

Draft Order laid before the Scottish Parliament under section 71(4) of the Judiciary and Courts (Scotland) Act 2008 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

**SCOTTISH COURTS AND TRIBUNALS SERVICE
SCOTTISH LAND COURT**

The Judiciary and Courts (Scotland) Act
2008 (Scottish Land Court) Order 2017

Made - - - - 2017
Coming into force - - 1st April 2017

The Scottish Ministers make the following Order 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⁽¹⁾ and all other powers enabling them to do so.

In accordance with sections 2(7) and 43(3) of that Act they have consulted the Lord President.

In accordance with section 71(4) of that Act a draft of this instrument has been laid before, and approved by resolution of, the Parliament.

Citation and commencement

1. This Order may be cited as the Judiciary and Courts (Scotland) Act 2008 (Scottish Land Court) Order 2017 and comes into force on 1st April 2017.

Specified court

2. The Scottish Land Court⁽²⁾ is specified for the purposes of section 2(6)(h) of the Judiciary and Courts (Scotland) Act 2008 (meaning of “the Scottish courts”).

(1) [2008 asp 6](#). There are amendments to section 43 not relevant to this Order. The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) The Scottish Land Court was established by section 3 of the Small Landholders (Scotland) Act 1911 ([c.49](#)), then re-established by section 1 and schedule 1 of the Scottish Land Court Act 1993 ([c.45](#)).

Specified judicial offices

3. The offices of member of the Scottish Land Court and Deputy Chairman of the Scottish Land Court are specified for the purposes of section 43(2)(j) of the Judiciary and Courts (Scotland) Act 2008 (meaning of “judicial office holder”).

Amendment of the Scottish Land Court Act 1993

- 4.—(1) Schedule 1 of the Scottish Land Court Act 1993(3) is amended as follows.
- (2) In paragraph 7, for “Secretary of State” substitute “SCTS”.
 - (3) Paragraph 8 is repealed.
 - (4) In paragraph 18—
 - (a) sub-paragraph (1) is repealed;
 - (b) in sub-paragraph (2), after head (b) insert—
 - “(c) the principal clerk of the Land Court”; and
 - (c) in sub-paragraph (5), for “Scottish Ministers” substitute “SCTS”.

Transfer of staff

5. The schedule has effect.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(3) [1993 c.45](#); paragraph 18 of schedule 1 was substituted by section 126(3) of the Courts Reform (Scotland) Act 2014 ([asp 18](#)).

SCHEDULE

Article 5

Transfer of staff

1. This schedule applies to persons who, on the coming into force of this Order, are members of the staff of the Scottish Ministers employed in the Scottish Land Court, other than the principal clerk of the Scottish Land Court.

2. On the coming into force of this Order, those members of staff transfer to, and become members of the staff of, the Scottish Courts and Tribunals Service (“the SCTS”).

3. The contract of employment of a person who becomes a member of the staff of the SCTS by virtue of this schedule—

- (a) is not terminated by the transfer; and
- (b) has effect from the date on which this Order comes into force as if originally made between the person and the SCTS.

4. Without prejudice to paragraph 3—

- (a) all the rights, powers, duties and liabilities of the Scottish Ministers under or in connection with the person’s contract of employment are transferred to the SCTS on the date on which this Order comes into force; and
- (b) anything done before that date by or in relation to the Scottish Land Court in respect of that contract of employment or that person is to be treated from that date as having been done by or in relation to the SCTS.

5. This schedule does not prejudice any right of any person to terminate that person’s contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of the person’s employer changes by virtue of this schedule.

6. A determination by the Scottish Ministers that any member of their staff is employed as mentioned in paragraph 1 is conclusive of that fact for the purposes of this schedule.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the Scottish Land Court as falling within the definition of “the Scottish courts” in section 2(6) of the Judiciary and Courts (Scotland) Act 2008 (“the 2008 Act”). It also specifies the offices of member and Deputy Chairman of the Scottish Land Court for the purposes of section 43(2) of that Act (meaning of “judicial office holder”).

By virtue of section 2(2) of the 2008 Act the Lord President of the Court of Session as Head of the Scottish Judiciary has responsibility, amongst other things, for securing the efficient disposal of business in “the Scottish courts” and for making arrangements for the welfare, training and guidance of “judicial office holders”. By virtue of section 61 of the 2008 Act, the Scottish Courts and Tribunals Service (“the SCTS”) has the function of providing, or ensuring the provision of, the property, services, officers and other staff required for the purposes of “the Scottish courts”.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Judiciary and Courts (Scotland) Act 2008 (Scottish Land Court) Order 2017 No. 88*

Article 2 specifies the Scottish Land Court as one of the Scottish Courts for the purposes of section 2(6)(h) of the 2008 Act.

Article 3 specifies the offices of member of the Scottish Land Court and Deputy Chairman of the Scottish Land Court as judicial offices within the meaning of section 43(2) of the 2008 Act. The holders of these offices thus become “judicial office holders” to which Part 2 of that Act applies.

Article 4 amends schedule 1 of the Scottish Land Court Act 1993 in consequence of article 2.

Article 5 gives effect to the schedule, which provides the staff of the Scottish Ministers employed in the Scottish Land Court to become members of the staff of the SCTS.