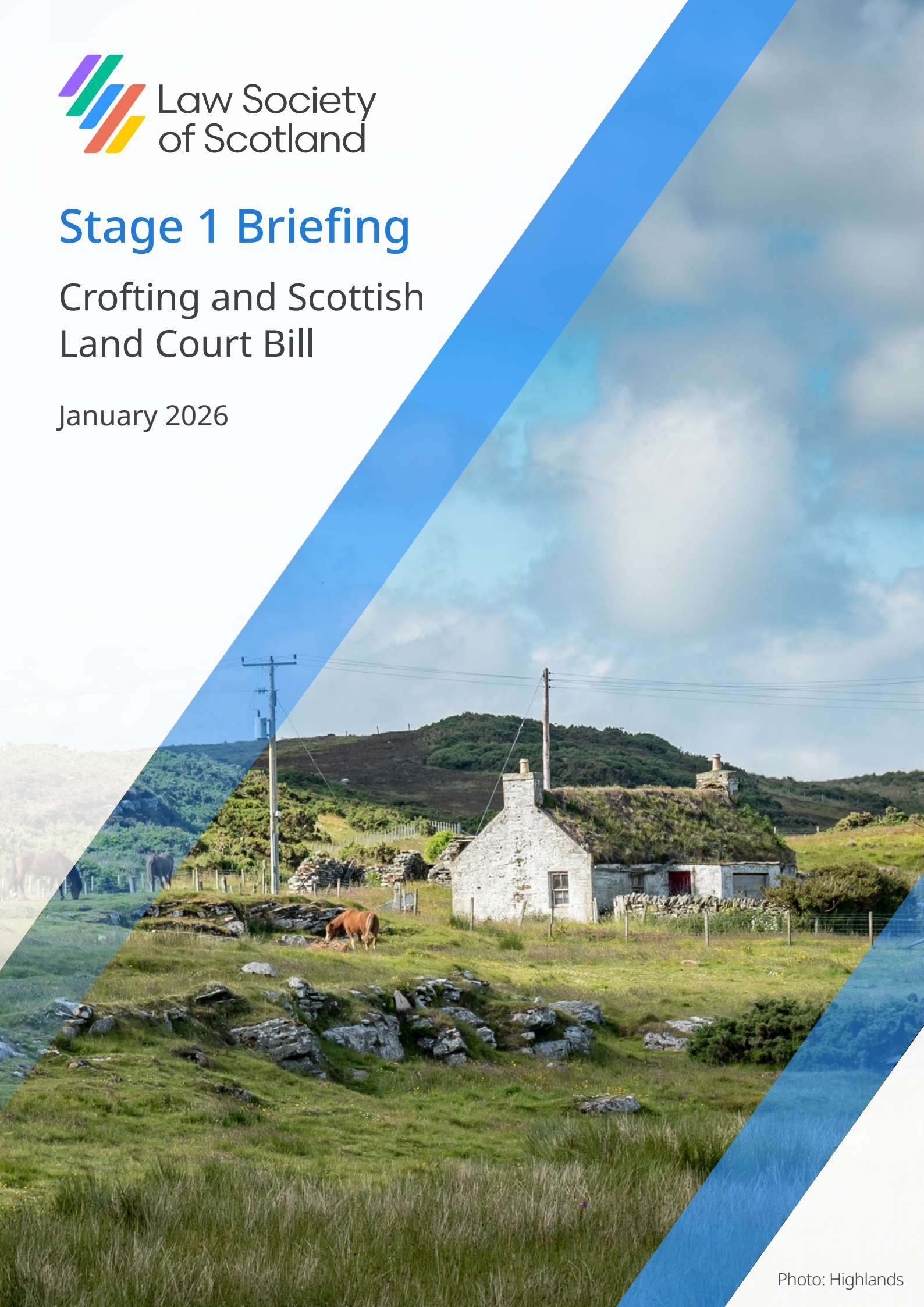


Stage 1 Briefing

Crofting and Scottish Land Court Bill

January 2026



Stage 1 Briefing

Crofting and Scottish Land Court Bill

January 2026

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.

