



The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

4th Report, 2012 (Session 4)

Stage 1 Report on Long Leases (Scotland) Bill

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The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs & the Environment.

Membership:

Claudia Beamish
Graeme Dey
Annabelle Ewing (Deputy Convener)
Rob Gibson (Convener)
Jim Hume
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4th Report, 2012 (Session 4)

Stage 1 Report on Long Leases (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

Procedure

1. The Long Leases (Scotland) Bill¹ was introduced in the Scottish Parliament on 12 January 2012 by the Cabinet Secretary for Rural Affairs and the Environment. The Bill was accompanied by explanatory notes (SP Bill 7-EN), which included a Financial Memorandum, a Delegated Powers Memorandum (SP Bill 7 – DPM) and a Policy Memorandum (SP Bill 7-PM), as required by the Parliament's *Standing Orders*².

2. At its meeting on the 18 January, the Parliament agreed that the Rural Affairs, Climate Change and Environment Committee be designated as the lead committee for Stage 1 scrutiny. The Delegated Powers Memorandum has been considered by the Subordinate Legislation Committee. The Finance Committee sought views on the Financial Memorandum and wrote to this Committee with the responses received. The Committee notes the consideration undertaken by both the Subordinate Legislation Committee and the Finance Committee which is discussed later in this report.

Rural Affairs, Climate Change and Environment Committee scrutiny

3. The Bill is the same Bill, with some amendments, as the Long Leases (Scotland) Bill (SP Bill 61) introduced on 10 November 2010 in Session 3.

4. The Committee agreed to take account of the evidence taken by the former Justice Committee and its Stage 1 Report on the Long Leases (Scotland) Bill (SP Bill 61)³ (“the Session 3 Bill”). In addition, the Committee agreed that its scrutiny

¹Long Leases (Scotland) Bill. All documents available at:<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45695.aspx>

² Scottish Parliament (2011). *Standing Orders*, 4th Edition (1st Revision). Available at:
<http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/StandingOrdersv4.1.pdf>

³ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/22395.aspx>

should focus on new aspects of the Bill which have been introduced as a result of previous scrutiny.

5. This Committee issued a call for views on the changes made to the Bill, compared to the previous Bill, and the recommendations made by the previous Justice Committee's Stage 1 report. 14 written submissions were received (including supplementary written submissions).

6. The Committee took evidence in public session over four meetings from the following witnesses—

8 February 2012

Simon Stockwell, Bill Team Leader, Sandra Jack, Policy Officer, Family and Property Law, Law Reform Division and Graham Fisher, Head of Branch, Constitutional and Civil Law Division, Scottish Government.

22 February 2012

Dale Strachan, Partner, Brodies LLP;
Lionel Most, Member, Conveyancing Committee, Law Society of Scotland;
Richard Blake, Legal Adviser, Scottish Land and Estates; and
Alan Cook, Chair, Commercial Committee, Scottish Property Federation.

29 February 2012

Andy Wightman, independent researcher;
Andrew Ferguson, President, Society of Local Authority Lawyers and Administrators in Scotland (SOLAR);
Andy Young, Head of Asset Management, City of Glasgow Council;
Iain Strachan, Legal and Administrative Services, and Bill Miller, City Development Department, City of Edinburgh Council; and
John Gahagan, Estates Manager, Aberdeenshire Council.

7 March 2012

Stewart Stevenson, Minister for Environment and Climate Change, Annalee Murphy, Solicitor, Legal Services Directorate, and Simon Stockwell, Bill Team Leader, Scottish Government.

7. The Report from the Subordinate Legislation Committee on the Delegated Powers Memorandum is reproduced at Annexe A to this report. The submissions received by the Finance Committee on the Financial Memorandum are contained in Annexe B. Extracts from the minutes of all the meetings at which the Bill was considered are reproduced at Annexe C. Written submissions made in support of evidence given at meetings and supplementary to the evidence given, together with extracts from the *Official Report* from those meetings are contained in Annexe D. All written submissions received in response to the Committee's call for views are reproduced at Annexe E. All Annexes are available as web-only publications.

8. The Committee thanks all those who gave evidence and is grateful to the work done by the previous Justice Committee on the Session 3 Bill which has greatly assisted this Committee in its scrutiny of the Bill.

BACKGROUND TO AND PURPOSE OF THE BILL

Development of the current Long Leases (Scotland) Bill

9. The Policy Memorandum⁴ which accompanies the Bill outlines the policy objectives of the Bill. It states that—

“The Bill converts ultra-long leases into ownership. An ultra-long lease qualifies if it has been granted for more than 175 years and has more than 100 years left to run immediately before the appointed day laid down in the Bill. On the appointed day, all qualifying ultra-long leases will convert automatically into ownership, unless the tenant chooses to opt out. In some cases, compensatory and additional payments will be payable to the landlord by the tenant and some leasehold conditions will be preserved as real burdens in the title deeds.”

10. The Bill is in six parts and, most noteworthy, is the same Bill, with some modifications, as the Long Leases (Scotland) Bill (SP Bill 61) (which was in five parts) introduced on 10 November 2010 in Session 3.

11. The Session 3 Bill was scrutinised at Stage 1 by the Justice Committee which recommended in its Stage 1 Report that the general principles of the Bill be approved. Due to lack of time, the Bill fell at the end of the session. This Bill has been amended to take account of some of the recommendations made by the Justice Committee in its Stage 1 Report.⁵

12. In Annex A to the Policy Memorandum⁶, the Scottish Government provides a table of equivalence which shows how the sections in this Bill relate to previous sections in the Session 3 Bill and the draft Scottish Law Commission’s (SLC) bill, and provides comments on the changes.

13. The Bill is based on a draft bill contained in the SLC’s 2006 report *Conversion of Long Leases*.⁷ The draft bill was prepared as the final part of the SLC’s review of the structure of land law in Scotland. Previous reviews led to the Abolition of Feudal Tenure etc (Scotland) Act 2000⁸, the Leasehold Casualties

⁴The Long Leases (Scotland) Bill. Policy Memorandum available at: [http://www.scottish.parliament.uk/S4_Bills/Long%20Leases%20\(Scotland\)%20Bill/Policy_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/Long%20Leases%20(Scotland)%20Bill/Policy_Memo.pdf) [Accessed March 2012]

⁵Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 91, 6th Report, 2011, (Session 3). Available at: <http://archive.scottish.parliament.uk/s3/committees/justice/reports-11/jur11-06.htm> [Accessed March 2012]

⁶The Long Leases (Scotland) Bill. Policy Memorandum Annex A.

⁷ Scottish Law Commission. (2001) *Conversion of Long Leases*. Discussion Paper 112. Edinburgh: Scottish Law Commission. Available at: http://www.scotlawcom.gov.uk/download_file/view/133/ [Accessed March 2012]

⁸ Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).

(Scotland) Act 2001⁹, the Title Conditions (Scotland) Act 2003¹⁰ and the Tenements (Scotland) Act 2004.¹¹

14. The rationale behind the draft bill was that granting leases for very long periods was akin to ownership, therefore, leases which were let for more than 175 years and have more than 100 years left to run should be converted to ownership.

15. The Scottish Government estimates that there are around 9,000 ultra-long leases in Scotland, most of which are for 999 years.¹²

16. The Scottish Government launched a consultation on the SLC's proposals in March 2010 and thirteen of the fifteen publicly available responses were in favour of the proposal for conversion of ultra-long leases. The responses are available to read on the Scottish Government's website.¹³

17. The Scottish Government then introduced the Session 3 Bill on 10 November 2010. It differed from the SLC draft bill in three areas—

- the exclusion of leases with a rent of over £100, to exclude commercial leases;
- the exclusion of leases let solely to allow access for pipes and cables; and
- any provision in a lease continuing on a year-to-year basis, requiring the landlord to renew the lease, would be regarded as having been complied with.

How the current Bill compares to the Session 3 Bill

Additional harbours exemption

18. Following representations made to the Justice Committee on the Session 3 Bill from Peterhead Port Authority, the Scottish Government has now included an exemption, section 1(4)(b), where the subjects of the lease include a harbour for which there is a harbour authority. ("Harbour" and "harbour authority" are then defined in section 80).¹⁴

19. The view put forward by Peterhead Port Authority was that the south breakwater has been leased for 999 years and converting it to ownership could impact adversely on the operation of the harbour.

