

# **CROFTING AND SCOTTISH LAND COURT BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Crofting and Scottish Land Court Bill, introduced in the Scottish Parliament on 2 June 2025.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 71–FM);
  - a Policy Memorandum (SP Bill 71–PM);
  - a Delegated Powers Memorandum (SP Bill 71–DPM);
  - a Report by the Auditor General for Scotland (SP Bill 71–AGR);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 71–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

5. The Bill deals with two distinct subjects, namely: it makes a number of reforms to the law of crofting, and it provides for the amalgamation of the Scottish Land Court and the Lands Tribunal for Scotland and updates the legislation and jurisdiction of the Scottish Land Court in the process.

## **Interpretation**

6. The Bill's freestanding text (that is, its sections and schedules) falls to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). In the main, that relates to Parts 2 and 3 of the Bill and schedule 1.

7. Text that the Bill inserts into another enactment falls to be interpreted in accordance with the interpretation legislation that applies to that enactment.

8. The interpretation legislation applicable to Acts of the Scottish Parliament the Bills for which received Royal Assent on or after 4 June 2010 (such as the Crofting Reform (Scotland) Act 2010, which received Royal Assent on 1<sup>st</sup> July 2010) is ILRA.

9. The interpretation legislation applicable to Acts of the UK Parliament, such as the Crofters (Scotland) Act 1993 and the Scottish Land Court Act 1993, is the Interpretation Act 1978.

10. The interpretation legislation applicable to Acts of the Scottish Parliament, the Bills for which received Royal Assent before 4 June 2010, is the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999.

## **Crown application**

11. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, the free-standing provision of this Bill (i.e. Parts 2 and 3 and schedule 1) apply to the Crown in the same way as it applies to everyone else.

12. However, where the Bill amends an existing enactment, it makes no change to the application of the enactment to the Crown. As Part 1 of the Bill makes extensive modifications to the 1993 Act, the manner in which those provisions apply to the Crown will be governed by section 62 of that Act.

## **PART 1 – CROFTING**

13. Key terminology used in this Part:

- **1993 Act** is the Crofters (Scotland) Act 1993
- **2010 Act** is the Crofting Reform (Scotland) Act 2010
- **the convener** refers to the convener of the Commission (who is renamed the Chair by the Bill)
- **the Commission** is the Crofting Commission.

14. The main legislation on crofting is the 1993 Act. Most of the changes made in Part 1 of the Bill are in the form of amendments to that Act.

15. The 2010 Act introduced the Crofting Register, and the Bill also makes some adjustments to that Act.

## **Chapter 1 – Crofters and crofters**

### ***Duties***

#### *Section 1 – enabling environmental uses of crofts*

16. Section 5B of the 1993 Act imposes a duty on tenant crofters not to misuse or neglect the crofts they tenant. Subsection (2) of that section sets out the circumstances in which a crofter “misuses” a croft. These are that the tenant crofter wilfully and knowingly uses the croft other than to cultivate it or put it to an approved purposeful use, fails to cultivate it; or fails to put it to any such purposeful use. Subsection (3) sets out the statutory definition of “neglect” that the Commission must use to determine whether a crofter is neglecting a croft and identifies the regulations containing the relevant standards. Subsection (4) of that section allows tenant crofters to act in a way that would otherwise constitute misuse or neglect without that being treated as a breach of the duty, provided such actions are planned and managed and are taken to conserve the natural beauty, or the flora and fauna, of the locality.

17. Section 5C imposes positive duties on tenant crofters to cultivate the croft or use it for another purposeful use and keep it in a fit state for cultivation, except insofar as any permitted purposeful use precludes that. Subsection (2) of that section defines the duties of the crofter as cultivating the croft or putting it to another purposeful use so that every part of the croft which is capable of being so used meets these criteria, and keeping the croft in a fit state for cultivation. Subsection (4) requires the consent of the landlord and the Commission before putting the croft or part of it to a purposeful use. Subsection (8) of that section provides a definition of “purposeful use” for the purposes of the 1993 Act, which means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner or the use of adjacent land.

18. Section 19C provides for broadly equivalent duties as respects owner-occupier crofters. Subsection (2) of that section provides that an owner-occupier crofter must not misuse or neglect the croft and must cultivate the croft or put it to another purposeful use so that every part of the croft which is capable of being so used meets these criteria, and keeping the croft in a fit state for cultivation. Subsection (3) of that section sets out the circumstances in which a crofter “misuses” a croft. These are that the owner-occupier crofter wilfully and knowingly uses the croft other than to cultivate it or put it to an approved purposeful use, fails to cultivate it; or fails to put it to any such purposeful use. Subsection (4) sets out the statutory definition of “neglect” that the Commission must use to determine whether a crofter is neglecting a croft and identifies the

regulations containing the relevant standards. Subsection (6) of that section allows owner-occupier crofters to act in a way that would otherwise constitute misuse or neglect without that being treated as a breach of the duty, provided such actions are planned and managed and are taken to conserve the natural beauty, or the flora and fauna, of the locality.

19. This section of the Bill modifies sections 5B, 5C and 19C of the 1993 Act to enable crofters and owner-occupier crofters to put their crofts to an “environmental use”. It does this by modifying provision in section 5B(2), 5C(2) and 19C(1).

20. A definition of “environmental use” is provided for by new section 5C(8A). The definition contains a non-exhaustive list of examples including peatland restoration, habitat creation and restoration and water management.

21. Further, there is also an example about “preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment”. This last example is intended to replace the existing duties in section 5B(4) and 19C(6) about allowing crofters and owner-occupier crofters to act in a way which would otherwise constitute neglect. Section 5B(4) and 19C(6) are therefore repealed by this section, given those uses are now covered as a subset of environmental purpose.

22. A power is included to allow the Scottish Ministers to modify the list of examples by regulations (subject to the affirmative procedure).

23. The critical differences between the framing of “another purposeful use” and “environmental use” is that, as it relates to crofters, a crofter will not need the consent of the Commission or Landlord to put their croft to an environmental use. Further, for both crofters and owner-occupiers, there is no condition that the environmental use is not to adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner. However, the environmental use must still be done in a planned and managed manner and must not adversely affect any adjacent land.

24. The statutory definitions of “neglect” contained in sections 5B(3) and 19C(4) are substituted to refer to extant regulations.

## *Section 2 – removal of timescales for deciding applications*

25. This section makes some minor changes to section 5C (crofters: duty to cultivate and maintain) and section 21B (Commission consent for absence from croft) of the Crofters (Scotland) Act 1993.

26. Section 5C(7) of the 1993 Act provides that the Commission has 28 days to decide whether to give its consent to an application by a crofter to put their croft to another purposeful use, in cases where this has not already been approved by the landlord. Section 21B(5) of the 1993 Act

provides the Commission 28 days to decide whether to give its consent to an application by a crofter to be absent from their croft for a period of time. This section removes the time limits for deciding those applications.

*Section 3 – reporting on breaches of duties*

27. Section 3 modifies sections 26A and 49A of the 1993 Act in relation to reporting of breaches of duties by grazings committees and investigation of those reports. The modifications to section 26A also add two new categories of person to the list of those who can report breaches of duty to the Commission.

28. Under section 26A(1)(a), the Commission is required to investigate when a report made by a grazings committee under section 49A covers information mentioned in section 26A(2). The information referred to in section 26A(2) is that certain duties are not being complied with. These duties are:

- being ordinarily resident on, or within 32 kilometres of their croft (section 5AA for crofters and section 19C(2)(a) for owner-occupier crofters),
- to not misuse or neglect the croft (section 5B for crofters and section 19C(2)(b) for owner-occupier crofters),
- to cultivate and maintain the croft (section 5C for crofters and section 19C(2)(c) for owner-occupier crofters).

