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

Delegated powers in the Crofting and Scottish Land Court Bill (as amended at Stage 2)



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Delegated Powers and Law Reform Committee

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

(a) any—

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

(ii) [deleted]

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

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

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

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

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

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

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

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

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



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction and overview of the Bill

1. At its meeting on 3 March 2026, the Delegated Powers and Law Reform Committee considered the delegated powers in the [Crofting and Scottish Land Court Bill](#) ("the Bill") as amended at Stage 2.
2. This Bill was introduced by the Scottish Government on 2 June 2025. The lead committee was the Rural Affairs and Islands Committee. As this report is after Stage 2, it is addressed to the Parliament.
3. The stated purpose of the Bill is to amend crofting law and to provide for the merger of the Scottish Land Court ("the Court") and the Lands Tribunal for Scotland ("the Tribunal") into an expanded Scottish Land Court ("the expanded Court").

Crofting Reform

4. Crofts and crofting are a distinct form of land tenure in the seven Crofting Counties of Scotland - Argyll, Caithness, Inverness, Ross and Cromarty, Sutherland, Orkney and Shetland. A croft is generally a relatively small agricultural land holding which may or may not have buildings or a house associated with it.
5. The Scottish Government states that the Bill is to make improvements to the current crofting system by strengthening residency and land use enforcement. It considers that the proposed changes support its strategy for crofting and are not intended to be a significant reform of the system of crofting tenure.

Court and Tribunal Merger

6. The Court operates under the Scottish Land Court Act 1993 and deals with questions between landlords and tenants of agricultural land, including crofts.
7. The Tribunal was brought into effect by the Lands Tribunal Act (Appointed Day) (Scotland) Order 1971 and has an extensive range of jurisdictions, including the determination of disputed compensation for the compulsory acquisition, or loss in value, of land; the accuracy of the Land Register; and appeals against the valuation of land under the community right to buy.
8. The Bill seeks to amalgamate the two bodies into an expanded Court.
9. The Bill consists of 44 sections in 3 parts together with 2 schedules.
10. Part 1 of the Bill makes various changes to crofting law, by modifying the Crofters (Scotland) Act 1993 ("the 1993 Act") and the Crofting Reform (Scotland) Act 2010 ("the 2010 Act"). The Scottish Government states that it is seeking to make changes upon which there has been extensive stakeholder input and for which there is support across crofting communities. The provisions, it states, are intended to simplify complex legislation and streamline administrative processes; facilitate productive or environmental activities on the "inbye" (land for cultivation) and on common grazing land; and improve the effectiveness of the regulatory functions of the Crofting Commission ("the Commission"), the regulator for crofting in Scotland.
11. Part 2 of the Bill amalgamates the Court and the Tribunal. Schedule 1 sets out the

expanded Court's constitution including structural arrangements, jurisdiction and rules and procedure. The Scottish Government states that this part is not about reforming courts or judicial office in Scotland but rather seeks to merge two existing bodies and pool their existing functions and powers.

12. Part 3 contains the standard provisions at the end of a Bill.

Delegated Powers

13. The Committee previously considered the delegated powers in this Bill at Stage 1 and published its [report](#) on 1 October 2025. The Committee was content with the 11 delegated powers contained in the Bill at that stage.
14. The Bill completed Stage 2 on 11 February 2026.
15. The amended Bill contains five new and five revised powers to make subordinate legislation, nine conferred on Scottish Ministers and one on the Court of Session. The Scottish Government has prepared a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) which sets out the new and revised powers and provides an explanation of what the powers allow for, why they have been taken and why the Parliamentary procedures are considered appropriate.

Review of relevant powers

Section 1(3)(d) of the Bill inserting new section 5C(8B) into the 1993 Act – enabling environmental uses of crofts

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision & Revision

16. Section 1(3)(d) of the Bill as amended at Stage 2 inserts new subsections (8A) and (8B) into section 5C of the 1993 Act.
17. Section 5C(2), substituted by amended section 1(3)(a) of the Bill, places a duty on crofters by themselves or with their family, with or without hired labour to cultivate and maintain their croft. Substituted 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.
18. New section 5C(8A) as amended at Stage 2 defines “environmental use” as 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 actively managed to provide an environmental benefit in a way that does not adversely impact the croft or neighbouring land. New section 5C(8B) gives the Scottish Ministers the power to modify the list of examples, including adding, amending or removing an example.
19. New section 5C(8A) was also amended at Stage 2 to exclude engaging in the generation, transmission or storage of energy from environmental use; and extended the power for Scottish Ministers in new section 5C(8B) to modify the list of examples to specifically exclude items from the list.