Pipes and cables exemption

20. Section 1(4)(c) exempts leases granted solely to allow the installation and maintenance of pipes and cables. This exemption was in the Session 3 Bill, however, the Justice Committee recommended that the Government revisit this area as some argued that this exemption was too limited in scope in terms of the

⁹ The Leasehold Casualties (Scotland) Act 2001 (asp 5).

¹⁰ The Title Conditions (Scotland) Act 2003 (asp 9).

¹¹ Tenements (Scotland) Act 2004 (asp 11).

¹² The Long Leases (Scotland) Bill. Policy Memorandum page 1, paragraph 4.

¹³ [Responses to the Scottish Government's consultation on long leases](#). [Accessed March 2012]

¹⁴ Scottish Government Bill team. Written evidence.

types of leases it included. The wording of the section has been amended to provide further clarification.

Commercial leases exemption

21. The Bill, as did the Session 3 Bill, excludes leases with an annual rent of over £100 with the aim of excluding commercial leases. Concerns were raised previously regarding the commercial lease exemptions and whether the exemption as drafted met the Scottish Government's policy intention.

22. The Justice Committee also drew the attention of the Scottish Government to the issue of variable rent and the arguments made to the Committee in favour of this being taken into account when setting the criteria for this exemption.¹⁵

23. Section 2 of the Bill (a new section which had no equivalent in the Session 3 Bill) provides that, for the purposes of this exemption, any element of variable rent is to be left out of account. However, section 64 of the Bill (another new section) provides that a landlord may register an exemption where the annual rental was over £100 at any point in the five years before Royal Assent, reflecting the fact that some leases have variable rent.

24. Registration of the exemption follows either an agreement entered into with the tenant in question, or an order being made by the Lands Tribunal under section 69. Section 69 is also a new section and permits, among other things, confirmation by the Lands Tribunal that there was variable rent over the relevant period for the purposes of the exemption.¹⁶

25. There are also further provisions related to *cumulo* rent where a single rent is payable in relation to two or more leases.

26. Issues raised during this Committee's scrutiny which relate to these provisions in the Bill were—

- compensation and additional payments for landlords on conversion to ownership;
- commercial leases in respect of variable rents;
- standard securities;
- registration issues; and
- the exemption of pipes and cables and time limits provisions.

27. Further detailed information on the Session 3 Bill can be found in the SPICe briefing¹⁷ published in January 2011. SPICe also produced a briefing¹⁸ on the current Bill in February 2012. It summarises the ways in which the Bill varies from

¹⁵ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 91, 6th Report, 2011, (Session 3).

¹⁶ Harvie-Clark. *Long Leases (Scotland) Bill*. SPICe Briefing 12-11. Page 18.

¹⁷ http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S3/SB_11-01.pdf

¹⁸ <http://www.scottish.parliament.uk/parliamentarybusiness/46603.aspx>

the Session 3 Bill and provides an overview of the law of leases and the Bill's proposals.

Related policy issues not directly referred to in the Bill

Common good

28. The common good is a fund of money and assets owned and administered by each local authority in respect of each former burgh within the area of that local authority. This policy issue was a major focus of the previous Justice Committee's Report, which recommended that any compensation received regarding the transfer of common good land should be paid back into the local authority's common good land fund, however no modifications have been made to the Bill in respect of common good.

29. The issue of to what extent common good land and buildings will be affected by the proposed conversion scheme for ultra-long leases was discussed and whether that this was desirable in policy terms or whether the bill should contain a common good exemption.

30. Questions arose as to how local councils collated information on the number of ultra-long leases which are held under common good and how robust this information is. This is discussed later in the report.

Edinburgh's Waverley Market

31. Evidence to the Committee raised questions in relation to the site of Edinburgh's Waverley Market and the question as to whether it was, or was not, part of the common good of Edinburgh. The Committee also heard evidence that an exemption for this specific site should be included in the Bill. This issue is discussed in more depth later on in this report.

Policy Memorandum

32. The Committee found the Policy Memorandum which accompanied the Bill to be helpful in clearly setting out the policy objectives and development of the Bill. Setting out the amendments to the Bill to reflect the evidence taken by the previous Justice Committee on the Session 3 Bill (including a table of equivalence) was particularly useful to this Committee's Stage 1 scrutiny.

Delegated powers

33. The Committee considered the delegated powers of the Bill in relation to setting time limits. The Subordinate Legislation Committee considered the delegated powers contained in the Delegated Powers Memorandum. This is discussed later in the report.

GENERAL PRINCIPLES OF THE BILL

34. The Committee will comment on certain specific provisions of the Bill and the wider policy issues considered as part of its scrutiny later in this report. However, the Committee, in endorsing the Justice Committee's 6th Report, 2011 (Session 3): Stage 1 Report on the Long Leases (Scotland) Bill,

recommends that the Scottish Parliament supports the general principles of the Bill at Stage 1, to allow the Bill to pass to Stage 2.

PROVISIONS IN THE BILL

Commercial leases

Variable rent provisions

35. When considering the Session 3 Bill, the Justice Committee agreed that there should be an exemption for commercial leases but heard conflicting views as to whether the £100 rent cut-off was the correct approach. It welcomed the Scottish Government's undertaking to consider how the commercial leases exemption was formulated and drew to the attention of the Scottish Government the issue of variable rent and the arguments in favour of taking this into account when formulating the exemption.¹⁹

36. In written evidence to the Committee, the current Bill team confirmed that the £100 cut-off point was still the approach taken in this Bill, however, additional provisions have been included to take into account variable rents. It stated—

“The current Bill still has an exemption for leases where the annual rental exceeds £100 (see section 1(4)(a) as read with section 2). Variable rental is not taken into account when considering if this exemption applies (see section 2(5)). However, the Bill now contains a provision (section 64) which allows the landlord to register an exemption if the annual rental in the 5 years before the Bill receives Royal Assent exceeds £100. This is designed to take account of variable rental.”²⁰

37. Section 64 allows a landlord to register an agreement with the tenant, or an order to be made by the Lands Tribunal under section 69, that the annual rent paid under the lease was over £100 at any point in the five years before Royal Assent. This is to take into account the fact that some leases may have a low base annual rental below £100, yet the landlord retains a significant interest in variable rental.

38. In written evidence to this Committee, Brodies LLP expressed concern about the commercial leases exemption in respect of variable rents. While it was pleased that additional provisions contained in sections 64 and 69 allow for variable rent to be taken into account, it recommended further clarity is provided so as to avoid any misinterpretation with section 2(5).²¹

39. When asked about this during oral evidence, Dale Strachan from Brodies LLP called for amendments in order to avoid confusion regarding the variable rent provisions in the Bill. He said—

“My specific concern about the bill is that section 2(5) has not been disapplied from any other section. Therefore, under the remedial sections—sections 64 and 69—you are still required to disregard the variable element

¹⁹ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraphs 80 and 91. 6th Report, 2011, (Session 3).

²⁰ Scottish Government Bill team. Written evidence.

²¹ Brodies LLP. Written evidence.

of rent. Although the explanatory notes clarify what the law is intended to be, that is not yet reflected in the bill.”²²

40. The Bill team, who supported the Minister for Environment and Climate Change on the Bill, was aware of the submission calling for clarification and told the Committee—

“We think that we are okay on that and that there is sufficient clarity. The interpretation that Brodies gave of the provision is in line with ours. However, we will double-check that and make certain that the provision captures what it needs to capture. There is an important point. The main point that Brodies and others have raised on the £100 exemption is that we need to be absolutely certain that, if there are variable rentals as a result of turnover, the leases can be exempted when the landlord has a significant interest. As I said, we think that we have got it right, but we will double-check that and report back to the committee.”²³

41. Dundas and Wilson CS LLP also agreed with the concerns regarding sections 64 and 69 stating—

“We are also of the view that sections 64 and 69 could be clarified to put beyond doubt what could be included in ‘annual rent’ for these sections. Although it is clearly intended that variable rent will be included, the Bill does not expressly state this.”²⁴

Variable rents not reflected in the original lease

42. Concerns were also raised regarding section 2 of the Bill and the fact that the rent payable is that as set out in the lease (or any assignation of the lease). The Committee heard that there are a number of occasions where the terms of a lease are amended but not necessarily then amended in the original lease or assignation of lease. Dundas and Wilson CS LPP in its written submission said—

“Where you have a lease and the original rent reserved is less than £100 but the lease has been varied so that the rent is now greater than £100, would this qualify for automatic exemption? In our opinion it is not clear whether s1(4)(a) covers the rent as originally reserved or the rent as varied. The reference to the assignation is in our view particularly unhelpful as it could lead to an interpretation that it is only those two documents (the original lease and the assignation of it) that you would be permitted to look at. The draft provisions do not seem to take into account that a lease can be varied other than in gremio of an assignation.”²⁵

43. Dale Strachan explained his concerns with the Bill as currently drafted by telling the Committee—

²² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 619.

