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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Delegated powers in the Land Reform (Scotland) Bill at Stage 1**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Roz McCall**  
Scottish Conservative  
and Unionist Party



**Daniel Johnson**  
Scottish Labour

# Membership changes

1. The following changes to Committee membership occurred during the course of the Committee's scrutiny of the delegated powers in the Land Reform (Scotland) Bill:
  - on 4 September 2024, Daniel Johnson MSP replaced Foysol Choudhury MSP.
  - On 10 October 2024, Roz McCall MSP replaced Tim Eagle MSP.

# Introduction

2. At its meetings on 18 June<sup>i</sup>, 17 September<sup>ii</sup>, 29 October<sup>iii</sup> and 26 November 2024<sup>iv</sup> the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Land Reform (Scotland) Bill ("the Bill") at Stage 1.
3. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
4. The Scottish Government introduced the Bill on 13 March 2024. The lead committee is the Net Zero, Energy and Transport Committee.
5. The stated purpose of the Bill is to make provision about the management and transfer of large holdings of land; to require the Scottish Ministers to make publicly available a model lease for environmental purposes; and to modify the law on small landholdings and agricultural holdings. The Bill comprises 31 sections in 3 parts together with a schedule in 7 parts to deliver the stated policy intent.

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<sup>i</sup> Foysof Choudhury MSP submitted apologies for this meeting.

<sup>ii</sup> Jeremy Balfour MSP submitted apologies for this meeting.

<sup>iii</sup> Rona MacKay MSP substituted for Bill Kidd MSP at this meeting.

<sup>iv</sup> Stuart McMillan MSP and Jeremy Balfour MSP submitted apologies for this meeting. Rona Mackay MSP substituted for Stuart McMillan MSP.

# Delegated Powers

6. The Bill confers 50 delegated powers on the Scottish Ministers.
7. The Scottish Government has produced a [Delegated Powers Memorandum](#) (“DPM”) which sets out its reasons for taking the delegated powers in the Bill and for the procedure chosen.
8. At its meeting on 18 June 2024, the Committee was content with the following delegated powers:
  - Section 2(4) – inserting section 46C into the Land Reform (Scotland) Act 2003 – power to set the manner by which an owner, or creditor can request to lift the prohibition under section 46B (Prohibition on transfer to allow time for interest to be registered);
  - Section 2(4) – inserting section 46D into the Land Reform (Scotland) Act 2003 – power to set out the information to be made publicly available about the land which is possibly to be transferred following receipt of notice under section 46C or 48;
  - Section 2(4) – inserting section 46F(3)(b) into the Land Reform (Scotland) Act 2003 – power to set out the information to be included in the note to the Scottish Ministers expressing an interest in registering a community interest in land;
  - Section 4(2) – inserting section 67K(2)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to make a lotting decision;
  - Section 4(2) – inserting section 67L(3)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers not to make a lotting decision;
  - Section 4(2) – inserting section 67M(4)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to make an expedited lotting decision where owner facing hardship;
  - Section 4(2) – inserting section 67P(3)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to review a lotting decision;
  - Section 4(2) – inserting section 67Q(2)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers to stop the review of a lotting decision;
  - Section 4(2) – inserting section 67T(1) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers to consider making an offer to buy;
  - Schedule, paragraph 7(4)(b): Notice of diversification – power to prescribe the form of a notice of diversification;



- Schedule, paragraph 9(8)(b): Landlord’s agreement or objection to notice of diversification – power to specify information to be included in a notice of objection to a diversification proposal;
- Schedule, paragraph 36(3): Application to Tenant Farming Commissioner – power to prescribe the form and content of an application to the Tenant Farming Commissioner for an assessment of the amount of compensation;
- Schedule, paragraph 37(6): Appointment of valuer by Tenant Farming Commissioner - power to modify the period within which a valuer must be appointed by the Tenant Farming Commissioner;
- Schedule, paragraph 45(2): Registration of small landholder’s interest in buying land – power to prescribe the form of a small landholder’s notice of interest;
- Schedule, paragraph 45(6): Registration of small landholder’s interest in buying land - power to specify a reasonable fee that the Keeper may charge for registering landholders’ interests;
- Schedule, paragraph 48(4)(b): Notice of proposal to transfer land – power to prescribe the form and any additional requirements that are to be included in a notice of a proposal to transfer land;
- Section 7: Duty to publish model lease – power to amend the date for which Scottish Ministers are to produce a model lease;
- Section 11: Resumption, section 32ZA(3)(a) of the 1991 Act – power to prescribe the form and content of a notice of resumption;
- Section 11: Resumption, paragraph 1(3)(b), schedule 2A to the 1991 Act - power to prescribe the period that another valuer may be appointed;
- Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 1(3)(b), schedule 2 to the 2003 Act – power to prescribe the period that another valuer may be appointed;
- Section 14: Compensation for improvements, section 37(1B) of the 1991 Act - power to prescribe the information about the improvement to be given with a section 37 notice;
- Section 14: Compensation for improvements, section 38(3A) of the 1991 Act - power to prescribe the form of a section 38 notice;
- Section 14: Compensation for improvements, section 38(3A) of the 1991 Act - the power to prescribe the information about the improvement to be given with a section 38 notice;
- Section 20: Compensation for damage by game etc, section 52(3)(a) of the 1991 Act – power to prescribe the form and manner of a notice of damage or injury;
- Section 20: Compensation for damage by game etc. Section 52(3)(c) of the 1991 Act – power to prescribe the form and manner of a notice of compensation;

- Section 27: Rules of good husbandry – power to prescribe conservation activities for the purposes of good husbandry;
  - Schedule, paragraph 7(5): Notice of diversification – power to add or remove information to be included in a notice of diversification;
  - Schedule, paragraph 9(8)(a): Landlord’s agreement or objection to notice of diversification – power to add or remove a ground for objection to a diversification proposal;
  - Section 15: Notice of objection to diversification – power to add or remove a matter which is to be specified in a notice of diversification and power to modify subsection (9) of that section so as to add or remove a ground of objection to a notice of diversification;
  - Section 21: Standard claim procedure, section 59B(1) of the 1991 Act – power to apply the standard claim procedure to any relevant type of compensation;
  - Section 21: Standard claim procedure, section 59B(4) of the 1991 Act – power to modify the standard claims procedure;
  - Section 23: Rent review: 1991 Act tenancies Paragraph 9 of schedule 1A to the 1991 Act – power to make further provision in relation to what the Land Court must have regard to for the purposes of determining the fair rent for the holding;
  - Section 24: Rent review: limited duration tenancies Section 9BA of the 2003 Act: power to make further provision in relation to what you must have regard to in determining the fair rent of a tenancy;
  - Schedule, paragraph 55(7): Valuation of the land;
  - Section 28: Power to make ancillary provisions. Regulations made under this power which amend primary legislation will be subject to the affirmative procedure, otherwise the negative procedure will apply; and
  - Section 30: Power to appoint days on which provisions of the Bill come into force. Regulations made under this power will be subject to the laid only procedure.
9. However, at that meeting, the Committee agreed to write to the Scottish Government to raise questions in relation to the following delegated powers:
- Section 1(4) inserting section 44A into the Land Reform (Scotland) Act 2016 - Power to impose obligations on the owner of land;
  - Section 1(4) inserting section 44M into the Land Reform (Scotland) Act 2016 - Power to modify community-engagement obligations for owners of large land holdings;
  - Section 2(4) inserting section 46L into the Land Reform (Scotland) Act 2003 - Power to modify the extended opportunity to register interest in relation to large land holdings;

- Section 4(2) inserting section 67S(6) into Land Reform (Scotland) Act 2003 – Power to make further provision about buying land under section 67P, including about how land is to be valued;
  - Section 4(2) inserting section 67V(4) into Land Reform (Scotland) Act 2003 to make further provision about compensation;
  - Section 4(2) inserting section 67Y into the Land Reform (Scotland) Act 2003 to modify various provisions;
  - Schedule: paragraph 40(4) Assessment of compensation;
  - Schedule: paragraph 49(5): Transfers not requiring notice;
  - Schedule: paragraph 50(7): Right to Buy;
  - Schedule: paragraph 59: Registration of small landholder’s interest: power to modify provisions;
  - Section 10: Registration of interest and right to buy;
  - Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act;
  - Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 4(5), schedule 2 to the 2003 Act; and
  - Section 14: Compensation for improvements – section 73(1A) and 3(A).
10. Correspondence was sent from the Committee to the Scottish Government on [21 June 2024](#) and a response was received on [31 July 2024](#).
11. At its meeting on 18 June, the Committee also agreed to invite the Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon MSP to give [evidence to the Committee on 17 September 2024](#). Following the session, further correspondence was sent on [18 September 2024](#). A response was received on [26 September 2024](#) .
12. The Committee's consideration of the Scottish Government's responses, the evidence from the Cabinet Secretary and the other delegated powers contained in the Bill, are set out under the 'Review of relevant powers' section of this report.

