



Delegated Powers and Law Reform Committee

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25 February 2016

Land Reform (Scotland) Bill

Dear Aileen,

At its meeting on 23 February the Committee considered your letter to the Committee concerning proposed Stage 3 amendments to Part 3 of the Land Reform (Scotland) Bill.

The Committee notes the Scottish Government's intention to bring forward amendments at Stage 3 to replace new section 35A with a regulation making power that will provide for the creation of a register of controlling interests in landowners.

As you will be aware, the Committee expressed concern about the power at section 35(1) in the Bill as introduced. Specifically the Committee expressed concern about the wide terms in which the power was framed, the absence of policy development and the potential impact of the power on individuals' rights as protected by Article 8 of ECHR.

The approach proposed as regards Stage 3 and explained in your letter continues to prompt concern amongst Committee members. As there will be very little opportunity for the Committee to scrutinise the proposed amendments once lodged, the Committee agreed that I should write to you at this juncture, so that you might be able to give consideration to the Committee's comments in developing the amendments.

Your letter indicates that the details of the new register and the information it will require to contain are policy matters which are still under development.

Accordingly the Parliament will be in a position where it cannot fully inform itself as to how the new power will be exercised and what information about landowners is to be disclosed, prior to being asked to pass the Bill at Stage 3.

The Committee finds this very unsatisfactory, for the same reasons as were given in relation to the power in the original section 35(1). As a matter of principle, delegated powers should not be taken as a substitute for policy development.

It also remains the case that there is potential for significant interaction with the Article 8 rights of individuals about whom personal information is to appear on the register. The effect of any interaction will not be understood until the power is exercised and draft regulations are brought forward.

Accordingly the Committee's concerns about the terms of the power are likely to remain broadly as stated at Stage 1.

It would be the Committee's preferred option for the Scottish Government to bring forward amendments to give full effect to the policy intention as stated in the Minister's letter, to include full details of the requirements for a register of controlling interests in landowners on the face of the Bill, including what information the register must contain, what information will be publicly available, and any exclusions and exemptions which are to apply, rather than taking a delegated power to create the provision in subordinate legislation.

If however the Scottish Government is not in a position to develop the policy more fully on the face of the Bill, the Committee agrees that any regulations made in exercise of the power should be subject to an enhanced form of Parliamentary procedure. In particular, the Committee considers that the Bill should provide Parliament with a full and effective opportunity to consider the details of the proposed scheme before such time as draft regulations are laid before Parliament.

In order to enable Parliament to properly scrutinise and influence the development of the proposals, the Committee would welcome an enhanced form of affirmative procedure which includes requirements for:

- i. consultation on draft regulations;
- ii. consultation responses to be had regard to and the draft regulations modified as appropriate; and
- iii. publication of a summary of the consultation responses and any changes which have been made to the draft regulations, together with the reasons for making those changes, prior to final draft regulations being laid before the Parliament.

Remedial orders made under the Convention Rights (Compliance) (Scotland) Act 2001 are subject to such a procedure, and it is suggested that an analogous approach might be appropriate here.

The Committee would be grateful for a response to the Committee's suggestions as regards the Stage 3 amendments by Wednesday 2 March.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Don', with a stylized flourish at the end.

Nigel Don MSP
Convener