

Written Evidence

Crofting and Scottish Land Court (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs, Property and Land Law Reform and Environmental law sub-committees welcome the opportunity to consider and respond to the Rural Affairs and Islands Committee of the Scottish Parliament's call for views on the Crofting and Scottish Land Court (Scotland) Bill.¹ The sub-committees have the following comments to put forward for consideration.

General Comments

Crofting law has developed over time in a piecemeal fashion and is unique to Scotland. It is generally considered to be a complex and difficult area of the law, made particularly so by the combination of the law relating to property and that relating to landlord and tenant matters. Crofting law may now be considered to be out-dated in many aspects and in need of reform.

We have long identified crofting law as a priority area for reform. Following a public consultation which ran from February to May 2020, we issued our full report into crofting law reform in October 2020 and called on the Scottish Government to take prompt action to effect legislative change.² We have also been participants in the Scottish Government's Crofting Law Working Group and previously responded to the Scottish Government's consultation: Crofting Consultation 2024: Proposals for Crofting Law Reform.³ We therefore welcome the introduction of the Crofting and Scottish Land Court (Scotland) Bill as a means to achieve the necessary reforms.

In our previous work on crofting law, we identified a limited number of specific aspects of the law relating to crofting that merited further consideration and proposed reforms pertaining to each area, being:

- 1) Aspects of succession.

¹ [Crofting and Scottish Land Court Bill - Scottish Parliament - Citizen Space](#)

² [Crofting Law Paper- Law Society of Scotland, 2020](#)

³ [Crofting Consultation 2024: Proposals for Crofting Law Reform](#)

- 2) Owner occupier status.
- 3) Statutory conditions of tenure.
- 4) Definition of 'crofting community'.

We recognise and welcome that the Scottish Government has brought forward several of our proposed reforms as part of this Bill. We also note that several proposals have not been taken forward under this Bill and have expressed our position on these in our answer to question 2.

Questions

1. Part 1 of the Bill would make a number of changes to crofting legislation. Do you have any comments on any of these changes? Please say which sections of the Bill you are commenting on in your answer.

Section 1

We would query whether section 1(3) is sufficiently clear regarding whether management for the benefit of cultural as well as natural heritage is permitted.

We would note that section 1(3)(d) does not specify that the use must benefit the environment. We would highlight the definition introduced by section 18(3) as a potentially more appropriate definition.

We note that section 1(3)(d)(8B) provides Ministers with the power under secondary legislation to modify section 1(3)(d)(8A). We would suggest that it is appropriate to include provisions in the Bill that ensure that removing a purpose from 8A would not prejudice those who had made long term commitments to particular uses prior to the removal of that purpose, rather than being left to secondary legislation.

We understand from paragraph 38 of the policy memorandum that the intention is to provide the optionality to grazing committees to propose such schemes listed in section 1 for potential environmental uses for a croft.⁴ We are unclear as to the effect of this provision where third parties (whether a landowner or developer) have proposed a scheme as set out in the memorandum (peatland restoration, forestry, habitat restoration or renewable energy schemes, the latter not being defined in the Bill) on the grazing land. It is not clear in the policy memorandum whether the intention is to provide the rights in land for a scheme to progress in the event that a landowner has refused consent to the scheme. Many of these environmental uses, particularly renewable energy schemes but also others, will

⁴ [Policy Memorandum- Crofting and Scottish Land Court \(Scotland\) Bill](#)

be carried out by third parties with either lease or servitude rights to do so. In an event where the grazing committee want to progress such a scheme with a third party developer and the landowner does not, the section 50 application would not provide the rights in land for the third party to carry out the scheme, meaning that it could not then progress. We would welcome clarity from the Scottish Government on this point.