29. Section 26A(1) also requires, under paragraph (b), the Commission to investigate when they receive information in writing about a breach of one of those duties from a person mentioned in subsection (3). These people are a grazings committee, a grazings constable, an assessor appointed under paragraph 16 of schedule 1, and a member of the crofting community within which the croft to which the matter mentioned in subsection (2) relates is situated.

30. Section 3(2) of the Bill makes a number of changes to this duty. First, section 3(2)(a) replaces section 26A(1) to remove the reference to a report from a grazings committee under section 49A(1). The section therefore applies only where the Commission receives information in writing from a person mentioned in subsection (3) relating to breach of duty. However, information about a breach of a duty from a grazings committee is still captured as a grazings committee is included in the list of persons in subsection (3). Second, section 3(2)(b)(i) and (c) update references to the removed section 26A(1)(b) to simply refer to section 26A(1). Third, section 3(2)(b)(ii) and (iii) amend the list of relevant people in section 26A(3) to add two new categories of person to the list: subtenants or short leaseholders of a croft within the township in which the croft is located and landlords or other owners of any part of the croft.

31. Under section 49A, grazings committees are required to report to the Commission on the condition of the common grazings, the condition of a croft with a share in the grazing, and the

condition of an owner-occupied croft with a share in the grazing, and any other matter the Commission may require. Section 3(3) amends section 49A(1) to limit what a grazings committee report must include. It does so by repealing paragraphs (b) and (c), which relate to the condition of every croft of a crofter sharing in the grazing and the condition of every owner-occupied croft of an owner-occupier crofter sharing in the grazing respectively.

#### *Section 4 – enforcement of duties*

32. Sections 26A to 26H, 26J and 26K of the 1993 Act set out the arrangements for the enforcement of duties placed on tenant and owner-occupier crofters.

33. Section 26C requires the Commission to give written notice to those they consider are not fulfilling their duties. Subsection (2) requires the written notice to explain why the Commission considers duties are not being complied with and to give notification that a person subject to the notice may make representations to the Commission within a “representation period” of 28 days of issue of the written notice. Section 26D sets out the steps that the Commission must take if they decide, under section 26B(5), that a duty is not being complied with, prior to proceeding with the tenancy termination and letting procedures introduced by sections 26H and 26J. The Commission must give written notice to the person in breach providing an opportunity for them to give an undertaking to remedy the breach and comply with the duty that has been breached within a period considered by the Commission to be reasonable.

34. This section of the Bill substitutes four new sections for sections 26C and 26D (26C, 26D, 26DA and 26DB) to streamline the process for the giving of notices and undertakings.

35. New section 26C provides that a notice must still inform the person the Commission consider that the duty is not being complied with, but it must also now give the person the opportunity, within 28 days of the notice being given, to make representations to the Commission or give an undertaking. In other words, the person is now able to give an undertaking directly in response to a notice given under section 26C, removing the 2 stage process in extant sections 26C and 26D. The notice must explain the matters mentioned in subsections (2)(a) to (d) and, in the case of a crofter, be copied to the landlord of the croft. Section 26C also provides that where a notice is given to a person under new section 26C(1), the Commission may decline to do anything in relation to an application made under this Act in which the relevant person has an interest until the Commission are satisfied the duty is being complied with or any of the circumstances mentioned in section 26E(c), (d)(i), (e)(i) or (f)(i) apply. Section 26K is amended so that a relevant person may appeal to the Land Court against a decision of the Commission under section 26C to decline to do anything in relation to an application. Subsection (4) of new section 26C explains the effect of subsection (3) on any separate provisions which would require the Commission to do something, within a specified time period, in relation to any application it has paused.

36. New section 26D sets out the procedure required if representations are made by the person within 28 days. In deciding whether the duty is complied with, the Commission is to consider all representations made within the representation period, although they may also consider representations made later. If the Commission decide that the duty is not being complied with, they must, before taking any action under section 26H or 26J, give the relevant person a further notice giving the person an opportunity to give an undertaking to comply with the duty before the expiry of such period as the Commission consider reasonable. The notice must explain the matters mentioned in subsection (4)(a) and, in the case of a crofter, be copied to the landlord of the croft.

37. New section 26DA sets out the procedure needed if an undertaking is given to the Commission following a notice under section 26C or 26D. The Commission may accept the undertaking (with or without imposing conditions) or reject the undertaking. Where an undertaking is accepted by the Commission, but things change, they may accept a modified undertaking (with or without conditions).

38. New section 26DB sets out the procedure if no representations or undertaking is given (following a notice given under section 26C or 26D). This section also covers instances where an undertaking is given under those sections, but rejected by the Commission. In deciding whether the duty is being complied with, the Commission may infer that the failure to make representations or give an undertaking constitutes acceptance by the person that the duty is not being complied with, although they may also consider representations made later in coming to any decision.

39. This section also makes some minor and consequential changes to sections 26B, 26E, 26J and 26K in response to the 4 new sections 26C, 26D, 26DA and 26DB.

#### *Section 5 – enforcement action against subtenants and tenants of short leases*

40. Crofters are able to grant a sublease in accordance with section 27(2) of the 1993 Act. Similarly, owner-occupier crofters may let their croft under section 29A(4). The Commission must give their consent to any such proposed sublease or lease and, in doing so, may impose conditions.

41. This section inserts a new section 29BA into the 1993 Act which applies to these subleases or leases granted in accordance with section 27(2) and 29A(4). If the Commission is satisfied that a condition imposed by them is breached, a condition of let (other than any relating to rent) is breached, or the subtenant or tenant is acting in a way which doesn't accord with the crofter's duties in sections 5AA, 5B, 5C or (as the case may be) owner-occupier crofter's duties in section 19C, the Commission may make an order. The order may vary or revoke any condition imposed by the Commission, impose a new condition or withdraw the Commission's consent to the sublease or lease and terminate it.

*Section 6 – power to decline to act until information provided*

42. This section relates to information required from a person by the Commission for the execution of their functions, including information for the Register of Crofts and the Crofting Census. It also deals with the consequences of failing to provide that information.

43. Section 40(1) of the 1993 Act allows the Commission to issue a notice requiring an owner or occupier of a croft to provide information about the extent, the rent and the tenure of the holding and other matters relating to the ownership or the occupation of the holding. Section 6(2) of the Bill replaces section 40(3) of the 1993 Act to allow the Commission to decline to do anything in relation to an application the person has made or has an interest in until the Commission are satisfied either that the requirement has been complied with or that it is not practicable to comply with the requirement. It also inserts new subsection (4A) which applies in circumstances where the Commission has declined to do anything in relation to an application by virtue of subsection (3). In that case, section 52A applies as if that decision to decline to do anything with the application were a decision of the Commission on an application to them under the Act.

*Section 7 – statutory conditions: entitlement to fixed equipment*

44. Section 7 amends the statutory conditions set out in schedule 2 of the 1993 Act to make it clear that the landlord is not under an obligation to provide any fixed equipment. In doing so, however, it confirms that the tenant is not restricted to providing fixed equipment for any particular purpose (i.e. it can be more than just cultivation). It also repeals paragraph 7 of the statutory conditions, as this duplicates provisions elsewhere in the 1993 Act.

