

**THE OFFICE OF
CHAIR OF SCOTTISH LAND COURT**

A NOTE ON THE ROLE AND RESPONSIBILITIES OF THE CHAIR OF SCOTTISH LAND COURT

Introduction

The Scottish Land Court is one of the Supreme Courts of Scotland, its Chair having the same rank and tenure as a judge of the Court of Session and its decisions the same standing as those of the Outer House.

Although its primary jurisdiction has to do with questions between landlords and tenants of agricultural land, including crofts in the north of Scotland, over the years since its creation by the Small Landholders (Scotland) Act 1911 its jurisdiction has been steadily widened to include appeals against decisions of the Crofting Commission and against penalties imposed by the Scottish Government on farmers and crofters under the agricultural subsidies regulations in force from time to time as well as environmental jurisdictions under the Nature Conservation (Scotland) Act 2004 and the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015. Its impending unification with the Lands Tribunal for Scotland (announced by the Scottish Government in September 2021) will dramatically widen its jurisdiction to include matters such as assessment of compensation for land compulsorily acquired, variation of title conditions, rectification of the Land Register, a role in the various “Right to Buy” provisions of the Land Reform (Scotland) Act 2003, the Community Empowerment (Scotland) Act 2015 and Land Reform (Scotland) Act 2016 and much more.

The Chair’s work is predominantly judicial in character but also includes responsibility for the resourcing and strategic management of the Court, a matter of some importance given the foresaid unification of the Court and the Lands Tribunal for Scotland. The Chair, who may be asked to sit as a Temporary Judge in the Court of Session from time to time, requires to operate at a high level of competence in civil law and procedure.

Qualifications and experience

To be eligible for appointment as Chair, a person must be:

- a) An advocate of ten years’ standing;
- b) A sheriff principal or sheriff who have held office as such for a continuous period of not less than ten years; or
- c) A solicitor who for a continuous period of not less than ten years have had rights of audience in the Court of Session

The person who is appointed Chair will have to demonstrate a degree of competence as a lawyer that marks them out from their peers. This competence needs to be demonstrated not only in the practical application of a branch or branches of the law to the highest standard, but also in a facility to work equally effectively, in any branch of the law that they may have to consider in the course of their judicial duties, including new or emerging areas of the law.

The Chair must now retire on their seventy fifth birthday

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Attendance at court

As has been said, the Chair's work is predominantly judicial in character and will involve sitting on cases across the range of the Court's present and future jurisdictions, not only in Edinburgh but elsewhere in Scotland as occasion demands, usually, but not always, sitting with agricultural or survey members of the Court or Tribunal.

Judicial Duties

The workload of the Chair is variable. Subject to the approval of the Lord President, the successful candidate will also become President of the Lands Tribunal for Scotland. The combined workload can be demanding. The post is supported by that of a part-time Deputy Chair and, for Tribunal duties, a legal member of QC status. There are two other members of the Court who are agricultural experts and two other members of the Tribunal who are surveyors.

Many aspects of the work are similar to those faced by judges in the Court of Session. However cases can involve issues of singular personal importance to the parties: for example decisions on whether or not a long standing tenancy of a farm can be brought to an end. Most of the legal issues turn on construction of statute but difficult issues of common law can arise.

The Chair may sit alone but usually will sit with one or more of the members who will be expected to advise on the practical aspects of evidence and the practical implications of legal issues which arise.

Hearings are sometimes carried out by Divisional Courts. This is a system under which individual cases are delegated to individual members who are agricultural experts, not lawyers, and who sit, either alone or with a colleague, with the support of an experienced clerk. There is an appeal from decisions of the Divisional Court to the Full Court, where the Chair sits with two members. Although heavily used historically, recent practice has made Divisional Court the exception rather than the rule; most cases are heard by either the Chair or Deputy Chair sitting with one or both of the agricultural members.

Whilst much of the work of the Chair involves the production of reasoned judgments and opinions, the post of Chair requires ability to conduct formal hearings in a variety of circumstances including informal venues. The Court is also fully conversant with the use of virtual hearings, on the Webex platform, for procedural hearings, legal debates and, though less frequently, simple proofs.

In comparison with other courts, the Land Court hears a comparatively high proportion of people representing themselves. They are usually well informed and well prepared. However, the ability to handle potentially highly charged proceedings in a firm but sensitive way is an important part of the conduct of hearings.

Many of the cases which come before the Land Court require site inspection by the Court if practical issues arise. It follows that all members of the Court, including the Chair require to be prepared to stay away from Edinburgh, sometimes for several days

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at a time to carry out site inspections of farms, crofts or extensive areas of common grazing or other disputed matters.

Site inspections must be conducted fairly and judicially. The public relations skills required for any hearing are of particular importance in informal settings to ensure that all present have a chance to hear and comment, if appropriate, on all relevant matters.

Where site inspection is likely to be needed it is the practice of the Court to try to sit in the locality of the subjects in dispute where possible. This may also be more convenient for parties and their witnesses. Venues for sittings out of Edinburgh depend upon availability of suitable premises. These may include Sheriff Courts, public halls, hotels, croft houses and the like.

Administrative duties

A particular feature of the Court is close co-operation between members and office staff in regulation of the procedural stages of cases. The nature and complexity of cases varies enormously and the Chair is expected to exercise a good deal of case management to find the most effective way of identifying and dealing with disputed issues, whether that be on the papers, by Webex or in-person.

Direct responsibility for office staff rests with the Principal Clerk but the Chair must be prepared to become involved in the practical details of office management and to work closely with all staff. The Chair is required to take responsibility for control of the library, publication of reports, use of IT equipment and similar essentially administrative matters.

Candidates should be aware that the office environment is more closely integrated than might be expected in most courts. Present practice is for members and staff to work together without much formality. Much informal discussion and exchange of information takes place.

Changes in court practice in recent years and the assumption by the judiciary of greater responsibility for case management and the administration of the court service have increasingly involved the Chair in administrative duties.

They will be expected to play a part in the Judicial Council for Scotland and may be asked to sit on other committees or engage with external bodies by the Lord President. The Chair may also have to get involved in dealing with queries from, for example, the Scottish Law Commission on law reform issues and government bodies such as the Scottish Government Rural Inspections and Payments Directorate about appeal procedures. The Chair is also expected to be prepared to engage with other bodies such as the Scottish Agricultural Arbiters and Valuers Association and the Agricultural Law Association. Any involvement by the Court must be circumspect and avoid comment on issues of policy but the Chair has a valuable role to play in advising on the procedural implications of proposals and the role or potential role of the Court.

Judicial Training and Support

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Induction training will be provided by the Judicial Institute and bespoke training in aspects of substantive law will also be arranged either in-house or by arrangement with the Judicial Institute.

Outside interests

The successful applicant will be expected to cease political activity, to avoid public comment on issues of policy and to eschew personal interests likely to give rise to conflicts of interest.