We note that paragraph 38 of the policy memorandum states regarding common grazings that “Common grazing land is increasingly recognised as having great potential for peatland restoration, forestry, habitat restoration and renewable energy schemes as well as traditional grazing”.⁵ We would highlight that the Bill does not reference renewable energy generation or renewable energy schemes. The Bill allows croft land and common grazing to be put to environmental use, with 'environmental use' being defined in section 1 of the Bill as including, but not limited to:

- peatland restoration.
- habitat creation and restoration.
- water management (making/improving water courses, ponds, wells).
- preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment.

We would highlight that whilst these examples are helpful, this definition of environmental use is wide and we would again refer to the definition used under section 18 as potentially more useful.

Furthermore, given the lack of reference to renewable energy generation or renewable energy schemes, it appears that these projects will still fall within 'alternative [purposeful] use' of croft land and of common grazing. We would highlight that this is perhaps inconsistent with paragraph 38 of the policy memorandum,⁶ and we would request clarity from the Scottish Government regarding the place of renewable energy generation or renewable energy schemes within this section of the Bill.

Furthermore, the Bill states that this “alternative use” has to be a planned and managed use which does not adversely affect the use of adjacent land, and may include:

- peatland restoration.
- habitat creation and restoration.
- water management.
- preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment.

We would highlight that there is no requirement that this alternative use actually preserves or enhances or has any other positive impact on the environment,

⁵ [Policy Memorandum accessible](#)

⁶ [Policy Memorandum accessible](#)

simply that it does not adversely affect the use of adjacent land. This is, again, a wide definition. We would welcome clarity from the Scottish Government on whether the intention is that the alternative use is environmental in nature and whether a further requirement on the face of the Bill is necessary regarding alternative uses.

Furthermore, we welcome the introduction of a clear definition of 'misuse and neglect' as recommended by our 2020 paper.⁷

Section 2-3

We have no specific comments regarding these sections.

Section 4

We would note that concerning section 4(3) that the policy of the Commission on the exercise of discretion to decline to progress matters will be key in how this provision works. We would suggest consideration should be given to adding an additional subsection to require the Commission to progress matters where the Commission is reasonably satisfied that the application is, or is part of a scheme which is, intended to resolve the breach of duty.

We would observe that under section 4(6)(b), the scope of the parties who are able to appeal is significantly increased. In the event of a decision not to progress an application, we consider that giving the applicant the right to appeal is sufficient.

Section 5-7

We have no specific observations regarding these sections.

Section 8

We welcome the introduction of provisions concerning assignments to family members under section 8.

Section 9

We generally welcome the provisions of section 9.

In specific regard to the proposed new section 19BA(3) of the Crofters (Scotland) Act 1993, we suggest consideration should be given to introducing a means for

⁷ [Crofting Law Paper- Law Society of Scotland, 2020](#)

the application to be advertised and the community given the opportunity to object. This would allow for a safeguard in preventing misuse by landlords to bring land back in hand. We would also suggest consideration should be given to introducing a requirement that applicants are in compliance with the relevant duties, even if technically those duties do not apply to them, as a further safeguard.

Section 10

We would observe that concerning section 10(2), there may be issues in the enforcement of this requirement. Where the croft is not registered on the Crofting Register, there is no means for the Keeper to know not to issue a title sheet. Additionally, where a croft is registered, the Keeper may not check the Crofting Register as part of the Land Registration process.

Secondly, if the Keeper does issue a title sheet, we would query how this provision interacts with section 86 of the Land Registration etc (Scotland) Act 2012, which read short provides that a good faith purchaser can rely on what the land register says as to ownership. Clarity on this point from the Scottish Government would be welcome.

Thirdly, we would observe that the main function of this provision is to stop future transfers, meaning legal persons who are currently owner-occupiers can continue. This will mean that existing issues concerning the status quo, such as where a company resides, will not be tackled by this section.

Finally we also wish to highlight that section 19BB(2) as drafted (introduced via section 10(2)) could be read as prohibiting the transfer of title to more than one individual if a croft was to be transferred to joint names, but which we do not anticipate is the intent of the Bill.