## Themes in the Bill

13. The Committee considers that the Bill is a framework bill (although the Cabinet Secretary did not agree with this during her evidence session). The Bill sets out several broad powers with little detail being provided in the Bill or in the DPM as to how they will be exercised as the policy is not yet fully developed. The detail will be filled in at a later stage through subordinate legislation once there have been detailed discussions and consultations with affected stakeholders.
14. Framework bills present challenges to carrying out effective scrutiny as much of the power and discretion on the direction of the policy provision is handed over from the legislature to the executive. This is something the Committee will be looking at in more depth as part of its inquiry into [Framework legislation and Henry VIII powers](#) in the months to come. There is a significantly higher level of scrutiny of primary legislation in comparison to the scrutiny carried out on subordinate legislation.
15. The Committee identified several themes that came through in the Committee's correspondence and the Scottish Government's responses. The identified themes were also probed further during the Cabinet Secretary's evidence session with the Committee on 17 September 2024. The identified themes are relevant to the powers in the Bill that the Committee asked questions about, and similar comments and recommendations apply to many of the powers with the themes being discussed individually in more detail further under 'Review of relevant powers'.

## Policy development

16. One of the main themes identified by the Committee is limited policy development. The correspondence and evidence from the Cabinet Secretary confirmed to the Committee that very few detailed discussions have been carried out to date with stakeholders on what subsequent regulations will look like. The Bill is intended to be one of “co-design”, being developed and implemented in conjunction with relevant stakeholders.
17. During the evidence session with the Cabinet Secretary, the Committee noted that there had been discussions with bodies that represented a limited group of interests in respect of some parts of the Bill and that further discussions were to be conducted in relation to many new policy areas being introduced by the Bill. As much of the policy detail is still to be determined through consultation and discussions, the Parliament and stakeholders will be unable to fully anticipate what provision may be made by the subsequent regulations, despite many of the Bill’s powers being able to make significant policy provision which will likely have a significant real-life impact on those affected by the regulations.
18. The Committee considers it is therefore being asked to accept that the detail of these provisions will be established following further consultation between the Scottish Government and stakeholders. In most cases, the Parliament will not have any oversight of that consultation process as there are very few statutory consultation requirements, which is another identified theme and addressed further below.
19. The Committee considers that if these powers are delegated, then the Parliament will be doing so on the understanding that it does not yet know what the policy is. That creates challenges to ensuring effective parliamentary scrutiny. The Parliament will have the opportunity to scrutinise the resulting regulations when they are laid before it, however, such scrutiny is limited to the acceptance or rejection of the proposal as there is no mechanism for amending subordinate legislation.

## Statutory consultation

20. The Committee identified and asked about the lack of statutory consultation requirements in the exercise of several powers in the Bill when it appears that consultation is intended to take place, and consultation is required in order to develop the regulations. The Cabinet Secretary, both in her correspondence and evidence before the Committee, did not consider that any further statutory obligations to consult were required in the delegated powers than is already provided for. The Scottish Government intends to consult to develop the subsequent regulations and has a general duty to do so where it considers it appropriate under the Scottish Government's [Right First Time A practical guide for public authorities in Scotland to decision-making and the law](#).
21. The Committee considers that there is a clear distinction between the general obligation on public authorities to consult where they consider it necessary and a statutory pre-requisite to carry out a consultation before exercising the powers. The general duty, which the Cabinet Secretary spoke about both in correspondence with the Committee and in her evidence session, is simply that, a general duty that is carried out by the decision maker only if they consider it necessary and used to assist them to make decisions fairly. How that is done is at the discretion of the decision maker, in this instance the Scottish Ministers.
22. Where there is a statutory obligation on Scottish Ministers to consult before exercising powers, then they must do so. The creation of a statutory obligation to consult is captured and considered as part of the parliamentary scrutiny process in a way that the general duty is not. The extent of a statutory consultation can be wide, or it can be more limited, depending on what is being done and the wording of the requirement can provide that flexibility without meaning that a full public consultation needs to take place on every occasion.
23. The Committee considers that a statutory consultation requirement would be appropriate in respect of several of the powers. This is recommended where consultation will have to take place to inform the policy so that the regulations can be drafted, the powers are wide and significant policy provision could be made through them. Having such a statutory requirement would ensure that clear and transparent consultation takes place before the Parliament considers any regulations.

## Scope of powers

24. Several of the powers the Committee asked the Scottish Government about are considered by the Committee to be widely drafted. The response to the Committee's correspondence indicates this is a result of limited policy development discussions having taken place on the Bill's provisions so far. It is therefore not clear to the Committee exactly what the powers will be required to do to meet the policy intent. When considering the scope of the powers, the Committee looked at whether the power permits only what is necessary to deliver the policy. Some of the powers in the Bill permit significant changes to be made to the Bill's provisions with little detail specified on the face of the Bill or the supporting documentation to allow the Parliament to anticipate exactly how they will be exercised.
25. The Committee asked about some powers whether more detail could be specified on the face of the Bill, or the powers be more narrowly drafted. In correspondence with the Committee and in the evidence session, the Cabinet Secretary considered that the drafting of the powers is appropriate and strikes a proportionate balance to allow changes to be made following consultation and monitoring of the provisions once the Bill comes into force.
26. The Committee also asked if it might be better to make any future changes when the picture becomes clearer and by way of a future bill allowing for parliamentary scrutiny at that point. The Cabinet Secretary responded that the proposals are based on the work of the Scottish Land Commission and that the Bill delivers on the Scottish Government's vision for land reform, and it is vital that the changes happen now.
27. It is the Committee's view that several powers are widely drafted and it is not yet clear how they will be exercised. That will not be able to be determined until consultation with stakeholders has taken place or on monitoring the provisions of the Bill in practice. The Parliament is therefore not able to anticipate how the powers will be exercised by the current, or indeed any future Government as there is a significant scope in the drafting of them. Conceivably, future Governments may exercise the powers in a different way from how it is intended that they are exercised by the current Government, which could make significant policy provision and have significant real-life consequences for those involved in these processes.

# Changes to Fundamental Concepts in the Bill by Subordinate Legislation

28. The Committee also identified and asked questions about the powers to allow unspecified changes to fundamental aspects of the Bill through subordinate legislation. This includes the land to which community responsibility obligations apply, the land to which the prohibition on transfer will apply and the length of the prohibition, the potential widening of those affected by the lotting decisions and the narrowing of those affected by exemptions; potentially creating further delays to the sale or transfer of land as well as widening the pool for compensation or for land purchases.
29. The Committee specifically asked the Cabinet Secretary why she considered that this is appropriate and whether such fundamental changes might be better introduced through future primary legislation with a concomitant level of scrutiny as that being afforded to the current Bill. The Cabinet Secretary responded that there would be scrutiny of the use of these powers through the affirmative procedure and that the Scottish Government requires to be flexible to monitor what are new areas of policy, to look at how they are working and how they are being embedded.
30. The Committee also asked whether the powers in the Bill could be used to implement a policy contrary to the current government's policy by a future government without appropriate scrutiny, given that it allows changes to the central concepts of the Bill to be made by secondary legislation. The Cabinet Secretary acknowledged this was an important point but reiterated the need for flexibility and stated that she considers the right balance has been struck to be responsive to issues which may arise with appropriate and proportionate parliamentary scrutiny. The Committee considers if these powers are delegated, then the Parliament will be doing so on the understanding that fundamental concepts in the Bill could potentially be changed by subordinate legislation. This creates challenges to ensuring effective parliamentary scrutiny of the current Bill if these potential changes are dependent on future monitoring and feedback. The Parliament is conducting scrutiny on the basis of the Bill's current policy intent.
31. Further, although the Parliament will have the opportunity to scrutinise the resulting regulations when these are laid before it, this scrutiny is limited in scope compared to the scrutiny of primary legislation and so the changes that are made will not have been considered in the same way. As such, the Committee questions whether these changes are ones that should properly be made by primary legislation.



## Analogous Powers

32. The Committee asked about the scope of several of the powers and the response from the Cabinet Secretary in correspondence and during her evidence with the Committee was that it was important to ensure consistency with other pieces of primary legislation. Several of the powers addressed are described by the Scottish Government as analogous to powers in other pieces of legislation that the Cabinet Secretary considers to be important to ensure that what can be done by subordinate legislation for one land type should also be able to be done for another. The Committee considers that whilst there is a clear benefit in ensuring consistency with other legislation, that should not outweigh or override the Parliament's scrutiny function.
33. In further correspondence with the Committee, the Cabinet Secretary describes the context of the powers that this applies to and explains the reasons for these changes which is intended to encourage more vibrant rural communities and to meet the Scottish Government's aim of diversity in agriculture. The Cabinet Secretary's response also provides further information about why each of the powers are considered necessary and notes that the analogous powers that are being relied upon to make consistent changes across land types have not been used.
34. The Committee considers that a reliance on an analogous power is not sufficient justification in itself for powers being wider in scope than would otherwise be considered appropriate. Recommendations are made in respect of powers below where the Committee does not consider that sufficient justification has been provided for the powers to be drafted in such a wide manner and the Scottish Government is placing reliance on analogous powers that have never been utilised to date, despite some of them having been in force for 21 years.