²³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 600.

²⁴ Dundas and Wilson CS LLP. Written submission.

²⁵ Dundas and Wilson CS LLP. Written submission.

“I refer you to section 2(2), which does not assist that conclusion because it says: “the rent payable under a lease is the rent as set out in the lease (or as the case may be the assignation of the lease).”

The practice is that, when rents change with time, they are recorded neither in the lease nor in an assignation but in a separate memorandum. If you confine yourself to the documentation that may be referred to, you do a disservice to the legislation.”²⁶

44. The Scottish Property Federation (SPF) and Brodies LLP agreed with the concerns raised by Dundas and Wilson CS LLP.²⁷

45. Concerns regarding the restrictive nature of these new provisions were put to the Minister who told the Committee that the issue will be considered again in more depth, although he believed that this was not the case. He pointed out to the Committee—

“[...] section 2(1) limits the scope of section 2 to section 1(4)(a), so it is less restrictive than it might seem. The issue is also covered in section 64, particularly in subsection (1), which covers the issue in a different way. We will consider the matter further, but we believe that we have covered the necessary bases through section 2(1), which limits the scope of section 2, and hence of 2(5), to only section 1(4)(a), and through section 64, which is on “Exemption of qualifying lease by registration of agreement or order.”²⁸

46. The Bill team acknowledged the fact that by referring to the rent payable under a lease as the rent as set out in the lease, this may not always reflect the correct rent payable. The Bill team agreed to look again at this provision to ensure that changes which may have been made to the lease and updated in other documents are captured by the provision. Simon Stockwell told the Committee—

“[...] there is an argument in relation to section 2(2) that we should perhaps cover other cases in which the rent has been varied and where that is clear. We think that there might be a bit more in that than there is in the first point. We will come back to the committee to let you know precisely what we are thinking.”²⁹

Grassum

47. Discussions took place at committee meetings on the commercial leases exemption and the fact that it did not take into account grassum³⁰ having been paid prior to agreeing annual rents for ultra-long leases. The thrust of the argument was that the rents for certain leases of a commercial nature are set below the £100 cut-off point set in the Bill as a grassum was paid. In these cases

²⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 621.

²⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 626.

²⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 691.

²⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 692.

³⁰ A single payment often made in addition to a periodic payment such as rent.

is a lease of a commercial nature and the low annual rent does not reflect the true nature of the lease.

48. This was discussed with particular reference to Waverley Market where a lump sum of £6.25 million was paid to Edinburgh City Council when the terms of the current lease were agreed in 1989. The ultra-long lease granted by the Council in 1983 seems to qualify for conversion under the scheme proposed in the Bill, as the annual rent payable is very low. This means that ownership of Waverley Market could pass from the City of Edinburgh Council to the current owner of the tenant's interest under the lease (a private developer) under the proposals in the Bill.³¹

49. During oral evidence, Iain Strachan from City of Edinburgh Council, outlined the Council's concerns regarding transfer of ownership of Waverley Market. One point made was the extent to which the commercial lease exemption, as currently drafted, only takes into account the £100 per annum rental threshold which may not be the only way of identifying leases of commercial interest. He told the Committee—

“If the bill seeks to exclude those properties where the landlord, through their heritable interest, retains a significant interest in the site but focuses on a purely monetary test—and if it does not take account of where grassums have been paid—the question is whether that gives a fully rounded picture.”³²

50. However, he went on to say—

“I admit that our suggestion is in some respects rather simplistic but, in essence, the grassum is the rental income capitalised on a day 1 basis.”³³

51. Bill Miller from the Council also added—

“It is common for grassums to be paid for leases for particular reasons—for example, when a landlord sees fit to take a large lump sum of money at a certain time and grant a longer lease at £1 per annum or for a peppercorn rent. In such circumstances, they take a lump sum of money equivalent to the rent over the period of the lease. That is quite common in commercial leases. It means that the landlord still has control over the land or property. They have not sold the land so they do not lose control and can still influence what happens during the period of the lease and thereafter. That is what the City of Edinburgh Council did with Waverley market: it did not want to lose ownership of the site for many reasons, including its location.”³⁴

³¹ Harvie-Clark. *Long Leases (Scotland) Bill*. SPICe Briefing 12-11. Page 15.

³² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 662.

³³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 664.

³⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 663.

52. The Minister was asked whether he would consider taking into account grassums when considering the issue of exempting leases of a commercial nature. The Minister did not agree that this was appropriate and told the Committee—

“A grassum is therefore not to be interoperated with the rent; it is a different issue and not a substitute for rent. To take a grassum and then, post hoc, apply it over the period of the lease to, in effect, take the payment above the £100 per annum limit is to misapply what a grassum is.”³⁵

53. The Committee welcomes the new provisions in the Bill to take into account variable rents for the purposes of exempting commercial leases from the Bill.

54. The Committee notes the concerns raised during evidence regarding the clarity of these new provisions and the extent to which they capture all circumstances where rents are variable and welcomes the Scottish Government’s commitment to consider these issues further before Stage 2.

55. The Committee notes the conflicting evidence received on taking into account grassum when considering leases of a commercial nature.

Standard securities

56. The Committee was told of the concerns regarding the conversion of ultra-long leases and retaining standard securities. A standard security, in simplest terms, is the legal mechanism by which lenders can collect monies relating to mortgages on the leases once converted to ownership. The evidence heard by the Committee related not only to the tenants’ interest and standard securities but to the landlords’ interest also. Under the Bill, the policy intention is that the standard securities over the tenants’ interests continue after the appointed day. Section 6(4) makes provision for the landlords’ standard security interest to be extinguished on the appointed day, given the landlords’ interest in the property itself disappears on the appointed day.

Landlords’ interests

57. The Council of Mortgage Lenders (CML) highlighted that the value of any standard security held by a lender over a tenant’s interest in a long lease could be impacted by the Bill and raised concerns regarding landlords’ interests. The written submission stated—

“In section 6(2) of the Bill it effectively says that on conversion any real right which the qualifying lease was subject to the converted land is now subject to. This would therefore appear to allow a Standard Security over the lease to remain in force.

Our interest in this matter is restricted to residential mortgages but we note in terms of Section 6(4) any Standard Security granted by the landlord over the land subject to the long lease will be extinguished when the Bill

³⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 684.

becomes law although the landlord would remain personally liable to the creditor under the Standard Security.

What we are not sure of is whether there could be any situations where lenders had lent on a commercial basis to a landlord and held a Standard Security from the landlord over the land subject to the lease. It may be worth obtaining the views of the British Bankers Association on this aspect of the Bill if you have not already done so.”³⁶

58. On the point raised by CML regarding landlords’ interests, the Bill team noted—

“The point has also been raised that the landlord might have granted a standard security. What would happen to that, come the appointed day? In most cases, the landlord’s interest in these leases will be very low. The typical rental for an ultra-long lease, as shown by the survey that was carried out by the Scottish Law Commission, is less than £5 a year, on which the landlord would probably not be able to raise much of a loan or advance. We have already excluded from the bill cases in which the landlord has a significant interest by excluding leases for which the rental is more than £100 a year. We do not think that there is an issue.”³⁷

59. The Bill team also confirmed that, as suggested by the Council of Mortgage Lenders, it would seek the views of the British Bankers Association (BBA) on these provisions.

60. The issue was raised with the Minister who reiterated the point that the effect of section 6(4), to extinguish standard security on the appointed day, is deliberate as it would not be appropriate for a standard security of a former landlord to affect the title of a former tenant, the new owner. However, the personal debt that the former landlord owes is not extinguished.³⁸ The Minister also confirmed that the BBA is content that the current provisions are appropriate.

