



# HORIZONS 2016

## Scottish Property Update

April 2016

The Scottish Parliament was dissolved on 23 March, in preparation for the Election on 5 May. The new administration, when it is elected, will no doubt have a full agenda for 2016/2017, but there is already much in the pipeline that will affect the real estate sector, in the months to come.

Parliament was frenziedly busy in the final days before dissolution, passing several complex Bills that will have a future impact on property interests. The Land Reform (Scotland) Bill and the Private Housing (Tenancies) (Scotland) Bill were both debated and passed in the final days of the Parliament. For a summary of the changes proposed by these Bills see our briefing [Reflections on 2015](#).

### LBTT: let the residential buyer beware

Echoing proposals at Westminster for a residential supplement to stamp duty land tax, Parliament passed the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016, on 8 March, in one of the speediest passages of a Bill to date.

From 1 April 2016, purchases of certain residential properties attract a supplement of 3% of the total purchase price of the dwelling, in addition to the usual land and buildings transaction tax liability. This additional tax affects not only individuals, but also companies, and businesses that are involved in purchasing residential property for investment purposes, such as buy-to-let.

The supplement applies to dwellings bought for £40,000 or over, where the purchase of a dwelling results in the buyer owning more than one dwelling at the end of the day on the date when that purchase settles. If, however, the buyer is an individual, and the purchase in question is of a dwelling that is to be the buyer's main residence **and** he has sold a previous main residence within 18 months prior to the purchase, the supplement will not apply, even if the buyer also owns other residential property on that day. For buyers who are non-natural persons, such as a company, then any purchase of a dwelling will attract the supplement.

### Contents

LBTT: let the residential buyer beware	1
Land reform: controlling interests in ownership of land	2
Accelerating completion of the Land Register: Standard Securities	2
Rates woes for commercial owners	2
The Rights of a Community to Buy Land	3
New regulations for Energy Performance of Buildings	4
Private residential tenancy reform	5

*...purchases of certain residential properties attract a supplement of 3% of the total purchase price of the dwelling, in addition to the usual land and building transaction tax liability.*



In cases where the buyer is replacing his main residence, but that property is sold after the purchase of the new main residence, the supplement will apply, but the buyer in that case is entitled to apply for a repayment of the supplement when the sale of his previous main residence finally settles, provided that happens not later than 18 months from the date of purchase.

Mixed use properties will also be affected: where there is a residential component, a 'just and reasonable' apportionment of the chargeable consideration will need to be made and the supplement will apply to that proportion.

More information on the LBTT 3% supplement is in our [briefing note](#). Revenue Scotland has also provided [guidance on the supplement](#).

### Land reform: controlling interests in ownership of land

A late addition to the Land Reform Bill was the requirement for a register of persons with controlling interests in relation to ownership of land in Scotland. Originally, this amendment to the Bill used the expression 'persons of significant control'.

There was speculation that this could mean that the criteria for the register of persons of significant control under the Companies legislation might be the model being considered for the landownership conditions. However, no other detail about these proposals is available, and it will not be until the Scottish Government publishes a consultation document that it will become clear how this will affect owners.

More information about for example, an individual's shareholding in a corporate owner may be targeted. Consideration will be given to the circumstances in which a person requests that information about them is not published (likely to pertain to instances where, for example, the publication of the information might result in the person concerned being at a serious risk of, or threat of violence, abuse, or intimidation).

### Accelerating completion of the Land Register: Standard Securities

The Registers of Scotland are committed to

completing the transfer of title to all property in Scotland to the map-based Land Register by 2024. From 1 April 2016, it is no longer possible to record a standard security in the General Register of Sasines. So, anyone granting a standard security over a title that is still in the Sasine Register will have to register that title in the Land Register as well. This will be achieved by making an application for voluntary registration of the title to be secured at the same time or prior to the registration of the standard security over that land.

There is good news. Usually, an application for voluntary registration of a Sasine title will attract registration dues based on the value of the land. For high value properties, this can be expensive. However, where the voluntary registration is required because a standard security is to be granted over the land, simultaneous applications for registration will mean that the voluntary registration fee will be waived, and only the standard security fee of £60 will be payable.

Most likely to be affected by the change are homeowners taking out a loan or remortgage over property that they have owned for a considerable time, and landowners, who have held title to the land for many years, but who are now granting a security over that land for some reason, such as on the granting of an option to a windfarm developer.

Waiver of the voluntary registration fee only applies where the security affects the whole of the land that is being registered. If you own more land than is being secured and want to register all of it, then the usual registration fee will apply. Until 2017 there is a 25% discount on registration dues for voluntary registration. However this may still be a comparatively modest outlay to achieve registration in the Land Register of the whole of your title, if the title examination work to register the title for the purposes of the security is having to be done anyway.