***Assignations***

*Section 8 – assignations to family members*

45. Section 8 amends section 8 of the 1993 Act to provide a simplified process for obtaining the Commission's consent to an assignation of a croft if certain conditions (described below, but primarily that the assignation is to a family member) are met. If the conditions are met, the Commission is required to consent to the application and notify the applicant within 21 days of coming to that decision (see new subsection (2A)).

46. A crofter seeking an assignation still has to apply for consent and pay any relevant fee (as per section 58A(2) of the 1993 Act). And the existing additional requirements for content of the application in section 8(1A) of the 1993 Act also still apply. Similarly, the requirements of section 8 that relate to registration are still relevant and must be satisfied for consent to be granted. But the obligations around giving public notice, considering objections and the possibility of granting consent subject to conditions are all disapplied (see new subsection (2A)(b)).

47. The new subsection (2B) contains the conditions that need to be satisfied. They are:



- the proposed assignee must be a member of the crofter's family. Section 61(2) of the 1993 Act sets out who are considered family members for the purpose of the Act.
- the proposed assignee must be ordinarily resident on or within 32 kilometres of the croft (or will be at the point of assignation).
- the proposed assignee must not be the tenant or owner-occupier of three or more crofts (whether alone or with others).
- the applicant must have notified the landlord of the proposed assignation and given the landlord at least 28 days to consent or object to the assignation. A failure to respond is considered as not objecting to the application.

48. The onus is on the crofter making the application to provide sufficient material for the Commission to be satisfied on the conditions. The form of that evidence will be up to the crofter, but the Commission can provide guidance as to what it needs. The power of the Commission to ask for more information also remains (see section 8(1A)(b)).

49. Finally, the Bill does not change section 8(5) of the 1993 Act. An assignation without consent, even to a family member, will be null and void and may lead to the croft being declared vacant.

### ***Owner-occupier crofters***

#### *Section 9 – meaning of “owner-occupier crofter” etc.*

50. Section 9 makes a number of changes in relation to the definition of “owner-occupier crofter”.

51. Subsections (2)(a)(ii) and subsection (3), which introduces a new section 19BA, create a new means by which a person may become an owner-occupier crofter. This involves a person who is the owner of a registered croft that is vacant, applying to the Commission for a determination that the person is an owner occupier-crofter. The application is to follow broadly the same process as other Commission applications under section 58A of the 1993 Act, but without the same public notification and consultation requirements.

52. Subsection (2)(d) amends section 19B to add a new subsection (5A) to clarify that, for the purposes of this section, an owner includes a person who has not completed title by registering ownership of the land upon which the croft sits in the Land Register (an ‘uninfest proprietor’). This mostly arises in the context of a person inheriting a croft where no formal steps are taken to transfer the title into the heir’s name.

53. Subsection (2)(e) adds a new power for the Scottish Ministers to make regulations about when the first condition of the test to be an owner-occupier crofter (in section 19B(2)) is satisfied. This allows for certain situations to be specified as meeting the condition.

*Section 10 – prohibition on transfers of owner-occupied crofts to person who are not individuals*

54. This section will restrict the ownership of owner-occupied crofts to natural persons (i.e. actual human beings). It achieves this by inserting a new section 19BA which prohibits any transfers to non-natural persons (such as companies or partnerships) from the date that the section comes into force. Any attempt to transfer the title of the croft to anyone other than an individual after that date will be ineffective.

***Restrictions on assignation and acquisition after Commission let***

*Section 11 – Ten-year restriction on assignation and purchase following Commission let*

55. Where crofters are in breach of their duties, the Commission has powers under sections 26A-26K of the 1993 Act to take enforcement action. In most cases, this leads to a voluntary resolution by the crofter in breach, such as assignation, sublet, or the crofter making arrangements to fulfil the duties. However, in a small number of cases each year, the action leads to termination of a tenancy under section 26H(1) or the Commission selecting a tenant for a previously-owner-occupied croft under section 26J(7) and (8). In the former case, the termination of the previous tenancy will commonly be followed by letting it to a new crofter under section 23, either by the landlord, or by the Commission selecting the new tenant under section 23(5B) and (5C).

56. The Commission also sometimes secures the right to let a vacant croft under section 23(5C) in other circumstances, for example where there has been a failed succession.

57. When the Commission selects a new tenant crofter under section 26J(8) or section 23(5C), its customary policy is to select the applicant able to make the greatest contribution to the crofting community. The Commission does not levy a charge, and the new crofter is awarded the tenancy without paying a price for it.

58. Section 11 of the Bill amends sections 23 and 26J of the 1993 Act to provide that where the Commission has let a croft to a crofter under section 23(5C) then, during the next 10 years from the date of the let, the Commission cannot consent to the assignation of the tenancy of the croft and the Land Court cannot make an order authorising the acquisition of the croft land by the crofter. An application to either the Commission for assignation, or the Land Court for authorisation, may be made during that period, but it cannot take effect until after the 10 year period has elapsed.

59. The amendments to section 26J impose the same restrictions in respect of formerly owner-occupied crofts which have been let by the Commission.

## ***Decrofting***

### *Section 12 – decrofting direction: rationalisation of routes and requirements*

60. Case law has interpreted subsections 25(1)(a) and 25(2) of the 1993 Act as providing two separate routes to decrofting, with section 25(1)(a) covering those applications which are made for some reasonable purpose, and section 25(2) allowing for applications where no purpose is stated.

61. This section changes that by repealing section 25(2) (and removing the reference in subsection (1)(a) of that section) so that there is no longer a possibility of a decrofting direction under section 25(2).

62. There has also been judicial comment that the empowering provisions of section 24(3) are not expressly tied to section 25. Section 25 makes detailed provision as to when decrofting should be allowed and what matters have to be taken into account, but it has been considered unclear whether this is intended as an exhaustive set of circumstances or not. In other words, section 25(1) could be read as the circumstances in which the Commission *must* give a direction, whereas section 24(3) could be read as providing the Commission with a discretionary power, independently of section 25(1), where they *may* also give a direction.

63. This section modifies sections 24(3) and 25(1) of the 1993 Act, connecting those provisions together, in order to clarify that the only route to decrofting is under section 24(3) if a condition in section 25(1) is met. It follows that there is no separate general discretionary power of the Commission that is independent to the ancillary aspects in section 25(1).

64. Section 25(1)(c) of the 1993 Act makes special arrangements for decrofting the site of a house would also apply to a croft which had been feud in accordance with the provisions of sections 17 or 18 of the 1955 Act (these were feus of house sites with existing houses to persons who had given up their croft for re-letting. Because there was no provision for decrofting these sites in the 1955 Act they have never been decrofted and thus are still in crofting tenure although no longer associated with other croft land). Section 24(3B) requires an unregistered croft to be registered before it can be decrofted. This is unnecessary in relation to crofts feud in accordance with the provisions of sections 17 or 18 of the 1955 Act as the right to decroft is automatic and there is no purpose in requiring it to be registered. Subsection (5) removes that requirement.

### *Section 13 – Commission decision-making on decrofting applications*

65. Subsections (2) and (3) of this section amend sections 24C and 25 of the 1993 Act to effect a number of changes. These sections deal with decrofting and the amendments will allow the Commission to consider additional factors when determining applications to decroft by both crofters and owner-occupier crofters.

66. Section 24A of the 1993 Act enables owner-occupier crofters to apply to the Commission for a decrofting direction. Section 25 of the 1993 Act makes further provision about applications for decrofting directions under the 1993 Act. Section 24C provides that section 25 applies in relation to applications by owner-occupier crofters under section 24A and decisions by the Commission under section 24B, but modifies how section 25 works in such cases.

