



## **Delegated Powers and Law Reform Committee**

Rob Gibson MSP  
Convener of the Rural Affairs, Climate  
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### **Community Empowerment (Scotland) Bill**

Dear Rob

At its meeting today the Committee considered the Scottish Government's response to its stage 1 report on the Community Empowerment (Scotland) Bill.

In so doing the Committee welcomed the Scottish Government's commitment to amend the Bill in a number of respects.

However, the Committee remains concerned by the power in the new section 97C(3)(a) of the Land Reform (Scotland) Act 2003 and continues to find the explanations provided in justification of what is a very significant power to be unsatisfactory.

As you know, section 97C(3)(a) provides that eligible land for the purposes of acquisition does not include land on which there is a building or structure which is an individual's home, unless the building or structure falls within such class or classes as may be prescribed. The word 'prescribed' adopts the definition set out in section 98(1) of the 2003 Act, meaning "prescribed in regulations made by the Scottish Ministers". The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body.

The Committee was concerned, and remains concerned, that this power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual's home.

In its stage 1 report the Committee noted that neither the DPM nor the Scottish Government's responses to the Committee's questions, both written and oral, offered a clear explanation as to the reasons for taking this power, or how the power is intended to be exercised. Furthermore, the Scottish Government did not provide the Committee with any examples of the kinds of building or structure that may be prescribed in regulations made in exercise of this power.

In our view the uncertainty around this power and its exercise has not in any way been assuaged either in the evidence given by the Cabinet Secretary for Rural Affairs, Food and Environment to your Committee or in the Scottish Government's response to our stage 1 report on the Bill.

In the Cabinet Secretary's evidence to your Committee he explained that the purpose of the power in section 97C(3)(a) is to give Ministers the opportunity to exclude land from the right to buy, and that the obvious case in point would be a person's home.

The Committee considers, however, that the power in section 97C(3)(a) is not a power to exclude certain land from the scope of the new Part 3A, but rather enables Ministers to make regulations the effect of which is to include land on which there is an individual's home within the scope of land which could be deemed to be eligible for acquisition by a Part 3A community body. In the Committee's view, the power enables the general exemption for land comprising individuals' homes to be disapplied for the particular categories or descriptions of land which may be prescribed using this power.

The Committee maintains that it is unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development.

The Committee appreciates the efforts of your Committee to pursue this matter. The Committee re-emphasises its concerns about the power and asks that you continue to pursue them with the Scottish Government.

Please note that we also intend to write to the Scottish Government reiterating our substantial concerns about this power and again inviting it to reflect on the scope and use of this power.

If I or the Committee can be of any assistance to you in your deliberations on this power, we would be very willing to assist.

A handwritten signature in black ink, appearing to read 'Nigel Don'. The signature is fluid and cursive, with the first name 'Nigel' and the last name 'Don' clearly distinguishable.

**Nigel Don MSP**  
**Convener**