# Review of relevant powers

## Section 1(4) inserting section 44A into the Land Reform (Scotland) Act 2016 - Power to impose obligations on the owner of land

### Power conferred on: The Scottish Ministers

### Power exercisable by: Regulations

### Parliamentary procedure: Affirmative

### Provision

35. Section 1(4) inserts section 44A into the Land Reform (Scotland) Act 2016 and confers a power on Scottish Ministers to make regulations imposing obligations on the owners of land for the purpose of promoting community engagement in relation to that land. Obligations are to apply to a single holding, or a composite holding, that exceeds 3,000 hectares in area; or land that forms part of an inhabited island and is a single holding or a composite holding that exceeds 1,000 hectares and constitutes more than 25% of the land forming the island (inserted section 44D).
36. Regulations under this section will require (inserted sections 44B and 44C):
  - the owner of land to ensure that there is a publicly available land management plan, that there is engagement with communities on the plan or any significant changes and that the plan is reviewed every 5 years;
  - to set out the information that a land management plan must contain including details of the land, the long-term vision or objectives of managing the land, how the owner is complying with obligations in the regulations, the Scottish Outdoor Access Code, and the code of practice on deer management and how the owner is managing the land in a way that contributes to net zero, adapting to climate change and increasing or sustaining biodiversity; and
  - the owner of land to consider a community body's request to lease land.
37. Before making such regulations, the Scottish Ministers must consult with the Land and Communities Commissioner ("the Commissioner").

### Committee consideration

38. In correspondence, the Committee asked the Scottish Government whether it has considered including a requirement for a statutory consultation with stakeholders prior to making regulations under this power. The Scottish Government responded that it expects to consult with a wide range of stakeholders before making regulations under this power and that the nature of any consultation and who is to be consulted will depend on the type of changes that are proposed. It does not consider that an additional statutory requirement in the Bill to consult any additional persons is necessary.
39. During the evidence session, the Committee asked the Cabinet Secretary about the absence of a statutory consultation requirement in the Bill and the concerns that have been raised about this. She confirmed that she was happy to consider the

Committee's and stakeholders' views on statutory consultation during the passage of the Bill. However, she also considered it important to highlight to the Committee, and to stakeholders, that the Scottish Government has a general duty to consult, whether or not it is specified in the Bill.

40. As has been discussed above the Committee considers that there are substantive differences in the nature of a general consultation duty and a statutory duty to consult. Given that these regulations will create a number of obligations on landowners in relation to the management and operation of their interests in land including penalties for non-compliance, it is the view of the Committee that it is important that a statutory duty to consult before laying any regulations is included under this power.

**41. The Committee recommends that there should be a statutory requirement to consult before exercising this power.**

**42. The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

The following three powers are wide powers which can potentially modify significant parts of the Bill and change policy. As the Committee raised similar issues with each of these powers, these are dealt with together below.

**Section 1(4) inserting section 44M into the Land Reform (Scotland) Act 2016 - Power to modify community-engagement obligations for owners of large land holdings ("44M")**

**Section 2(4) inserting section 46L into the Land Reform (Scotland) Act 2003 - Power to modify the extended opportunity to register interest in relation to large land holdings ("46L")**

**Section 4(2) inserting section 67Y into the Land Reform (Scotland) Act 2003 to modify various provisions:**

- what constitutes an exempt transfer;**
- the land to which the prohibition on transfer without a lotting decision applies;**
- the duration of the lotting decision; and**
- the period to make an application for review of a lotting decision. ("67Y")**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

**Provisions**

43. Section 1(4) inserts section 44M into the Land Reform (Scotland) Act 2016 which confers a power on the Scottish Ministers to modify the land in relation to which community engagement obligations may be imposed by regulations under new

section 44A. It also confers a power to change the list of persons who may report an alleged breach to the Commissioner under new section 44E.

44. The Bill introduces a requirement for landowners to give prior notification of their intention to sell large land holdings and gives communities an enhanced opportunity to make a late application under existing community right to buy legislation. Section 2(4) inserts section 46L into the Land Reform (Scotland) Act 2003 (“the 2003 Act”) which confers a power on the Scottish Ministers to make regulations amending both the period during which the prohibition on transfer of large land holdings applies to allow for those that have noted an interest to register to be invited to make an application to register an interest; and the land to which the prohibition applies.
45. Section 4(2) inserts new section 67Y into the 2003 Act which confers a power on the Scottish Ministers to make regulations modifying various provisions of the Bill - to change what constitutes an exempt transfer for the purposes of the prohibition on transfer under inserted sections 67C and 67D; the land affected by prohibition on transfer (section 67G); how long lotting decisions have effect (section 67F); and the period after which a review of a lotting decision can be requested under inserted section 67P.

### **Committee consideration**

46. The questions that the Committee asked the Scottish Government about these three powers were similar in content as were the Government's responses; and in some cases the responses were the same. The questions and responses together with the Cabinet Secretary's relevant responses during the evidence session have been summarised under the rubric of the questions asked below.
47. In each case, the first question corresponds to what was asked under inserted section 44M, the second question in relation to inserted section 46L and the third question relates to inserted section 67Y.

### **Necessity**

48. On 44M, the Committee asked the Scottish Government to provide further detail on why the power to modify the land to which the obligations would apply is deemed necessary. The Scottish Government responded that the threshold has been set at a level which it is confident will deliver the policy objectives. However, the Scottish Government considers it important that there should be an ability to adjust the threshold in the future if monitoring indicates that those objectives are not being met. The Scottish Government is also mindful that land reform is very much a process, rather than an event and that future Parliaments and governments may wish to review key aspects of the proposals, such as whether modifying the land to which the obligations would apply is necessary following consultation. This power would allow that to happen without the need for primary legislation.
49. On 46L, the Committee asked the Scottish Government to provide further detail why the power to modify the length of the prohibition and the land to which the prohibition would apply is deemed necessary. The Scottish Government responded that the 40-day period has been set with regard to community right to buy timescales, and the need to balance the rights and interests of landowners and community groups. It considers that it is appropriate to take a power to modify the 40-day period following monitoring and review of the operation of the transfer

measures, particularly given that the operation of the land market can be impacted by a wide range of factors. The Scottish Government states that it is its intention only to make such changes if satisfied that doing so is within devolved competence, and that they are compatible with Article 1 Protocol 1 (ECHR): Protection of Property. In respect of modifying the land affected by the prohibition again, the Scottish Government further states that it is important that there is the ability for these definitions to be amended in light of monitoring of the Bill provisions in practice, particularly since this is a new area of policy.

50. On 67Y, the Committee asked the Scottish Government to provide further details on why the power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision, is deemed necessary. The Scottish Government responded that the power is considered necessary in order to be able to ensure that the measures operate effectively in the light of experience, including addressing avoidance should that be necessary.
51. During the evidence session, the Cabinet Secretary reiterated that these powers are necessary to respond to monitoring and feedback.

#### Scope

52. On 44M, the Committee asked the Scottish Government to provide further detail on why the power to modify the land to which the obligations would apply is not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised. The Scottish Government responded that there is limited scope to narrow the drafting of this power while retaining the ability to respond meaningfully to monitoring and stakeholder feedback.
53. On 46L, the Committee asked the Scottish Government to provide further detail on why the power to modify the length of the prohibition and the land to which the prohibition would apply to modify the land to which the obligations would apply is not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised. The Scottish Government responded that there is limited scope to narrow the drafting of this power while retaining the ability to respond meaningfully to monitoring and stakeholder feedback. The Scottish Government intends that that the operation of the prohibitions will be closely monitored and should be capable of being modified where that is warranted having regard to the purpose of the measures.
54. On 67Y, the Committee asked the Scottish Government to provide further details on why the power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision is not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised. The Scottish Government responded that the drafting approach for these provisions is for the same reasons as set out above in relation to 44M and 46L.
55. During the evidence session, the Cabinet Secretary reiterated that she considers that the drafting of the powers is appropriate and strikes a proportionate balance to allow changes to be made following consultation and based on experience once the Bill comes into force.

