

Crofting and Scottish Land Court Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Crofting and Scottish Land Court Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 71–EN);
 - a Financial Memorandum (SP Bill 71–FM);
 - a Policy Memorandum (SP Bill 71–PM);
 - a Report by the Auditor General for Scotland (SP Bill 71–AGR);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 71—LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Scottish Parliament.

Outline of Bill provisions

4. Part 1 of the Bill makes reforms to crofting law. Part 2 of the Bill makes provision for the merger of the Scottish Land Court and the Lands Tribunal for Scotland. Part 3 of the Bill contains general provisions.

Part 1 – Crofting Reform

5. The Scottish Government recognises the vital contribution that crofting makes to the population, economy, and culture of Scotland. Crofting is at the heart of communities across many parts of the Highlands and Islands, in Argyll, the Hebrides,

the Highlands and the Northern Isles. Crofters across these areas are cultivating land, tending livestock, diversifying into alternative land-based businesses, protecting the environment and biodiversity, playing a full part in their local communities, and maintaining the areas' heritage and culture.

6. Part 1 of the Bill provides for a package of miscellaneous reforms of crofting legislation. They are intended to simplify the legislation, improving the operation of the regulatory framework, strengthening land use in crofting areas and promoting 'environmental' activities on the inbye croft and common grazings. All of the crofting provisions in the Bill modify the existing legislation on crofting, which is set out in the Crofters (Scotland) Act 1993 ("the 1993 Act") and the Crofting Reform (Scotland) Act 2010 ("the 2010 Act"). The 2010 Act made substantial amendments to the 1993 Act and also introduced a new body of legislation, mainly about the Crofting Register and the registration processes. The 1993 Act and the 2010 Act will remain the two Acts governing crofting and its regulation.

7. The Bill aims to strengthen crofting in seven key respects:

- a) Crofting communities,
- b) Common grazings,
- c) Enforcement of crofters' duties,
- d) Crofting Commission powers,
- e) The Crofting Register,
- f) Electronic communications,
- g) Simplifying and clarifying aspects of crofting law.

8. **Crofting Communities:** Crofting has an important community dimension, and the legislation reflects this by balancing the rights of individual crofters with the rights of the communities of which they are part. However, the Law Society of Scotland's 2020 paper¹ pointed out some circularity in the definition of crofting community, and some inconsistencies in the way the current legislation covers this. The Bill clarifies the definition of a crofting community as the crofters holding crofts and/or grazings rights in a particular township, with the townships being those recorded in the Register of Crofts. The Bill will also require the Crofting Commission ("the Commission") to consider a wider area – the parish – when they are weighing up pressures on the sustainability of crofting. The amendments will give subtenants and landlords, along with the crofters themselves, the right to report suspected breaches of duty to the Commission, while removing the grazings committee's duty to do this wholesale.

9. **Common grazings:** Two thirds of all crofting land is on common grazings, the upland areas shared by most members of local township(s) and by other shareholders. In common with upland areas not in crofting tenure, common grazing land is increasingly recognised as having great potential for peatland restoration, forestry,

¹ Crofting Law Reform, Paper by the Law Society of Scotland, October 2020. Retrieved from <https://www.lawscot.org.uk/media/xa1bxvez/20-10-20-croft-final-paper.pdf>

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habitat restoration and renewable energy schemes, as well as traditional grazing of livestock. The Bill aims to bolster and strengthen the role of Grazing Committees, giving them and individual shareholders more options for proposing environmental initiatives on common grazings. The Bill also aims to protect the connection between the inbye croft and grazings shares, by preventing the unintended separations of grazings rights, which have happened many times when crofts have been purchased, and by providing new flexibility for owners of common grazings, and the Commission, to reallocate shares.

10. Enforcement of crofters' duties: All crofters have a legal duty to reside within 32km of their croft and to ensure their croft land is cultivated or put to another purposeful use. Crofters' adherence to these duties are vital for the strength of crofting communities, and for population retention and land use in remote areas. The legislation gives the Commission powers to enforce adherence to the duties, and the Bill aims to streamline and improve this legislation to give the Commission more power to act. The Commission will be entitled to require that questions about crofters' adherence to their duties can be resolved before their other applications are considered. In addition, the Bill will prohibit future transfers of owner-occupied crofts to legal persons such as a limited company or incorporated charity. This will help ensure over time that every owner-occupier crofter is, like a tenant crofter, a natural person (human being) directly responsible for complying with the crofting duties.

