

## **Land Reform Bill**

Additional Evidence from Andy Wightman

1 November 2015

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I submit this further evidence on the Land Reform Bill.

Following a RACCE evidence session on 2 September 2015, the Committee Convenor, Rob Gibson MSP, wrote to Trudi Sharp, Deputy Director for Agriculture, Rural Development and Land Reform at the Scottish Government. In his letter, he sought answers to a series of questions including two relating to the EU/offshore provisions. The answers provide further insight into Scottish Government reasoning on why they decided not to proceed with the proposals and I have responded to the answers as follows.

### **QUESTION 2**

Question 2 asked for

*“clarification of why the proposal in the consultation to make it incompetent for non-EU registered entities to register title to land in Scotland is not in the Bill and any analysis that the Scottish Government conducted in this area”.*

In its response, the Scottish Government provided 6 pages of argument (pages 24-29 in Annex B) which raised a number of issues.

### **EU still poses problems**

Scottish Ministers' principal reasoning is that landowners may, instead of incorporating offshore, simply incorporate within the EU but with an opaque shareholding structure involving (possibly) offshore companies. In other words, instead of Hanky Panky Properties Ltd. in Grand Cayman, you would have Hanky Panky Properties Ltd. registered in Berlin but, in turn, owned by shareholders in Panama or somewhere. Even taking into account the new registers of beneficial ownership being developed by EU member states, the Scottish Government argue that these will not be fully open to the public and, in any case, do not apply to trusts.

This argument, in essence, suggests that because there remain means of concealing the true ownership of companies, nothing should be done. But this is not logical.

Currently, we can know nothing about companies registered in tax havens. They have refused to co-operate with efforts to improve transparency. Any company registered in places such as Grand Cayman or the British Virgin Islands is surrounded by an impenetrable veil of secrecy.

A ban may well mean that alternative means of concealment are deployed within the EU. Even so, we will be in a better position than we were before the non-EU ban.

Firstly all such companies will be subject to registers of beneficial ownership. even though they may not be public available in the first instance, the trend is to move steadily to greater transparency and not less. In Scotland and the UK, we have direct influence in the EU and

can argue and vote to improve matters. We have no influence over the internal affairs of Grand Cayman and other tax havens.

Secondly, bringing such companies 'onshore' so to speak means we have access to information on Directors and shareholders as well as annual accounts and returns. Again, such information may be subject to a variety of regimes in terms of openness across the EU but all are better than offshore tax havens.

In other words, if the price of barring of the worst of secrecy jurisdictions is that we may still have residual problems with EU rules and regulations, that is no argument for doing nothing when we are in a position to improve matters within the EU.

## **Trusts**

The second key argument deployed by the Scottish Government is that barring non-EU entities might increase the use of Trusts as vehicles for owning land. Trusts (the argument goes) can be opaque and thus there is no point in doing anything about offshore entities. Again, this is illogical. Trusts are governed by Scots law and are within the jurisdiction of the Scottish Parliament. If there is a problem with Trusts (and there is), we can do something about it. Indeed, the Scottish Law Commission drafted a Bill as recently as August 2014. The Scottish Parliament has unfettered competence to legislate to make Trusts more transparent.

## **Further Reasoning**

The response to RACCE concludes on page 29 with three further reasons why the proposal will not increase transparency and accountability of landownership in Scotland (1st, 3rd and 4th bullet points). The 3rd and 4th bullet points relate to the claim that there is no evidence that non-EU incorporation has ever caused any detriment to any individual or community. By contrast (it is claimed), there is plenty evidence of instances where UK registered entries have caused concerns.

But the rationale for the bar on non-EU entities has nothing to do with any alleged detriment. It is a proposal to improve transparency and, thus, accountability. In recent years, I have highlighted a number of instances where such concerns may have a bearing on potential criminal proceedings (1) Beyond that, there are widespread generic concerns about money-laundering and taxation.

The first bullet point argues that,

*"There is no clear evidence to suggest that having land owned by a company or legal entity incorporated in a Member State will increase transparency and accountability of land ownership in Scotland. To illustrate, the Tax Justice Network began publishing in 2013 a Financial Secrecy Index that ranks jurisdictions according to their secrecy and scale of their activities. The results from 2013 show that Luxembourg ranks second on the index, Germany eighth and Austria 18th. It is also worth noting that the United Kingdom ranks 21st (just behind the British Virgin Islands (20th) and somewhat higher than some of countries that are sometime perceived to be tax havens; Liechtenstein 33, Isle of Man 34, Turks and Caicos Islands 63)."*