Use of power and compliance with Article 1 Protocol 1 (ECHR): Protection of Property ("A1P1")

56. On 44M, the Committee asked the Scottish Government: In what circumstances it proposes to use this power to modify the land to which the obligations would apply and to what extent. The Committee also asked the Scottish Government how it intends to assess A1P1 compliance in the exercise of the power. The Scottish Government responded that the power would be used where feedback showed that doing so was appropriate or necessary in order to ensure that the policy objectives are being delivered, including modifying the thresholds and making further or consequential changes in that respect. That monitoring of the effect of the measures will help identify additional considerations that would, if taken into account, make the measures more effective. Further any proposals for compatibility with A1P1 will be assessed in the usual way.
57. On 46L, the Committee asked the Scottish Government: In what circumstances [it] propose[s] to use this power to modify the length of the prohibition and the land to which the prohibition would apply and to what extent. The Committee also asked the Scottish Government how it intends to assess A1P1 compliance in the exercise of the power. The Scottish Government responded by providing an example of potentially exploring a limited extension and repeating that it would be its intention to only make such changes if satisfied that doing so is within devolved competence, and that they are compatible with A1P1. In terms of changes to the land subject to the prohibitions any revisions to the land in scope are anticipated to come from ongoing monitoring of provisions once in force. Monitoring and impact assessment of the operation of these provisions may reveal other amendments to definitions of land that would improve the effectiveness of the proposals. Any proposals for compatibility with A1P1 would be assessed in the usual way.
58. On 67Y, the Committee asked the Scottish Government: In what circumstances [it] propose[s] to use this power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision and to what extent. The Committee also asked the Scottish Government how it intends to assess A1P1 compliance in the exercise of the power. The Scottish Government responded that, in general, the purpose of these provisions is to allow for adjustment where monitoring and practical experience of the proposals demonstrate that this is required. Any proposals for compatibility with A1P1 would be assessed in the usual way.

Consultation

59. On 44M, the Committee asked the Scottish Government, given the potential significant impact on landowners of any modification to the land to which the obligations would apply, whether it has considered including a requirement to consult with stakeholders and the Commissioner before exercising this power to modify the land. Further, the Committee asked the Scottish Government whether consideration has been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power.
60. On 46L, the Committee asked the Scottish Government, given the potential significant impact on landowners and creditors of any modification to the land and

the length of the prohibition, whether it has considered including a requirement to consult with stakeholders and the Commissioner before exercising this power. Further, the Committee asked the Scottish Government whether consideration has been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power.

61. On 67Y, the Committee asked the Scottish Government, given the potential significant impact on landowners and creditors of any modifications under section 4(2), whether it has considered including a requirement to consult with stakeholders and the Commissioner before exercising this power to modify these various provisions. Further, the Committee asked the Scottish Government whether consideration has been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power.
62. The Scottish Government responded on each occasion that Scottish Ministers are committed to making policy in a way that involves engagement with stakeholders and co-production wherever possible. Any significant amendment to these powers is anticipated to be the result of monitoring of their real-world application, and so would be subject to the following basic stages:
- Ongoing monitoring of policy OR impact evaluation identifies and reports on issue;
  - Stakeholder consultation on appropriate response;
  - Impact assessment; and
  - Laying of regulations.
63. For minor corrective legislative fixes, the Scottish Government considers that a more narrowly targeted consultation process rather than a written consultation paper may in some cases be more appropriate. Further, the Scottish Government considered whether there should be a statutory requirement to consult but, given it is its view that the Scottish Government is under a legal obligation to undertake consultation where appropriate with persons affected by any decision, such a specific duty is not needed.
64. The Scottish Government stated it will make information available following a public consultation in the usual way. For smaller changes, the costs involved in preparing and publishing a report are not considered proportionate to the benefit. It therefore does not consider that a duty to publish or lay consultation documents or reports is required although the Explanatory Memorandum accompanying any regulations would detail what consultation had taken place.
65. During the evidence session, the Cabinet Secretary reiterated that she did not consider that any further statutory obligations to consult were required in the delegated powers than is already provided for; and that the Scottish Government intends to consult to develop the subsequent regulations as it has a duty to do so.

#### Changes to significant aspects by subordinate legislation

66. On 44M, the Committee asked the Scottish Government, given this power is significant, why it considers it appropriate to change the land to which the

obligations would apply by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power.

67. On 46L, the Committee asked the Scottish Government, given this power is significant, why it considers it appropriate to modify the land and the length of the prohibition by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power.
68. On 67Y, the Committee asked the Scottish Government, given this power is significant, why it considers it appropriate to modify the provisions in section 4(2) by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power.
69. The Scottish Government responded on each occasion that for the reasons explained in earlier answers, it does not consider that the changes that could be made under these powers are so extensive that primary legislation is appropriate. The powers would need to be exercised with reference to the overall objectives and purposes of the Bill, with appropriate consultation and with reference to, for example, A1P1. Further, such changes can only be made if they are approved by the Parliament through the affirmative procedure to ensure the Parliament is able to scrutinise any use of the power. The Scottish Government considers that secondary legislation is an appropriate mechanism to enable the principal policy in the Bill to continue to be achieved. Further the power will ensure that changes can when necessary or appropriate be made in a timely and flexible manner, taking due account of ongoing monitoring and continuing stakeholder engagement, so that the policy aims can continue to be met.
70. During the evidence session, the Cabinet Secretary reiterated that there would be scrutiny of the use of these powers through the affirmative procedure and that the Scottish Government requires to be flexible to monitor what are new areas of policy, to look at how they are working and how they are being embedded.
71. The Committee considers that the power to modify the land to which the community land obligations apply (44M) is wide. The Bill does not define any criteria or limitations upon its exercise and little detail has been provided on why the power is necessary or how it will be exercised other than the Scottish Government considers it important that there should be an ability to alter the threshold following monitoring and feedback. However, regulations made under this provision could substantially alter the land to which community responsibility obligations apply with no statutory consultation requirement, despite the significance of the obligations to be imposed on landowners, who are also subject to penalties for failure to comply with the obligations. Further, modifications made under these regulations could represent a significant policy change and amend primary legislation.
72. The Committee considers that the power to modify the land to which the prohibition will apply and the length of the prohibition on transfer without defining any criteria or limitations upon its exercise (46L) is wide. Little detail on why the power is necessary or how it will be exercised has been provided other than the Scottish Government considers it appropriate to be able to modify the 40-day period



following monitoring and review of the transfer measures; and that it is important for the definition of land affected by the prohibition to be amended in light of monitoring as this is a new area of policy. However, the exercise of this power could have a significant impact on landowners and creditors. It could lengthen the period of prohibition creating further delays to the sale or transfer of land. It could also result in more landowners being subject to a prohibition if the power is used to widen the definition of land in new section 46K. Further there is no statutory consultation requirement on the face of the Bill despite the significance of the prohibition on landowners and creditors. Also, modifications made under these regulations could represent a substantial policy change and amend primary legislation.

73. The Committee considers that the power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision without defining any criteria or limitations to be placed upon its exercise (67Y) is wide. Little detail has been provided on why the power is necessary or how it will be exercised other than to allow for adjustment where monitoring and practical experience demonstrate that this is required. However, this power permits the modification of several central definitions and integral aspects of this part of the Bill through regulations. The result is that regulations could be made which alter these definitions and could mean that lotting decisions could be applied to a different range of landowners and creditors who are not currently captured by the Bill's provisions. Such regulations could have a significant impact on landowners and creditors by widening those affected by the lotting decisions and narrowing those affected by exemptions; by creating further delays to the sale or transfer of land as well as widening the pool for compensation or for land purchases. Further there is no statutory consultation requirement despite the significance that any modifications could have on landowners and creditors. Also, modifications made under these regulations could represent a substantial policy change and amend primary legislation.

74. **The Committee draws to the attention of the lead committee that it is concerned by the undefined extent of these powers to modify:**

- **the land on which community obligations are imposed;**
- **large landholdings to which the prohibition on sale applies; and**
- **the land to which the prohibition on transfer without a lotting decision applies.**

**and, as a result, the potential for these powers to increase the impact on additional landowners/creditors and the land market in Scotland.**

75. **The Committee asks the lead committee to consider:**

- **the necessity for and the scope of these powers; and**
- **whether it considers it is appropriate that such potentially significant modifications to fundamental aspects of the Bill be made by**

**subordinate legislation.**

76. **If the lead committee considers these powers are appropriate, the Committee recommends that:**
- **additional scrutiny is attached to the subordinate legislation, whereby the instrument is laid in draft for consultation with Parliament; and**
  - **there should be a statutory requirement to consult before exercising these powers including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power.**

**Section 4(2) inserting section 67S(6) into Land Reform (Scotland) Act 2003 – Power to make further provision about buying land under section 67P, including about how land is to be valued**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

**Provision**

77. Section 4(2) inserts new section 67P which makes provision for the Scottish Ministers to offer to buy land subject to a lotting decision in certain limited circumstances. New section 67S makes further provision about this including when such an offer can be made, how land is to be valued, the price to be offered for the land and an appeal process regarding the price to be offered for the land. Section 67S(6) confers a power for the Scottish Ministers by regulations to make further provision about buying land under section 67P, including how land is to be valued for the purpose of section 67S.

**Committee consideration**

78. In correspondence, the Committee asked the Scottish Government whether it has given any consideration to including a statutory consultation requirement with stakeholders and the Land and Communities Commissioner prior to making regulations under this power.
79. The Scottish Government responded that the Scottish Ministers are committed to making policy in a way that involves engagement with stakeholders and co-production wherever possible. The Scottish Government considers that it is also under a legal obligation to undertake appropriate consultation with persons affected by any decision, and this will apply to regulations made under this power. As such, it does not consider that a specific requirement for statutory consultation is merited. Further, as the Commissioner does not have a role in making compensation decisions as these are ministerial decisions, the Scottish Government does not consider that a specific consultation requirement to consult the Commissioner on

regulations made under this power is appropriate.