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.

The Crofting and Scottish Land Court Bill (“the Bill”) was introduced by Jim Fairlie MSP, the Minister for Agriculture and Connectivity, on 2 June 2025.¹ We submitted written evidence,² and provided oral evidence on 8 October 2025,³ to the Rural Affairs and Islands Committee of the Scottish Parliament (“the lead committee”) as part of its Stage 1 consideration of the Bill. The lead committee’s Stage 1 Report on the Bill (“the Stage 1 Report”)⁴ was published on 19 December 2025.

Executive Summary

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.⁵ 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*.⁶ We therefore welcome the introduction of the Crofting and Scottish Land Court Bill as a means to achieve the necessary reforms, and welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 13 January 2026. Our briefing includes the following key points:

- We highlight a number of areas where further clarity from the Scottish Government would be welcome, including regarding specific legal definitions.
- We highlight further reforms for the Scottish Government to consider, based on our 2020 report concerning crofting law reform.

¹ [Crofting and Scottish Land Court Bill as introduced](#)

² [Crofting and Scottish Land Court \(Scotland\) Bill - Written Evidence](#)

³ [Rural Affairs and Islands Committee | Scottish Parliament TV](#)

⁴ [Stage 1 report on the Crofting and Scottish Land Court Bill | Scottish Parliament](#)

⁵ [Crofting Law Paper- Law Society of Scotland, 2020](#)

⁶ [Crofting Consultation 2024: Proposals for Crofting Law Reform](#)

- We highlight extensive legislative and policy reform within the wider agricultural and environmental legal landscape, and the importance of considering the interplay between such reforms to ensure a consistent approach which ensures certainty and legal clarity.

Part 1- amendments to main crofting laws

Part 1 of the Bill reforms the Crofters (Scotland) Act 1993 and Crofting Reform (Scotland) Act 2010, focusing on nine key areas:

- Environmental use of crofts. The Bill enables crofters to utilise croft land for environmental uses. We have concerns surrounding the broad and vague definition of the term “environmental use”.
- Crofting Communities: The Bill provides a definition of a crofting community, including which individuals can be counted as part of a community and strengthens the role of communities in reporting problems such as neglect of duties. We are supportive of the introduction of the definition of a crofting community. The Bill also allows more individuals (e.g. landlords and subtenants) to report suspected breaches of duty to the Crofting Commission that must be investigated.
- Enforcement of Crofters’ Duties: The Bill streamlines the administration of the crofter’s duties and gives the Crofting Commission more power to enforce the rules and prevent crofts being transferred to companies or charities.
- Crofting Commission Powers: The Bill provides the Crofting Commission greater independence and several new powers to resolve issues and confirm crofter status where appropriate. This includes a new and simplified consent process for assignations of crofts, which we welcome.
- Owner-Occupier definition: The Bill provides for a definition of owner-occupier and a restriction on ownership of owner-occupied crofts to individuals. We welcome the introduction of a definition of owner-occupier crofts and suggest that the Bill should clearly state the types of persons who may be owner-occupier crofters.
- Common Grazings: The Bill introduces various changes to Common Grazings and Common Grazings Committees, including the creation of a new two-stage process for obtaining consent, from the landlord and the Commission, to use Common Grazings as woodlands or for an environmental purpose (including peatland restoration, habitat creation and restoration, water management and preserving, protecting, restoring, enhancing or otherwise improving natural heritage or environment). It also prevents important grazing rights being unintentionally lost

when land is sold. We generally consider that more clarity from the Scottish Government is required regarding these provisions.

- **Crofting Register:** The Bill introduces provisions that aim to refine the process and make it easier to fix errors regarding the crofting registration system. The Bill also reforms the respective roles of the Registers of Scotland and the Crofting Commission in handling applications for registration.
- **Electronic Communications:** The Bill modernises how crofters and the Commission communicate — such as serving notices and holding meetings — by enabling more use of digital methods.
- **Simplifications and Clarifications:** The Bill also “tidies up” the law to make it clearer, including how Commissioners are appointed and fixing known legal inconsistencies. We are generally supportive of these provisions and have further suggestions for how the law can be further clarified.