Committee consideration

20. During the Stage 2 debate on the amendments to the Bill, the Member who proposed the amendment stated that excluding energy generation, transmission and storage would not prohibit energy generation on a croft, but it would prohibit it from being termed “environmental use”. By way of an example, she stated that a crofter could not cover their croft with solar panels and say that it had been put to environmental use but they could still have solar panels to generate electricity on their croft as part of the normal working of their croft.
21. Further, the Member stated that as the Bill gives Ministers the power to adapt the list of purposes considered to be environmental use, the further amendment allows them to specifically exclude items from the list, as is the case for energy generation,

transmission and storage.

22. The Minister for Agriculture and Connectivity supported these amendments because, in his view, this would make “sound changes” to the definition of environmental use in line with the evidence heard at Stage 1.
23. The Scottish Government explains in the SDPM that the reasons for taking this power remain as set out in the DPM. The change to the power reflects evidence received at Stage 1 that the definition of environmental use may be too wide and that certain activities may require to be excluded. The broadening of the power ensures that Ministers can respond appropriately where an activity should not fall within the scope of the definition.
24. The Scottish Government also explains in its SDPM, and as set out in the original DPM, that the justification for the use of the affirmative procedure remains as set out in the DPM.
25. In its Stage 1 report, the Committee found this power acceptable in principle and was content that it is subject to the affirmative procedure. The Committee, for the reasons outlined above, is content with the rationale for the proposed exclusion and the amended power to exclude items, as well as add, amend or remove items, from the list of examples of environmental use.

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

New section 6A inserting new section 59B into the 1993 Act – power to impose monetary penalties for non-compliance with crofting duties

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

27. New section 6A inserting new section 59B into the 1993 Act was amended into the Bill at Stage 2. This provides for Scottish Ministers to (a) confer on the Commission the power to impose and collect monetary penalties from crofters who do not comply with their duties; (b) to repeal or adjust any existing criminal offence and penalties; and (c) to make such further provision as they consider appropriate in connection with the imposition and collection of such penalties.
28. Regulations must provide for the imposition of a monetary penalty by way of written notice, specify the amount of any penalty that may be imposed, require penalties to be paid to the Commission, provide for the recovery of unpaid penalties as a civil debt, and make provision about a right to appeal to the expanded Court against a decision to impose a penalty and the grounds of appeal. The maximum monetary penalty is to be no more than the maximum penalty that could be imposed in

respect of an offence under level 1 on the standard scale, currently £200.

29. Regulations under new section 59B may also modify any enactment, make incidental, supplemental, transitional, transitory or saving provision, and make different provision for different purposes.
30. Before making regulations under this section, the Scottish Ministers must consult the Commission, persons that they consider to be representative of the interests of crofters, and any other person they consider appropriate. Regulations would be subject to the affirmative procedure.

Committee consideration

31. During the Stage 2 debate on the amendments to the Bill, the Member who proposed this new power stated that it is vital that the Commission has the necessary enforcement powers to ensure that crofters meet certain requirements, and that a practical system of monetary penalties would enable the Commission to respond proportionately and effectively to non-compliance. He also considered that a statutory consultation requirement would allow those who are likely to be affected by any change to have an opportunity to express their views and ensure appropriate parliamentary scrutiny.
32. The Minister for Agriculture and Connectivity agreed with the proposed new power. He stated that enforcing compliance with statutory duties is one of the Commission's most important functions, and it is right that that is stated explicitly in the legislation. He also considered it appropriate and practical for enforcement to be done by means of a civil fine rather than by approaching breaches as criminal offences.
33. The Scottish Government explains in the SDPM that the reason for taking the power is to improve the effective enforcement of crofting duties by replacing certain criminal offences, such as failure to return the Annual Notice, which are in practice unlikely to be prosecuted, with a more practical civil enforcement system. There is also a wider view that criminal sanctions for administrative non-compliance are disproportionate. A monetary-penalty regime will allow the Commission to respond to non-compliance in a proportionate and effective way. A comparable enforcement model already exists in section 31 of the Land Reform (Scotland) Act 2016 in relation to the enforcement powers of the Tenant Farming Commissioner.
34. The Scottish Government further explains that it considers that the affirmative procedure is appropriate because the power engages substantive matters of enforcement and involves amending primary legislation. As such, any regulations made under this power should be subject to thorough Parliamentary scrutiny. The use of the affirmative procedure, alongside a duty to consult, is necessary and proportionate to ensure that changes to the enforcement framework for crofting duties are made transparently and with appropriate oversight.
35. The Committee finds this power acceptable. It considers that sufficient detail has been provided in new section 59B, in the SDPM, and during the Stage 2 debate, to explain the rationale for this power, its practicalities and how it is to be exercised. Further, sufficient procedural safeguards and a right of appeal are to be built into the penalties system. The Committee also welcomes that there is a statutory duty to consult and agree that the affirmative procedure is appropriate given the power

relates to the enforcement of crofting duties.