80. During the evidence session, the Committee asked the Cabinet Secretary about the absence of a statutory consultation requirement in the Bill and the concerns that have been raised about this. She confirmed that she was happy to consider the Committee's and stakeholders' views on statutory consultation during the passage of the Bill. However, she also considered it important to highlight to the Committee, and to stakeholders, that the Scottish Government has a duty to consult, whether or not it is specified in the Bill.
81. As noted above, the Committee considers that there are substantive differences in the nature of a general consultation duty and a statutory duty to consult. Given that these regulations will determine when an offer to buy land subject to a lotting decision can be made, how land is to be valued, the price to be offered for the land and an appeal process regarding the price to be offered for the land, it is the Committee's view that it is important that a statutory duty to consult before laying any regulations is included under this power.

**82. The Committee recommends that there should be a statutory requirement to consult before exercising this power.**

**83. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

#### **Section 4(2) inserting section 67V(4) into Land Reform (Scotland) Act 2003 to make further provision about compensation**

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

#### **Provision**

84. An owner of land or a creditor in a standard security having a right to sell land is entitled to compensation from the Scottish Ministers in certain circumstances (new section 67V inserted by section 4(2) of the Bill). The amount of compensation to be awarded is to be determined by the Scottish Ministers or the Lands Tribunal on appeal by the person seeking compensation against the Scottish Ministers' determination of the amount payable. New section 67V(4), confers power on the Scottish Ministers to make further provision about compensation, including how claims are to be made and how the amount payable is to be determined, by regulations.

#### **Committee consideration**

85. In correspondence, the Committee asked the Scottish Government whether it has considered that the power to make further provision about how the compensation payable is to be determined is more suitable to the affirmative procedure in order that Parliament may have a sufficient degree of scrutiny over what is being

proposed given the impact on landowners, creditors and the public purse. The Scottish Government responded that it has given careful consideration as to whether the affirmative procedure is appropriate for this power and would ask the Committee to note in that respect that equivalent powers in respect of other community rights to buy are also subject to the negative procedure (see for example section 63(5) of the Land Reform (Scotland) Act 2003); and on this basis to ensure consistency of approach and minimise the risk of unintended consequences, it feels appropriate to also use the negative procedure here.

86. The Committee also asked the Scottish Government whether it has given any consideration to including a statutory consultation requirement with stakeholders and the Commissioner prior to making regulations under this power. The Scottish Government responded that it is committed to making policy in a way that involves engagement with stakeholders and co-production wherever possible. The Scottish Government considers that it is also under a legal obligation to undertake appropriate consultation with persons affected by any decision, and this will apply to regulations made under this power. As such, it does not consider that a specific requirement for statutory consultation is merited. Further, as the Commissioner does not have a role in making compensation decisions as these are ministerial decisions, the Scottish Government does not consider that a specific consultation requirement to consult the Commissioner on regulations made under this power is appropriate.
87. During the evidence session and in further correspondence, the Committee asked the Cabinet Secretary about analogous powers, and she stated that it was important to ensure consistency with other pieces of primary legislation.
88. During the evidence session, the Committee also asked the Cabinet Secretary about the absence of a statutory consultation requirement in the Bill and the concerns that have been raised about this. She confirmed that she was happy to consider the Committee's and stakeholders' views on statutory consultation during the passage of the Bill. However, she also considered it important to highlight to the Committee, and to stakeholders, that the Scottish Government has a duty to consult, whether or not it is specified in the Bill.
89. As noted above a reliance on analogous powers and the parliamentary procedure attached to them is not in itself sufficient justification for using the same parliamentary procedure. In any event, it is noted that section 40(4) of the Bill - the power to modify the compensation payable in respect of small landholdings - is subject to the affirmative procedure. Therefore, in order that Parliament may have a sufficient degree of scrutiny over what is being proposed given the impact on landowners, creditors and the public purse it is the Committee's view that the affirmative procedure is more appropriate.
90. Also, as noted above, the Committee considers that there are substantive differences in the nature of a general consultation duty and a statutory duty to consult. Given that these regulations will make further provision about compensation, including how claims are to be made and how the amount payable is to be determined, it is the Committee's view that it is important that a statutory duty to consult before laying any regulations is included under this power.

91. **The Committee recommends that the power is amended so it is subject to the affirmative procedure.**
92. **The Committee recommends that there should be a statutory requirement to consult.**
93. **The Committee otherwise finds the delegation of the power in principle to be acceptable.**

#### **Schedule: paragraph 40(4) Assessment of compensation**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

#### **Provision**

94. Paragraph 40 of the schedule deals with the assessment of compensation by a valuer appointed by the Tenant Farming Commissioner in respect of small landholdings. Paragraph 40 provides that in carrying out their assessment a valuer is to invite representation from parties, can enter land and can require landholders to comply with reasonable requests made by the valuer. Sub-paragraph 4 confers power on the Scottish Ministers to modify paragraph 40 to specify the basis on which the valuer is to assess the compensation payable and the consideration to be given to certain matters by the valuer in doing so.
95. Such regulations are subject to the affirmative procedure.

#### **Committee consideration**

96. The Committee asked several questions of the Scottish Government regarding this power, namely, whether provision should be made on the face of the Bill; what policy development discussion has taken place to date; whether there should be a requirement to consult and what consideration has been given to this power being a duty.
97. In its response, the Scottish Government stated it does not consider that provision should be made on the face of the Bill despite the potential significance the exercise of this power may have on those involved in compensation claims. The Scottish Government considers that the Bill already provides some detail on how compensation is to be calculated and states that it is subject to the affirmative procedure offering a high level of scrutiny.
98. The Scottish Government further notes in its response that a specific duty to consult is not necessary as the Scottish Ministers are committed to making legislation involving stakeholders where necessary already, although no detailed discussion with stakeholders has yet taken place. This position was reiterated in the evidence

session the Committee had with the Cabinet Secretary. In relation to the question of this power being a duty the response notes that this was considered but is not appropriate as it will be dependent on stakeholder feedback with more detail being required for some matters than others.

99. This power is described in the DPM as being one to provide further detail on how compensation is to be calculated and to provide flexibility to adapt to new considerations. However, very little detail is provided for on the face of the Bill as to how compensation will be calculated, what a valuer is to take into account and what they should not take into account when valuing compensation claims. Beyond being able to invite representation from parties, enter land and requiring landholders to comply with reasonable requests made by the valuer, no detail is provided on the face of the Bill, so the type of provision that may be made is not clear and a significant level of discretion on the exercise of this power lies with Ministers. The provisions to amend what valuers are to have regard to in relation to resumed land in sections 11 and 12 does provide detail and a power to be able to add, vary and remove what a valuer must have regard to.
100. The Committee considers that this power will be able to be exercised in a way that can make significant policy change and have a huge impact on stakeholders. Although the Cabinet Secretary stated during the evidence session that certain discussions have been undertaken regarding some of the Bill's provisions, there has been no detailed discussion on what these regulations may provide. The Bill outlines some things that a valuer can do in carrying out their functions but provides no detail at all on the basis on which the valuer is to assess the compensation payable. Clarity on what these regulations may do will not be provided until there has been further policy development and discussions with those involved in the process.
101. The Scottish Government has indicated the importance of consultation and their commitment to that, and consultation will have to take place to inform the policy so the regulations can be drafted. Significant policy provision can be made by the regulations and any regulations made may also have a huge impact on those involved in compensation claims.
102. The Committee considers that detail on how to calculate compensation is important and that is a view echoed by Scottish Land and Estates. Based on the information before the Committee it draws this power to the attention of the lead committee as further provision should be specified on the face of the Bill similar to the more detailed provision that is made in respect of sections 11 and 12.
103. Furthermore, given the lack of detail on the face of the Bill and that subsequent regulations will be required to ensure that compensation calculations will be clear and consistent, and the Bill's provisions will not operate as intended without these further regulations the Committee considers the power should be a duty on Scottish Ministers to make regulations.

104. **The Committee considers that this power is not acceptable as drafted. It considers it is too wide and further provision should be specified on the face of the Bill.**

105. **The Committee recommends that without further detail being provided for on the face of the Bill the power should be a duty on Scottish Ministers to specify the basis on which the valuer is to assess the compensation payable.**

106. **The Committee also recommends that without further detail being provided for on the face of the Bill there should be a requirement to consult before exercising this power.**

**Schedule: paragraph 49(5): Transfers not requiring notice**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

**Provision**

107. Paragraph 49 of the schedule sets out which transfers of land do not require notice to be given and so do not trigger the right to buy. Paragraph 49(5) confers power on the Scottish Ministers to modify any, or all of sub-paragraphs (1) - (4) which set out the exemptions to requiring notice to be given.

108. Such regulations are subject to the affirmative procedure.

**Committee consideration**

109. The Committee asked several questions of the Scottish Government regarding this power, namely, for further information as to the necessity of this power; what policy development discussion has taken place to date; whether there should be a requirement to consult and why the power is not more narrowly drafted so the Parliament can understand how the power is likely to be exercised.