11. Crofting Commission powers: The Commission is the key public body charged with promoting the interests of crofting. The Bill will make changes to give it stronger autonomy, in particular relating to decisions on applications to decroft land. The Bill will also give the Commission additional powers with which to resolve issues for individual crofters or crofting communities, in particular the power to award owner-occupier status when it is merited, and to adjust the boundaries of crofts with consent from all interested parties.

12. The Crofting Register: The Crofting Register, held and managed by Registers of Scotland (RoS), was introduced by the 2010 Act. The Crofting Register complements the information held by the Commission in their Register of Crofts, in particular by including in the Crofting Register a map of each registered croft. A number of provisions in the Bill refine the processes for registration of crofts in the Crofting Register, including the interaction between the Commission and RoS in handling first registrations, and more flexibility for both RoS and the Commission to correct errors in the Crofting Register.

13. Electronic communications: The Bill includes provisions to modernise and broaden the methods available to crofters and the Crofting Commission for serving notices, giving public notifications, and holding meetings.

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14. **Simplifications and clarifications:** The Bill makes a range of simplifications and improvements to the way crofting is administered, including more flexibility for the Scottish Ministers in the appointment of Crofting Commissioners; and makes corrections and clarifications to the legislation as recommended at various times by the Scottish Land Court or suggested by the Crofting Law Group.

Part 2 – the Scottish Land Court

15. Part 2 of the Bill makes provision to amalgamate the Scottish Land Court and the Lands Tribunal for Scotland to form one expanded body, the Scottish Land Court. The provisions relate to the transfer of all aspects of the Lands Tribunal for Scotland to the Scottish Land Court:

- the transfer of the jurisdiction and functions of the Lands Tribunal for Scotland
- the transfer of staff of the Tribunal
- the transfer of property, rights, liabilities and obligations of the Tribunal.

16. Schedule 1 of the Bill sets out the Court's constitution including provision about structural arrangements, jurisdiction and rules or procedure of the Court.

17. Schedule 1 consists of 3 Parts:

- Part 1 - Administration and Organisation of the Court
- Part 2 - Jurisdiction of the Court
- Part 3 - Rules, procedure, expenses and powers

18. Part 1 deals with the various aspects of the administration and organisation of the court including the appointment of members and Chair of the Court, tenure of office and remuneration of members and Chair of the Court, the quorum and delegation of the Court and fitness for office and removal of members of the Court. Part 1 also includes a provision to allow the Chair of the Court to determine the eligibility of court members to act as members of the Upper Tribunal for Scotland

19. Part 2 sets out the matters which will fall within the jurisdiction and competence of the Court and provides Scottish Ministers with the power to adjust what is (or is not) within the competence and jurisdiction of the Court.

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20. Part 3 provides that the procedural rules of the Court are now to be made by the Court of Session following consultation with the Scottish Civil Justice Council. This brings the Court into line with the manner in which other civil court rules are made. This part of the Bill also sets out that procedure in relation to selecting members to deal with the range of cases that come before the court; the powers of the court; finality of decisions and special cases; enforcement of the court's decisions, the award of expenses and how the accounts of the court should be administered.

21. Schedule 2 of the Bill contains minor and consequential amendments in relation to the Scottish Land Court.

Rationale for subordinate legislation

22. The Bill contains a number of provisions conferring delegated powers. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered the importance of each matter against:

- the need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- the need to ensure proper use of parliamentary time;
- the possible frequency of amendment; and
- the need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

23. The relevant provisions are described in detail below. For each provision, this memorandum sets out:

- the person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- the parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

24. Where subordinate legislation is required to implement the Scottish Government's policy, some form of parliamentary procedure is appropriate. For the decision on negative or affirmative procedure, the Scottish Government has carefully considered the degree of parliamentary scrutiny that is thought to be required for the instrument, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily. The balance reflects the views of the Government on the importance of the matters being delegated by the Scottish Parliament.