Tenants’ interests

61. Morton Fraser LLP expressed concerns regarding section 6 of the Bill and whether it was sufficiently clear. It indicated that it would appear that the intention is that the customer’s standard security survives conversion but the Bill or Explanatory Notes do not make this clear. It states that it—

“[...] would strongly suggest that if this is the desired intention, then section 6 is re-worded to make it a bit clearer.”³⁹

62. Alan Cook, representing the Scottish Property Federation, said to the Committee—

³⁶ Council of Mortgage Lenders. Written submission.

³⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 600.

³⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 692.

³⁹ Morton Fraser LLP. Written submission.

“As I understand it, section 6(2) of the bill is intended to preserve the standard security interest over the leasehold interest so that it will continue to exist as a standard security interest over the converted ownership interest. I guess that you have to understand the language of that subsection to know that that is its purpose, as it does not use the phrase “standard security”. The very fact that we are having a discussion about how solidly the bill picks up the standard securities point suggests that it could be strengthened by making it clear, for the avoidance of any doubt, that that point is covered by section 6(2).”⁴⁰

63. Brodies LLP agreed that there was ambiguity and said the Bill could be clarified quite simply to make clear the intent.⁴¹ Lionel Most from the Law Society of Scotland appeared less concerned, but told the Committee—

“My understanding of the law as it stands is that where there is an absorption, as the keeper calls it, the standard security continues; it continues to be attached to the interest that acquires the old interest. I do not see that the bill has changed that position. If it is felt that there is a need to clarify the position, so as to maintain the status quo, the Law Society would not have an objection to that.”⁴²

64. The concerns raised regarding preserving the tenants interests were raised with the Bill team who told the Committee that they were content with the provisions as currently drafted. Simon Stockwell told the Committee—

“[...] we think that the answer to the point that was raised by Morton Fraser is that the relevant provision is in section 6(2) rather than sections 6(3) and 6(4). Section 6(2) states: “The converted land is subject to any subordinate real rights to which the qualifying lease was, immediately before the appointed day, subject.” That is certainly the intention. If the tenant is granted a standard security, it should transfer to his new right of ownership under section 6(2).”⁴³

65. The Committee notes the concerns raised by witnesses regarding the clarity of these provisions, however accepts the response that the relevant provisions contained in section 6(2) protect the tenants interests.

Compensation for loss of landlords’ rights

66. Part 4 of the Bill sets out the scheme under which the landlord of a lease which would convert to ownership under the Bill may claim compensation in respect of loss of rights. Compensation payments are based on the annual rent payable (sections 45 to 49) and, as a consequence, will be expected to be very

⁴⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 625.

⁴¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 620.

⁴² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 619.

⁴³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 600.

low. No concerns were raised about these provisions during consideration of the Session 3 Bill, however this Committee's consideration involved discussion on the level of additional payment provision on the conversion of ownership and the role of the Lands Tribunal in determining the level of such payments.

67. During evidence, there were discussions around the compensation provided for under the Bill upon conversion. Iain Strachan, representing the City of Edinburgh Council, was of the belief that the amounts would be minimal, telling the Committee—

“Yes, the bill entitles landlords to a level of compensation; however, as has been commented on, in the case of Princes mall such compensation would be minimal.”⁴⁴

68. However, additional payments on top of the compensation payments are provided for (sections 50 to 55) on various grounds as set out as set out in the policy memorandum. Where no agreement can be reached on the amount of additional payment to be made, section 55 allows it to be referred to the Lands Tribunal for Scotland which will determine the matter.

69. When asked about the additional payment provision contained in section 50 of the Bill, Iain Strachan replied—

“We accept that under the current compensation provisions the compensation for the loss would be minimal. As you correctly say, landlords can claim additional payments, based on the loss of residual heritable interest and potential development value, but I think it is fair to say that given that you are talking about a lease that expires in a significant period of time, its value, as assessed by the Royal Institution of Chartered Surveyors in Scotland, would be minimal. We should look at this not purely on the basis of the asset's monetary value, but its non-monetary value to the city.”⁴⁵

70. The Minister explained the provisions in part 4 of the Bill in relation to compensation and additional payments. He said—

“We have the provisions for the conversion of the lease payments into a one-off payment. Given that we are talking about leases of no more than £100 per annum, the finance that is associated with that is comparatively modest. Section 51 of the bill discusses extinguished rights and also provides ways in which rights that are extinguished by the conversion from a lease to ownership can be agreed by the Lands Tribunal for Scotland and otherwise. Section 51 seeks to address the issues of loss of rights and financial compensation.”⁴⁶

⁴⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 663.

⁴⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 669.

⁴⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 683.

71. Section 47 provides a formula for calculating the compensation payment and section 50(2) provides guidance for the Lands Tribunal on how to calculate the additional payment.

72. The Minister was asked for clarification on the additional payment provisions. He said to the Committee—

“The relevant bit of section 52 states that the value is the value “which the right could reasonably be expected to obtain if sold on the open market by a willing seller to a willing buyer.” In considering the matter under section 55, I suspect that the Lands Tribunal would consider matters such as grassum, which is an exchange of value. I imagine that the Lands Tribunal would wish to look at timing. In other words, if the grassum that was paid in the past is discounted with an appropriate rate of interest to the point at which the decision is being made, would that grassum adequately reflect the value, scaled up because the council has had it for many years?’.

The best approach is for a body such as the Lands Tribunal, which is used to dealing with debates about value, to be part of the process for dealing with such issues. Section 54 deals with situations when additional amounts are mutually agreed and section 55 deals with cases when there is a reference to the Lands Tribunal. The bill has all the provisions necessary to cover loss of value when there is transfer of ownership from the current owner to the leaseholder.”⁴⁷

73. The Committee notes the compensation provisions in the Bill and the provision of an additional payment. The Committee notes the role of the Lands Tribunal in determining the level of additional payment.

Registration

74. The Committee considered how this Bill relates to the Land Registration etc. (Scotland) Bill (SP Bill 6), which is currently being scrutinised at Stage 1 by the Economy, Energy and Tourism Committee.

75. The Policy Memorandum acknowledges that, as both bills progress through their parliamentary scrutiny, some consequential and transitional provision will need to be amended into this Bill at a later stage, or put in place by ancillary order under the Bill.⁴⁸

76. On a related matter, in written evidence to the Committee, the Bill team confirmed that Registers of Scotland has decided not to carry out a specific exercise to update the Land Register to reflect the conversion of ultra-long leases to ownership under the Bill.

77. Brodies LLP expressed concern regarding the decision not to carry out the exercise to update the Land Register. Dale Strachan told the Committee—

⁴⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 686.

⁴⁸ The Long Leases (Scotland) Bill. Policy Memorandum, page 9, paragraph 62.

“I was slightly concerned to read in recent evidence to the committee that Registers of Scotland does not intend to update the registers. It is a key feature of Scottish property law that the registers may be relied on for accuracy and correctness in relation to all matters disclosed. Although I may be straying from the agenda here, I urge the committee to look again at a system whereby those registers would not record the true position.”⁴⁹

78. Dale Strachan went on to say—

“I would have thought that Registers of Scotland would wish its registers to reflect an accurate position. This legislation was not invited by Registers of Scotland or by those who hold the interests. It seems that either matters could be rectified on the keeper’s own initiative over time and with appropriate budgeting, or there could be a mechanism whereby the registers could be corrected on application for a fee.”⁵⁰

79. The question of whether the registration provisions within the Bill should be strengthened was pursued. Richard Blake of Scottish Land and Estates said—

“That is a very valid point. I recently gave evidence on the Land Registration (Scotland) Bill; ...That bill contains a lot of detail on completing the register and under one particular section—which I might well have flagged up to this committee during its consideration of the Agricultural Holdings (Amendment) (Scotland) Bill—any paperwork to do with a registered lease must be put on the land register. I do not think that that sits comfortably with your point about a possible lack of facility to register converted leases. If Government policy is to try to ensure that land registration covers the whole of Scotland, which is something that we support, this would seem to be a very good opportunity to catch some land that might otherwise stay under the same ownership for a long enough time before it triggered first registration.”⁵¹

80. Scottish Property Federation (SPF) said in oral evidence to the Committee—

“If the Long Leases (Scotland) Bill presents another opportunity to take a step towards that and if the objective can be met—indeed, it seems that that is the case, given that the Registers of Scotland was ready to undertake a process in relation to it—we will support it. However, policy on how the Registers of Scotland should approach these matters should be driven by the Government.”⁵²

81. However, Richard Blake representing Scottish Land and Estates made the point—

⁴⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 622.

⁵⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 623.

⁵¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 627.