67. Section 24C(2) modifies section 25(1)(b) (which provides for decrofting of the site of the dwelling-house on or pertaining to the croft) so that it applies only where an owner-occupier crofter is applying to decroft the site of a dwelling-house on the croft and has not already obtained a decrofting direction in relation to another such site on the owner-occupied croft. Where such a decrofting direction has already been given, a subsequent application to decroft the site of a dwelling-house on the croft will be dealt with under section 25(1)(a).

68. Subsection (2) of section 13 of the Bill amends section 24C(2). The changes mean that the Commission may only give a direction under section 24A(1)(b) where they have not previously given a direction under section 24(3) to the applicant in relation to such a site on or pertaining to that croft, which could refer to a house site decrofting on the same croft but before it was an owner-occupier croft. Where such a decrofting direction has already been given, a subsequent application to decroft the site of a dwelling-house on the croft will be dealt with under section 25(1)(a).

69. Section 25(1A) details the matters which the Commission may take into account in determining a decrofting application under section 24(3) and, in particular, in relation to satisfying themselves, under section 25(1)(a) of the 1993 Act, that the proposed reasonable purpose for decrofting relates to some local, community or public interest. Subsection (1A)(a) allows the Commission to take into account the effect the proposed purpose for decrofting will have on the issues detailed in subsection (1B). This section adds any plan of the Commission approved and published under section 2C of the 1993 Act to the list of matters set out in subsection (1B).

70. Subsection (3) also inserts a new section 25(1D) providing that the Commission may take into account whether a direction under section 24(3) has already been given in relation to land which previously formed part of the croft (or was deemed to form part of the croft by virtue of section 3(4) or (5)), in determining whether they are satisfied in respect of any matter mentioned in subsections (1)(a) and (b) of section 25.

71. The new subsections (6A) to (6C) of section 25 (inserted by section 13(3)(c) of the Bill) introduce a right to object to a decrofting application by those who already have a right to appeal (i.e. members of the crofting community in relation to applications under section 24(3) and the owner of the land in relation to applications under section 25(4)). Objections must be made within 28 days and have to meet the same requirements as objections under the approval and consent process contained in section 58A of the 1993 Act. The Commission must have regard to objections when considering their decision.

***Boundaries: adjustment and remapping***

*Section 14 – Commission’s powers to adjust boundaries*

72. This section of the Bill inserts 2 new sections into the 1993 Act: section 39A (Commission’s power to adjust boundaries) and section 39B (Commission’s power to bring land into, or move land outwith, crofting tenure).

73. Section 39A applies where 2 or more crofters or owner-occupier crofters of registered crofts come together to agree that the boundaries of their respective croft should be adjusted.

74. The crofters or owner-occupier crofters may apply jointly to the Commission for a direction that the boundaries be adjusted (a “boundaries adjustment”). An application must include a plan based on the ordnance map (or such other map as the Commission considers appropriate) identifying the requested boundaries. A map or description of the existing boundaries should be available in the registration schedule of the Crofting Register.

75. The Commission may make a direction if they are satisfied that, in the case of an application involving a crofter, each crofter has obtained the consent of the landlord of the croft, that the period mentioned in section 12(5) of the 2010 Act (the period to challenge a first registration) in relation to each croft has expired, and that the boundaries adjustment does not affect any land deemed to form part of the croft by virtue of section 3(4) or (5).

76. A direction under this section may not alter the total area of the land comprising the crofts affected by adjustment. That means Croft A may become slightly smaller, and Croft B slightly larger (or vice versa) as a result of the boundaries adjustment but the total area of Croft A and Croft B combined must remain the same.

77. The application is to follow broadly the same process as other Commission applications under section 58A of the 1993 Act, but without the same public notification or consultation requirements.

78. Where the Commission makes a direction, the direction expires at the period of 3 months beginning with the date on which the direction is made unless an application for registration of the boundaries adjustment is submitted by virtue of section 5 of the 2010 Act, and the boundaries adjustment takes effect on the date of registration. The persons responsible for submitting the application to the Keeper are the crofters, or owner-occupier crofters, who applied for that direction.

79. Section 39B applies when a crofter or owner-occupier crofter of a registered croft considers that the description of the croft in the registration schedule does not correspond with the occupied extent of the croft, or the boundary is otherwise inaccurate or undesirable in some respect and land needs to be added to or removed (or both added and removed) from the extent of the croft. The

crofter or owner-occupier crofter may apply to the Commission for a direction that the boundary be remapped (“a boundary remapping”). A crofter or owner-occupier crofter may apply jointly with one or more other crofters or owner-occupiers. An application must include a plan based on the ordnance map (or such other map as the Commission considers appropriate) identifying the requested boundary. The existing boundary will be available in the registration schedule of the Crofting Register.

80. The Commission may make a direction if they are satisfied that the description of the croft in the registration schedule does not correspond with the occupied extent of the croft or the boundary is otherwise inaccurate or undesirable in some respect, that each crofter involved in the application has obtained the consent of the persons mentioned in subsection (6)(a) and (b) of that section, and each owner-occupier crofter involved the application has obtained the consent of the persons mentioned in subsection (6)(b), and that the boundaries adjustment does not affect any land deemed to form part of the croft by virtue of section 3(4) or (5). The application is to follow broadly the same process as other Commission applications under section 58A of the 1993 Act, including the public notification or consultation requirements (because under this section, land can be taken into or out of crofting tenure).

81. Where the Commission makes a direction, the direction expires at the period of 3 months beginning with the date on which the direction is made unless an application for registration of the boundary remapping is submitted by virtue of section 5 of the 2010 Act, and the boundary remapping takes effect on the date of registration. The person(s) responsible for submitting the application to the Keeper are the crofter(s), or owner-occupier crofter(s), who applied for that direction.

### ***Common grazings***

#### *Section 15 – common grazings: unattached shares etc.*

82. Section 15 of the Bill makes a number of changes in respect of the situation where a share in the common grazings is ‘severed’ or otherwise becomes ‘unattached’ from a croft.

83. This typically happens where a tenanted croft is acquired by the crofter, but the share in the common grazings which pertains to the croft is not<sup>1</sup>. This usually means that the share is deemed to be a croft in its own right (see section 5(3) of the 1993 Act) and is tenanted by the former crofter (now owner-occupier crofter) who acquired the croft land. Subsequent transfers mean that the share may be held by someone who is not otherwise a crofter. Section 47(10) of the 1993 Act

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<sup>1</sup> Unless the share has been apportioned to the croft, it is not possible for the crofter to buy the share as part of the croft.

confirms that the provisions of the 1993 Act relating to common grazings (such as section 52) apply to persons who are not crofters in the same way as they apply to crofters.

84. The amendment to section 12 of the 1993 Act aims to make severance a less common occurrence. It inserts a new subsection (2A) which provides for the common grazing share to be included in the acquisition of a croft as a pertinent<sup>2</sup> of the croft, unless the landlord and the crofter agree otherwise.

85. The amendment to section 52 of the 1993 Act provides the Commission with an additional option when a determination is made under that section that a person's share in the common grazings is terminated. The Bill enables the Commission to treat the share as vacant and follow the procedure in the new inserted section 52ZA for the reallocation and reletting of the share.

86. New section 52ZA sets out a procedure for dealing with unattached grazing shares. Subsection (1) is applicatory and defines what is an unattached grazing share for the purposes of the section. This is done by reference to section 3(5) of the 1993 Act and sets out that the provision is available when the share is vacant (i.e. not currently tenanted or attached to an owner-occupier croft as part of an acquisition under section 12).

