strengthened to provide greater transparency of landownership in Scotland.

It is clear that where land in Scotland is owned by legal entities, such as companies and trusts, there is a desire for the names of any individuals who are not themselves the legal owners but have control over landowners to be publicly available.

#### *Establishment of a Register of controlling interests in land*

We believe that, in principle, it is possible to increase the transparency of landownership in Scotland through requiring the public disclosure of information about persons who make decisions about the use of land in Scotland and have a controlling interest in land.

We consider that this will be best achieved through the disclosure of information about such persons in a public register.

As the Committee is aware, greater transparency gives rise to many complex legal issues, most notably the right to free movement of capital under EU law and the interaction with rights protected under ECHR.

We are confident that we can map out the overall scope of a requirement to provide such information in a public register ahead of Stage 3. In doing so there are various issues to be considered in detail through further engagement and consultation. For example:

- what information should be disclosed and in what circumstances disclosure should be required;
- how would any requirement to provide the information interact with registration law and our commitment to complete the Land Register;
- how the information should be obtained and kept up to date;
- fees and charges;
- what provisions will be necessary to protect the legitimate interests of individuals in maintaining their privacy;
- whether there should be any exceptions on *de minimis* grounds (eg flats and house owned by private individuals);
- how requirements to disclose and update information can be enforced; and
- how to ensure that landowners cannot avoid the disclosure requirements.

### *Next Steps*

We are committed to bringing forward Government amendments at Stage 3, in the form of a power to make regulations to provide for the creation of a public register that will contain the information required to provide greater transparency on who owns and controls land in Scotland.

The Committee is due to conduct its Stage 2 scrutiny of Part 3 of the Bill on 20 January. It is not possible to bring forward detailed amendments to establish such a register, to provide for full detail on the functioning of the register, or clarify the full extent of the information that would be held in the register to this timetable.

Bringing forward a regulation-making power will allow the further policy work to be undertaken on the issues above and further consultation carried out in order to bring forward detailed regulations at the earliest opportunity in the next Parliamentary term.

The Government recognises the concerns that both the Committee and the DPLR Committee have expressed in relation to the breadth of regulation-making powers being taken in this and other Bills. Given these concerns, I confirm that the regulation-making power that is brought forward at Stage 3 will be subject to an enhanced form of Parliamentary procedure to ensure an appropriate level of scrutiny when the regulations are brought forward in the next Parliamentary term.

We shall continue to keep the Committee updated on progress and share further information and draft provisions as soon as it is possible to do so.

### *EU legal entities*

As we said in our response to the Committee's Stage 1 Report, the Government will not be bringing forward amendments to limit landownership in Scotland to individuals and legal entities registered in a Member State of the EU.

Such a measure would not be within the competence of the Scottish Parliament.

### *Additional information on the categories of landowners*

As indicated in our response to the Stage 1 report, we are continuing to consider potential ways to strengthen the provisions in section 36 on the disclosure of information about the categories of landowners. We will keep the Committee updated of developments on this topic.

The issue of disclosure of information on individuals with controlling interest in proprietors of land is addressed above.

#### *Current provisions in sections 35 and 36 relating to controlling interests in land*

As a consequence of the proposal to bring forward the wide regulation-making power about the disclosure of information about individuals with a controlling interest in landowners, the Government does not feel it is necessary for the current provisions in section 35 to remain in the Bill. If information is publicly available there would be no need for people to make a request for information on persons with control over land on a case-by-case basis. As a result the Government does not intend to bring forward any amendments at Stage 2 to section 35 and will lodge amendments at Stage 3 to remove section 35 from the Bill, replacing it with amendments to introduce the regulation making power..

In addition, it will no longer be necessary for the regulation-making power in section 36 to enable the Keeper to request information about individuals that have a controlling interest in proprietors of land.

The proposed regulation- making power, outlined above, on a register of those who have a controlling interest in land should provide greater transparency of landownership than this provision in the current section 36.

Therefore, the Government will also bring forward appropriate amendments at Stage 3 to amend section 36 so that it does not enable the Keeper to request information about individuals having a controlling interest in land as this will be superseded by the regulation making power..

The Government will continue to update the Committee about the possibility of amending section 36 in respect of information about categories of landowner.

#### *Conclusions*

I hope that the Committee will find this letter useful in helping to inform its scrutiny of the Bill at Stage 2.

I shall, of course, be happy to provide, so far as possible, any further information and clarification the Committee requires and will continue to keep the Committee updated.

I shall also be happy to confirm our intentions on the record at Stage 2 on 20 January.

Kind regards

**AILEEN MCLEOD**