⁵² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 628.

“What the committee is driving at here is to get the land registered rather than to ensure that title conditions on the register are 100 per cent up to date following changes in legislation. I think that there is a fundamental difference in that respect.”⁵³

82. The Minister was asked about the compatibility of this Bill with the Land Registration etc. (Scotland) Bill. He replied stating—

“The question is whether it is necessary to update the registers at one point in time, and it is proposed that the updating take place the next time it is necessary to update the land register in respect of ownership. That method is more economical and, indeed, more effective, particularly given that the Registers of Scotland will be heavily engaged in implementing the Land Registration (Scotland) Bill, should it be passed by Parliament.”⁵⁴

83. On the processes of updating the land register, the Minister said—

“This bill is not the place to address that issue; it should be dealt with in the Land Registration (Scotland) Bill.”⁵⁵

84. The Committee notes the concern raised by witnesses regarding the decision by the Registers of Scotland not to carry out a specific exercise to update the Land Register to reflect the conversion of ultra-long leases to ownership under the Bill. The Committee considers the Land Register should be updated to accurately reflect ownership and requests that the Scottish Government responds to the concerns expressed to this Committee, in advance of consideration of the Bill at Stage 2.

85. The Committee notes the evidence it heard on updating the land register and further notes the potential issues of compatibility in relation to the Land Registration etc. (Scotland) Bill and anticipates the Scottish Government may, in response, bring forward amendments if required.

Pipes and cables

86. Section 1(4)(c) exempts leases granted solely to allow the installation and maintenance of pipes and cables. The Policy Memorandum explains that this provision was added after responses to the Scottish Government’s consultation indicated that they were aware of ultra-long leases granted in favour of utility and telecom companies for strips of land for cables and pipes.

87. During consideration of the Session 3 Bill, the Justice Committee heard evidence on the legal complexities surrounding this exemption and welcomed the

⁵³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 628.

⁵⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 694.

⁵⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 694.

commitment made by the Scottish Government that it would give further consideration to the issue.⁵⁶

88. In written evidence to the Committee, the Bill team confirmed that this exemption had been retained and clarified, stating “the Government considers it best to include the exemption to put the matter beyond doubt.”⁵⁷

89. The Minister confirmed that he is content with these provisions, telling the Committee, “In practical terms, we think that the bill covers the needs that exist.”⁵⁸

90. The Committee notes the previous Justice Committee’s scrutiny of these provisions and the Scottish Government’s reconsideration of the issue. The Committee notes the Scottish Government’s view that such an exemption should be contained in the Bill and that the exemption has been appropriately clarified following the Justice Committee’s scrutiny of the Session 3 Bill.

OTHER ISSUES OUTWITH THE PROVISIONS OF THE BILL

Common good

91. This Bill, and the Session 3 Bill, contains no specific provisions relating to common good, however, as was the case with the Justice Committee’s scrutiny, the policy issue of how such land will be affected by this Bill and whether there should be an exemption in the Bill has been a major focus of the evidence presented to this Committee. Further background information on common good can be found in the SPICe briefing prepared for the Justice Committee.⁵⁹

92. In December 2007, guidance was published requiring local authorities to establish registers of common good assets held by 31 March 2009.⁶⁰ In February 2010, Audit Scotland found that councils had generally taken reasonable steps to comply with the guidance but that some of the registers were incomplete.⁶¹

93. In its Stage 1 report on the Session 3 Bill, the Justice Committee stated—

“The Committee is disappointed that there is still not an accurate and complete record of the common good property held by local authorities across Scotland.”⁶²

⁵⁶ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 104. 6th Report, 2011, (Session 3).

⁵⁷ Scottish Government Bill team. Written evidence.

⁵⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 697.

⁵⁹ <http://archive.scottish.parliament.uk/s3/committees/justice/papers-11/jup11-01.pdf>

⁶⁰ Local Authority (Scotland) Accounts Advisory Committee (LASAAC). *Accounting for the Common Good Fund: A Guidance Note for Practitioners* (2007).

⁶¹ Audit Scotland. *An overview of Local Government in Scotland 2009*. Available at: http://www.audit-scotland.gov.uk/docs/local/2010/nr_100218_local_authority_overview.pdf.

⁶² Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 55, 6th Report, 2011, (Session 3).

94. In 2011, the Scottish Government carried out a survey of local councils to ascertain the number of leases of common good property which would convert to ownership under the Bill.⁶³ The results of the survey suggested there were five leases of common good property which would be covered by the Bill. Eight councils did not respond to the survey.⁶⁴

Records of common good property held by local councils

Council responses

95. The Policy Memorandum stated that there are an estimated 9,000 ultra-long leases in Scotland, five of which relate to common good property which would be covered by the Bill.⁶⁵ The Committee was subsequently informed that the figure was actually four as incorrect information had been supplied to the Scottish Government by Fife Council.⁶⁶

96. The Bill team wrote again to the eight councils in February 2012, requesting that they supply this information. During evidence to the Committee, the Bill team was asked about the eight councils who had not responded to the consultation. Simon Stockwell told the Committee—

“We had no power to compel local authorities to respond to the survey, which was voluntary. When we wrote to ask them to complete the information, we cited no statutory powers.”⁶⁷

97. The information provided to the Committee on common good land throughout its scrutiny was revised a number of times, with councils providing late information, amending the information already provided to the Bill team, and the identification of discrepancies in what was said in oral evidence to this Committee compared with what was heard by the previous Justice Committee.

98. The Bill team provided an update immediately prior to the final evidence session with the Minister.⁶⁸ The final total number of leases identified by all 32 local authorities had now been revised to nine.

99. The Committee asked about the robustness of the data supplied, to which the Bill team responded that the information supplied is taken on trust stating “we have no way of checking whether properties are part of the common good.”⁶⁹

Compiling information related to common good

100. The Committee heard from witnesses on the complexities involved in ascertaining whether land is part of a council’s common good assets and how the

⁶³ The Session 3 Bill at the time the initial survey was carried out.

⁶⁴ Angus, Comhairle nan Eilean Siar, Dumfries and Galloway, Moray, North Ayrshire, Perth & Kinross, Scottish Borders and South Ayrshire.

⁶⁵ The Long Leases (Scotland) Bill. Policy Memorandum, page 4, paragraph 21.

⁶⁶ Harvie-Clark. *Long Leases (Scotland) Bill*. SPICE Briefing 12-11. Page 4.

⁶⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 595.

⁶⁸ Scottish Government Bill team. Supplementary written evidence.

⁶⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 595.

law relating to common good is a complex mixture of case law and statute law. Dale Strachan of Brodies LLP described common good law as “one of the most confused laws in Scotland.”⁷⁰ The City of Edinburgh Council echoed this and pointed to the fact there is little statutory and judicial guidance on the matter.⁷¹

101. Given the uncertainty surrounding the robustness of the information received, the Committee explored with witnesses whether the figure of four ultra-long leases of common good was an accurate one. Alan Cook of the Scottish Property Federation agreed that the numbers affected would be small.⁷² Dale Strachan of Brodies LLP told the Committee—

“It is worth clarifying that the registers of common good land that are held by public authorities are not conclusive about the common good that they hold. They are merely the administrative registers that they have maintained to date. Some may be haphazard, some may not be being maintained at present, while others may be being kept more assiduously. I do not think that the specific allocation for common good has been given high priority by some authorities, particularly after two batches of local government reorganisation, but the law remains the law until it is changed.”⁷³

102. The Minister was asked to comment of the difficulties the Bill team has had in obtaining accurate information for the local councils. He said—

“More fundamentally, what has emerged from the bill process is that it is probably not possible to have 100 per cent accuracy, however much effort is made, and there will continue to be areas of uncertainty. It is clear that a large amount of work is involved in getting even relatively close to 100 per cent certainty. Councils, ultimately, will have to deal with the consequences of the bill and it is up to them to make a judgment on how much effort they want to expend.”⁷⁴

Register of common good properties

103. The Committee explored further with witnesses the accuracy of common good registers and the difficulties in compiling such registers. The City of Edinburgh Council outlined the processes involved when Bill Miller told the Committee—

“For properties in the old town, we had to go back to the 12th century and work our way forward to see why properties were in what ownership when and to see what their uses had been over the years. That took an inordinate

⁷⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 616.

⁷¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 648.

⁷² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 626.

⁷³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 618.

