

The Scottish Land Court and the Lands Tribunal for Scotland

SCF response to a consultation on the future of the Land Court and the Lands Tribunal

1 Please indicate your views on the proposal to amalgamate the Scottish Land Court and the Lands Tribunal for Scotland.

In favour

Please give your reasons.

It makes sense to amalgamate the two in order to have one body that deals with land related litigation. The two bodies have many common functions and purposes and amalgamation could enhance the powers and scope of the body. A single body devoted to the matters currently dealt with by both would have more coherence and efficacy. An amalgamation must not dilute the powers of the SLC in any way. However, the consultation document doesn't make it clear what is driving the proposal so if this goes ahead we would like to see the rationale made clear please.

2 If there is a decision to merge the Scottish Land Court and the Lands Tribunal for Scotland, do you consider that the merged body should be a court or a tribunal?

Court

Please give your reasoning

The SLC should take in the functions of the LTS and must remain a court with full powers. As we say above, an amalgamation must not dilute the powers of the SLC in any way. The SLC has always been respected by our members and recognised as a fair arbiter. To change it to a tribunal would seem to diminish its status and powers. We would want it to continue to do site visits and convene in the townships.

3 If there is a decision to merge the Scottish Land Court and the Lands Tribunal for Scotland, do you consider that the merged body should take on more functions than those separately undertaken by the two bodies at present?

yes

If 'yes', please list the extra function(s) to be undertaken and your reasoning.

The merged body, the SLC, should take on environmental judgements as these are relevant to its remit and its reputation as a fair arbiter would be beneficial in such judgements. It would be appropriate also take on march dykes, runrig and division of commonties. Likewise the sheriff court's role in land related cases should come under the jurisdiction of the land court and land access (the right to take responsible access – there is not a 'right to roam'.) cases should also be transferred. We agree that the SLC would be a more appropriate forum for litigation on land reform. All things effecting crofting and land should reside with the SLC. It could make sense to merge the organisations and let it bed in before adding additional functions.

4 a. Please indicate your views on the proposal that the other legal member of the Lands Tribunal could be entitled to be appointed to hear a case from which the Chair and the Deputy Chair of the Land Court have had to recuse themselves.

agree

b. Please indicate your views on the proposal that the Deputy Chair of the Land Court could be entitled to be appointed to hear a case from which the President and the other legal member of the Lands Tribunal have had to recuse themselves.

agree

Please give your reasons.

There seems no reason to not do this in both cases.

5 Do you consider it necessary to continue to have a Gaelic speaker as one of the members of the Land Court?

No

Please give your reasons.

There seems no good reason to limit the pool of potential court members by insisting on a Gaelic speaker. If appellants want to present their case in Gaelic then the court may appoint a translator.

However we think that at least one court member should have a cultural link to the Highlands and Islands and that it would still be of practical benefit there being a Gaelic speaking official employed by the Court. The reasoning for this is that knowledge of place names and the cultural links is important.

6 Do you consider that the Lands Tribunal power to award expenses under section 103 of the Title Condition (Scotland) Act 2003 should be amended so that expenses are not as tied to the success of an application as they are at present?

Yes

Please give your reasons.

The merged body will be the SLC so we refer to expenses under the court, not tribunal. We think that costs awarded should be proportional to the case and that protected expenses orders are made available. Appellants will incur expenses getting the case to court which can deter frivolous applications.

7 Do you think that the present power of the Land Court to award expenses against unsuccessful appellants in rural payment appeals operates as a barrier to justice?

Yes

If your answer is "yes", please indicate:

why, and

what, if anything, do you think should be done about it (e.g. abolish the power or introduce a ceiling on awards of expenses in such cases).

Someone appealing against the Scottish Government is completely out-matched in regards to the representation the SG can afford – at public expense. It therefore deters appellants from coming forward to appeal against a SG decision due to the fear of incurring the SG expenses, which could be ruinous.

The introduction of a statutory cap on awards of expenses – so that appellants would know it advance their maximum exposure to expenses; and/or discretion of the court to limit awards in appropriate cases or to depart from the principle that expenses should follow success where that seemed to accord with the interests of justice.

8 Please provide any further comments on any matters relevant to this consultation.

All archived material of the SLC must remain accessible.

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