Delegated powers

Section 1(3)(d) of the Bill – Enabling environmental uses of crofts

New section 5C(8B) of the 1993 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

25. Section 1(3)(d) of the Bill inserts new subsections (8A) and (8B) into section 5C of the 1993 Act.

26. Section 5C places a duty on crofters to cultivate and maintain their croft. New section 5C(2) defines the duties as cultivating the croft, putting it to an environmental use, or putting it to another purposeful use. Every part of the croft capable of being used in these ways must be so utilised, and the croft must be kept in a fit state for cultivation.

27. Subsection (8A) defines “environmental use” through a non-exhaustive list of examples, which includes peatland restoration, habitat creation and restoration, water management, and the preservation, protection, restoration, enhancement or other improvement of the natural heritage of the environment. Any environmental use must be planned and managed in a way that does not adversely impact neighbouring land.

28. Subsection (8B) grants the Scottish Ministers the power to modify by regulations the list of examples.

Reason for taking power

29. As the definition of “environmental use” is illustrative rather than exhaustive, it is appropriate to provide Ministers with the flexibility to add, amend, or remove examples as circumstances evolve. This power ensures the legislation remains responsive to future environmental challenges, technological advancements, and changing land use priorities. It supports the wider objectives of land use and environmental policy, particularly where they intersect with crofting.

Choice of procedure

30. The regulation-making power affects substantive matters relating to what constitutes environmental use of a croft. As such, any changes should be subject to thorough Parliamentary scrutiny. Furthermore, as this power amends primary legislation, the use of the affirmative procedure is considered both necessary and proportionate. This approach ensures that any significant changes to the scope of the crofting duty, are made transparently and with appropriate oversight.

Section 9(2)(e) – Meaning of “owner-occupier crofter” etc.

New section 19B(7) and (9) of the 1993 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

31. Section 19B of the 1993 Act provides for the meaning of the terms “owner-occupier crofter” and “owner-occupied croft”

32. Three conditions must be met if a person is to be an owner-occupier crofter. The first condition is that the person is the owner of the croft.

33. Section 9 of the Bill inserts new subsections (7) and (9) into section 19B of the 1993 Act. Section 19B(7) provides for the Scottish Ministers to make further provision about the circumstances in which the first condition is met, including in particular provision about what land or rights may be considered as a croft for the purposes of that condition.

34. Section 19B(9) provides for such regulations to include such consequential, transitional, transitory or savings provisions as Ministers consider necessary or expedient.

Reason for taking power

35. Section 3 of the 1993 Act provides for the meaning of “croft”, by reference to the types of holding which a “crofter” may have. The typical croft includes a dwelling, land for cultivation (also described as “inbye” land), and a share of a common grazing right. The rights in respect of a particular holding may however be different, so that for example a holding may not include grazing land or a dwelling.

36. The power will enable Ministers to make such provision as is necessary or expedient to clarify that ownership of a croft other than a ‘typical’ croft satisfies the first condition for the purpose of determining whether or not a person is an owner-occupier crofter.

37. The 1993 Act does not include any of the now usual ancillary powers, and so such powers are expressly provided for in connection with these regulations.

38. The regulation of crofting tenure engages complex property law issues, and the Bill makes significant changes to crofting law. Ancillary powers are justified in this case as they will enable Ministers to make regulations that resolve issues that might otherwise require primary legislation, despite being technical matters in this context.

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Choice of procedure

39. Regulations under this power are expected to deal with technical property law issues, and not raise any issues of principle. Negative procedure is therefore considered appropriate.

Section 18(3) of the Bill – Use of common grazings for forestry or environmental purposes

New section 50(1) of the 1993 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

40. Section 18(3) of the Bill substitutes a new section 50 into the 1993 Act. That section provides for the use of common grazings for forestry as at present, and provides in addition for the use of common grazings for environmental purposes.

41. New section 50(7) has the effect that a reference in that section and in new section 50ZA (use of common grazings for forestry or environmental purposes: application to and determination by the Commission) of the 1993 Act to using any part of the common grazing for an environmental purpose includes - but is not limited to - using the land for peatland restoration, habitat creation and restoration, water management, and the preservation, protection, restoration, enhancement or other improvement of the natural heritage of the environment.