110. Part 5 of the schedule establishes a scheme to provide small landholders with the opportunity to purchase the land comprised in their small landholding, should the landlord or an eligible creditor decide to transfer the land. This is similar to that already provided for in relation to agricultural holdings. The Scottish Government states that this power is necessary in order to enable further refining of what constitutes an exempt transfer if needed after the legislation comes into force.

111. The power is described as being consistent with exempt transfers in relation to agricultural holdings and that it is beneficial to have this consistency to avoid issues having to be dealt with differently depending on the legislation it is made under. Like many of the other powers, the correspondence further notes that a specific duty consult is not necessary as the Scottish Ministers are committed to making legislation involving stakeholders where necessary already, although no detailed discussion with stakeholders has yet taken place.

112. The Scottish Government states it considers the power to be drafted appropriately so that it can ensure that the list of transfers that do not require notice remain

relevant and so the list can be adjusted if it becomes clear in light of experience that is necessary. It further states that the power mirrors other legislation and whilst it does permit the modification of primary legislation by subordinate legislation, it is subject to the affirmative procedure ensuring parliamentary scrutiny of the power.

113. In further correspondence with the Committee, the Cabinet Secretary outlines the context of this power and notes that the scope of the power is not any wider than is appropriate. It is also noted that what the power will do will be determined by discussions with various stakeholders.
114. This power is wide and permits modification of all sub-paragraphs in paragraph 49 of the schedule without any consultation taking place. It is permitting the amendment of primary legislation which could significantly affect the interests of landlords and creditors as it can be used to change the types of transfers that will give rise to a pre-emptive right to buy which is only being introduced by this Bill. This is an important provision in this part of the Bill with the power being able to effect significant policy changes to how a pre-emptive right to buy is engaged by modifying any, or all of, paragraph 49.
115. The Scottish Government's response talks about this being worded the same as the power in section 27(5) of the Agricultural Holdings (Scotland) Act 2003 for consistency and to ensure changes can be made as a package; however, this power has never been used despite being in force for over 20 years. The power is described as being intended to ensure that the list of transfers that do not require notice remain relevant, but the list for other legislation has remained relevant for over 20 years and does not appear to be one that would be changed frequently to take account of technological or other practice changes in the same way as other legislation. This leads the Committee to have reservations about the necessity of this power and whether such fundamental changes should be made through subordinate legislation.
116. There has been no detailed discussion with stakeholders on what regulations may provide if the power is exercised, and that will not be clear until there has been further policy development and discussion with those involved. The Scottish Government has indicated the importance of consultation and its commitment to that; however, there is no statutory consultation requirement. Consultation will have to take place with those affected to inform the policy so the regulations can be drafted and the regulations could have a significant impact on those involved. It therefore appears appropriate to the Committee that there should be a statutory requirement to consult.

**117. The Committee draws this power to the attention of the lead committee to consider the necessity of the power.**

**118. The Committee recommends that if the power is considered necessary there should be a requirement to consult before exercising it.**

### **Schedule: paragraph 50(7): Right to Buy**

**Power conferred on: the Scottish Ministers**



## **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Affirmative**

#### **Provision**

119. Paragraphs 50(3) and 50(4) of the schedule defines when an owner or eligible creditor is taking steps with a view to transferring land that will trigger the right to buy. Paragraph 50(7) of the schedule confers power on the Scottish Ministers to modify those sub-paragraphs.
120. Regulations made under this provision are subject to the affirmative procedure.

#### **Committee consideration**

121. The Committee asked several questions of the Scottish Government regarding this power, namely, for further information as to the necessity of this power; what policy development discussion has taken place to date; whether there should be a requirement to consult and why the power is not more narrowly drafted so the Parliament can understand how the power is likely to be exercised for example, to add or remove matters from the list.
122. The Scottish Government states that this power is necessary in order to enable the list of steps for acquiring a right to buy remains relevant and can be adjusted if needed after the legislation comes into force. The power is described as being consistent with provisions in relation to agricultural holdings and that it is beneficial to have this consistency to avoid issues having to be dealt with differently depending on the legislation it is made under.
123. The correspondence further notes that a specific duty consult is not necessary as the Scottish Ministers are committed to making legislation involving stakeholders where necessary already, although no detailed discussion with stakeholders has yet taken place.
124. The Scottish Government states it considers the power to be drafted appropriately so that it can ensure that the list of steps for acquiring a right to buy remain relevant and so the list can be adjusted if it becomes clear in light of experience that is necessary. This power mirrors other legislation and whilst it does permit the modification of primary legislation by subordinate legislation, it is subject to the affirmative procedure ensuring parliamentary scrutiny of the power.
125. In further correspondence with the Committee, the Cabinet Secretary outlines the context of this power and notes her view that the scope of the power is not any wider than is appropriate. It is also noted that what the power will do will be determined by discussions with various stakeholders.
126. As currently drafted, the power permits modification of sub-paragraphs 50(3) and 50(4) in the schedule, which specifies what land transfers engage the right to buy, without any consultation taking place. It is permitting the amendment of primary legislation which could significantly affect the interests of landlords and creditors as it could change the circumstances which give rise to a pre-emptive right to buy. This is an important provision in this part of the Bill. The power can make significant policy changes to what transfers engage the pre-emptive right to buy.

127. The Scottish Government's response talks about this being worded the same as the power in section 28 of the Agricultural Holdings (Scotland) Act 2003 for consistency and to ensure changes can be made as a package; however, this analogous power has never been used despite being in force for over 20 years. The power is described as being intended to ensure that the list of types of land transfer that engages the pre-emptive right to buy remain relevant, but the list for other legislation has remained relevant for over 20 years and does not appear to be one that would be changed frequently to take account of technological or other practice changes in the same way as other legislation. This leads the Committee to have reservations about the necessity of this power.
128. There has been no detailed discussion on what regulations may provide if the power is exercised, and that will not be clear until there has been further policy development and discussion with those involved. The Scottish Government has indicated the importance of consultation and their commitment to that; however, there is no statutory consultation requirement. Consultation will have to take place to inform the policy so these regulations can be made and any regulations made could have a significant impact on those involved. It therefore appears appropriate to the Committee that there should be a statutory requirement to consult.

129. **The Committee draws this power to the attention of the lead committee to consider the necessity of the power.**

130. **The Committee recommends that if the power is considered necessary there should be a requirement to consult before exercising it.**

The following are powers the Committee considers to be wide which allow modification of large parts of the Bill relating to the registration of interest and right to buy for both small landholders and agricultural holdings. The next two powers do the same thing for both types of land and as such both powers are dealt with together below for the purposes of the Committee's consideration and recommendations.

### **Schedule: paragraph 59: Registration of small landholder's interest: power to modify provisions**

#### **Power conferred on: the Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

#### **Parliamentary procedure: Affirmative**

#### **Provision**

131. Paragraph 59 of the schedule deals with the modification of provisions relating to the registration of small landholder's interest, which is necessary to register their interest in acquiring their land subject to their leases.
132. The power has a number of different aspects to it. Firstly, sub-paragraph (1) confers power on the Scottish Ministers to make regulations for, or in connection with, the registration of small landholder's interests in acquiring the land and can include measures such as the effect of registration, the Keeper's functions, procedure to register their interests and others.

133. Secondly, sub-paragraph (2)(b) confers power on the Scottish Ministers to modify paragraphs 44-50 of the schedule on a small landholder's right to buy. Finally, sub-paragraph (2)(c) confers power on the Scottish Ministers to make consequential provision which modifies other provisions in this part if it is considered necessary or expedient.
134. There is a requirement to consult the Keeper and such other persons that are likely to have an interest in the registration of interests before making such regulations.
135. Regulations made under this provision are subject to the affirmative procedure.

## **Section 10: Registration of interest and right to buy**

### **Power conferred on: the Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Affirmative**

### **Provision**

136. Section 10 confers power on the Scottish Ministers in identical terms to the power discussed above, but in respect of agricultural holdings. Inserted section 31A(1) confers power on the Scottish Ministers to make regulations for, or in connection with, the registration by tenants of Agriculture Holdings (Scotland) Act 1991 ("1991 Act") tenancies of their interests in acquiring the land comprised in their leases. Regulations can include measures such as the effect of registration, the Keeper's functions, procedure to register their interests and other matters.
137. Section 31A(2)(b) confers power on the Scottish Ministers to modify sections 24- 28 of the Agriculture Holdings (Scotland) Act 2003 relating to the registration of a tenant's interest and right to buy.
138. Section 31A(2)(c) confers power on the Scottish Ministers to make consequential provision which modifies other provisions in this part if it is considered necessary or expedient.
139. There is a requirement to consult the Keeper and such other persons that are likely to have an interest in the registration of interests before making such regulations.
140. Regulations made under this provision are subject to the affirmative procedure.