Part 2- Land Court and Lands Tribunal Merger

The Bill will merge the Scottish Land Court and the Lands Tribunal for Scotland into a single body, keeping the name of the Scottish Land Court.

We previously stated our opposition to this proposal but understand the persuasive argument for amalgamating the Land Court and the Lands Tribunal due to the potential savings in administrative costs and alignment of the membership.

We consider it vital that the Court is properly resourced and that access to justice is maintained for all parties.

Part 3

Part 3 of the Bill contains general provisions.

Chapter 1- Comments on sections of the Bill

General Comments

We welcome the introduction of the Bill. The Bill covers two main policy areas: reforms to crofting law and the amalgamation of the Land Court and the Lands Tribunal of Scotland. We note that the first area deals with topics that we identified in our report into crofting law reform.

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
- 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 we have expressed our position on these in Chapter 2 of this briefing.

We generally highlight the ongoing and prospective legislative and policy reform within the wider legal landscape. For example, legislation which interacts with aspects of the Bill currently before the Parliament or being implemented includes the Natural Environment (Scotland) Bill and the Land Reform (Scotland) Act 2025, the Wildlife Management and Muirburn (Scotland) Act 2024, the Agriculture and Rural Communities (Scotland) Act 2024 and the Climate Change (Emissions Reduction Targets)(Scotland) Act 2024. We highlight the importance of considering the legal interplay and overlap between such legislation to ensure a consistent and aligned approach, and of ensuring that these do not contradict or conflict with one another. We also highlight the importance of ensuring that secondary legislation stemming from such legislation is given ample time to be scrutinised by the Scottish Parliament, to allow for their impact on niche areas of law - such as crofting law - to be fully considered by Scottish Ministers and MSPs.

We also highlight that many other wider, non-legal factors, will impact on the operation and deliverability of the proposals, for example ensuring appropriate resourcing and capacity, expertise, and the availability of data. This includes the importance of appropriate resourcing and prioritisation in the context of effective monitoring and enforcement. We welcome the renewed focus of policy and resources by the Crofting Commission (“the Commission”) on enforcement and reiterate the lead committee’s request that the Scottish Government maintains its support and resourcing of the Commission.⁷

Part 1- Crofting Reform

Section 1

Section 1 amends duties for crofters under the Crofters (Scotland) Act 1993 (“the 1993 Act”) to allow a third, distinct option for croft land: environmental use.

Under this section, tenant crofters will no longer need landlord or Commission consent to put their land to environmental use. Environmental use must be planned and managed, and must not adversely affect adjoining land. In contrast, under section 5C of the 1993 Act

⁷ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 9

“another purposeful use” must not adversely affect the croft, the public interest, or the landlord.⁸

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

We note that section 1(3)(d)(8B) provides Ministers with the power under secondary legislation to modify section 1(3)(d)(8A). We suggest that it is appropriate to include provisions in the Bill that ensure that removing a purpose from subsection 8A would not prejudice those who had made long term commitments to particular uses prior to the removal of that purpose, rather than leaving this 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.⁹ 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 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”.¹⁰ We 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.¹¹

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

⁸ [Crofters \(Scotland\) Act 1993](#), page 18

⁹ [Policy Memorandum](#), paragraph 38

¹⁰ [Policy Memorandum](#), paragraph 38

¹¹ [Crofting and Scottish Land Court Bill as introduced](#), section 1

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

We note the lead committee's recognition of our concern and the concerns of other stakeholders as in regard to the definition of environmental use¹² and would welcome further detail from the Scottish Government regarding any potential amendments at Stage 2 concerning clarifying the definition of environmental use.