42. New section 50(10) enables the Scottish Ministers by regulations to modify subsection (7) to add, amend or remove a use.

Reason for taking power

43. As the definition of “environmental use” is illustrative rather than exhaustive, it is appropriate to provide Ministers with the flexibility to add, amend, or remove examples as circumstances evolve. This power ensures the legislation remains responsive to future environmental challenges, technological advancements, and changing land use priorities. It supports the wider objectives of land use and environmental policy, particularly where they intersect with crofting.

Choice of procedure

44. The regulation-making power affects substantive matters relating to what constitutes environmental use of a croft. As such, any changes should be subject to thorough Parliamentary scrutiny. Furthermore, as this power enables Ministers to modify primary legislation, the use of the affirmative procedure is considered both

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necessary and proportionate. This approach ensures that any significant changes to the scope of the environmental uses of common grazings, are made transparently and with appropriate oversight.

Section 26(2)(d) of the Bill – Rectification of the Crofting Register

New section 16(6A) of the 2010 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

45. Section 26(2) of the Bill amends section 16 of the 2010 Act and inserts a new subsection (6A) into the 2010 Act. Section 16 provides for the Keeper of the Registers of Scotland to amend at any time the Crofting Register to make corrections to any typographical, clerical or administrative errors. The Keeper may do so on the application of (1) the original applicant where the error has arisen as a consequence of a mistake in the application or (2) the Commission or the original applicant where the error has arisen as a result of a mistake by the Commission. Where a mistake arises as a result of a mistake by the Keeper, the Keeper may rectify the mistake on application by any person or on their own initiative.

46. New subsection 16(6A) enables the Scottish Ministers by regulations to specify further persons, or descriptions of persons, who are entitled to make an application to the Keeper to rectify the register under section 16.

Reason for taking power

47. Section 16 of the 2010 Act allows for rectification of the register, but only allows for that to be instigated by the original applicant, the Commission or the Keeper. However Ministers consider it may be appropriate to allow other categories of person to instigate a rectification. For example, the Land Court have ruled that the executor of an original applicant should be able to apply. The question of which other categories of person should be able to apply is not straightforward and is likely to evolve as more time passes from the original applicant. The power will enable Ministers to add to the class of rectification applicant(s) in the event that a defined need for a further class of persons arises in the future. It is therefore appropriate to provide Ministers with the flexibility to add, amend, or remove classes of persons as applicant circumstances evolve. This power acts as a contingency to ensure the legislation remains responsive to crofting practices relating to ownership and tenancies of crofts, and reflects the importance of maintaining accuracy in the Crofting Register.

Choice of procedure

48. This regulation making power affects the categories of person who can apply for the rectification of the register. As this power enables Ministers to modify primary

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legislation, the use of the affirmative procedure is considered both necessary and proportionate. This approach ensures that any changes to the categories of person who may apply for rectification are made with appropriate Parliamentary oversight.

Section 29(3) of the Bill – Public notification

New section 55A of the 1993 Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

49. Section 29(3) of the Bill substitutes a new section 55A into the 1993 Act, enabling the Scottish Ministers to make provision by regulations about the giving of public notification under both the 1993 Act and the 2010 Act.

50. Regulations may include provision on the methods of giving notice, the form and content of any notice, the duration for which a notice must remain publicly available, and any fees the Commission may charge for publishing a notice.

51. Before exercising this regulation-making power, the Scottish Ministers must first consult the Commission.

52. The power extends to making incidental, supplementary, consequential, transitional, transitory, or saving provision, and to making different provision for different purposes.

Reason for taking power

53. The existing section 55A restricts public notification to the publication of notices in one or more local newspapers, a requirement which is increasingly considered as overly prescriptive and financially burdensome. This power introduces greater flexibility, allowing adaptation to new and emerging methods of communication, including digital platforms. This flexibility ensures that the legislation remains responsive to technological developments within an ever-evolving communications landscape.