Section 11

We would highlight that section 11 is inflexible in its approach. Ten years is a long period and situations can arise which could require a tenant to sell, such as being no longer able comply with their duties due to personal circumstances; illness or accident are obvious examples. Equally they may be forced to sell due to bankruptcy. By the time such circumstances arise, the crofter may have made significant investment in the croft. Whilst we do not have a view as to whether certain specific exemptions would be appropriate or if the time they have been the tenant should be a factor that is taken in to account by the Crofting Commission (the Commission) in deciding whether to consent to an assignation, we would welcome clarity from the Scottish Government on how they would address the inflexibility in section 11 and perhaps provide exemption to crofters.

Section 12-13

We have no specific observations regarding these sections.

Section 14

We welcome the introduction of the new section 39A into the Crofters (Scotland) Act 1993 under section 14 of the Bill. We would highlight that it may be appropriate to distinguish between the 2 types of registers referred to by this Bill and the Crofting Act 1993. We would highlight with slight concern how a boundary adjustment would interact with the 9 month challenge period and have further comments on potential resolution in our answer to question 2. We would highlight similar concerns regarding the proposed section 39B(6).

We would suggest perhaps that proposed new section 39A(8)(b) of the Crofters (Scotland) Act 1993 is amended so that the adjustment takes place on the later of the date of registration or the end of the 9 month challenge period for all the crofts involved. Equally this process could be restricted to only those that have passed the 9 month period without a challenge or where any challenge has been finally disposed of.

In section 14(5) we would recommend that any of the crofters or owner-occupier crofters should be able to register the direction. The current wording might be read as requiring them all to do so, raising questions about what happens if some do and some do not.

Section 15

We would observe that the proposed grazing right does not easily fall into any pre-existing category of rights. We would therefore consider that this makes the proposed relationship between the crofter and the owner of the grazings unclear in the legislation and would welcome clarity from the Scottish Government under what category of rights it considers this provision to fall. We would highlight that lack of clarity in this area could affect what enforcement action could be undertaken by the Crofting Commission.

We would also welcome clarity on how the Scottish Government considers that this will impact on the role of the Keeper of the Registers of Scotland in relation to common grazings.

We would highlight the potential for unintended consequences concerning this section. We would query what avenue the owner of the grazings has to enforce against the party holding a pertinent right of grazing. We would suggest that the Bill should address the outcome of *Zetland Estate v Crofters* 2025 SLC 4 concerning the right to various crofts on Zetland Estate.⁸ In this case, it was held

⁸ [Decision: Zetland Estate v Crofters Having Rights in Various Crofts on Zetland Estate](#)

that an apportionment of such a right creates a tenancy that is rentable. We would welcome clarity on whether this would still be the intention following passage of the Bill. We would also highlight that consideration should perhaps be given to inclusion of an express provision that this right only applies to conveyances granted and/or registered after a particular date.

We would suggest that in the proposed new section 52(1E)(b)(ii)(A) of the Crofters (Scotland) Act 1993 that the Scottish Government use a word other than “apportion”, given this already has a different meaning in relation to common grazings.

Regarding the proposed new section 52ZA, we would suggest that the term “owner of the common grazings” would perhaps be a more appropriate term than “owner of the share”.

We would highlight that this section does not appear to provide a mechanism for “re-attaching” the share to its original main croft, although it could put it into the same hands as the main croft. Paragraph 121 of the policy memorandum states that this will reattach the shares, which become a pertinent of the main croft.⁹ We would welcome clarity on this point on the face of the Bill.

Furthermore, we would also be in favour of a mechanism whereby if the same person holds both the main croft and the unattached share they can convert the deemed croft into a pertinent of the main croft. That could mean that we can start to put all such deemed crofts on to the same footing.

Section 16

We have no specific observations regarding these sections.

Section 17

We would highlight that in the new section 47A(6) of the Crofters (Scotland) Act 1993 proposed under section 17(2) of the Bill there is no provision for an ordinary shareholder to appeal. Equally, there is no provision for an appeal against a decision of the Commission to not remove the committee.