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 consider that this is perhaps inconsistent with paragraph 38 of the policy memorandum,¹³ and we request clarity from the Scottish Government regarding the place of renewable energy generation or renewable energy schemes within this section of the Bill. We would welcome clarity specifically on how the provisions within the Bill would interact with agreements made under section 19A of the 1993 Act concerning schemes for development involving renewable energy projects.¹⁴

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

We welcome the introduction of a clear definition of 'misuse and neglect' in sections 1(2) and 1(4) as recommended by our 2020 paper¹⁵

Section 2

Section 2 removes the 28-day deadline for the Commission to decide on applications from crofters to either use their croft for a different "purposeful use" (if not already approved by the landlord) or be absent from the croft for a temporary period from two sections of the 1993 Act:

- Section 5C(7) – where a crofter applies for consent to use their croft for another purposeful use;

¹² [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 14

¹³ [Policy Memorandum](#), paragraph 38

¹⁴ [Crofters \(Scotland\) Act 1993](#), section 19A

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

- Section 21B(5) – where a crofter applies for permission to be temporarily absent from their croft.

Under these proposals, there will no longer be a fixed timeframe within which the Commission must make a decision on these types of applications.

We have no specific comments regarding these proposals.

Section 3

Section 3 widens the range of individuals who are able to report suspected breaches of crofting duties that the Commission is obliged to investigate and reduces the reporting burden for grazings committees.

We have no specific comments regarding these proposals and note that the lead committee supported the removal of the requirement for the grazings committee to report on each croft.¹⁶

Section 4

Section 4 replaces sections 26C and 26D of the 1993 Act with four new sections (26C, 26D, 26DA and 26DB) which aim to streamline the enforcement process where the Commission believes a crofter is failing to meet their duties and give the Commission clearer powers to manage how breaches are handled. We note that the lead committee supports the proposals under this section.¹⁷

We note that, concerning section 4(3), the policy of the Commission on the exercise of discretion to decline to progress matters will be key in how this provision works. We 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.

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

Section 5 introduces a new provision, section 29BA, to the 1993 Act, which gives the Commission clearer powers to take enforcement action in relation to subtenants and tenants under short leases.

We have no specific comments to make for the purpose of this briefing.

¹⁶ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 16

¹⁷ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 17

Section 6

Section 6 of the Bill makes changes to strengthen the Commission's ability to respond when this required information is not provided.

We have no specific comments to make for the purpose of this briefing.

Section 7

Section 7 introduces two main changes to the statutory conditions under the 1993 Act concerning fixed equipment:

- It clarifies that landlords are not under any obligation to provide fixed equipment for the croft.
- It generalises the condition by removing the reference to cultivation, confirming that the provision applies to fixed equipment of any type required by the tenant, including environmental use or other productive activity.

We have no specific comments to make for the purpose of this briefing.

Section 8

Section 8 of the Bill introduces a streamlined process for assignments to family members, in certain circumstances. We welcome the introduction of these provisions.

We welcome the lead committee's support for streamlined processes for assignment, which we agree would free up valuable time and resources to allow greater attention towards the enforcement of crofters' duties.¹⁸

We note the lead committee's comments concerning the utility of implementing a three-croft limit for the streamlined assignment process, as a means to provide a check against 'croft-bagging' and enabling new entrants to crofting.¹⁹

Section 9

Section 9 of the Bill makes several amendments to the 1993 Act aimed at clarifying and expanding the routes by which a person may be recognised as an owner-occupier crofter.

We generally welcome the provisions of section 9.

In specific regard to the proposed new section 19BA(3) of the 1993 Act, we suggest consideration should be given to introducing a means for the application to be advertised and for the community to be given the opportunity to object. This would provide a safeguard in preventing misuse by landlords to bring land back in hand. We also suggest consideration should be given to introducing a requirement that applicants are in

¹⁸ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 18

¹⁹ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 18

compliance with the relevant duties, even if technically those duties do not apply to them, as a further safeguard.

Section 10

Section 10 introduces a new legal restriction aimed at limiting ownership of owner-occupied crofts to individuals only, explicitly excluding *non-natural persons* (such as companies, trusts, or partnerships).

We 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 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 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, which we do not anticipate is the intent of the Bill.