### Rates woes for commercial owners

From 1 April 2016 rates for non-domestic properties that are lying vacant will change significantly. Prior to that date, empty industrial premises benefited from full relief from rates. Under [new regulations](#) 100% relief applies only for the first six months that the property is vacant, after which the

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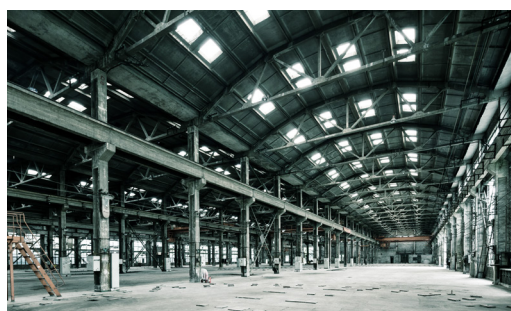
amount of the relief drops to a mere 10%. If you own industrial premises that have already been lying vacant for at least six months, the relief will reduce immediately.

Relief from rates for other types of business properties also decreases. Initially only half of the rates will be payable, but that 50% relief also now drops to 10%, this time after only three months of the premises lying empty.

	Relief for first 3 months	Relief for months 3 to 6	Relief after 6 months
Industrial buildings	100%	100%	10%
Other business premises	50%	10%	10%

The exemptions for listed buildings and properties with a rateable value under £1,700 will still apply.

Occupied properties are also affected, with an increase in the rate (where the rateable value is over £35,000) from 49.3 to 51 pence in the pound. The gloom is partially offset by the prospect of a comprehensive review of business rates, announced by the Finance Minister in his Budget statement, and expected to be completed by summer 2017.



### The Rights of a Community to Buy Land

From 15 April 2016, communities will have the right to apply to register a notice to buy any land in Scotland. Prior to that date, the right applied only to predominantly rural land. The right to buy is a pre-emptive right. In other words it can only be exercised if the landowner takes steps to sell the property.

Eligibility to register, and the procedural steps to be followed, including valuation of the land in question are similar to the existing arrangements that have been available for rural land since 2004. The proposed

acquisition must be compatible with furthering the achievement of sustainable development, and Scottish Ministers' consent to the application is necessary.

The Scottish Government has published [Guidance for Community Bodies, Landowners, Heritable Creditors in possession, and Third Parties](#) which is essential reading for communities considering registering an interest, and for landowners who might be affected.

### Abandoned, neglected or detrimental land

Further community rights to buy are in the pipeline. The Community Empowerment (Scotland) Act 2015 introduces a new right to buy land that is abandoned or neglected, or is being used or managed in such a way that harm is being caused to the environmental wellbeing of the local community. This right, when it comes into force, will not have to rely on the landowner wishing to sell the land – it can be exercised even when the seller is unwilling. Homes, and land within the curtilage of a home, will be excluded from the right.

A consultation on the detail of this is running until 20 June 2016. In particular, it looks at the criteria that should be considered by Scottish Ministers, when determining whether land is to be regarded as abandoned or neglected, or detrimental to the community. This will include:

- The physical condition of the land or any building or other structure on it.
- The length of time it has been in such a condition.
- Whether that condition is detrimental to the amenity of adjacent land, or a risk to public safety, or causing or likely to cause environmental harm.

It is proposed that certain rights which might otherwise preclude a community right to buy should be suspended while an application for such a right to buy is being considered by Scottish Ministers. These include:

- Pre-emption rights (other than those under an option agreement).
- Redemption rights.
- Reversion rights.
- Rights arising from any option to purchase.

*Before making any application, the community must have tried, and failed to reach agreement with the owner to buy the land.*



Before making any application, the community must have tried, and failed to reach agreement with the owner to buy the land. Owners of such land will be given an opportunity to make representations in relation to an application to buy, but Scottish Ministers should not approve a community's application to buy, unless it is in the public interest, and compatible with furthering the achievement of sustainable development in relation to the land, which would be unlikely to be furthered if the owner of the land continued to own it.

Where the application is to acquire land that is causing environmental harm, the community must first approach appropriate regulators, such as the local or Parks authority, SEPA, the Health and Safety Executive, the Police, and Scottish Natural Heritage to request them to invoke legislation or regulations or take action that could resolve or alleviate the harm that the current use or management of the land is causing. The application should demonstrate that even if such regulators do take action it appears that the harm is unlikely to be removed, or substantially removed, if the owner of the land continues to own it.

The owner is entitled to payment for the land based on market value, and may also be entitled to be compensated for other losses incurred.

### **Right to buy land to further sustainable development**

The Land Reform (Scotland) Bill provides for another non-pre-emptive right to buy for communities. This right, when it comes into force (on a date yet to be determined) will also apply to all of Scotland, but excludes homes and land pertaining to the home, but does not exclude homes occupied under a tenancy. Land that has fallen to the Crown is also excluded, and other types of land may be excluded by regulations.