Section 18

We would highlight that this section contains several changes in relation to how common grazings can be used to add environmental purposes as well as forestry.

⁹ [Policy Memorandum accessible](#)

We note that the grounds upon which the owner may refuse consent are similar to those which exist for woodland planting but with some important revisions (which would also apply to woodland consent going forward);

1. The implementation of the proposal will need to be “substantially” detrimental to the sound management of the estate in order to be able to refuse consent (at the moment there is no substantiality requirement).
2. Failure to respond or make a decision within 6 weeks will now result in a deemed consent rather than a deemed refusal. There is no means to appeal that decision.
3. Once the owner has consented (either expressly or by failing to respond) or refused an application, the grazings committee must then apply to the Commission to determine that the decision is reasonable. The Commission may effectively override the landlord’s decision. The Commission must consult the owner at this stage, and once its decision is registered in the Register of Crofts it will be binding on successors unless the use has not commenced within 7 years. There is a right of appeal against the Commission’s decision under the general appeal provision in section 52A of the Crofters (Scotland) Act 1993. The owner has to appeal within 42 days of the Commission “disposing of the application” but there is no requirement for the Commission to notify the owner of their decision, meaning the owner may not necessarily know when the 42 day period begins.

We would highlight therefore then that these changes contain the potential to impose new requirements on landowners and that we would welcome clarity from the Scottish Government regarding how the provisions relating to lack of appeal for deemed consent align with Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR)¹⁰ and Article 6 of the ECHR.¹¹

Section 19

We recognise that the Scottish Government has introduced a new definition of crofting community under section 19 of the Bill. We broadly welcome the definition of crofting community within this section, including the use of “persons”.

We previously highlighted the practical problems of the current wording in section 25(2) of the Crofters (Scotland) 1993 Act in our 2020 paper¹². If the desired approach is to reflect taking account of the general interest of crofting within a “district”, we suggest that this could be resolved by removing the word “community” from the subsection which would then provide that the Commission

¹⁰ [European Convention on Human Rights](#)

¹¹ [European Convention on Human Rights](#)

¹² [Crofting Law Paper- Law Society of Scotland, 2020](#)

“shall have regard to the general interest of ...crofting...in the district in which the croft is situated”.¹³

In addition, the use of the variety of terms “locality”, “area” and “district” through the Crofters (Scotland) Act 1993 lacks clarity and consistency. The legislation should be amended either to use the same term or for terms to be clearly defined and how any such definition relates to the primary definition of crofting community as introduced in this Bill.

Sections 20-21

We have no specific comments on these sections.

Section 22

We would highlight that the provisions under section 22 do not appear to catch nominee purchases (i.e. where the crofter exercises the right to buy but title is taken by a member of their family).

Section 23

We welcome the provisions under section 23, as these provide for the Keeper to have a much greater role in the process.

As applications are still to be submitted to the Commission in the first instance, much will depend on the arrangements to be made for payment of fees. For solicitors with accounts with the Registers of Scotland, this could work well. Where a crofter is not instructing a solicitor, it is not clear how this would work in practice and how the Registers of Scotland would deal with payments if the forms are in the first instance going to the Commission. We would welcome clarity on how the Scottish Government envisions this process working in practise.

Section 24

We have no objection to the provisions under section 24 requiring the landlord to be notified on certain applications for first registrations. We would note that the inclusion of a timescale is perhaps unnecessary, as there is no compulsion on the landlord to do anything when notified nor on the crofter take any comments from the landlord into account. Consideration should be given to whether it is appropriate to require notification of the landlord formally at the same point of notification for neighbours to the croft.

¹³ [Crofting Law Paper- Law Society of Scotland, 2020](#)

Section 25

We have no specific observations regarding this section.