54. The 1993 Act does not include any of the now usual ancillary powers (such as those in section 54 of the 2010 Act), and so such powers are expressly provided for in connection with these regulations.

55. Ancillary powers are justified in this case, as they will allow Ministers to make regulations resolving issues related to notices and notification which, although technical in nature, might otherwise require primary legislation. These powers will support the effective adoption of modern public notification procedures by enabling a seamless and appropriate transition to updated methods of notification.

Choice of procedure

56. The regulations concerning public notification are expected to address procedural and technical details and are not expected to raise any substantive issues. The inclusion of a consultation requirement ensures transparency, accountability, and well-informed decision-making by engaging the relevant stakeholder. The Scottish Ministers consider the negative procedure appropriate, as it allows Parliament to maintain oversight without requiring the use of parliamentary time on procedural matters.

Section 38 – Power to make further provision in connection with the merger etc.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative

Provision

57. Section 38 allows Scottish Ministers, by regulations, to make further provision in connection with the merger.

Reason for taking power

58. Section 38 specifically allows Scottish Ministers to make further provision in connection with the transfer of things mentioned in section 36. This reflects the fact there are often matters which come to light at a later stage surrounding implementation of the Bill. For example if issues arise surrounding the transfer of cases or the transfer of staff this section allows Scottish Ministers to make further provision to address those issues. Section 38 is a specific power in contrast to the standard ancillary power in section 42 (paragraphs 60- 65 below).

Choice of procedure

59. Regulations made under this section which contain provision which adds to, replaces or omits the text of primary legislation are subject to the affirmative procedure. Otherwise, where the regulations are clearly limited in scope and effect, for example they relate solely to administrative matters, they are subject to the negative procedure.

Section 42 of the Bill – Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative

Provision

60. Section 42 enables the Scottish Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for giving full effect to the Bill. The regulations may make different provision for different purposes and modify any enactment.

61. This power compliments the powers in respect of ancillary matters considered above, including for example the powers provided for by section 9(2)(e) of the Bill.

Reason for taking power

62. As with any new body of law, the Bill may give rise to the need for a range of ancillary provisions to ensure its effective implementation. While the Scottish Government has given careful consideration to the provisions of the Bill, it is recognised that unforeseen issues or necessary adjustments may arise once the legislation is in operation. The power to make further provision is therefore considered essential to ensure that the policy objectives of the Bill can be fully achieved, and that any technical, operational, or implementation matters can be addressed without delay.

63. Powers of this nature are commonly included in legislation to provide Ministers with the flexibility to make timely and proportionate changes in light of practical experience. Without such a power, it may be necessary to return to Parliament with further primary legislation to address issues that are clearly within the scope and intent of the Bill. The Scottish Government considers this would not represent an efficient use of either Parliamentary time or Government resources.

64. The Scottish Government acknowledges the potentially broad scope of this power, including the ability to modify primary legislation and to alter provisions within the Bill. However, the power is clearly limited in its application: it may only be exercised by the Scottish Ministers for the purposes of, in connection with, or for giving full effect to any provision of the Bill. These safeguards ensure that the power is used appropriately and only in support of the Bill's effective implementation.

Choice of procedure

65. Section 42(3) requires that regulations made in exercise of this power are subject to the affirmative procedure if they add to, replace or omit any part of an Act. Otherwise, such regulations will be subject to the negative procedure. This approach is commonly

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adopted for ancillary powers, and the Scottish Ministers consider that this is appropriate scrutiny in this case. It ensures that the Scottish Parliament is able to closely scrutinise and determine whether to approve any draft regulations that change the text of primary legislation before they can be made.

Section 43 – Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

66. Section 43 allows the Scottish Ministers to commence provisions in this Bill (other than sections 41 (Regulations), 42 (Ancillary provision), 43 (Commencement), 44 (Short title) which come into force on the day after Royal Assent) on such day as they may appoint by regulations. The regulations may include transitional, transitory or saving provision and may make provision for different purposes or areas.

Reason for taking power

67. It is standard practice for the Scottish Ministers to take a power to bring provisions of a Bill into force at a time of their choosing, so that its provisions can be brought into force at an appropriate time. This enables any guidance, or administrative measures or IT changes that are needed to give practical effect to a measure to be in place in advance of its provisions coming into effect.