We note the lead committee's request that the Scottish Government provide an update on any proposed amendments at Stage 2 concerning section 10, in light of concerns raised by stakeholders regarding the drafting of section 10 potentially preventing community organisations purchasing croft land for crofting or housing purposes.²⁰

Section 11

Section 11 introduces a restriction on the ability of a new tenant, selected by the Commission under the assignation process, to assign the tenancy for a period of 10 years from the date of the let. During the same period, the Land Court is also prohibited from authorising the acquisition of the croft land by the tenant under the purchase provisions of the Act. An application for assignation or acquisition may still be submitted during this period, but cannot take effect until the 10-year period has expired.

We consider 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

²⁰ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 20

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 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.

We highlight the existing flexibility allowed for in existing legislation, specifically for modern limited duration tenancies in section 5B in the Agricultural Holdings (Scotland) Act 2003,²¹ as a potential model for the Scottish Government.

We note and welcome the lead committee's request that the Scottish Government respond to the concerns raised during stage 1 regarding the need for flexibility within the proposed ten-year restriction following Commission lets to allow tenants to exercise their right to buy.²²

Section 12

This section amends sections of the 1993 Act and the Crofting Reform (Scotland) Act 2010 ("the 2010 Act"). Section 12 introduces new provisions exempting applications for decrofting which are made in respect of a croft, the conveyance in feu of which was granted under section 17 or 18 of the Crofters (Scotland) Act 1955, from the provisions of the 1993 Act and 2010 Act concerning decrofting and unregistered crofts.

We have no specific observations regarding this section.

Section 13

Section 13 introduces a new right for members of the crofting community and landlords to object to a decrofting application before a decision is made by the Commission. The Commission must have regard to objections when deciding whether to grant a decrofting direction.

We have no specific observations regarding this section.

Section 14

Section 14 introduces new provisions to allow for boundaries of registered crofts to be adjusted or remapped. Two new sections are added to the 1993 Act.

- Section 39A – The Commission's Power to Adjust Boundaries applies when two or more crofters agree to adjust the boundaries of their respective crofts, without altering the overall boundary of land in crofting tenure.
- Section 39B – The Commission's Power to Bring Land Into or Remove Land from Crofting Tenure applies when there is a need to change the description of a croft

²¹ [Agricultural Holdings \(Scotland\) Act 2003](#), section 5B

²² [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 21

because the registered boundary does not match the land actually occupied, or when the boundary is otherwise inaccurate or undesirable.

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

We suggest perhaps that proposed new section 39A(8)(b) of the 1993 Act 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 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.

We note the concerns raised during stage 1 about maintaining linkages between the Crofting Register and the Land Register. We welcome the Scottish Government's reassurance that these will be addressed through amendments to the Bill and reiterate the lead committee's request that the Minister provide an update on any proposed changes in his response to this report.²³

Section 15

Section 15 amends section 12 of the 1993 Act. The section provides that when a croft is purchased, the associated share in the common grazings will automatically be included in the transfer (as a pertinent of the croft) unless both the landlord and crofter agree otherwise.

The section also amends section 52 of the 1993 Act to give the Commission a new option when a grazing share has been terminated by the Commission under section 52(1E)(b)(i). In such cases, the Commission can now treat the share as vacant and apply a new procedure under section 52ZA for its reallocation and reletting.

Section 15 inserts a new section 52ZA into the 1993 Act concerning unattached Grazing Shares. This new section outlines a specific process for dealing with grazing shares that are vacant, and not currently part of any croft.

We observe that the proposed grazing right does not easily fall into any pre-existing category of rights. We 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 on under what category of rights it considers this provision to fall. We highlight that lack of clarity in this area could affect what enforcement action could be undertaken by the Commission.

²³ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 25

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 highlight the potential for unintended consequences concerning this section. We query what avenue the owner of the grazings has to enforce against the party holding a pertinent right of grazing. We 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.²⁴ In this case, it was held that an apportionment of such a right creates a tenancy that is rentable. We 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 suggest that in the proposed new section 52(1E)(b)(ii)(A) of the 1993 Act 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 suggest that the term “owner of the common grazings” would perhaps be a more appropriate term than “owner of the share”.

We 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.²⁵ 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. This could allow for all such deemed crofts to be placed onto to the same footing.