### **Committee consideration**

141. The Committee asked several questions of the Scottish Government regarding these powers, namely, whether provision should be made on the face of the Bill; what policy development discussion has taken place to date; whether consideration has been given to laying the consultation documents alongside any instrument and why the powers are not more narrowly drafted so the Parliament can understand how they are likely to be exercised.
142. The Scottish Government states that alternatives to these being powers have been considered, including the commencement of section 99 of the Land Reform (Scotland) Act 2016 and the procedure being on the face of the Bill. It notes however, that the alternatives would not provide the legal certainty that landlords,

tenants and third parties should have, and that the registration process should not be unduly burdensome.

143. The Scottish Government further states that the powers are wide enough to allow issues to be proactively identified and to allow work to be carried out with stakeholders to co-develop and improve the registration process. The affirmative procedure is applied to the exercise of these powers given the potential significance of the policy provision that can be made.
144. The correspondence further notes that there is a statutory duty to consult with the Keeper and such other persons affected before exercising these powers with there being no necessity to lay any consultation documents alongside any future instrument as it is normal practice to make such information available.
145. The Scottish Government states it considers the powers to be drafted appropriately so that it can ensure that changes made to deliver improvements to the registration process are fair and effective. These powers are subject to the affirmative procedure, ensuring parliamentary scrutiny of the power.
146. The Committee considers that the above powers are wide. They permit the amendment of several provisions in the schedule and the 2003 Act which could significantly affect the interests of landlords and third parties who may acquire the land. They could be exercised in a manner that changes the circumstances where an interest is registered.
147. The Bill does not specify any aspect of the process of registering an interest in land. It only provides non-exhaustive lists of some things which may be done through regulations. Powers to specify the detail of schemes and processes is a common feature of primary legislation and as there is no detail in the Bill then a power is appropriate to allow that detail to be outlined. While it is not expected that the full detail of how to register an interest would appear on the face of the Bill, despite the Committee asking questions of the Scottish Government, there is still little to indicate what future regulations might make provision for and how the registration process will operate as those discussions have not yet taken place. This creates obvious challenges for this Committee to fully assess the scope of the powers.
148. The response highlights the objective in developing future regulations will be to work flexibly with stakeholders to co-develop an improved registration process, but no information has been provided to the Committee on what regulations made under this power might practically do. Given how widely the powers are currently drafted they could be exercised in any number of ways which may not be anticipated by the Parliament at this time.
149. There is a requirement to consult the views of the Keeper and others affected before exercising this power which offers a level of protection. The Scottish Government states in the DPM that it wishes to avoid an unduly burdensome process, however, the Committee considers that there is still little justification for the powers being so wide with them being able to modify several paragraphs of the schedule and the 2003 Act. The result could be significant policy changes being made to the Bill over time through subordinate legislation with potentially significant real-life consequences. The powers allow further provision to be made in connection with registration and to change large parts of the schedule and the 2003 Act.

150. **The Committee draws these powers to the attention of the lead committee, on the basis that it is concerned about their scope.**

151. **The Committee recommends that they should be more narrowly drafted.**

The following powers are powers to modify what valuers are to have regard to when valuing resumed land in relation to 1991 Act tenancies, limited duration tenancies and repairing tenancies. The next two powers do the same thing for differing tenancies and as such both powers will be dealt with together below for the purposes of the Committee's consideration and recommendations.

**Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

**Provision**

152. Section 11 provides for the determination of resumed land under a 1991 tenancy. Newly inserted schedule 2A sets out what a valuer appointed must have regard to and what they must not take account of when valuing the resumed land. This includes: taking account of the value agreed between parties; terms and conditions of the lease; not taking account of any increase in the value of the land resulting from improvements in relation to which the tenant would be entitled to compensation, and any factor attributable to unlawful use of the land, amongst other matters.
153. Inserted paragraph 4(5) of schedule 2A confers power on the Scottish Ministers to add, remove or vary the description of those matters listed in sub-paragraphs (2) and (3) for valuing the resumed land.

**Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 4(5), schedule 2 to the 2003 Act**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

**Provision**

154. Section 12 provides for the determination of resumed land under limited duration tenancies and repairing tenancies. Newly inserted schedule 2 sets out what a valuer appointed must have regard to and what they must and must not take account of when valuing the resumed land. This includes the same issues as set out in the power above.

155. Inserted paragraph 4(5) of schedule 2 confers power on the Scottish Ministers to add, remove or vary the description of those matters listed in sub-paragraphs (2) and (3) for valuing the resumed land.

### **Committee consideration**

156. The Committee asked several questions of the Scottish Government regarding these powers, namely, for further information on the necessity of the powers; how it is anticipated that these powers will be exercised; what policy development discussion has taken place to date; whether there should be a requirement to consult and why the powers are not more narrowly drafted so the Parliament can understand how they are likely to be exercised.
157. The Scottish Government states in its response that it is necessary to ensure that paragraphs 4 of schedule 2A and 2 are capable of being modified to reflect the current views on the matters which should in fairness be taken into or left out of account when valuing a claim. The Scottish Government further states it considers the powers to be appropriately drafted to achieve the policy aim, with the power being described as comparable to that in section 32J of the Land Reform (Scotland) Act 2016 allowing the Scottish Government to respond to issues identified by stakeholders and to adapt to changing valuers' practice.
158. Stakeholders have raised potential areas where they are seeking clarity since the Bill has been introduced, however, there does not appear to have been any proactive discussions with stakeholders generally on what these provisions may include. The correspondence further notes that a specific duty to consult is not necessary as the Scottish Ministers are committed to making legislation involving stakeholders where necessary already, however, no detailed discussion with stakeholders has yet taken place.
159. The DPM said very little about why these powers were considered necessary with further questions being asked after the evidence session about the analogous powers referred to in response. How resumed land is valued, and what is and is not to be considered when calculating that, can have significant consequences for landowners, bears directly on the interests of the parties to the lease and can be expected to affect the amount of compensation payable.
160. The various responses to the questions from the Committee provides more context to the necessity of the powers and the Committee considers it appropriate to be able to amend the lists provided for in the Bill to take account of changing practice and ensuring consistency among valuers.
161. The Committee does still hold some reservations as the analogous powers referred to have not yet been exercised in 8 years. However, more justification and more detail has been provided in respect of these powers so the Parliament can anticipate the type of provision which may be made by the regulations in the future. Additionally, the powers are changing how something is calculated and is not extinguishing or changing fundamentally whether a right under the Bill is engaged. Therefore, on balance it would appear necessary to have such powers to amend the lists provided for in the Bill.
162. What valuers are to consider when making these calculations is outlined on the face of the Bill so parties to the leases can see how that will be calculated and there is a

level of clarity for the Parliament on how the powers will be exercised. However, changes to that through subordinate legislation can have significant consequences for those involved, with the regulations also being able to make significant policy changes in how these calculations are carried out and there is no requirement to consult with valuers, or anyone else involved in this process.

163. The response indicates that stakeholders have contacted the Scottish Government about the resumption provisions and that stakeholder feedback is being actively considered. However, given the impact these regulations could have, the Committee considers it appropriate to have a consultation requirement before exercising these powers.

**164. The Committee recommends that there should be a requirement to consult before exercising these powers.**

**165. The Committee finds the powers acceptable in principle and is content that that they are subject to the affirmative procedure.**

## **Section 14: Compensation for improvements – section 73(1A) and 3(A)**

### **Power conferred on: the Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish Statutory Instrument**

### **Parliamentary procedure: Negative**

### **Provision**

166. Section 14(8)(a) inserts new subsection (A1) into section 73 of the 1991 Act dealing with improvements which includes when compensation is payable on them. Schedule 5 of the 1991 Act is replaced by Schedule 5 in the Bill.
167. Paragraph 1 of the new Schedule has the effect that an improvement that makes a change to the land or fixed equipment will require the consent of the landlord if it means that the land or equipment affected by the change either cannot or is unlikely to return to its former agricultural use, or the improvement has a long term or significant impact on the management of the holding as a whole. Paragraph 2 is an illustrative list of improvements of that type. Paragraph 3 of the new Schedule has the effect that notice is required for an improvement that does not have a long term or significant impact on the management of the holding. Paragraph 4 is an illustrative list of improvements of that type. Paragraph 5 is a fixed list of improvements for which no consent or notice is required.
168. Section 73(A1) confers power on the Scottish Ministers by regulations to modify paragraphs 2, 4, 5 and 6 of Schedule 5 of the Bill to add, amend or remove an improvement. Regulations made under this power are subject to the negative procedure.

### **Committee consideration**

169. The Committee asked the Scottish Government about the procedure attached to

the exercise of this power. In response, the Scottish Government states that the power is considered to be a largely administrative power to amend the illustrative lists and one fixed list and so the negative procedure is appropriate.

