

Written submission from the Law Society of Scotland

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making process.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from the knowledge and expertise both within and out with the solicitor profession.

The Rural Affairs Sub-Committee (the “Committee”) welcomes the opportunity to provide oral evidence to the Rural Affairs, Climate Change and Environment Committee on 18th February 2015 on amendments to part 3 of the Land Reform (Scotland) Act 2003 made through the Community Empowerment (Scotland) Bill. The Committee has prepared the following brief comments in advance of the evidence session.

Legal Structure of Community Body

We agree that SCIOs and BenComs should be allowed to be crofting community bodies. However, we also believe the community interest companies should be permitted to be a crofting community bodies. A community interest company is a new type of company for people that want to be involved in a business that helps the community (the population as a whole or a specific group), rather than just the owners, managers or employees – a social enterprise.

Removal of Provision for Auditing of Accounts

We have no objection to the Scottish Government’s proposals and agree that that the crofting community right to buy requirements should be the same as those for the general community right to buy. In general, we suggest that some financial scrutiny should still be required in order to promote good financial management.

Definition of Crofting Community

We agree that the definition of a crofting community should be expanded to include tenants and owner occupiers. However, we do not agree with the definition proposed. The inclusion of tenants on either the Registers of Scotland or Crofting Community Registers but only of owner occupiers on the Registers of Scotland Register is unfair. This is especially so when a tenant exercising the right to buy does not trigger registration in the Registers of Scotland register. The vast majority of crofting land is not on the Crofting Register. We therefore suggest that the definition be amended to also include land registered with the Crofting Commission.

Crofting Land Mapping

The proposed Government amendments go some way to simplifying the mapping requirements although we do not think that they go far enough. Satisfying the current

mapping requirements can be extremely difficult and complex. We believe that the proposed amendment would result in slightly less onerous application requirements but that problems would still remain.

We can see nothing to justify why the mapping requirements should be more onerous in a crofting context than in other contexts. We believe that the mapping requirements for the rural community right to buy should be no different to those required when submitting a first registration to Registers of Scotland.

Public Notice of Application

The explanatory notes provide that the amendments will lead to greater flexibility by providing that the form of advertisement is to be set out in regulations made by Ministers. However, it is difficult to comment on this until the regulations have been published. We do support measures aimed at increasing awareness of applications in the area to which the application relates. Advertising in the Edinburgh Gazette - and perhaps even by newspaper – is unlikely to generate the desired level of publicity. Additional means of publicity could include placing advertisements in shop windows in the locality. We therefore agree with the proposal in principle. However, further details on the form of advertising Ministers are proposing requires to be provided.

Identification of Owner, Tenants and Certain Creditors

We agree that the list of proposed persons should be properly identified in the application form. However, we anticipate that there may be some practical difficulties in identifying whether there is a sporting tenant. This information is unlikely to be available from the Land Register and therefore an applicant would have to ask the landlord for these details. The landlord would not be under any obligation to provide this information and even if he did then it would be difficult for the applicant to verify its validity. It would be undesirable if an application was rejected at the outset because of a failure to specify information that the applicant is unable to ascertain. We therefore suggest that a “reasonable endeavours” test should apply with respect to obtaining details of a person entitled to sporting interests.

The designation of the other proposed persons will be available from the Land Register or Companies House and therefore we do not foresee any difficulties in the application form requiring these parties to be correctly identified.

We suggest that floating charge holders (where the landlord is a UK limited company) is a further category that would be appropriate to identify on the application form. As these details would be available from Companies House, no difficulties in providing this information are foreseen.

Ballot Procedure

We have no objection to this proposal.

Reference to the Land Court

We believe that the right of reference should apply to:-

- The owner or person entitled to sporting interests in the land;
- The tenant, in the case of an application to purchase a tenant's interest;
- The person entitled to sporting interests, depending on the nature of the land;
- A creditor in a standard security in relation to that land or those interests.

Furthermore, if the Scottish Government agrees with our proposal to include details of floating charge holders on the application form, as suggested above, then we believe that floating charge holders should also be listed in section 81(1).

Valuation

We agree that the timescale in which a valuer must notify the value of the land requires to be increased. However, we suggest that the increase should be to 12 weeks and not 8 weeks as proposed. The ability to extend the period on cause shown should be retained.

Parties regularly struggle to comply with the current 6 week time period and an extension of 2 weeks is unlikely to alleviate this problem. We acknowledge that an 8 week period would be analogous to that permitted under the wider community right to buy. However, the crofting community right to buy is utilised over a much bigger area of land. Often valuers will encounter difficulties obtaining accurate information from landlords because they are reluctant to sell. Therefore we believe that there are sound reasons why the permitted period should be longer in a crofting context.

We agree that provision should be made for counter-representations to be made. However, this should be limited to one opportunity for representations and counter-representations to be made. A requirement to obtain such representations would provide a further reason why we suggest that the permitted time period for the valuer to notify the value of the land should be 12 weeks and not 8 weeks as proposed.

Compensation

We do not object to the proposals.

Outcome of Appeal to Land Court

We accept that the existing 4 week time limit for the Land Court to give its decision is short. We therefore do not have any objection to this being removed and substituted for an 8 week period (or longer in exceptional circumstances where notification is given). However, it is in the interests of justice that decisions are provided as expeditiously as possible.