Section 26

We welcome section 26 concerning the rectification of the Crofting Register. We would suggest that consideration should be given as to whether there should be a provision to include an appeal against any question of fact or law, in line with section 103 of the Land Registration (Scotland) 2012 Act for appeals against the Keeper relating to the Land Register.

Section 27

Regarding section 27(2), we would highlight that it would be unusual that Scottish Ministers would ever use the power to change forms and override the forms as prescribed by the Keeper.

We would highlight that section 27(4) can't be commenced until the new forms are in place.

Section 28

Concerning section 28, we would suggest that consideration should be given to including a provision that states that service on an agent noted on the Register of Crofts should be specifically deemed to be service on the principal.

Secondly, regarding the new section 55(2)(a) of the Crofters (Scotland) Act 1993, we would suggest that consideration should be given to enabling a more flexible approach i.e. by amending this sub-section to conclude with "and/or (as the case may be)". It may be, for example, that the name is known but not the address or vice versa.

Thirdly, we are unclear on whether fixing a notice to a conspicuous object is an appropriate method of service on a landlord and would suggest consideration should be given to whether the inclusion of this provision is appropriate.

Fourthly, in the new section 55(3)(b), we would highlight that the principal office for a partnership is not always readily identifiable and can change without public notice being given. The provision is only one mechanism by which notice "may" be served but another provision, such as that it may be served on any partner of the partnership, may be a more useful provision in practice.

Sections 29-32

We have no comments regarding these sections.

Section 33

We would observe that regarding the provisions relating to the Chairing of Commission meetings and committees there is no provision present if the Chair is unexpectedly absent and therefore unable to delegate that role. We would suggest that this should be resolved via amendment at Stage 2 or Stage 3.

Section 34

We have no specific observations on these sections.

2. What changes would you have liked to see included in the Bill but which are not included?

In addition to our comments in response to question 1, we would highlight a number of recommendations within our previous 2020 paper which are not taken forward by the Bill.¹⁴ We have included these in further detail below under the four subject area headings contained within the paper.

Aspects of succession

In our 2020 paper, we illustrated the issues relating to the rules for agricultural tenancies and croft tenancies. We would suggest consideration should be given to clarifying the relevant sections of the Succession (Scotland) Act 1964 Act to set out the differing rules applying to agricultural tenancies and croft tenancies clearly.¹⁵

We welcome that the Scottish Government has brought applications made under section 16 of the Succession (Scotland) Act 1964 under the jurisdiction of the Land Court¹⁶ but would highlight that the Bill does not provide a single 24 month period that we previously highlighted as an issue.¹⁷ We would suggest consideration should be given to providing for a single 24 month period from the date of death.

We consider that this Bill would be an appropriate vehicle through which to provide clarity in the law as to the approach which should be taken where the tenancy has not been brought to an end under section 16(3) of the Succession

¹⁴ [Crofting Law Paper- Law Society of Scotland, 2020](#)

¹⁵ [Crofting Law Paper- Law Society of Scotland, 2020](#)

¹⁶ [Schedule 1, para 25](#)

¹⁷ [Crofting Law Paper- Law Society of Scotland, 2020](#)

(Scotland) Act 1964, no transfer has been undertaken within the required period (or such longer period otherwise fixed) and where the Commission has not taken steps under section 11(4). This could include;

- Providing provision, on the face of the Bill, for an application process whereby an executor, landlord or potential beneficiary may apply to the Commission for leave to transfer a tenancy outwith the 24 month period and in the absence of agreement or a court order. Such an application should be on a 'on cause shown' basis and it be within the discretion of the Commission as to whether to grant such an application. The right of the landlord to serve a notice terminating the tenancy would be suspended pending the outcome of the application.
- Any consent would not have the effect of transferring the tenancy or right as this would require confirmation, but would enable the executor to transfer the tenancy competently once he or she has obtained confirmation and has carried the formalities of transfer.
- In some circumstances, the expense of, for example, obtaining confirmation and a bond of caution simply to allow a tenancy to be transferred could be spared before it is known whether consent to the transfer will be granted.