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

Section 10A inserting new section 29C into the 1993 Act – power to make provision about the transfer of owner-occupied crofts

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

37. New section 10A inserting new section 29C into the 1993 Act was amended into the Bill at Stage 2. This provides for Scottish Ministers to make provision for or in connection with the transfer of owner-occupied crofts. Regulations under this section may specify any conditions which must be met, by the purchaser or seller, prior to the transfer of an owner-occupied croft (including, for example, a requirement to obtain the prior consent of the Commission).
38. Regulations may provide for the circumstances in which any condition may or may not apply to a transfer and about the process for determining if such conditions are met including, for example—any requirement to give public notification of the proposed transfer, the period during which, and manner in which, objections may be made, and any particular matter to which regard must be had in making such a determination.
39. Regulations may also provide for the consequences of completing the transfer of the owner-occupied croft having failed to meet any condition (for example, the new owner does not become the owner-occupier crofter of the croft). Regulations can also confer functions on a person or persons and provide for a right to appeal to the expanded Court against a decision of the Commission affecting the transfer of an owner-occupied croft, and the grounds of appeal.
40. Regulations under this section may also modify any enactment, make incidental, supplemental, transitional, transitory or saving provision, and make different provision for different purposes.
41. Before making regulations under this section, the Scottish Ministers must consult the Commission, persons that they consider to be representative of the interests of crofters, and any other person they consider appropriate. Regulations would be subject to the affirmative procedure.

Committee consideration

42. During the Stage 2 debate on the amendments to the Bill, the Member who proposed the amendment stated that this will give Ministers a general power to make provision about the transfer of owner-occupied crofts to include a new

regulatory system for the control and transfer of ownership and for the transfer of the owner-occupier crofter status. He stated that it could be considered anomalous for there to be regulatory checks on who can become a tenant crofter by assignation without any similar controls on who can become an owner-occupier crofter by purchasing an owner-occupied croft.

43. However, he acknowledged that provision about transfers of owner-occupied crofts did not feature in the 2024 consultation on crofting reform. He also appreciated that regulating the sale of owner-occupied crofts might require wide-scale reform as there are approximately 6,000 owner-occupier crofters who would be affected by such a change the next time they sold their croft and there could also be a significant impact on the Commission, which could, in turn, impact all crofters. Therefore, he proposed that the Scottish Ministers should consult appropriately before using the power, including with the Commission and with representatives of both owner-occupier and tenant crofters.
44. The Minister for Agriculture and Connectivity was happy to support this amendment as it addresses points raised in the debate and would provide a power for Ministers to introduce regulation of transfers of owner-occupied crofts, subject to appropriate consultation.
45. The Scottish Government explains in the SDPM that the reason for taking the power is to respond to concerns raised by some stakeholders during Stage 1 of the Bill about whether there should be greater scrutiny of the transfer of owner-occupied crofts. Given the range of interventions that could be made, the detailed legal and regulatory consideration that would be required and the need to consult on any specific proposals with the crofting community, the Scottish Ministers considered that the appropriate response to these concerns is to take a regulation making power which will enable full consideration of the issues arising.
46. The Scottish Government further explains that it considers that the affirmative procedure is appropriate because the power is broad and capable of affecting, to a greater or lesser extent, the protected rights of owner-occupier crofters and persons wishing to become owner-occupier crofters.
47. The Committee finds this power wide and considers that any regulations will have a significant impact on owner-occupier crofters' rights and the operation of the Commission. Although, as both the Member and Minister propose, any changes would be subject to consultation before their introduction, this is the sort of power which the Committee might have normally expected to be subject to further enhanced "super-affirmative" procedures, or even being introduced via primary legislation. This would have allowed for a higher level of parliamentary scrutiny of significant changes, particularly given a new regulatory regime on the transfer of owner-occupied crofts did not originally feature in the 2024 consultation.