We note the lead committee’s proposal for a safeguard requiring any future separation of shares to obtain Commission consent, as a means to strike an appropriate balance between providing flexibility for those wishing to use common grazings and ensuring effective oversight.²⁶

Section 16

Section 16 introduces measures to increase transparency and accessibility concerning grazings committee meetings.

We have no specific observations regarding this section.

²⁴ [Decision: Zetland Estate v Crofters Having Rights in Various Crofts on Zetland Estate](#)

²⁵ [Policy Memorandum accessible](#), paragraph 121

²⁶ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 25

Section 17

Section 17 introduces a more accessible route of appeal for members of grazings committees removed by the Commission by allowing affected individuals to instead appeal to the Scottish Land Court, which deals specifically with crofting matters.

We highlight that in the new section 47A(6) of the 1993 Act 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

Section 18 amends the rules in the 1993 Act to allow common grazings to be used for a broader range of environmental purposes (like peatland restoration or biodiversity projects). It replaces section 50 of the 1993 Act with new sections 50, 50ZA, and 50AA, creating a new two-step process for gaining approval.

We highlight our earlier comments regarding the definition of environmental use in section 1. We would welcome clarity from the Scottish Government regarding how sections 1 and 18 would interact with section 19A of the 1993 Act, and further stress the need to ensure these sections are properly aligned.

This section contains several changes in relation to how common grazings can be used to add environmental purposes as well as forestry.

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):

- 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).
- 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.
- 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 consider that these changes contain the potential to impose new requirements on landowners and 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)²⁷ and Article 6 of the ECHR.²⁸

Section 19

Section 19 introduces a more specific definition of a crofting community. It now refers to the group of people who:

- Are connected to a particular township; and
- Fall within certain categories listed in a new subsection (section 61(1A)) of the 1993 Act: crofters, owner-occupier crofters, and others who have a share in any common grazings associated with that township.

We broadly welcome the definition of crofting community within this section, including the use of “persons” in the proposed section 61(1A)(a).

We previously highlighted the practical problems of the current wording in section 25(2) of the Crofters (Scotland) 1993 Act in our 2020 paper.²⁹ 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 “shall have regard to the general interest of ...crofting...in the district in which the croft is situated”.³⁰

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 to clarify how any such definition relates to the primary definition of crofting community as introduced in this Bill.

Section 20

Section 20 of the Bill adds crofts to the list of exclusions detailed under the Private Housing (Tenancies) (Scotland) Act 2016, Schedule 1 concerning types of tenancy arrangements that do not qualify as private residential tenancies.³¹

We have no specific comments on this section.

²⁷ [European Convention on Human Rights](#)

²⁸ [European Convention on Human Rights](#)

²⁹ [Crofting Law Paper- Law Society of Scotland, 2020](#)

³⁰ [Crofting Law Paper- Law Society of Scotland, 2020](#)

³¹ [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), Schedule 1

Section 21

Section 21 of the Bill simplifies the personal information required in the Register of Crofts alongside improving the locational information provided in the Register.

We have no specific comments on this section.

Section 22

Section 22 of the Bill updates the rules concerning unregistered crofts in the 2010 Act to include one more trigger for first-time registration. If a tenant crofter buys their croft and becomes an owner-occupier crofter, the croft must now be registered in the Crofting Register.

We 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

Section 23 of the Bill removes the requirement to pay the application fee to the Commission when registering a croft and provides that the applicants must now make arrangements that are satisfactory to the Keeper for paying the registration fee.

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 practice.

Section 24

Section 24 updates the 2010 Act to introduce a new requirement for tenant crofters applying to register their croft for the first time.

We have no objection to the provisions under section 24 requiring the landlord to be notified on certain applications for first registrations. We 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.

Section 25

Section 25 makes changes to the 2010 Act to improve the notification process for first-time croft registrations. It transfers responsibility for notifying interested parties from the Commission to the Keeper of the Registers of Scotland.

We have no specific observations regarding this section.

Section 26

Section 26 amends Part 2 of the 2010 Act, focusing on how errors in the Crofting Register can be corrected.