87. It is worth noting that this procedure is an alternative to the Commission looking to let the share as a vacant croft by way of section 23 (which is an option since the unattached share is a deemed croft by virtue of section 5(3)). Subsection (10) makes it clear that the new procedure does not displace that existing power.

88. The process for reallocating and reletting is similar to that which exists for section 23. The Commission must first give notice to the landlord requiring the landlord to submit up to 3 proposals for reallocation and reletting within a 2-month period. The Commission may then approve or reject those proposals. If the landlord fails to make proposals within the time period, or the proposals made are all rejected, the Commission is to invite applications by means of public notification and determine to whom the share is allocated and let (if anyone).

89. Before making a decision on approving a proposal from the landlord or a determination on allocation and reletting, the Commission must consult the grazings committee that is responsible for the relevant common grazings, if there is one.

90. Once the share has been allocated and relet, the Commission are required to ensure that the Register of Crofts and Crofting Register are appropriately updated with the appropriate details.

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<sup>2</sup> A pertinent is a right which runs with the land. It is understood that some conveyances of croft land have described it as an accessory.

Exactly what this will look like will depend on whether it is, for example, a new tenant or someone with an existing share in the common grazings.

91. Subsection (11) confirms that the reallocation of an unattached grazing share may be to more than one person and might be to a crofter or another person who already has a share in the common grazings, or someone new. It might also be a combination. This gives flexibility to the Commission to consider what proposals are most suited to the particular circumstances (in consultation with the relevant grazings committee).

#### *Section 16 – grazings committees meetings*

92. Section 47(1) of the 1993 Act provides that crofters who share in a common grazings may from time to time, at a public meeting of which public notification has been given, appoint a grazings committee. Subsection (4) of that section sets out that the term of office of the members of the grazings committee appointed under section 47 is 3 years and at the expiry of that period a new committee is to be appointed.

93. This section changes that by amending section 47(1) so that crofters must also notify the Commission of any public meeting. Further, section 47(1) is modified to provide that a public meeting to appoint a new grazings committee must be held no earlier than 3 months before the expiry of the period of term of office of the members of the grazings committee.

94. In addition to the meetings mentioned above to appoint a grazings committee under section 47, sections 48(7) and 50B include provision about common grazings meetings. Section 49(1) and (2)(g) also requires a grazings committee to make and submit to the Commission common grazings regulations which include provision about the summoning of meetings of the grazings committee and the procedure and conduct of business at such meetings.

95. This section inserts a new section 50C into the 1993 Act to make it clear that such meetings may be held by electronic means without requiring physical attendance at a particular place by participants (e.g. by conference call). It also sets out that common grazings regulations under section 49(2)(g) may make provision accordingly.

#### *Section 17 – Appointment, etc., of grazings committee or grazings constable: appeal to Land Court*

96. Section 47(8) of the 1993 Act allows the Crofting Commission to remove from office any or all of the members of a grazings committee, or the grazings clerk of a committee if, following an inquiry, they are satisfied that they are not properly carrying out their duties. Currently, the only recourse open to anyone affected by the decision is to proceed with an appeal to the Court of Session.

97. This section changes that by inserting a new section 47A into the 1993 Act which would allow a relevant person (meaning a member or clerk, or certain former members or clerks, of the



committee) to make an appeal to the Land Court. Subsection (1) sets out the decisions which may be appealed. These are: the decision to remove either (or both) any or all members of the committee or the clerk, or to appoint another person in their place. Subsection (2) provides that an appeal must be made within 42 days of the decision. Subsection (3) defines the grounds on which an appeal may be made. Subsection (4) sets out the actions the Land Court may take in respect of an appeal and subsection (5) requires the Commission to give effect to the decision of the Land Court on an appeal under this section.

*Section 18 – use of common grazings for forestry or environmental purposes*

98. This section introduces a number of changes in relation common grazings provisions in the 1993 Act to enable common grazings to also be used for environmental purposes, in addition to use as grazings. It substitutes, for extant section 50 of the 1993 Act which refers only to forestry/woodlands, new sections 50 and 50ZA. It essentially creates a 2 stage process for obtaining the consent of (1) the owner of the grazings and (2) the Commission to use the grazings as woodlands or for an environmental purpose.

99. The new section 50 applies where a grazings committee or any crofter who holds a right in the common grazing, proposes that the committee should, in exercise of their power under section 48(4) plant trees on, and use as woodlands, any part of the common grazing or use any part of the common grazing for an environmental purpose.<sup>3</sup> Subsection (2) provides that the grazings committee must apply to the owner of the common grazing requesting consent to the proposed use of the part of the common grazing concerned. Subsection (3) sets out that the owner may grant consent with or without conditions, or refuse consent. However, the owner may only refuse consent on a ground mentioned in subsection (3)(b). Subsection (4) provides that a decision must specify the part of the grazings to which it relates and, where the decision is to refuse consent, it must provide reasons for the refusal. The decision must be given to the grazings committee and the Commission. Subsection (5) provides that if the owner does not make a decision under subsection (3) in accordance with subsection (4) within 6 weeks of the application being made the owner is deemed to have decided to grant consent (without conditions). Subsection (6) provides that a reference to using any part of the common grazing as woodlands is to having the right to exclusive economic and recreational use, including the things set out in paragraphs (a) to (d) of that subsection. That list is not intended to be exhaustive. Subsection (7) provides a definition of environmental purpose and also sets out a list of non-exhaustive examples, which includes peatland restoration, habitat creation and restoration and water management. There is also an example about preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment. Subsection (8) provides that subsections (6) and (7) are without prejudice to any person's access rights (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003). Subsection (9) provides that consent granted or deemed to be granted under this section is

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<sup>3</sup> Section 47(10) of the 1993 Act provides that a reference to a crofter includes any person who, not being a crofter, is entitled to a share in the grazings along with the crofters.

of no effect unless confirmed by the Commission under new section 50ZA(7). Subsection (10) enables the Scottish Ministers to modify the definition of environmental purpose to add, amend or remove a use by regulations (subject to the affirmative procedure).

100. New section 50ZA applies in respect of any decision, or deemed decision, by the owner under section 50. Subsection (2) provides that the grazings committee must apply to the Commission for a determination that the decision under section 50(3), or deemed decision under subsection (5) of that section, is reasonable. But subsection (3) provides that that where the owner decides to give their consent (expressly and without conditions) the Commission are duty bound to confirm that the decision is reasonable. In all other cases (including cases where the consent is only *deemed* to have been granted without conditions), the Commission may confirm or otherwise determine the decision in the way set out by subsection (4). Subsection (5) provides that, before making a determination, the Commission must consult the grazings committee, the owner, the crofters who share in the common grazing and such other persons as appear to the Commission to have an interest. Subsection (6) provides that if a determination confirms the decision of the owner to grant consent or (as the case may be) determines consent is to be deemed given, the determination must specify the part of the grazings to which it relates and the conditions (if any) of such consent. The determination must be given to the grazings committee and the owner (in all cases). Subsection (7) provides that a determination which confirms the decision, or deemed decision, of the owner to grant consent or (as the case may be) determines consent is to be deemed given must be entered in the Register of Crofts. On being entered in the register it is binding on the successors to the owner's interest. But subsection (8) provides that any such determination ceases to have effect if the use of the part of the common grazing to which the determination relates has not commenced within 7 years. Subsection (9) makes provision about liability for expenditure where the determination specifies a condition that land be fenced or otherwise enclosed. Subsections (10) and (11) apply section 58A of the 1993 Act to the Commission making a determination under subsection (4) as it applies to the Commission making a decision in respect of an application for approval or consent (except that subsections (7)(a) to (d) of section 58A do not apply).