48. The Committee notes the power.

49. While recognising the context of this change being introduced via a Stage 2 amendment, the Committee considers this is the sort of power which it might have normally expected to be subject to further enhanced "super-

affirmative” procedures, or even being introduced via primary legislation.

Section 11B inserting new section 19BC into the 1993 Act – power to make provision requiring proposed owner to be aware of owner-occupier duties

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

50. New section 11B inserting new section 19BC into the 1993 Act was amended into the Bill at Stage 2. This provides for Scottish Ministers to make provision requiring that before any person may acquire title to a croft as the nominee of a crofter, or can purchase a croft from a constituting landlord, the Commission must be satisfied that the person is aware of the duties of an owner-occupier crofter under section 19C.
51. Regulations may modify any enactment and would be subject to the affirmative procedure.

Committee consideration

52. During the Stage 2 debate on the amendments to the Bill, the Member who proposed this new power stated that this is to deal with the issue of someone who is buying a croft or in receipt of an assignation being aware of the duties that they are taking on. She stated that all too often, people believe that a croft is a house. However, there cannot be a croft house without it being attached to croft land, and it is the land to which obligations are attached. She considers that crofts are changing hands for huge amounts of money and believes that that this would not happen if people understood what they were taking on.
53. The Minister for Agriculture and Connectivity did not support this amendment stating that one of the aims of the Bill is to simplify the legislation and make crofting regulation less onerous for crofters and the Commission. The Minister stated that this amendment would bring yet more regulation into the system and would have a resource impact on the Commission. He agreed with the need to raise awareness of the crofting duties and welcomed the action that the Commission is taking to issue guidance to solicitors and agents on croft sales to ensure that they are fully aware of the legal duties and obligations that come with owning a croft and the key responsibilities of a crofter, including the legal duties. The guidance also highlights the offence of failing to return the annual notice, which requires crofters to confirm that they are complying with their duties. The amendment was agreed on a division.
54. The Scottish Government explains in the SDPM that this provision was introduced by a non-government amendment and is because the Member considers there to be an issue with persons acquiring crofts without being fully aware of the legal duties with which a crofter must comply. The reason for taking the power is to

improve awareness of the duties of an owner-occupier crofter amongst persons who are seeking to purchase crofts and ensure crofts are put to proper use.

55. The Scottish Government further explains that the affirmative procedure is appropriate because this power amends primary legislation, the 1993 Act, regarding the Commission's duties.
56. The Committee finds this power acceptable. It considers that sufficient detail has been provided in new section 11B, in the SDPM, and during the Stage 2 debate, to explain the rationale for this power, its practicalities and how it may be exercised. It also agrees that the affirmative procedure is appropriate.
57. However, the Committee considers a statutory requirement to consult with the Crofting Commission, persons that the Scottish Ministers consider to be representative of the interests of crofters, and any other person they consider appropriate prior to making regulations under this power, should be a pre-condition of using this power.

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

59. The Committee considers a statutory requirement to consult with the Crofting Commission, persons that the Scottish Ministers consider to be representative of the interests of crofters, and any other person they consider appropriate prior to making regulations under this power, should be a pre-condition of its use.

Section 14 inserting new section 39B(9) into the 1993 Act – power to make further provision for the purposes of the Commission's power to remap boundaries

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Revised or new power: New

Provision

60. New section 39B(5)(ba) as amended in at Stage 2 states that the Commission may make a direction to remap boundaries if the applicant has, amongst other things, obtained the consent of (i) any person the Commission considers has a relevant interest in the application, and (ii) any other person as may be specified in regulations made under subsection 39B(9).
61. Section 14 inserting new section 39B(9) into the 1993 Act was also amended into the Bill at Stage 2. This provides that Scottish Ministers may by regulations make further provision for the purposes of the Commission's power to remap boundaries including by (a) specifying any persons, or descriptions of persons, whose consent must be obtained for the purposes of subsection (5)(ba)(ii), (b) specifying further

persons, or descriptions of persons, who are entitled to make an application to the Commission for a direction that the boundary be remapped under this section, (c) making different provision for different applicants, types of land or circumstances.

