

POLICY NOTE

THE JUDICIARY AND COURTS (SCOTLAND) ACT 2008 (SCOTTISH LAND COURT) ORDER 2017

SSI 2017/xxx

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 2(6)(h), 43(2)(j), 71(2) and 74(1) of the Judiciary and Courts (Scotland) Act 2008. The instrument is subject to affirmative procedure.

Background

2. The Judiciary and Courts (Scotland) Act 2008 (“the 2008 Act”) provided for the establishment of the Scottish Court Service (a non-Ministerial Department) with the function of provision of administrative support to the Scottish courts, the judiciary of those courts and certain other specified persons. The Scottish Land Court was not transferred to the Scottish Court Service at that time. However, the then Cabinet Secretary for Justice said that the intention would be to transfer the Scottish Land Court to the Scottish Court Service at an appropriate point in time.

3. The Courts Reform (Scotland) Act 2014 (“the 2014 Act”) created a merged organisation, known as the Scottish Courts and Tribunals Service (SCTS), to provide administrative support for both courts and the Scottish Tribunals (as defined in the Tribunals (Scotland) Act 2014). From 1 April 2015, the responsibility for administering the Lands Tribunal for Scotland transferred to the SCTS together with the other tribunals for which Scottish Ministers previously had responsibility.

4. The Lord President now has leadership of all courts (other than the Scottish Land Court) and the Scottish Tribunals and administrative support is provided by the SCTS. The SCTS now also has responsibility for the remuneration of the Chairman and members of the Scottish Land Court (in terms of section 126 of the 2014 Act which was brought into force on 1 April 2016). It is therefore now the appropriate time to transfer the Scottish Land Court to the SCTS who will then have responsibility for the staff and services of the Scottish Land Court.

Policy

5. The key policy is that the Scottish Land Court will become a part of “the Scottish Courts”, within the meaning of section 2(6) of the 2008 Act. This will bring the Scottish Land Court within the responsibilities of the Lord President in terms of section 2 of the 2008 Act.

6. This will also have the consequence of giving SCTS the function of providing, or ensuring the provision of the property, services, officers and other staff required for the purposes of the Scottish Land Court and its judiciary (by virtue of section 61 of the 2008 Act).

7. The Chairman of the Scottish Land Court is already specified as a “judicial office holder” within the meaning of section 43(2) of the 2008 Act. The offices of member and Deputy Chairman of the Scottish Land Court will be added to section 43(2). This will bring the members and Deputy Chairman under the remit of the Lord President for the purposes of

training, welfare, guidance and discipline (up to the point of formal advice, a formal warning or a reprimand, but not removal via the fitness for judicial office tribunal mechanism since special provision is made in paragraph 11 of the schedule to the Scottish Land Court Act 1993).

8. Five members of staff of the Scottish Land Court are currently employed by the Scottish Government. It is intended that the staff will transfer to the SCTS with the exception of the Principal Clerk who will remain on secondment from the Government Legal Service for Scotland. There will be no change of physical location for the staff. The Land Court and its offices will remain where it is currently situated in George Street, Edinburgh. The SCTS has worked closely with the staff of the Scottish Land Court on human resources, information technology and finance related transitional matters. The PCS Union has been consulted throughout the transfer process.

9. Consequential amendments are proposed to be made to the schedule of the Scottish Land Court Act 1993. These consequential amendments are to paragraphs 7, 8 and 18 of that schedule.

Consultation

10. A written consultation was carried out by the Scottish Government on the basis of the proposals and draft Order. The consultation was targeted at those with an interest in the business of the Scottish Land Court, including solicitors firms involved in agricultural work, land agents and other farming and crofting contacts. Three responses were received, with none making any comment about the proposals

Impact Assessments

11. An Equality Impact Assessment has been carried out to consider any impacts in relation to the transfer of the Scottish Land Court to the SCTS. As this proposal has no or minimal environmental effects a pre-screening notification, as per the Environmental Assessment (Scotland) Act 2005, has been carried out and submitted to the Strategic Environmental Assessment Gateway.

Financial Effects

12. This Order imposes no new financial requirements on business, and so no Business and Regulatory Impact Assessment has been undertaken.

Scottish Government
Justice Directorate

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