As with the right to buy abandoned, neglected or detrimental land, there does not need to be a willing seller, but the community must have tried and failed to reach agreement with the owner to buy the land.

For the right to be approved, it must be shown that the transfer of land is likely to

further the achievement of sustainable development, that it is in the public interest, likely to result in significant benefit to the community and is the only, or most practicable way of achieving that benefit. It must also be shown that not consenting to the transfer is likely to result in significant harm to the community.

Once fully enacted, this trio of rights will give communities significant power to acquire land for that community's benefit. Acquiring land in any one of these ways, however, will not be an easy task for a community, and rigorous procedural steps must be followed, with Scottish Ministers having the final say. Land must be acquired for value, and so the community must be in a position to raise sufficient funds to pay a proper price.

That said, owners of land that is in a neglected or environmentally dangerous state, should be live to the possibility that communities will have rights to take matters into their own hands.

### **New regulations for Energy Performance of Buildings**

On 1 September, 2016, new regulations come into force that affect owners of 'large', non-domestic buildings. Unlike the current regulations concerning Energy Performance Certificates, these new regulations will require some pro-activity on the part of the owner.

#### **Eligible buildings**

The new regulations will apply to public and private buildings with a floor area greater than 1000 square metres. The definition of building includes a 'building unit' – i.e. part of a building.

Certain buildings will be exempt including:

- Buildings which have installed Green Deal measures up to the maximum eligible within a Green Deal finance offer. This is because: they already have in effect an EPC, recommendations and an action plan – i.e. the Green Deal plan.
- Buildings constructed to the 2002 building standards, and pre 2002 buildings that have been retrofitted to meet recent energy standards – they are already sufficiently energy efficient so no action plan is necessary.

*New regulations will apply to public and private buildings with a floor area greater than 1000 square metres.*





- Buildings already exempt from having to obtain an EPC such as temporary buildings with a planned time of use of two years or less, workshops and non-residential agricultural buildings with low energy demand.

### Action Plan and improvement measures

An owner of an eligible building must, when the building is to be sold or let, arrange for an Action Plan to be prepared, and provide a copy of it to prospective purchasers or tenants

An Action Plan must be prepared by a suitably qualified assessor and must contain a programme for the implementation of measures that will:

- Improve the energy performance of the building.
- Reduce emissions of greenhouse gases produced by or associated with that building.

The Action Plan is prepared following an assessment of the energy performance of the building which results in the production of an EPC.

Where the assessment identifies improvement measures that can be taken, the Action Plan must also specify those, and include the energy performance and emissions targets for the building.

Alternative improvement measures can be taken if these would reduce the energy consumption of the building and reduce the level of greenhouse gas emissions produced by the building.

The owner of the building must complete the building improvement measures within a period of 42 months after the date on which the first Action Plan is issued, or if the operational ratings measures option is chosen, when that option is discontinued.

### Operational rating measures

Instead of carrying out improvements, the owner can opt (in consultation with the assessor) to assess and record the energy consumption associated with the actual use of a building. When this option is chosen, the owner must display a valid Display Energy Certificate for the building within the building in a prominent place clearly visible to persons using the building. This must be

updated annually.

Energy improvement data from an Action Plan, a Display Energy Certificate, and other documents specified in the regulations must be submitted to the appropriate register of such data before the document is issued.

The Scottish Government plans to produce detailed guidance for owners of buildings that will be affected by these regulations, in advance of the commencement date.

### Private residential tenancy reform

The Private Housing (Tenancies) (Scotland) Bill will radically reform the law relating to the letting of residential property in Scotland.

Much of the clarification in the Bill is welcome news for tenants, but there are two key elements of the Bill which have given private landlords cause for concern, namely:

1. the possibility of future 'rent control' on residential tenancies; and
2. the abolition of the 'no fault' ground for recovering possession from a residential tenant after the expiry of the agreed lease term.

### Rent Control

A landlord of residential property will have the right to review the rent to the open market rent, but not more than once in any 12 month period. There is, however, the possibility that the Scottish Government may introduce a 'cap' on rent review increases in future, within a designated 'rent pressure zone'. Before rent control arrangements could be introduced, a local authority would have to apply to the Scottish Ministers for all or part of the authority's area to be designated as a 'rent pressure zone' (to which the cap would apply). Before introducing any cap, the Scottish Ministers would require to undertake a consultation process with representatives of both landlords and tenants, and exhibit to the Scottish Parliament evidence to support their belief that rents payable within the proposed rent pressure zone are rising by too much, that rent rises are causing undue hardship to tenants, and the local authority concerned is coming under increasing pressure to provide housing or subsidise the cost of housing due to the rent rises within the proposed zone. It can therefore be seen that a number of steps must first be taken

*...the Action Plan must also specify and include the energy performance and emissions targets for the building.*



before any rental cap can be introduced.