We consider it appropriate that this application process should be placed alongside the powers of the Commission in section 11(4) of the Crofters (Scotland) Act 1993 and be subject to the right of appeal to the Land Court.

We would urge the Scottish Government to insert a definition of 'bequest' into section 10 of the Crofters (Scotland) 1993 Act as being either a specific legacy or a legacy of residue.

We would welcome a clear statement from the Scottish Government regarding the means by which a transfer of a croft tenancy may be effected.

We also think it appropriate that this Bill should be used as a means to clarify the law to confirm the position of a landlord where a transfer is carried out within the required 24 month period but is not notified to a landlord timeously. Under the current law, it appears that the landlord could not terminate the tenancy under the Succession (Scotland) Act 1964 in such circumstances.

We also consider it appropriate that the pro-forma docket to the Succession (Scotland) Act 1964 should be updated to take account of the changes made under the Crofting Reform (Scotland) Act 2010 in relation to the suggested wording for the transferee.

Owner occupier status

We welcome the introduction of an application process to allow an individual to apply to the Commission to obtain owner-occupier crofter status. It is unclear whether this process is subject to a right of appeal to the Scottish Land Court and would welcome clarity from the Scottish Government on this point.

Regarding the condition relating to letting in section 19B(4) of the Crofters (Scotland) Act 1993, we previously stated that this should be amended to include at the end of the subsection: “unless it was subsequently renounced or otherwise terminated by operation of law ”.¹⁸ We consider this Bill an opportunity to achieve this and urge consideration of this amendment.

Furthermore, section 19B of the Crofters (Scotland) Act 1993 appears to prevent someone who has acquired a landlord’s interest in a croft from becoming an owner-occupier crofter. We would welcome clarity from the Scottish Government if they regard this as an unintended consequence of the legislation. If this is an unintended consequence, we consider that this should be amended, recognising that section 19B aims to prevent those who are landlords (whether traditional crofting estate owners or those who have deliberately set up a landlord/tenant relationship) from becoming owner-occupier crofters.

We consider it appropriate that the legislation should be amended to clearly state the types of persons who may be owner-occupier crofters. As part of this, we would suggest consideration should be given to the possibility of limiting owner-occupier crofter status to natural persons (although not necessarily a single natural person).

Statutory conditions of tenure

We previously stated our support for the consolidation and restatement of the duties clearly in legislation. We welcome the introduction of statutory definitions of “misuse or neglect” in the Bill.¹⁹

We would highlight our previous suggestion for amendment to section 5C(2) of the 1993 Act to reflect that family members or hired labour can assist with working the croft – either by altering the wording to reflect that the “crofter must ensure that the croft is cultivated or put to another purposeful use...” or by inserting the previous wording of paragraph 3 of schedule 2 that the crofter must “by himself or his family, with or without hired labour...”.²⁰ We would suggest that consideration should be given to amending this legislation through amendment to this Bill.

In line with our previous recommendation, we would suggest that the wording of the condition in paragraph 4 of schedule 2 of the Crofters (Scotland) Act 1993 should be amended to refer to cultivation of the croft or another purposeful use, to ensure the conditions are in line with section 5C of the Crofters (Scotland) Act 1993, which would provide clarity.

In relation to bankruptcy, as detailed by paragraph 10 of schedule 2 of the Crofters (Scotland) Act 1993, we previously suggested it would be appropriate to

¹⁸ [Crofting Law Paper- Law Society of Scotland, 2020](#)

¹⁹ [Section 1\(2\)](#)

²⁰ [Crofting Law Paper- Law Society of Scotland, 2020](#)

review the existence of the condition. We would welcome clarity from the Scottish Government regarding the continuation of this condition. If the condition is to remain, we consider it appropriate that the wording in paragraph 10 of schedule 2 should be amended to reflect that a crofter may become apparently insolvent by the actions of another, for example, by way of an application by a creditor for sequestration – the wording should be amended to read: “the crofter shall not become apparently insolvent...”.²¹

We previously noted the importance of sufficient resources for the Commission to enable enforcement of the conditions and requested the Scottish Government consider whether powers should be given to the Commission to recover costs for enforcement of crofting duties. We would welcome clarity from the Scottish Government’s on its position on this and any discussion. If the Scottish Government and Commission are supportive of such measures, we suggest that consideration should be given to including such powers within this Bill.