Committee consideration

62. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated that these amendments make technical refinements to the Commission’s powers to adjust boundaries, enhancing their flexibility for use in different circumstances; and resolve points that were raised by the lead committee during Stage 1 and further points of detail that were subsequently raised by the Commission.
63. The Scottish Government explains in the SDPM that a key requirement of the boundary remapping power is that it can only be exercised if all parties with a relevant interest consent. The amended power supports this by giving flexibility to ensure that the correct classes of people whose consent must be required are included. For example, such regulations may specify who is required to consent if a boundary remapping application affects the area of a common grazings. The new provision also gives Scottish Ministers the power to expand the types of people who are entitled to apply for a boundary remapping, and the types of land which may be covered. This power allows the Scottish Ministers to extend the scope of boundary remapping in future.
64. The Scottish Government further explains that it considers that the negative procedure is appropriate because the power will provide technical detail, such as lists of persons whose consent is required or who can make applications, which will support the provisions and approach established by the Bill.
65. The Committee finds this power acceptable. It considers that sufficient detail has been provided in new section 39B(9), in the SDPM, and during the Stage 2 debate, to explain the rationale for this power, its practicalities and how it may be exercised. The Committee also agrees that the negative procedure is appropriate.

66. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.

Section 18(3) of the Bill inserting new section 50(10) into the 1993 Act – use of common grazings for forestry or environmental purposes

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision & Revision

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

for environmental purposes.

68. New section 50(7) provides that 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. New section 50(10) enables the Scottish Ministers to modify subsection (7) to add, amend or remove a use.
69. New section 50(7) was amended at Stage 2 to exclude engaging in the generation, transmission or storage of energy from environmental use; and extended the power for Scottish Ministers in new section 50(10) to modify the list of examples to specifically exclude items from the list

Committee consideration

70. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated that he had listened to the debate at Stage 1 and agreed that energy generation, transmission and storage should count as other uses of common grazings rather than environmental use. These amendments therefore clarify that point and give Ministers a power to make further clarifications should that be necessary.
71. The Scottish Government explains in the SDPM that the amendment addresses concerns that the definition of environmental purpose was too wide, by allowing the Scottish Ministers to exclude activities or purposes, including the generation, transmission and storage of energy, from the scope of the definition of using the common grazing for an environmental purpose.
72. The reasons for the power and the choice of procedure remain as set out in the DPM for the Bill as introduced.
73. In its Stage 1 Report, the Committee found this power acceptable in principle and was content that it is subject to the affirmative procedure. The Committee is therefore content with the rationale for the proposed exclusion and the amended power to exclude items, as well as to add, amend or remove items, from the list of examples of environmental use.

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

Section 20B inserting new section 40B(6) into the 1993 Act – power to make provision about when ownership is to be treated as transferred for the purpose of giving the Commission notice of a change of ownership

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Revised or new power: New

Provision

75. New section 40B requires the Commission to be given a notice of change of ownership within 1 month in relation to the transfer (whether or not for valuable consideration) of any land on which a croft, an owner-occupied croft or a common grazing are situated by the person who acquires the land. New section 40B(6) gives Scottish Ministers the power to make provision about when ownership is to be treated as transferred for the purposes of this section.

Committee consideration

76. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated this amendment ensures that any transfer of ownership of land whether by sale, gift or inheritance, must be notified to the Commission within one month. The Commission must maintain the register of crofts, including ownership details, so it is important that it is notified of any change of ownership at the earliest opportunity. If a new owner fails to notify the commission or comply with an information request, the Commission can reject any objection submitted by the person in relation to an application until that failure is remedied.
77. The Scottish Government explains in the SDPM that the reason for taking the power is to give Ministers the flexibility to specify when ownership is to be treated as transferred for the purposes of the notification duty, ensuring that the Commission receives complete and accurate information about changes of ownership.
78. The Scottish Government further explains that it considers that the negative procedure is appropriate because the manner in which transfer of ownership may take place is largely an administrative matter intended to support the Commission in obtaining accurate information. The negative procedure provides an appropriate balance between the use of Parliamentary time and the technical and procedural nature of the regulations.
79. The Committee finds this power acceptable. It considers that sufficient detail has been provided in new section 40B(6), in the SDPM, and during the Stage 2 debate, to explain the rationale for this power, its practicalities and how it may be exercised. The Committee also agrees that the negative procedure is appropriate.

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

Section 29 – inserting new section 55A into 1993 Act – Public notification

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Revised or new: Revised

Provision

81. Section 29(3) of the Bill substitutes a new section 55A into the 1993 Act, enabling the Scottish Ministers to make provision about the giving of public notification under both the 1993 Act and the 2010 Act. This section was amended so that the Scottish Ministers can only make provision, in relation to the 2010 Act, insofar as it extends to section 12(8) of that Act.