101. This section also inserts new section 50AA which provides scope for joint environmental ventures between the owner of the common grazing and crofters. It provides for the crofters and owner to make agreements which are binding on their successors, and which can be amended at a later date only by agreement. It also provides (new section 50AA(3)) for a copy of such an agreement to be held by the Commission and in terms of section 50A(4) for such agreement to be amended by written agreement also lodged with the Commission.

102. This section also amends the empowering provision of the grazings committee in section 48(4) to cover environmental uses (including the application of subsection (6) of that section). It also makes minor or consequential changes to section 50B of the 1993 Act.

103. This section also repeals section 53(1)(e) of the 1993 Act. This provision is not needed as the proposed use will be permitted only if the Commission grants approval, and a decision in that respect can be appealed under section 52A.

### ***Meaning of crofting community, parish and township***

#### *Section 19 – meaning of “crofting community”, “parish” and “township”*

104. This section on the Bill adjusts the definition of crofting community and clarifies that a reference to the parish or township of a particular croft is tied to the information held in the Register of Crofts under section 41.

105. The change to the meaning of crofting community specifies that the crofting community means, collectively, the people who are identified in paragraphs (a) to (c) in a new section 61(1A) of the 1993 Act who live in a particular township and that a reference to a member of the crofting community is to be construed as meaning one of the specified people.

106. Part 1 of schedule 2 goes on to make a series of consequential amendments to the 1993 Act to reflect this change to the meaning of crofting community.

### ***Crofts not to be private residential tenancies***

#### *Section 20 – tenancies which cannot be private residential tenancies*

107. Schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 outlines the types of tenancies which cannot be private residential tenancies. This includes agricultural land tenancies. Section 20 of the Bill adds crofts to the list of exemptions in schedule 1 of the 2016 Act, so that a tenancy cannot be classified as a private residential tenancy if the let property includes a croft.

## **Chapter 2 - Registration**

108. The Crofting Register is a register maintained by the Keeper of the Registers of Scotland. It was established by the Crofting Reform (Scotland) Act 2010. It is to be distinguished from the Register of Crofts maintained by the Commission under the 1993 Act. A key difference is that the Crofting Register includes a digital map of each croft registered in it.

### ***Register of Crofts***

#### *Section 21 – changes to the content required in the Register of Crofts*

109. Section 41 of the 1993 Act requires the Commission to compile and maintain the Register of Crofts. Information contained in the Register includes the name, location and extent of the croft, along with the name, age and date of birth of the people associated with it.

110. Section 21 streamlines the information required to be included in the Register and improves consistency of information across different kinds of occupiers. The first effect of the amendments in section 21 is to remove the requirement for those included in the Register to provide their age, since dates of birth are already included. The requirement for landlords to provide a date of birth is also removed. Further, the amendments require owner-occupier crofters to provide the same personal information as a tenant.

111. Additionally, section 41(2) of the 1993 Act is amended to ensure that the Register of Crofts has a township and parish noted against every croft in support of the changes contained in section 19 of the Bill relating to the meaning of crofting community.

### ***Registration in the Crofting Register***

#### *Section 22 – first registration purchased by tenant crofter*

112. Section 4 of the 2010 Act outlines the circumstances under which a croft must be registered for the first time on the Crofting Register. Where details of a croft are not already registered in the Crofting Register, subsection (1) of that section requires that the croft must be registered in the following instances: upon the creation of a new croft under section 3A(1) or (2) of the 1993 Act; upon the transfer of ownership of an owner-occupied croft; and in the event of a regulatory trigger that is mentioned in subsection (4) of that section.

113. Section 22 of the Bill changes that by amending section 4(1)(c) of the 2010 Act to add a new circumstance in which a croft must be registered, namely in the case of a crofter buying their croft (and thereby becoming an owner-occupier crofter). This section also modifies section 6(1) of the 2010 Act to make it clear that the crofter (who becomes the owner-occupier crofter on transfer) is responsible for submitting the application for registration. It also amends section 29 of the 2010 Act by inserting new subsections (5A) and (5B) to make it an offence for the owner-occupier crofter to fail to apply to register the croft within 1 year of the transfer (and a further offence for each successive year of failure). A person who commits an offence under subsections (5A) or (5B) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Section 23 – payment of fees for applications for registration*

114. Section 23 of the Bill contains a number of amendments to the 2010 Act which relate to the manner in which application fees in respect of registration are made.

115. The Bill changes the requirement that the application fee must be given to the Crofting Commission for onward transmission to the Keeper to requiring that arrangements satisfactory to the Keeper have been made in respect of the application. The Keeper and the Commission will inform applicants what those arrangements are and how to comply with them. The application will not be registered if the arrangements are not made.

*Section 24 – requirements for certain applications for first registration to be copied to landlord*

116. Section 24 of the Bill amends the 2010 Act to require a tenant who is submitting an application for first registration to send a copy of the draft application to the landlord of the croft at least 14 days before submitting the application to the Commission. The tenant must also confirm to the Commission that this has been done at the point of the application, otherwise it may be refused. The landlord does not have to take any action upon receipt of the application, but may choose to if the landlord considers that there are inaccuracies in the information being submitted.

*Section 25 – notification of first registration*

117. Section 25 of the Bill amends sections 7, 12 and 18 of the 2010 Act to transfer the notification requirement for persons who have an interest in (and a right to challenge) the key details of the first registration of a croft, from the Commission to the Keeper.

118. The change to section 7 requires that the applicant for first registration supply the names and addresses of the persons who have an interest in the croft to the Commission. Where the applicant does not know those details, the applicant has to tell the Commission what steps have been taken to ascertain the details. The Commission may use its existing powers to request further information to require the person to try and find out the information or may supply the information itself insofar as it is available from its records.

119. Section 12 of the 2010 Act is amended to require the Keeper to issue notification of first registration to the persons with an interest as soon as reasonably practicable after the certificate of registration is issued. The 9-month period of challenge (see section 14 of the 2010 Act) only starts when the last of the persons with an interest is notified.

120. Section 18 of the 2010 Act is amended to provide that the Keeper is not liable for any information contained in a notice (or failure to notify) which results from the information provided to the Keeper by the Commission. However, if the Keeper has been given the correct information and makes a mistake (or fails to notify) then the Keeper may be liable.

*Section 26 - rectification of the Crofting Register*

121. This section of the Bill amends Part 2 of the Crofting Reform (Scotland) Act 2010 which deals with the Crofting Register, specifically the provisions concerning rectification of the register when there is a mistake in it.

122. Section 16(1) of the 2010 Act enables the Keeper to rectify the Register in accordance with subsections (2) to (4), and requires the Keeper to rectify it on being ordered to do so by a court. Subsection (2) allows the Keeper to rectify the Register, where there is a mistake arising as result of a mistake in an application for registration, on the application of the person who made that application for registration. Subsection (3) allows the Keeper to rectify the Register, where there

is a mistake arising as result of a mistake made by the Commission in submitting their own application for registration or forwarding an application submitted by someone else, either on the application of the Commission or on the application of the person who made the application for registration. Subsection (4) allows the Keeper to rectify the Register either on application being made to the Keeper or of the Keeper's own volition, where a mistake has been made by the Keeper in making up or amending the Register.

123. Section 26 of the Bill retains the existing routes to rectification but modifies section 16(1) of the 2010 Act to provide for additional avenues.

124. The modifications enable the Keeper to, at any time, amend the register to correct any typographical, clerical or other administrative error. The Keeper does not require an application, nor does the Keeper require to be satisfied that the error was made by the Keeper.