Any rental cap introduced by the Scottish Ministers would also cease to have effect after five years (or sooner, if revoked by the Scottish Ministers).

### Minimum Rent Cap

There are a few points worth bearing in mind in relation to any proposed 'cap' on rents referred to above:

- As can be seen, the application of the rent cap is designed to apply to fairly extreme circumstances (and can only be introduced in circumstances where there is evidence to support this).
- If introduced the cap would only limit a proposed increase in the rent payable by a sitting tenant. It would not therefore restrict the rental which a landlord can seek to agree in the open market on a new letting to a new tenant.
- The legislation provides that, in general terms, any cap cannot restrict the amount of any annual rental increase to less than an increase which is one percentage point above any increase in the Consumer Prices Index (CPI) for the relevant year. Residential landlords will therefore at least have the comfort of knowing that in the event that a rent cap is applied in future by the Scottish Government, they will not be prevented from seeking an annual increase in the rent which reflects an increase of 'CPI plus 1'. It will also be open to the Scottish Ministers to set a higher cap if desired.

### Abolition of the 'no fault' ground for regaining possession

The Bill will also remove a residential landlord's ability to regain possession of their property simply because the end-date of the tenancy has arrived (the 'no-fault' ground). Instead, a landlord will need to identify one of 16 specific 'eviction grounds' to justify removing the tenant. If none of these grounds apply, the tenant cannot be asked to leave the property (despite the agreed lease term having ended). The specific eviction grounds are broadly as follows:

1. The landlord intends to sell the property.
2. The landlord's lender intends to sell the property.
3. The landlord intends to carry out significant disruptive works to the property.

4. The landlord or a family member intends to live in the property.
5. The landlord intends to use the property for a purpose other than housing.
6. The property is required for religious purposes.
7. The tenancy was given to an employee and the tenant is no longer an employee.
8. The tenancy was given for community care, and the tenant no longer requires such community care.
9. The tenant is not occupying the property as their home.
10. The tenant has materially breached their tenancy agreement.
11. The tenant is in rent arrears for three or more consecutive months.
12. Criminal behaviour.
13. The tenant has acted in an anti-social manner.
14. The landlord's local authority registration has been withdrawn or refused.
15. The landlord's HMO licence has been revoked.
16. An overcrowding statutory notice has been served on the landlord.

### Student accommodation

Prior to the Bill being passed, representations were made by the private student accommodation sector about potential adverse effects to student letting arrangements arising from the proposed abolition of the 'no fault' ground. The inability to agree with a student a finite nine month tenancy (to align with the university academic year) would present challenges for private investors operating in the student accommodation sector.

To address this concern the Scottish Government have included provisions in the Bill which exempt specific types of student lettings from the general security of tenure to be provided to residential tenants. It will therefore be possible to grant a fixed term tenancy to a student where either:

- the landlord is a university or other recognised education institution; or
- the landlord is an 'institutional provider of student accommodation' and the letting is of 'purpose built student accommodation'. An 'institutional provider of student accommodation' is effectively a body which owns/controls at least 30 student bedrooms in the same building or complex. In order for accommodation to qualify as 'purpose built student accommodation', the



planning permission for the property must have been given on the basis that the let property would be used predominantly for housing students.

Whilst the above concessions are welcome, the Bill does not provide relief for either:

- (a) small investors in individual flats or houses (ie those landlords who are not 'institutional providers of student accommodation' as above), or
- (b) private owners of flats or houses which

do not constitute 'purpose built student accommodation' (as above).

#### **When will the Bill come into force?**

It is anticipated that the Bill will come fully into force in late 2017.

There is time now for residential landlords and investors to review the proposals, and properly consider the implications for their lettings and investments.

*The Private Housing (Tenancies) (Scotland) Bill isn't expected to come into force until late 2017, so there is still time to prepare.*

### **SIGN UP FOR OUR DILAPIDATIONS BREAKFAST SEMINAR**

At this seminar, our Property Dispute Resolution team will offer practical guidance on the key issues that can arise in dilapidations disputes, particularly in the light of recent case law.

It will also look at how lease provisions are to be interpreted in the context of recent court judgments on interpretation of contracts, focusing in particular on the scope of the repairing obligations, and the remedies and defences available to the parties. An update on the position in England will also be provided, bearing in mind the key differences in the law north and south of the Border.

The breakfast seminar takes place in our Edinburgh and Glasgow offices on 10<sup>th</sup> and 12<sup>th</sup> May respectively. **For more information and to sign up, click here.**

## **Get in touch**

Should you wish to discuss any of the issues covered in this Update, please get in touch with one of our specialist lawyers below or visit our website: [shepwedd.co.uk](http://shepwedd.co.uk)



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