Committee consideration

82. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated that this amendment limits the powers to make provision about the giving of public notification and specifying the form and content of public notice in relation to section 12(8) of the 2010 Act only. As this is the only public notice requirement in the entire 2010 Act, the broader reference is not appropriate.
83. The Scottish Government explains in the SDPM that the amendment addresses concerns raised that the power was too widely drawn as respects provision in the 2010 Act. The Scottish Government further explains that it continues to consider the negative procedure is appropriate.
84. In its Stage 1 Report, the Committee found this power acceptable in principle and was content that it is subject to the negative procedure. The Committee is therefore content with this minor correction.

85. **The Committee finds the revised power acceptable in principle and is content that it is subject to the negative procedure.**

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision and Revision

86. This provision, which enables the Scottish Ministers to modify what is within the competence and jurisdiction of the expanded Court was amended at Stage 2 to enable Scottish Ministers to:
- specify matters in respect of which the internal review process of the expanded Court is not to apply;
 - modify what is within the competence and jurisdiction of the expanded Court:
and

- modify the method by which any proceedings before the expanded Court relating to such matters as may be specified are to be stated or appealed to the Court of Session.

87. This provision may include modifying any enactment which is impacted by the change to the competence or jurisdiction of the expanded Court or the right of appeal (by whatever means) from the expanded Court. Before making regulations under this paragraph, the Scottish Ministers must consult the Lord President of the Court of Session, and the Chair of the expanded Court.

Committee consideration

88. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated that amendments had been lodged following feedback to improve the approach to reviews and appeals when the two bodies are merged as the Court and the Tribunal currently operate with different review and appeal structures. Amendments are to create a coherent mechanism for updating the expanded Court's internal review and appeal arrangements. Scottish Ministers are also given a power to specify which matters are not subject to internal review by the expanded Court and to adjust how cases are appealed to the Court of Session. Changes cannot be made unless Ministers have formally consulted the Lord President and the Chair of the expanded Court. This requirement provides for judicial oversight and helps ensure that any future procedural reforms are proportionate, workable and consistent with the wider justice system, thereby strengthening the safeguards around the new flexibility.

89. The reasons for taking this power and the choice of procedure are as set out in the DPM. Further, as the Scottish Government explains in the SDPM, the reason for amending this power is because the Tribunal has differing procedures from the Court in respect of appeals. It also allows for the internal review process of the expanded Court to be excluded in appropriate cases; and enables the method by which cases are appealed to the Court of Session to be adjusted with a view to harmonisation between the different approaches that exist between the Tribunal and the Court. The power also allows for other enactments to be modified if they are impacted by the change to the expanded Court's jurisdiction or method of appeal.

90. The reasons for the choice of procedure are as set out in the DPM. The Scottish Government also explains in its SDPM that the affirmative procedure provides the Scottish Parliament with the appropriate level of scrutiny for the significance of modifying the jurisdiction of the expanded Court or how cases may be appealed.

91. In its Stage 1 Report, the Committee found this power acceptable in principle and was content that it is subject to the affirmative procedure. For the reasons outlined above, the Committee therefore finds the addition of this detail regarding reviews and appeals, and a statutory consultation requirement, acceptable.

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

Schedule 1, Part 3, paragraph 26 - Rules of the expanded Scottish Land Court

Power conferred on: Court of Session**Power exercisable by: Act of Sederunt****Parliamentary procedure: None****Revised or new: Revised****Provision and Revision**

93. Paragraph 26 enables the Court of Session, by Act of Sederunt to make provision regarding the practice and procedure of the expanded Court. This was amended at Stage 2 to include a provision for the Court of Session to consult the Chair of the expanded Court.

Committee consideration

94. During the Stage 2 debate on the amendments to the Bill, the Minister for Agriculture and Connectivity stated that this amendment will make a small but important adjustment to the rule-making process by requiring the Court of Session to consult the Chair of the expanded Court when preparing procedural rules for that Court. This will ensure that the specialist nature of the expanded Court's work is recognised and reflected in the development of those rules.
95. The Scottish Government explains in the SDPM that the reasons for taking the power, and for Acts of Sederunt not usually being subject to Parliamentary scrutiny, are as set out in the DPM. However, given the specialist nature of the expanded Court and the fact that the Court used to make its own rules, the Court of Session must consult the Chair of the expanded Court, prior to making rules for it.
96. In its Stage 1 Report, the Committee found this power acceptable in principle and was content that it is not subject to any parliamentary procedure. The Committee is therefore, for the reasons outlined above, content with the addition of this additional consultation requirement.

- 97. The Committee finds the revised power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

