

19 October 2020

Mr Michael Green  
Scottish Government  
[courtsreform@gov.scot](mailto:courtsreform@gov.scot)

Dear Mr Green

### **Response to the consultation on the future of the Land Court and the Lands Tribunal**

Ramblers Scotland welcomes the opportunity to respond to this consultation. Our response here is restricted to Question 3 only, in relation to our own interests. But we have also seen the response that has been submitted to you by the Environmental Rights Centre for Scotland (ERCS). We fully support the recommendations made by ERCS.

Ramblers Scotland is the representative body for walkers in Scotland, recognised by **sportscotland** as a governing body of sport. We help everyone, across Scotland, enjoy walking and protect the places we love to walk. We are a membership organisation with 54 local walking groups in Scotland.

We played a major role in the process leading up to the passing of the Land Reform (Scotland) Act 2003 and subsequently we were parties in two cases which were section 28 applications to the Sheriff court (Gloag v Perth & Kinross Council and the Ramblers' Association and Snowie v Stirling Council and the Ramblers' Association).

We would also like to record our disappointment that the Scottish Government did not inform us of this consultation, given our interest in matters relating to Scottish access legislation, and it was only by chance that we became aware of it.

#### **Q3. 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. If 'no', please provide your reasoning for this view.**

We agree with the suggestion in Chapter 4 of the consultation document that there could be a transfer of jurisdiction from the Sheriff court of cases under section 28 of the Land Reform (Scotland) Act 2003. We would also suggest that the government consider the inclusion of appeals under section 14 of the Act to be transferred to the new body. Notices served under section 14 of the Act require a landowner to remove any deterrent or obstruction to access, and appeals are made to the Sheriff. While section 28 cases are not appeals, they require a sheriff to determine the extent to which statutory access rights apply, whether they have been exercised responsibly or whether the land is being managed in a way which is responsible.

It is our understanding that there have been very few cases relating to Part 1 of the Land Reform Act 2003 since it was passed with fewer than ten cases being decided, most between 2006-2009 and then two in more recent years. Of these, seven related to section 14 and two to section 28. They took place in a range of sheriffdoms around the country and as a result there is

little opportunity for individual sheriffs to gain understanding of, or expertise in, this legislation. As noted in the consultation document this lack of regular experience in this sphere of legislation can lead to the risk of an approach which lacks consistency.

We believe that a dedicated Land Court which already has Parts 2 and 3 of the Land Reform (Scotland) Act 2003 within its scope along with other land reform legislation would be better placed to handle the full range of cases in this regard. This would enable expertise in all legislative matters relating to land, including human rights associated with public access to the outdoor environment, as well as the right to enjoy a healthy environment, to be more fully developed.

We would also point out that in our view it is the expense of land reform litigation that in practice currently limits the willingness of access authorities to risk court proceedings by serving s. 14 notices and makes the s. 28 remedy of little practical value to the access takers that we represent. Therefore, it could be strongly argued that Land Reform (Scotland) Act 2003 disputes are more suited to Lands Tribunal procedure which is generally less formal and less expensive than procedure before the Land Court or the sheriff court. From that point of view the transfer of the s.14 & 28 jurisdictions to an amalgamated Land Court/Lands Tribunal would be unfortunate unless an amalgamated court is able to adopt an informal summary procedure appropriate for such cases.

Finally we also recommend, if the above changes are implemented, that the SLC should be re-named as the Scottish Land and Environment Court.

We would be happy to discuss any of these points if that would be useful.

Yours sincerely

Helen Todd  
Campaigns & policy manager

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