The problem with this analysis (which seems to suggest that EU countries such as Germany and the UK are little different in terms of secrecy than the British Virgin Islands or

the Turks and Caicos Islands) is that it relies on a composite index. As the Tax Justice Network explains,

*“The Financial Secrecy Index is a ranking of jurisdictions based on combining a qualitative measure (a secrecy score, based on 15 secrecy indicators) with a quantitative measure (the global weighting to give a sense of how large the offshore financial centre is). The secrecy score and the weighting are arithmetically combined with a special formula – the cube of a jurisdiction’s secrecy score is multiplied by the cube root of its global scale weight – to create the final score, which is then used for the FSI ranking.”*

The secrecy score is based purely on the level of secrecy. The FSI ranking is derived by taking this secrecy ranking and weighting it by the volume of financial transactions that flow through each country. In other words, the most secretive jurisdiction in the world is Samoa. But because it is so small and handles very little financial flows, it ranks 76th out of 82 on the main FSI index. Germany, on the other hand is 58th out of 82 on the secrecy ranking but jumps to 8th place on the FSI index due to the sheer volume of financial flows through Frankfurt and other financial centres in Germany.

For the purposes of assessing the secrecy of any jurisdiction (the rationale for barring non-EU entities), it is the secrecy ranking which matters. (2)

The highest ranking EU member state is (not surprisingly) Luxembourg in 52nd place out of 82. Austria is at 52, Germany at 58, Cyprus at 65 and Latvia and other EU member states at 67 onward. In other words, EU member states are considerably more open than the virtually all other jurisdictions on the secrecy index. It is only the volume of transactions that flow through London and Frankfurt that elevate Germany and the UK higher up in the FSI index.

### **QUESTION 3**

The second question RACCE asked was,

*“How much land the Scottish Government understands is held in tax havens, and whether it accepts the figure of 750,000 acres as reported by Private Eye magazine.”*

The Scottish Government replied that it could not verify the accuracy of this figure because of the limited information available from the Register of Sasines and the fact that the term “tax haven” has no officially agreed definition. This is true although the OECD has identified a number of jurisdictions as tax havens and the Financial Secrecy Index provides evidence the extent to which states are secrecy jurisdictions.

As for the limited information within the Register of Sasines, I have been interrogating this over the past 20 years. The jurisdiction within which any corporate entity is registered is always narrated in full on the title deed. This research led me to conclude in Table 15 in my book, *“The Poor Had No Lawyers”*, that 727,634 acres of land were owned by companies registered in offshore tax havens in 2012. Land sales since then has increased the total extent to over 740,000 acres. The figure that appeared in Private Eye is derived from my work. I know because I wrote the article.

### **THE WAY FORWARD**

The rationale for not having included any provision for the restriction of legal persons owning land to those registered within the EU remains unconvincing. I understand from

informal discussions, however, that there is no technical impediment to doing so. Any such amendment would involve amending Section 22 of the Land Registration etc. (Scotland) Act 2012 such that no deed would be accepted where the applicant was a legal person registered in any jurisdiction that was no at the time of recording a member state of the EU. In order to maintain such a condition, there would have to be provision for future action to be taken in circumstances where membership of the EU changes.

A further question remains in relation to retrospective application. Such a condition would require landowners who currently own land held by offshore entities to transfer ownership to a compliant entity. This could be done by requiring all existing owners registered outside the EU to transfer title to a compliant entity within, say, 5 years of a date to be set.

## **NON-DOMESTIC RATES**

Part 6 of the Bill contains provisions to re-introduce rates for shootings and deer forests. Non-domestic rates form part of the revenue for local government. But in evidence to the Committee from Dougie McLaren on 2 September 2015 (col.35), it is clear that the Scottish government intend to retain the revenues raised by this part of the Bill by adjusting the formula that governs the general revenue grant. This is consistent with statements from the Scottish Government that this revenue would be used to expand the Scottish Land Fund.

I am of the view that it is wrong to hypothecate any non-domestic rates for use by central government. Non-domestic rating revenue belongs to local government and it is wrong for it to be retained by central government. In a number of European countries this would be deemed a breach of the constitutional rights of local government. If Scottish Ministers wish to commit funds to a Scottish Land Fund they should do so from the Scottish Consolidated Fund in same way as all other public expenditure is allocated.

## **NOTES**

(1) See here [www.andywrightman.com/archives/4024](http://www.andywrightman.com/archives/4024) & here [www.andywrightman.com/archives/3534](http://www.andywrightman.com/archives/3534)

(2) See [www.financialsecrecyindex.com/faq/whatisasj](http://www.financialsecrecyindex.com/faq/whatisasj)