170. The DPM states that this power is necessary for the Scottish Ministers to be able to modify the illustrative lists in paragraphs 2, 4 and 6, and the fixed list in paragraph 5, in order to ensure that those lists properly reflect changes in understanding and in agricultural practice over time. The Committee considers it appropriate for there to be a power to amend these lists to take account of changes in the future.
171. The power itself is permitting the amendment of primary legislation, albeit to a somewhat limited extent. The Scottish Government expects the power to be exercised to add 'examples' of activities to a non-exhaustive list or add activities to Part 3 of schedule 5 of the 1991 Act which provides for improvements with modest impact that do not require notice or consent.
172. The Scottish Government considers the negative procedure to be appropriate as the power is not expected to raise any particular issue of importance and the lists being modified will have a minimal or modest effect. One of the lists this power permits amendment to is also a fixed list of improvements. The current fixed list of improvements is amended by regulations subject to the affirmative procedure.
173. The Committee considers that this power is more than minor or administrative and as such the level of parliamentary scrutiny being applied should reflect that. Further the current schedule 5 in the 1991 Act can be subject to change, but through an order subject to the affirmative procedure. The Committee therefore recommends the parliamentary procedure to be applied is amended to afford a higher level of scrutiny.

**174. The Committee is content with the power in principle but recommends that the power be subject to the affirmative procedure.**

### **Powers to prescribe or make minor modifications**

Many of the powers in the Bill are to prescribe or specify certain requirements. The following are such powers.

#### **Powers conferred on: The Scottish Ministers**

#### **Powers exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Negative**

- Section 2(4) – inserting section 46C into the Land Reform (Scotland) Act 2003– power to set the manner by which an owner, or creditor can request to lift the prohibition under section 46B (Prohibition on transfer to allow time for interest to be registered);
- Section 2(4) – inserting section 46D into the Land Reform (Scotland) Act 2003 – power to set out the information to be made publicly available about the land which is possibly to be transferred following receipt of notice under section 46C or 48;
- Section 2(4) – inserting section 46F(3)(b) into the Land Reform (Scotland) Act 2003 –



power to set out the information to be included in the note to the Scottish Ministers expressing an interest in registering a community interest in land;

- Section 4(2) – inserting section 67K(2)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to make a lotting decision;
- Section 4(2) – inserting section 67L(3)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers not to make a lotting decision;
- Section 4(2) – inserting section 67M(4)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to make an expedited lotting decision where owner facing hardship;
- Section 4(2) – inserting section 67P(3)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid application asking Scottish Ministers to review a lotting decision;
- Section 4(2) – inserting section 67Q(2)(b) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers to stop the review of a lotting decision;
- Section 4(2) – inserting section 67T(1) into the Land Reform (Scotland) Act 2003 – a power to set out the manner of a valid request asking Scottish Ministers to consider making an offer to buy;
- Schedule, paragraph 7(4)(b): Notice of diversification – power to prescribe the form of a notice of diversification;
- Schedule, paragraph 9(8)(b): Landlord’s agreement or objection to notice of diversification – power to specify information to be included in a notice of objection to a diversification proposal;
- Schedule, paragraph 36(3): Application to Tenant Farming Commissioner – power to prescribe the form and content of an application to the Tenant Farming Commissioner for an assessment of the amount of compensation;
- Schedule, paragraph 37(6): Appointment of valuer by Tenant Farming Commissioner - power to modify the period within which a valuer must be appointed by the Tenant Farming Commissioner;
- Schedule, paragraph 45(2): Registration of small landholder’s interest in buying land – power to prescribe the form of a small landholder’s notice of interest;
- Schedule, paragraph 45(6): Registration of small landholder’s interest in buying land - power to specify a reasonable fee that the Keeper may charge for registering landholders’ interests;
- Schedule, paragraph 48(4)(b): Notice of proposal to transfer land – power to prescribe the form and any additional requirements that are to be included in a notice of a proposal to transfer land;
- Section 7: Duty to publish model lease – power to amend the date for which Scottish

Ministers are to produce a model lease;

- Section 11: Resumption, section 32ZA(3)(a) of the 1991 Act – power to prescribe the form and content of a notice of resumption;
- Section 11: Resumption, paragraph 1(3)(b), schedule 2A to the 1991 Act - power to prescribe the period that another valuer may be appointed;
- Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 1(3)(b), schedule 2 to the 2003 Act – power to prescribe the period that another valuer may be appointed;
- Section 14: Compensation for improvements, section 37(1B) of the 1991 Act - power to prescribe the information about the improvement to be given with a section 37 notice;
- Section 14: Compensation for improvements, section 38(3A) of the 1991 Act - power to prescribe the form of a section 38 notice;
- Section 14: Compensation for improvements, section 38(3A) of the 1991 Act - the power to prescribe the information about the improvement to be given with a section 38 notice;
- Section 20: Compensation for damage by game etc, section 52(3)(a) of the 1991 Act – power to prescribe the form and manner of a notice of damage or injury;
- Section 20: Compensation for damage by game etc. Section 52(3)(c) of the 1991 Act – power to prescribe the form and manner of a notice of compensation; and
- Section 27: Rules of good husbandry – power to prescribe conservation activities for the purposes of good husbandry.

### **Committee consideration**

175. Powers to prescribe certain notices, the form and content of other documents, or other matters that must be specified in various documents and notices is a common feature in modern primary legislation. It is not generally expected that such detail would be on the face of the Bill and so it is standard to see this type of power to be outlined in subsequent subordinate legislation.
176. Other provisions listed above allow very limited and narrow changes to prescribed dates provided for in primary legislation. Although they are making changes to primary legislation, they are making minor and administrative changes relating to timescales. The negative procedure is considered appropriate for all of these powers given the nature of them and how they are drafted.

**177. The Committee is content with these powers in principle and that they are subject to the negative procedure.**

### **Powers to modify**

The Bill contains some other powers which allow changes to be made to the Bill, other primary legislation or secondary legislation to alter how certain parts of the Bill operate.

These powers are listed below.

## **Powers conferred on: Scottish Ministers**

### **Powers exercisable by: Regulations made by Scottish Statutory Instrument**

#### **Parliamentary procedure: Affirmative**

- Schedule, paragraph 7(5): Notice of diversification – power to add or remove information to be included in a notice of diversification;
- Schedule, paragraph 9(8)(a): Landlord’s agreement or objection to notice of diversification – power to add or remove a ground for objection to a diversification proposal;
- Section 15: Notice of objection to diversification – power to add or remove a matter which is to be specified in a notice of diversification and power to modify subsection (9) of that section so as to add or remove a ground of objection to a notice of diversification;
- Section 21: Standard claim procedure, section 59B(1) of the 1991 Act – power to apply the standard claim procedure to any relevant type of compensation;
- Section 21: Standard claim procedure, section 59B(4) of the 1991 Act – power to modify the standard claims procedure;
- Section 23: Rent review: 1991 Act tenancies Paragraph 9 of schedule 1A to the 1991 Act – power to make further provision in relation to what the Land Court must have regard to for the purposes of determining the fair rent for the holding; and
- Section 24: Rent review: limited duration tenancies Section 9BA of the 2003 Act – power to make further provision in relation to what you must have regard to in determining the fair rent of a tenancy.

#### **Committee consideration**

178. These powers permit the amendment of primary legislation and can modify various matters outlined in the Bill. However, the modifications that can be made by the powers listed above are not considered integral to the policy or operation of the Bill. They can be used to implement fairly minor modifications and to take account of changes in circumstances over time to certain aspects of primary legislation, not to implement significant policy changes that would not be reasonably foreseen by the Parliament.
179. The Committee considers that, for the above powers, there is sufficient detail in the Bill to be able to anticipate how the power could be exercised and what the impact of that may be. They are sufficiently narrowly drafted and cannot be exercised in such a way that the policy intent is significantly altered. They are all subject to the higher level of parliamentary scrutiny afforded by the affirmative procedure, which is entirely appropriate where a power permits the amendment of primary legislation.

180. **The Committee is content with these powers in principle and that they are subject to the affirmative procedure.**

## Guidance issuing power

### Schedule, paragraph 55(7): Valuation of the land

**Powers conferred on: Scottish Ministers**

**Powers exercisable by: Direction or Guidance**

**Parliamentary procedure: No procedure**

#### Provision

181. Paragraph 55(7) of the schedule to the Bill confers power on the Scottish Ministers to issue guidance generally or in respect of a particular description of case for the purposes of valuation under paragraph 55.

#### Committee consideration

182. Powers for the Scottish Ministers to issue guidance is not uncommon and is generally used to aid understanding or implementation of certain aspects of Bills. Guidance can be issued in relation to the valuation of land and is intended to complement the provisions of the Bill and to be used to assist those involved in the valuation process to promote consistency of approach and set out examples of how certain things should be valued. Such powers do not generally attract any parliamentary procedure due to the nature of them, which is considered appropriate here.

**183. The Committee is content with the power in principle and that it is not subject to any parliamentary procedure.**

## Standard Powers

**Powers conferred on: The Scottish Ministers**

**Powers exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative for section 28 and no procedure for section 30**

184. The following are standard powers, subject to the standard procedures:

- Section 28 - Power to make ancillary provisions. Regulations made under this power which amend primary legislation will be subject to the affirmative procedure, otherwise the negative procedure will apply; and
- Section 30- Power to appoint days on which provisions of the Bill come into force. Regulations made under this power will be subject to the laid only procedure.

**185. The Committee is content with these powers in principle and with the parliamentary procedure being applied to them.**