⁷⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 690.

time and cost. We took senior counsel's opinion on all the properties before we made up our mind."⁷⁵

104. Glasgow City Council explained that its current register could not be guaranteed to be 100 per cent accurate, however, whenever any piece of land for which sale of lease is being proposed, an investigation is carried out as to whether it should be on the common good register. To compile an accurate register of common good land, Andy Young said—

"It might not be completely impractical, but it would be extremely costly to deal with it all, and it would take a long time. However, most of the significant common good properties in Glasgow are on the common good register. Issues arise only when the use of land is to be changed. That is what triggers interest, and that is when action is required."⁷⁶

105. Aberdeenshire Council confirmed that the quality of its records varies and that developing the register is an on-going process. John Gahagan explained—

"We are developing our register as we go along. When something comes up for a possible transfer, we investigate at that stage whether it is common good."⁷⁷

106. Andrew Ferguson gave evidence to the Committee on behalf of the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), but was able to confirm that Fife Council's register is around 95 per cent accurate. He added that—

"I do not know that we will ever reach a stage at which we can all say, "Yes—we know absolutely and definitely what is common good throughout Scotland."⁷⁸

107. Brodies LLP, on compiling a register of common good, said—

"It seems to me that common good has been an issue for a few hundred years and is a matter that is not going to resolve itself. If it were to receive the attentions of the Parliament, that may be a favour to all concerned with it."⁷⁹

108. The Minister was asked his views on the inconsistencies in information provided to this Committee and the previous Justice Committee by local councils, regarding ultra-long leases which fall under common good, to which he replied—

⁷⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 652.

⁷⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 653.

⁷⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 654.

⁷⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 653.

⁷⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 624.

“The bill has certainly thrown up a wider issue about how accurate information about common good is in the generality and not just in the context of leases. In many ways, that is a matter for another day. Ultimately it is a matter for councils rather than the Government—it is a creature of councils.”⁸⁰

109. However, the Minister reiterated the fact that the Bill is not about common good and, while it has raised issues in relation to records held on local authority land which may fall under common good, a small number which would convert under this Bill, the Bill as drafted is not directly affected by this discussion.⁸¹

110. The Committee acknowledges that common good is an extremely complex area and understands that to compile an accurate register of all common good property under an ultra-long lease would be an expensive and time-consuming exercise and may not result in the identification of a significant number of leases which would convert to ownership under this Bill.

111. The Committee notes that the total number of ultra-long leases on common good land held by local councils identified, although small, has more than doubled during the scrutiny of this Bill. The Committee is concerned about the robustness of the information held by local councils in relation to common good.

112. The Committee believes, however, that despite evidence that relatively few numbers would be involved, such leases could be of significant importance to the public interest of the people of Scotland. The Committee recommends that the Scottish Government works together with local councils and relevant professionals to identify better ways in which this information could be gathered, verified, recorded and maintained.

Exemption for common good

113. In response to its call for evidence on the Session 3 Bill, 19 of the 26 submissions received by the Justice Committee expressed concerns about common good land or assets that might be subject to an ultra-long lease and thus be caught by the provisions of the Bill.⁸²

114. In evidence to the previous Justice Committee, the Minister for Community Safety set out the reasons why the Scottish Government was not in favour of an exemption for common good leases: the numbers involved were low; there were adequate compensation provisions in the Bill; and that exempting common good

⁸⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 681.

⁸¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 681.

⁸² All submissions available at:

<http://www.scottish.parliament.uk/s3/committees/justice/inquiries/LongLeases/longleasessubmissions.htm> [Accessed March 2012].

could give rise to litigation whenever a council tried to dispose of property and where a question arose as to the status of the property.⁸³

115. The Justice Committee considered the arguments for and against creating an exemption for common good and concluded that it was not persuaded at that time that there was a compelling case for exempting leases of common good from the Bill.⁸⁴

116. At the outset of the Committee's evidence taking, the Bill team told the Committee the reason why the Scottish Government was not in favour of including an exemption for common good land, when other exemptions, such as harbours, had been included. Simon Stockwell said—

“Unlike the situation with Peterhead, where concerns were raised about the fact that the harbour might not be able to continue to operate, the arguments that were made with regard to common good property and other areas that have not been exempted from the bill did not concern whether the land could continue to be used; they were more to do with the benefits to the people of the burgh.”⁸⁵

117. Andy Wightman explained to the Committee why he thought there should be an exemption for common good—

“I think that common good land should be exempted because, in general, such land is held for the common good of the citizens of burghs [...]”⁸⁶

118. He went on to say—

“The rationale for my suggestion that we exclude common good land is that it was never intended to pass from the ownership of the burgh or council to private interests; it was let out on a lease because that was a way of getting round the legal obligation to go to court if one wanted to sell it...The reason why I seek an exemption for common good land is to protect the public interest in that land.”⁸⁷

119. Andrew Fergusson, representing SOLAR, and Andy Young, representing Glasgow City Council, were also in favour of such an exemption.^{88 89}

⁸³ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 54, 6th Report, 2011, (Session 3).

⁸⁴ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 61, 6th Report, 2011, (Session 3).

⁸⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 597-598.

⁸⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 639.

⁸⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 644.

⁸⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 654.

⁸⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 660.

120. Despite the complexities involved in identifying common good properties which may convert under this Bill, the Committee heard that providing an exemption in the Bill would be fairly straightforward as common good is a recognised legal concept in Scotland.⁹⁰

121. Given the lack of confidence expressed in the accuracy of what is and what is not a common good asset, and the possibility that such land could convert to ownership under the Bill, Glasgow City Council said—

“The justification for excluding common good property from the bill is to cover exactly that point as transactions occur, and as we investigate the land or buildings whose purpose will change when they are sold, leased or transferred to community ownership. Although it is unlikely that there is anything significant of which we are not aware, if the bill can provide a failsafe, Glasgow City Council would encourage the committee to consider that.”⁹¹

122. The Minister told the Committee that he believed that the cost of establishing where the leases were and ensuring that they were exempted would outweigh the benefit of doing so.⁹²

123. An interesting point was made to the Committee by Andrew Fergusson on how to overcome any uncertainty surrounding the exact numbers of local authority ultra-long leases of common good, he said—

“As my colleagues have said, knowing what is covered by an ultra-long lease is a lot easier than knowing what is covered by common good. If I may be mischievous, perhaps the easiest way for the bill to cover the matter would be to exclude all local authority ultra-long leases. That would cover Waverley market, but perhaps the committee would not like to go that far.”⁹³

124. The Committee asked the Minister whether a case existed for exempting ultra-long leases of local authority land from the Bill to which he replied—

“Yes, but the point is that what we are looking at is the use by and the availability of an asset—in this case, land—for the community. As I said in my opening remarks, the bill is about converting leasehold conditions to real burdens, so the test is not whether an asset is a common good; the test is whether the asset and its availability for public good would be affected by what is in the bill. Under the bill, I do not believe that that test would be failed. That is the important question.”⁹⁴

⁹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 656.

⁹¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 665.

⁹² Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 685.

⁹³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 666.

⁹⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 683.

125. The Minister went on to tell the Committee that—

“I cannot see any systematic way that we could make an exception that would not exempt everything, if you see what I mean.”⁹⁵

126. The Committee notes that the number of leases relating to common good land which would convert to ownership under the Bill is very small. Given the concerns expressed by this Committee on the lack of reliable and robust information in relation to common good assets, the Committee acknowledges the legal and administrative complexities which would arise should an exemption for common good land be included in the Bill.

127. The Committee acknowledges the arguments made to the previous Justice Committee and its conclusion not to support an exemption for common good at that time. The Committee is not persuaded by the arguments made thus far to exempt ultra-long leases on common good land, however, neither is the case against this exemption been a clear and compelling one.

Treatment of compensation received on conversion of common good land

128. The Previous Justice Committee noted that the Session 3 Bill provided compensation where leases converted to ownership. In the case of disposal of a common good asset, it was the strong view of the Justice Committee that compensation received should be paid back into the local authority’s common good fund.⁹⁶

129. The Policy Memorandum confirms that the Scottish Government has written to local authorities on this point. It states—

“We indicated that if the Bill should be passed by Parliament, the Scottish Government would intend to write again to local authorities. In this further letter, we would suggest that any compensatory or additional payments paid to local authorities as a result of ultra-long leases of common good land converting to ownership should be allocated to common good funds or accounts.”⁹⁷

130. The Bill team confirmed in evidence to the Committee that if a lease on land held for the common good converts to ownership under the Bill, it would recommend that any moneys that accrue from that should be allocated to common good funds and if no common good funds exist ‘we would tell local authorities that they should consider the best way of allocating the money so it can continue to benefit the people of burgh or local authority area.’⁹⁸

⁹⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 683.