125. This section also provides for 2 more ways in which rectification may be effected.

126. The first is provided for by new section 16A (rectification: direction by the Commission). Where the Commission becomes aware of a material inaccuracy in the register and the conditions in subsection (2) are met, the Commission may direct the Keeper to rectify the register if what is needed to do so is manifest, and may give the Keeper any further direction it considers necessary in connection with the rectification. The conditions in subsection (2) are that the Commission has given 28 days' notice of their intention to issue a direction and had regard to any representations received within that period. Subsection (4) defines "material inaccuracy" for the purposes of this section, being an inaccuracy relating to any matter mentioned in section 11(2)(a) and (b) of the 2010 Act. It would include an error which is a typographical error.

127. The second new avenue is provided for by section 16B (rectification at instance of the Keeper). This section applies where the Keeper becomes aware of a material inaccuracy in the register which is not attributable to the Keeper and the Keeper became aware of that inaccuracy other than as a result of being ordered to do so by a court, a direction by the Commission under new section 16A or an application being made under section 16(2) or (3). The Keeper may rectify the register if what is needed to do so is manifest. Subsection (4) defines "material inaccuracy" for the purposes of this section, as being an inaccuracy relating to any matter mentioned in section 11(2) of the 2010 Act other than a typographical, clerical or other administrative error capable of being corrected under new section 16(1)(a) (which could be fixed under new section 16(1)(a)).

128. The Keeper is required to give notice of any rectification (other than the correction of a typographical, administration or clerical error) to any person appearing to the Keeper to be affected by the rectification, and to the Commission.

129. This section also inserts a new power enabling the Scottish Ministers to modify section 16 so as to specify further persons, or descriptions of persons, who are entitled to make an application to rectify the register under that section.

130. This section also makes consequential changes to sections 17 and 18 of the 2010 Act.

131. Section 17 of the 2010 Act provides that where the Register is rectified to correct a material inaccuracy in relation to a first registration during the 9-month challenge period, it is necessary to re-notify and the registration and the challenge period begins again. Subsection (5) defines “material inaccuracy” as an inaccuracy in any of the matters which must be included in the registration schedule under section 11(2). This section modifies section 17 so as to exclude typographical, clerical or other administrative errors from this section’s application. Such errors would be minor and capable of being rectified under section 16(1)(a) and do not merit the restarting of the challenge period.

132. Section 18 of the 2010 Act sets out the circumstances in which the Keeper or the Commission will be required to indemnify a person suffering a loss relating to the Crofting Register. Subsection (2) sets out the matters which result in indemnifiable loss in respect of which the Keeper may be liable. Section 26 of the Bill adds a new paragraph to subsection (2) to include a mistake in the register made by the Keeper when rectifying the register in accordance with section 16B (i.e. a mistake rectified, incorrectly, by the Keeper at the Keeper’s own instance), the correction of which would require rectification of the register.

133. It also inserts a new subsection (7A) which provides that the Commission is liable to indemnify a person for loss suffered as result of a mistake in the register made by the Commission in a direction given under section 16A.

134. This section also inserts a new section 20A about appeals in relation to a direction by the Commission to rectify the register. It enables a person who is affected by the direction to appeal to the Land Court against a decision of the Commission under section 16A to give a direction. Subsection (2) provides that an appeal must be made within 42 days beginning with the day on which the keeper gives notice of the rectification under section 16(6). Subsection (3) defines the grounds on which an appeal may be made. Subsection (4) sets out the actions the Land Court may take in respect of an appeal and subsection (5) requires the Commission to give effect to the decision of the Land Court on an appeal under this section.

#### *Section 27 – form of applications for registration*

135. Section 27 inserts a new section 19A into the 2010 Act. This makes it the responsibility of the Keeper to specify the form of applications for registration and related matters. The specified forms have to be published on the Registers of Scotland website or in some other similar manner (to cover the possibility of technological change). If necessary, applicants can be required to use

the forms under rules made under section 19 (though in practice, they will have to use the forms specified in order to be able to register anything).

136. Before specifying a new form, the Keeper must consult the Commission and publicise the new form in such manner as the Keeper considers appropriate. The latter requirement is particularly focused upon giving potential applicants notice of the new form to minimise the number of applications made using the wrong form.

137. If the Scottish Ministers make rules about the form of an application using their powers under section 19(1)(c) (for example to require particular information or certain accessibility requirements) the Keeper must specify a form that complies with the rules. In those circumstances, consultation with the Commission is unnecessary as it will already have occurred as part of the process of making the rules. Subsection (4) revokes the rules and forms contained in the Crofting Register (Scotland) Rules 2012, which are rendered unnecessary by this change.

### **Chapter 3 – Miscellaneous**

#### ***Service of notices and public information***

##### *Section 28 – service of notices*

138. This section of the Bill substitutes new section 55 of the 1993 Act to make new provision about the service of any notice or other document required by or under that Act. The main change is to expand the current modes of competent service to include service by electronic communications (such as email), but it also updates the existing provisions covering service by post.

139. New subsection (1) of section 55 sets out the 3 main ways in which a document can be served: personal delivery, post (registered or recorded) and by electronic communications.

140. Subsection (2) also specifies (restating the provision in the existing legislation) that where any notice or other document is to be given to or served on a person as being the person having any interest in land and it is not practicable after reasonable inquiry to ascertain their name or address it may be given or served by addressing the notice to “The person with an interest in the land” (describing the land), and either delivering the notice personally to some responsible person on the land, or affixing it (or a copy of it) to some conspicuous object on the land.

141. New subsection (3) sets out what is meant by the proper address of the person for the purpose of service by post.

142. Subsection (4) provides further detail in relation to documents served by electronic means. Electronic transmission of a document must be effected in a manner that the recipient has indicated to the sender that they are willing to receive the document electronically. Subsection (4)(b) makes



provision as to the circumstances in which willingness to receive a document electronically may be given or inferred. Subsection (4)(c) provides that uploading a document to an electronic storage system from where it may be downloaded by the recipient may constitute electronic transmission.

143. New subsection (5) of section 55 provides that where a document is served by post, on an address within the United Kingdom, it is taken to have been received 48 hours after it is sent. New subsection (6) of section 55 provides that when a document is served using electronic communications, it is also taken to have been received 48 hours after it is sent. These are rebuttable presumptions given the potential difficulties with postal service and problems which may arise with delivery by service providers/internet for email.

#### *Section 29 - public notification*

144. Extant section 55A of the 1993 Act describes what constitutes public notification for the purposes of that Act, where such notification is required by the Act. It specifies that public notification is given by publication of an appropriate notice in one or more local newspapers. The contents of the notice will generally be specified by the Commission (section 55A(2)). Section 55A(2) provides that the notice must always specify the purpose of the application to which it relates, include a description of the land to which it relates and specify the period during which objections to the proposals in the notice may be made and the manner in which they should be made. New section 55A(3) provides that in any case where notification is to be given to a specified person that notification should be in the same form as the public notification.

145. This section substitutes section 55A for new sections 55A and 55B. New section 55A enables the Scottish Ministers to make provision by regulations about the giving of public notification under the 1993 Act and 2010 Act (subject to the negative procedure). Subsection (2) of new section 55A sets out a non-exhaustive list of the things that the Scottish Ministers may make provision about. Subsection (3) of new section 55A requires the Scottish Ministers to consult the Commission before making regulations under subsection (1). Subsection (4) provides that regulations may make different provision for different purposes and include incidental, supplementary, consequential, transitional or saving provision.