We welcome the proposals under section 26. We 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.³²

We note the lead committee is content with the power given to the Registers of Scotland.

Section 27

Section 27 inserts a new section 19A into the 2010 Act, giving the Keeper responsibility for specifying the form of applications for registration in the Crofting Register.

Regarding section 27(2), we 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 highlight that section 27(4) cannot be commenced until the new forms are in place.

Section 28

Section 28 replaces section 55 of the 1993 Act to modernise how notices and documents may be served.

Concerning section 28, we first 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 1993 Act, we 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.

³² [Land Registration etc. \(Scotland\) Act 2012](#), section 103

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

Fourthly, in the new section 55(3)(b), we 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.

Section 29

Section 29 updates how public notification is carried out under the 1993 and 2010 Acts, removing the requirement to publish notices in local newspapers.

We have no comments regarding this section.

Section 30

This section amends section 40A of the 1993 Act concerning the crofting census which requires the Commission to issue notices every year. The Bill changes this so that notices are issued at least every three years.

We have no comments regarding this section.

Section 31

Section 31 amends paragraph 3 of Schedule 1 to the 1993 Act, which sets out the Commission's membership and chairing arrangements. The Bill enables Scottish Ministers appoint a chair who is either (as currently) an existing member, or someone external to the Commission. If Ministers delegate appointment to the Commission, only an existing member can be chosen.

We have no comments regarding this section.

Section 32

Section 32 amends paragraph 4 of Schedule 1 to the 1993 Act so that Ministers must now only have regard to the desirability of appointing a landlord representative and requiring Ministers consult the Commission before making such an appointment.

We have no comments regarding this section.

Section 33

This section amends paragraphs 12 and 13 of Schedule 1 to the 1993 Act by removing the requirement that the Commission's Chair, if attending a committee meeting, has to take over the chair from the committee chair.

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

Section 34

We have no specific observations on this section.

Part 2- Merger of the Scottish Land Court and the Lands Tribunal for Scotland

We 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.³³

We understand that persuasive arguments for amalgamating the Land Court and the Lands Tribunal are 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.³⁴ 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.³⁵

Furthermore, we highlight our response to the Scottish Government's consultation 'A review of the effectiveness of environmental governance.'³⁶ We welcome clarity on how significant a role the reformed Land Court should play in environmental issues and highlight that, given the provisions in the Bill relating to environmental use in section 1, legal matters connected to the environment could often end up before the Land Court.

We welcome the Scottish Government's introduction of provisions which bring applications made under section 16 of the Succession (Scotland) Act 1964 (the 1964 Act) within scope of the Scottish Land Court, in line with our previous recommendation.³⁷

³³ [Future of the Land Court and the Lands Tribunal](#)

³⁴ [Future of the Land Court and the Lands Tribunal](#)

³⁵ [Convention on access to information, public participation in decision making and access to justice in environmental matters](#)

³⁶ [Review of the effectiveness of environmental governance response](#)

³⁷ [Crofting Law Paper- Law Society of Scotland, 2020](#)

Section 35

This section confirms continuation of the Land Court and implements Schedule 1. We have no specific comments regarding this section.

Section 36

This section transfers the Lands Tribunal for Scotland's functions, staff, property, and cases to the Court. Under this section, Tribunal members are initially authorised to sit in the Court.

We have no specific comments regarding this section.

Section 37

This section confirms the existing principles and rulings of the Lands Tribunal stand.

We have no specific comments regarding this section.

Section 38

This section gives Scottish Ministers the power to make further provision in connection with the merger. We note that this power is subject to the affirmative procedure and consider this appropriate.

Section 39

This section confirms the eligibility of suitable members of Lands Tribunal for Scotland to sit in the Upper Tribunal for Scotland.

We have no specific comments on this section.

Schedule 1

Schedule 1 of the Bill sets out practical details of how the amalgamated Court would operate.

We 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.

Furthermore, we 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 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 moving a case from the Land Court to the Inner House of the Court of Session depending on what type of case is being considered.