⁹⁶ Scottish Parliament Justice Committee. *Stage 1 Report on the Long Leases (Scotland) Bill*. Paragraph 60, 6th Report, 2011, (Session 3).

⁹⁷ The Long Leases (Scotland) Bill. Policy Memorandum page 7, paragraph 51.

⁹⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 596.

131. In addition, the Bill team confirmed that if there are scenarios that are similar to common good; if land is held in trust in a similar arrangement, that would be reflected in the guidance issued to local authorities.⁹⁹

132. The Minister was asked why the Scottish Government has opted for non-statutory guidance in relation to the treatment of compensation received for ultra-long leases of common good land. He replied—

“Because common good covers such an enormous range of options and because of the different legal heritage of many items in the common good, it would be nigh on impossible for us to provide statutory guidance that tied councils’ hands. It is better to have non-statutory guidance, which lays down principles and allows councils to work out their own salvation according to local circumstances.”¹⁰⁰

133. The Committee notes the Scottish Government’s position that additional compensation is provided for in section 50 of the Bill. However, the Committee believes, with respect to leases of land held under the common good, financial compensation on transfer of ownership is not necessarily adequate compensation for the loss of that land and the loss of greater public benefit.

134. The Committee agrees with the previous Justice Committee’s recommendation that any compensation or additional payments received by local councils on the conversion of ultra-long leases of common good should be directed to relevant common good funds.

135. The Committee notes the Scottish Government’s comments regarding its reluctance to impose statutory guidance on local authorities but welcomes the Scottish Government’s intention to write to local authorities recommending that the proceeds of any compensation should be directed to its common good fund.

Edinburgh Waverley Market

The status of the site

136. The issue of the status of Edinburgh’s Waverley Market site, at present the site of the Waverley shopping centre (also known as Princes Mall), was raised by witnesses. The ground was originally leased by the City of Edinburgh Council to a private developer in 1983, who then built Waverley shopping centre. In 1989 the Council received a payment of £6.25 million from the developer, which was deemed to represent the market value of the Council’s interest at the time.¹⁰¹ As the annual rent for this lease is less than £100 it would not qualify for the commercial lease exemption provided for in the Bill and would therefore convert to ownership should the Bill pass as currently drafted.

⁹⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 599.

¹⁰⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 689.

¹⁰¹ Harvie-Clark. *Long Leases (Scotland) Bill*. SPICe Briefing 12-11. Page 15.

137. The City of Edinburgh Council told this Committee and the previous Justice Committee that it does not believe that Waverley Market is part of the Council's common good. In its 2008 review of common good assets in Edinburgh, it stated that when the fruit and vegetable market transferred from Waverley Market to premises in East Market Street through Acts of the Council in 1937 and 1938, the common good status transferred also. Waverley Market's inclusion as a common good asset in 2005 was an error according to the Council.¹⁰²

138. The main focus of discussion in relation to Waverley Market was the issue of whether or not this site is part of the common good and also, if not, whether an exemption for this site specifically could be provided for in the Bill.

139. The Committee also explored the extent to which the Bill provides compensation which would be paid to landlords on conversion. Discussions around whether or not Waverley Market was common good land focussed on the function of land deemed to be part of the common good and the status of such land should the functions transfer to another site.

140. Andy Wightman confirmed to the Committee that he believed that the Edinburgh Waverley Market site was indeed part of the common good of Edinburgh and made reference to correspondence he had received from the City of Edinburgh Council.¹⁰³ In its written submission to the Committee, the Cockburn Association supported Andy Wightman's view that the site had common good status and that ultra-long leases of common good land should be exempted from the Bill.¹⁰⁴

141. Iain Strachan acknowledged that the correspondence between council officials and Mr Wightman had stated that Waverley Market had common good status but explained that was "probably just an unfortunate and confusing mistake."¹⁰⁵

142. Speaking to this Committee, Andy Wightman refuted the claim made by the City of Edinburgh Council that the common good status of Waverley Market was lost when the site of the fruit and vegetable market transferred to East Market Street. He said—

"The other straightforward evidence that runs counter to the council's view that Waverley market disappeared in 1938 is section 70 of the Edinburgh Corporation Order Confirmation Act 1950, which states:

"the Corporation may as part of the common good erect and maintain new buildings on the site".

¹⁰² Harvie-Clark. *Long Leases (Scotland) Bill*. SPICe Briefing 12-11. Page 15. Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012 Cols 647- 648.

¹⁰³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 638.

¹⁰⁴ Written submission. The Cockburn Association

¹⁰⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 647.

In other words, there was statutory authority that it was common good land in 1950, which runs counter to the council's view that that flew off in 1938. That view is derived from the Edinburgh Corporation Order Confirmation Act 1933, which merely says that the market was losing its market rights and functions. In other words, if a citizen of Edinburgh wished to go there and sell cabbages, they would not have the legal right to do so. That has no bearing at all on the common good status of the land."¹⁰⁶

143. In oral evidence, the City of Edinburgh Council set out the main reasons why it felt that Waverley Market was not part of its common good assets by explaining—

“If we are incorrect, and Waverley market retained its common good status post-1938, it would seem odd that that status should remain post-1967 when all the remaining markets lost their common good status, especially given that the site in question had long since ceased to be a market. Even if we are wrong in that, and Waverley market still had common good status post-1967, that common good status would not continue because the public has not had use of the site. As I understand it, the market closed in the late 1930s or early 1940s. The roof-level gardens were closed in the 1950s and the market was demolished in the 1970s, following which it was used as a car park until redevelopment took place. As Mr Wightman acknowledged in his evidence to the Justice Committee of 18 January last year, the loss of common good status through such non-use is also legally possible. For a number of reasons, the council does not believe that it is common good land.”¹⁰⁷

144. Andy Wightman suggested to the Committee that prior to any lease of local authority owned land passing into ownership, a declarator from the courts should be obtained to confirm that it was not land which is part of the common good.¹⁰⁸

145. This suggestion was put to the City of Edinburgh Council, Iain Strachan responded by saying—

“It is not for me to decide, but I am not sure whether spending additional time, resources and public money on seeking a declarator from the court on the alleged common good status would be the most appropriate use of council time and money, when we have already reached a view. That is my thinking.”¹⁰⁹

146. The Minister was asked his opinion on the status of the site and in response he stated—

¹⁰⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 639.

¹⁰⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 649.

¹⁰⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 641.

¹⁰⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 651.

“I do not think that I would add anything to the discussion by commenting on the matter, because whether the Waverley market site is common good land does not touch on the bill....I am not a lawyer and I will not express a view on the validity of what, essentially, are legal arguments.”¹¹⁰

147. The Committee has heard conflicting views as to the common good status of the Waverley Market site and in addition, has noted previously the lack of robust information related to identifying leases which fall under common good more generally. It is not for the Committee to reach a view on what is and what is not an asset held under the common good.

Specific Waverley Market exemption

148. The City of Edinburgh Council told the Committee quite clearly and repeatedly that it does not believe that Waverley Market is part of Edinburgh’s common good assets. In light of this and its desire that the site should not convert to ownership under this Bill, they argued for a specific exemption to be provided for in the Bill. Iain Strachan told the Committee—

“[...] earlier this month a full meeting of the council passed a motion seeking a specific exemption for Princes mall from the scope of the bill, and that is one of the reasons why we are here today. Although we recognise that it is not wise to legislate by exception, we feel that there are good reasons why Princes mall should be exempted, leaving aside the common good issue.”¹¹¹

149. Alison Johnstone MSP, in her written submission to the Committee, also referred to the motion passed by the Council to seek a specific exemption for Waverley Market. She argued that the case for exempting common good land from the provisions of the Bill remained strong however, she said—

“[...] if in reconsidering these arguments the committee is minded not to exempt common good land, I propose the RACCE committee recommend an exemption specifically for Waverley Market in Edinburgh.”¹¹²

Grassum

150. An argument was made for providing a specific exemption for Waverley Market to make allowances for situations where the landlord has chosen to receive an upfront premium or grassum on the granting of the lease. This exemption was also discussed in the commercial leases exemption section of this report.