Other matters

We note and welcome that the Scottish Government has introduced provisions to cover civil partners under the Crofters (Scotland) Act 1993.

The Bill does not propose amendment to sections 5(3)-(6) of the Crofters (Scotland) Act 1993. We would welcome information from the Scottish Government clarifying if it considered how these provisions are being used, both by the Land Court and by crofters and landlords, and if this informed its decision not to seek to modify these sections of the Crofters (Scotland) Act 1993. We would also welcome similar information from the Scottish Government regarding section 10(1)(b) of the Crofters (Scotland) Act 1993 and whether any changes to the law would be merited.

Finally, we would welcome clarity from the Scottish Government regarding its position on whether joint tenancies could be created in respect of crofts, including any discussions with the Commission.

3. Part 2 of the Bill would allow for the merger of the Scottish Land Court and Lands Tribunal for Scotland. Do you have any comments on this merger?

We have no specific comments on Part 2 of the Bill. We would highlight our previous response to the Scottish Government’s 2020 consultation ‘Future of the Land Court and the Lands Tribunal’ in which we stated our opposition to the two bodies being amalgamated.²² We understand that a persuasive argument for

²¹ [Crofting Law Paper- Law Society of Scotland, 2020](#)

²² [Future of the Land Court and Lands Tribunal response](#)

amalgamating the Land Court and the Lands Tribunal is the potential savings in administrative costs and alignment of the membership so as to resolve some of the difficulties which presently arise. Equally we consider it vital that any amalgamated body must be properly resourced, and an amalgamation should not be seen purely as a means of reducing resource. It is vital that access to justice is maintained. We consider that it is important that an amalgamation of the bodies does not in itself result in increased costs for parties.²³ We would further highlight the importance that the rules on costs for this new body comply with the access to justice provisions of the Aarhus Convention.²⁴

Furthermore, we would highlight our response to the Scottish Government's consultation 'A review of the effectiveness of environmental governance.'²⁵ We would welcome clarity on how significant a role the reformed Land Court should play in environmental issues.

We welcome the Scottish Government's introduction of provisions which bring applications made under section 16 of the Succession (Scotland) Act 1964 within scope of the Scottish Land Court, in line with our previous recommendation.²⁶

We would also highlight a potential discrepancy in paragraph 25 of schedule 1. The heading states that it relates to "certain" leases, but the text itself appears to cover all leases. We would welcome clarity on this point from the Scottish Government.

We would highlight the following points regarding paragraph 30 of Schedule 1:

- Firstly, the purpose of paragraph 30(1) is unclear and we would welcome clarity from the Scottish Government on why it was felt necessary to include this point on the face of the Bill.
- Secondly, we would highlight that paragraph 30 can provide the impression that there is no right of appeal. We presume that this is connected to the presence of an appeal route by virtue of section 88 of the 2003 Act. We would welcome clarity from the Scottish Government on this point.
- Thirdly, if that is the rationale for excluding agricultural holdings cases, we are unclear as to the rationale for having different mechanisms of getting a case from the Land Court to the Inner House of the Court of Session depending on what type of case is being considered.

4. Do you have any other comments to make on this Bill?

We have no further comments.

²³ [Future of the Land Court and Lands Tribunal response](#)

²⁴ [Convention on access to information, public participation in decision making and access to justice in environmental matters](#)

²⁵ [Review of the effectiveness of Environmental Governance response](#)

²⁶ [Crofting Law Paper- Law Society of Scotland, 2020](#)



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