We welcome the lead committee's request³⁸ for a response from the Scottish Government regarding three further issues identified by Lord Duthie,³⁹ these being:

- Extending the criteria for appointment as a legally qualified member of the Tribunal, persons appearing to be suitably qualified by the holding of judicial office or by experience as an advocate or solicitor, to the role of deputy chair. We would welcome clarity from the Scottish Government on this proposal.
- Retention of the current situation whereby crofting law appeals are by 'special case procedure' but not for appeals in agricultural holdings jurisdiction. We would welcome clarity from the Scottish Government as to the rationale behind retaining two appeal methods.
- The proposal to reform the Court's powers concerning rule-making. The Bill would remove these powers from the Court, replacing it with a Court of Session Act of Sederunt after consultation with the Scottish Civil Justice Council. Lord Duthie suggested that the Bill be amended to require consultation on forms of application and procedure with the Chair of the Court. We would welcome clarity from the Scottish Government on this.

Part 3

Part 3 of the Bill contains general provisions. We have no specific comments to make on Part 3 at this stage.

³⁸ [Stage 1 report on the Crofting and Scottish Land Court Bill](#), page 37

³⁹ [Response 145982830 to Crofting and Scottish Land Court Bill - Scottish Parliament - Citizen Space](#)

Chapter 2- Aspects not included in Part 1

In addition to our comments regarding specific sections of the Bill, we highlight a number of recommendations within our previous 2020 paper which are not taken forward by the Bill.⁴⁰ We have included these in further detail below.

Aspects of succession

In our 2020 paper, we illustrated the issues relating to the rules for agricultural tenancies and croft tenancies. We suggest consideration should be given to clarifying the relevant sections of the 1964 Act to set out the differing rules applying to agricultural tenancies and croft tenancies clearly.⁴¹

We welcome that the Scottish Government has brought applications made under section 16 of the 1964 Act under the jurisdiction of the Land Court⁴² but highlight that the Bill does not provide a single 24 month period that we previously highlighted as an issue.⁴³ We note that this has been superseded by the outcome of *Pattinson v Matheson* 2021 SLC/6/20 & SLC/7/20.⁴⁴ However, we consider that section 16 would benefit from having a singular 24-month period from the date of death placed in primary legislation and suggest this be remedied by amendment at Stage 2.

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 1964 Act, 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.

⁴⁰ [Crofting Law Paper- Law Society of Scotland, 2020](#)

⁴¹ [Crofting Law Paper- Law Society of Scotland, 2020](#)

⁴² [Schedule 1, para 25](#)

⁴³ [Crofting Law Paper- Law Society of Scotland, 2020](#)

⁴⁴ [Pattinson v Matheson 2021 SLC/6/20 & SLC/7/20](#)

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 1964 Act in such circumstances.

We also consider it appropriate that the pro-forma docket to the 1964 Act should be updated to take account of the changes made under the 2010 Act 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 and reiterate our comments made in regards to section 10. It is unclear whether this process is subject to a right of appeal to the Scottish Land Court and we 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".⁴⁵ 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 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 suggest consideration should be given to the possibility of limiting owner-occupier crofter status to natural persons (although not necessarily a single natural person).

⁴⁵ [Crofting Law Paper- Law Society of Scotland, 2020](#)

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.⁴⁶

We 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...”.⁴⁷ We suggest that consideration should be given to amending this legislation through amendment to this Bill.

In line with our previous recommendation, we 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 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...”.⁴⁸

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 1993 Act.

The Bill does not propose amendment to sections 5(3)-(6) of the 1993 Act. We 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 1993 Act. We would also welcome

⁴⁶ [Section 1\(2\)](#)

⁴⁷ [Crofting Law Paper- Law Society of Scotland, 2020](#)

⁴⁸ [Crofting Law Paper- Law Society of Scotland, 2020](#)

similar information from the Scottish Government regarding section 10(1)(b) of the 1993 Act and whether any changes to the law would be merited.

Finally, we 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.



For further information, please contact:

Reuben Duffy
Policy Team
Law Society of Scotland
DD: 0131 476 8150
reubenduffy@lawscot.org.uk