151. Andy Wightman questioned whether such an exemption would assist the Council in relation to Waverley Market. He suggested that the Council had wrongly identified its ‘qualifying lease’ in the Waverley Markey transactions, having regard to section 3 of the Bill. He argued that the lease under which a large grassum had been paid had been extinguished due to the legal doctrine of ‘*confusio*’ which

¹¹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 682.

¹¹¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 663.

¹¹² Alison Johnstone MSP. Written submission.

provides that a lease is extinguished when the landlord and tenant become the same individual.¹¹³

152. The City of Edinburgh Council did not respond to this point raised by Andy Wightman.

Location of site

153. Iain Strachan also told the Committee that the Council would not want to lose ownership of the Waverley Market site due to its location, explaining—

“It is a unique site of special significance to the capital city, located as it is beside Princes Street gardens and adjacent to Waverley station, which is itself a landmark destination. It is close to the transport hub at St Andrew Square and is in a United Nations Educational, Scientific and Cultural Organization world heritage site. We all know the vision of the city that gets beamed around the world at hogmanay. Given the site’s significance, the council, as guardian of the city, should have an involvement in it and so should retain its heritable interest going forward.”¹¹⁴

154. Bill Miller expressed concerns about the Council’s ability to control the future use of the site. He said—

“By retaining ownership of the whole site, the council can maintain any conditions it wishes, either through a lease or ownership, but if it loses sight of both the lease and the ownership it loses control over the future use of the site.

Future Parliaments might decide to do away with the 1991 act, and planning legislation might change to allow a future owner to do something totally different with the site. However, while the council remains the owner—or as a landlord—it is in control of the site, no matter what the planners or an act of Parliament say.”¹¹⁵

155. The Minister acknowledged that in future Parliaments may change the laws which could affect council’s interests, however, in relation to the Council’s particular argument he referred to the existing planning system and told the Committee—

“It is interesting that the council does not appear to have identified any specific change over which it feels that it would lose control. It is the planning authority so, within the planning system, it has the ability to control the appearance and development of the Waverley market and all other properties on Princes Street, which are equally important to world heritage status and most of which the council does not own or lease out.

¹¹³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 645.

¹¹⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 663.

¹¹⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 29 February 2012, Col 668.

The distinction between the council's ability to influence what happens to the Waverley market and its ability to do that in relation to every other building on Princes Street is unclear. That boils down to saying that I wait for the examples."¹¹⁶

156. In response to an invitation by this Committee to provide further evidence in support of exempting Edinburgh Waverley Market, the City of Edinburgh Council provided an additional written submission to the Committee immediately prior to the final oral evidence with the Minister. The submission referred to previous evidence supplied to the Committee. It stated—

“The Council's concern is that should this long lease be converted to ownership, then it will effectively remove the Council's ability to be involved in the site going forward. While the Council may still have an interest through its statutory functions, including as Planning Authority, this would not allow the Council the same level of direct involvement in, for instance, any future redevelopment plans, which may in turn affect the views of the Castle which can be enjoyed from other parts of the City.

As this property is within an UNESCO World Heritage Site, the Council has a particular interest in ensuring that its future use and development is in-keeping with this much prized World Heritage status, particularly given the location's prominence on the global stage during the Festival and Hogmanay celebrations. In connection with this, it is worth highlighting that the Old and New Towns of Edinburgh have had this World Heritage status since 1995, and they are together 1 of only 4 such sites in Scotland, and 28 in the UK (including 3 in overseas territories). While ownership alone will not safeguard this status, it will provide the Council with a greater ability to protect it, and preserve it for future generations.”¹¹⁷

157. The evidence on providing a specific exemption was put to the Minister who was asked directly if he would be minded to provide a specific exemption for Waverley Market to which he responded—

“I am still entirely unclear about why Waverley market is different from the Balmoral hotel, which is adjacent to it, Marks and Spencer on Princes Street, and every other building in the area that is covered by planning law and a range of other laws. Until and unless there is something distinct, it is difficult to identify why, when we look at the policy as a whole, one building should be treated differently in primary legislation in a relatively arbitrary way. I await further information on what the distinct difference might be.”¹¹⁸

158. The Committee is aware that this is a contentious area and has heard conflicting views from witnesses. The Committee believes that the case for

¹¹⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 686.

¹¹⁷ City of Edinburgh Council. Supplementary written evidence.

¹¹⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 697.

exempting the Edinburgh Waverley Market site from the Bill has still to be made.

159. It is not for this Committee to make such a case and therefore the Committee notes the evidence that it has received on the matter and will consider any further information provided to it should the Bill progress to Stage 2.

SUBORDINATE LEGISLATION

Subordinate Legislation Committee

160. At its meetings on 7 and 21 February 2012, the Subordinate Legislation Committee (SLC) considered the delegated powers provisions of the Bill. The SLC wrote to the Scottish Government on issues raised in the Delegated Powers Memorandum (DPM).

161. In its report the SLC made comments in relation to sections (as listed in the DPM) 78(5), 81(1) and 82. The report, and the correspondence with the Scottish Government, is reproduced at Annexe A to this report.

Time limits

162. The Faculty of Advocates, in its written submission, referred to its previous comments on the subordinate legislation provisions in the Session 3 Bill. The submission also provided additional comments in relation to section 78 of the Bill on prescribing time limits within which applications have to be made to the court or Lands Tribunal. It argued that these time limits should appear on the face of the Bill rather than being left to Scottish Ministers to prescribe them by secondary legislation.

163. The point made by the Faculty of Advocates was endorsed by the Law Society of Scotland which takes the view that legislation should be as explicit as possible and so it would be preferable to have these time limits in the Bill rather than in delegated legislation.¹¹⁹

164. The Bill team was asked for its view on the concerns raised by the Faculty of Advocates, and said—

“Our view tends to be that it would be better to consult on time limits so that everybody can see the proposals and has a chance to comment on them. There is a lot of technical detail there [...]

[...] It will take time to implement the bill. Therefore, rather than put something in the bill now that we might need to change later if we discover that people have different views from ours, it is preferable to leave the bill as it is and to carry out a consultation on the time limits so that the key bodies

¹¹⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 22 February 2012, Col 620.

such as the Faculty of Advocates, the Law Society of Scotland and the keeper can comment on what is proposed.”¹²⁰

165. The Minister also reiterated the Scottish Government’s desire to be able to consult further on the time limits telling the Committee—

“It would be better to do the consultation and seek views on a potential time limit. I am not clear on what the advantage of incorporating the limit into the bill at this stage would be, and think that it would cause difficulties. Parliament will have to consider a suitable timetable when secondary legislation is proposed. When the bill reaches its final stage—assuming that Parliament consents to that—we will seek views and consult on the time limit. We would prefer to take that approach.”¹²¹

166. The Committee notes the views expressed regarding setting the time limits through subordinate legislation and accepts the Scottish Government’s view that it would be advantageous to consult further on this.

167. The Committee welcomes the Report by the Subordinate Legislation Committee and has no further issues to raise with regard to the Delegated Powers Memorandum.

FINANCIAL MEMORANDUM

168. The Finance Committee considered its approach to the Bill’s Financial Memorandum (FM) at its meeting on the 25 January 2012 and agreed to adopt level 1 scrutiny. This level of scrutiny is applied where there appears to be minimal additional costs as a result of the legislation. Applying this level of scrutiny means that the Committee did not take oral evidence, nor did it produce a report. The Finance Committee’s approach was to seek written comments from relevant organisations through its agreed questionnaire and then pass these comments on to the lead committee.

169. Eight responses were received, from Aberdeen City Council, Dumfries and Galloway Council, East Ayrshire Council, Fife Council, Glasgow City Council, North Ayrshire Council, North Lanarkshire Council and West Lothian Council. Most of the responses were content that the financial implications for their respective authorities had been accurately reflected in the FM. North Lanarkshire Council did not, however, believe the FM accurately reflected the cost to the organisation, but had yet to ascertain the level of costs that might be incurred. Both Fife Council and Glasgow City Council reiterated their view that assets falling under the law of common good should be excluded from the Bill. All responses are attached at Annexe B to this report.

170. The Committee thanks the Finance Committee for the scrutiny it conducted and has no further issues to raise with regard to the Financial Memorandum.

¹²⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 8 February 2012, Col 601.

¹²¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 7 March 2012, Col 696.

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