68. The coming into force of the Bill's substantive provisions will have implications for the operation of the expanded Scottish Land Court. It will have implications for the parties involved in proceedings before the Lands Tribunal for Scotland and Scottish Land Court, for the members of those bodies, for staff and for Scottish Courts and Tribunals Service. In order to provide parties, members and staff with due notice and to ensure the amalgamation is effective and that each body is prepared for the transition to the new expanded court it is important for the Scottish Ministers to have power to allow for the planning of orderly, and timely implementation and to commence the substantive changes when appropriate. Section 36(3) of the Bill provides that the merger of the Scottish Land Court and the Lands Tribunal for Scotland will take place on the appointed day(s) as provided for in regulations made under this section.

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Choice of procedure

69. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

Schedule 1, Part 1, paragraph 2(8) – Appointment of members and Chair of the Court

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

70. This provision enables the Scottish Ministers, by regulations, to make provision regarding the eligibility for appointment of members (other than the Chair) of the new Scottish Land Court.

Reason for taking power

71. The Scottish Land Court and the Lands Tribunal for Scotland currently have different eligibility requirements for membership which are directly related to the range of skills, expertise and experience required for each jurisdiction. The new Scottish Land Court is required to deal with all matters currently under the separate jurisdictions of the Lands Tribunal for Scotland and the current Scottish Land Court and the jurisdiction may be further expanded in future. This power enables the Scottish Ministers to adapt the eligibility requirements of members of the new Scottish Land Court to meet the needs of the court and to ensure that the court can continue to operate effectively in the future. This will futureproof the legislation, and allow the Scottish Ministers to respond to the experience of operating the new court and changing circumstances, including any future changes to the jurisdiction

Choice of procedure

72. Regulations made under this paragraph are subject to the negative procedure. The negative procedure is considered most appropriate in this instance as the power makes provision relating to the administration of the court i.e. the eligibility requirements in respect of its members.

Schedule 1, Part 2, Paragraph 15(2) – power to adjust what is within the competence of the Court and to modify any enactment in consequence of a change made to the competence and jurisdiction of the Court.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

73. This provision enables the Scottish Ministers, by regulations, to modify what is within the competence and jurisdiction of the Court. This may include modifying any enactment which is impacted by the change to the competence or jurisdiction of the Court .

Reason for taking power

74. The Lands Tribunal has a wide remit. The purpose of this provision is to allow for any matters which the Lands Tribunal has jurisdiction over, which have not already been included in the jurisdiction of the Land Court, to subsequently be included within the expanded Land Court's jurisdiction. The power also allows for other enactments to be modified if they are impacted by the change to the Land Court's jurisdiction. For example, if an enactment referred to the right to bring a matter before the Lands Tribunal and, subsequently, that jurisdiction was transferred to the new Land Court, the enactment can be modified with references to the Lands Tribunal substituted for references to the Land Court.

75. The purpose of this provision is not to provide a gateway to significantly alter jurisdiction of the new Land Court. However, it is possible that in the future the expanded Land Court will take on new functions. In order to future proof the legislation, this power is required in order to provide the required flexibility.

Choice of procedure

75. Regulations made under this paragraph are subject to the affirmative procedure. This provides the Scottish Parliament with the appropriate level of scrutiny for the significance of the legislation which may be made under this paragraph modifying the jurisdiction of the Land Court.

Schedule 1, Part 2, Paragraph 26 – power for the Court of Session to make provision regarding practice or procedure of or about the Land Court

Power conferred on: Court of Session
Power exercisable by: Act of Sederunt
Parliamentary procedure: None

Provision

76. This provision enables the Court of Session, by Act of Sederunt to make provision regarding the practice and procedure of the Court.

Reason for taking power

77. The administrative detail of the Court's procedural rules is better suited for subordinate legislation. This power will also provide the Court of the Session with the flexibility to ensure that the procedure followed in the Court is fit for purpose and efficient.

Choice of procedure

78. To preserve the Court procedure from political interference, in accordance with the principle of separation of powers, such acts of sederunt are usually not subject to Parliamentary scrutiny.

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