146. New section 55B broadly replicates extant section 55A(2)(b) and (3). It requires the Commission to specify the form and content of notices and publish the notices specified on its website or in such other similar manner as it considers appropriate. However, if a form of notice is prescribed under section 55A(1), the Commission must specify that form (see subsection (2)). New section 55B(3) also provides that in any case where notification is to be given to a specified person that notification should be in the same form as the public notification.

147. This section also modifies section 25 of the 1993 Act and section 12(8) of the 2010 Act to remove the requirement to publish a notice in a newspaper. It also makes a consequential change to section 61 of the 1993 Act, which contains definitional material.

*Section 30 – crofting census notices*

148. Section 40A of the 1993 Act states that the Commission must give notice to each crofter and owner-occupier crofter to make an annual declaration to the Commission with the information stated in subsection (2) and (3) of that section. Notices are to be given annually. This paragraph changes that by requiring notices to be given at least once in every 3-year period.

***The Crofting Commission***

*Section 31 – Appointment of Chair*

149. Paragraph 3 of schedule 1 of the 1993 Act outlines the proposed membership of the Crofting Commission. Sub-paragraph (1) indicates that there are to be a maximum of nine members, of whom no fewer than two should be persons appointed by the Scottish Ministers and no more than six should be elected members. There are therefore two types of members: “elected members” and “appointed members”. The Scottish Ministers are also to select one of the members (appointed or elected) of the Commission to be the chair although they may delegate this function to the Commission. Paragraph 3 also provides that the majority of the Commission are to be elected members unless such a majority cannot be maintained. This could occur if an elected member resigns or is removed from office and there are no other candidates available from the Commission elections (who originally polled too few votes to become a member of the Commission) to fill this role.

150. This section amends paragraph 3 of schedule 1 of the 1993 Act in order to effect a variety of changes relating to the appointment of the chair and membership. New sub-paragraph (3) enables the Scottish Ministers to appoint a person to chair the Commission. New sub-paragraph (3A) provides that the person appointed could be an existing member of the Commission or someone external. New sub-paragraph (3A) also sets out the membership ‘type’ of that person on becoming chair. New sub-paragraph (4A) also provides that, while the Scottish Ministers may appoint someone external, if the function is delegated to the Commission the Commission may only appoint a chair from their existing pool of members. New sub-paragraph (5A) also creates a new rule which applies where the Commission consists of the maximum number of members specified in sub-paragraph 1 and the chair resigns office, but does not otherwise cease to be a member of the Commission, and is not replaced as the chair by a person who is already a member of the Commission (for example if there are no suitable members of the Commission interested in being chair). In such circumstances the Scottish Ministers may appoint an external person, despite the fact that this would mean the Commission has more than the maximum number of specified members. This section also provides that where a person is appointed by virtue of sub-paragraph (5A), the rule about the majority of members being elected members need not be maintained. New sub-paragraph (5B) also provides that where a person is appointed as the chair of the Commission who was not already a member of the Commission at the time of their appointment, the person’s membership of the Commission ends when the person ceases to be chair. That rule applies irrespective of whether the chair was appointed by virtue of sub-paragraph (5A) or in ‘normal’ circumstances under sub-paragraph (3).

*Section 32 – Appointed members: special considerations*

151. Section 32 of the Bill amends paragraph 4 of schedule 1 to the 1993 Act.

152. The Commission consists of a mix of elected and appointed members. It must have between 5 and 9 members, up to 6 of whom may be elected.

153. At present, where there are no members elected to the Commission that appear to Ministers to represent the interests of landlords of crofts, the Scottish Ministers are, when appointing members to the Commission, required to appoint at least one such a person. This appointment will typically happen after an election once the composition of the Commission is known.

154. The changes made by the Bill remove the requirement to appoint a person who, in the opinion of the Scottish Ministers, represents the interests of landlords of croft and replace it with an obligation to have regard to the desirability of such a person being appointed. Before making appointments when there are no representatives of landlords, the Scottish Ministers also have to consult with the Commission.

*Section 33 – Chairing of Commission meetings and committees*

155. Section 33 amends paragraphs 12 and 13 of schedule 1 to the 1993 Act.

156. The change to paragraph 12 requires the Commission to appoint a chair for any committee it establishes (including those it is required to establish).

157. The changes to paragraph 13(2) enable the chair of the Commission to delegate the chairing of all or any part of a meeting of the Commission to another member. For example, if the convener is unable to attend or is having technical difficulties during a remote meeting, then the convener can ask another member to act as chair. Paragraph 13(3) is similarly adjusted to allow committee chairs to do the same.

158. The adjustment of paragraph 13(4) clarifies that the casting vote does not change with the delegation of part of a meeting. If the chair only delegates part of a meeting of the Commission, the chair retains the casting vote throughout. The same applies to committee meetings.

***Interpretation of Part 1***

*Section 34 – interpretation of Part 1*

159. This section defines the 1993 Act and 2010 Act for the purposes of Part 1 of the Bill and Part 1 of schedule 2.

## **PART 2 – MERGER OF THE SCOTTISH LAND COURT AND THE LANDS TRIBUNAL FOR SCOTLAND**

### **Overview and background**

#### *Overview*

160. Part 2 of the Bill relates to the merger of the Scottish Land Court (“the Court”) and the Lands Tribunal for Scotland (“the Tribunal”). The Bill effects the merger by transferring the jurisdiction and functions of the Tribunal to the Court and setting out an updated legislative framework for the Court (which takes account of the merger as well as making a number of changes to the operation of the Court). The majority of the provisions relating to the operation and jurisdiction of the Court following the transfer are contained in schedule 1 to the Bill.

#### *The Scottish Land Court*

161. The Court was created by the Small Landholders (Scotland) Act 1911, and is now provided for principally in the Scottish Land Court Act 1993 (“SLC 1993”). It began operations on 1 April 1912.

162. The Court’s current jurisdiction is primarily within the context of Scottish farming. It has authority to resolve a range of disputes, including disputes between landlords and tenants, in agriculture and crofting. It does not, however, have universal jurisdiction to deal with all matters relating to land. In particular, it does not have any jurisdiction to deal with the question of ownership and heritable title to land (which are dealt with by the ordinary courts, i.e. the Sheriff Court and the Court of Session), nor does the Court have any jurisdiction in relation to urban subjects.

163. The SLC 1993 requires for the Court to have a Chairman, who has the status of a judge of the Court of Session. It also provides for the appointment of a Deputy Chairman. To be the Chairman or Deputy Chairman, a person must have held the office of sheriff or sheriff principal or have been an advocate or solicitor advocate. The Chairman and Deputy Chairman deal with the most difficult cases and disputes involving questions of law. The other members of the Court are legal members and lay members who are appointed for their agricultural expertise, and their ability to deal with cases in a proper judicial manner.

164. The SLC 1993 provides that the Chairman may delegate a case to be heard by any one or two members of the Court, with or without the assistance of one or more land valuers, assessors or other skilled persons. There is a procedure to internally appeal the decision made by any

delegation. There is also a further right to appeal to the Inner House on a question of law arising under an enactment<sup>4</sup> (although there are exceptions to this provision).

### *The Lands Tribunal for Scotland*

165. The power to establish the Lands Tribunal for Scotland, and the operation of Tribunal (and the Lands Tribunal for the remainder of the UK) was provided for in the Lands Tribunal Act 1949 Act (although not actually utilised until 1971).

166. The Tribunal has statutory power to deal with various types of disputes involving land or property. However, while its jurisdiction relates to land issues, most disputes about rights to land (for example, disputes over ownership or succession) are heard in either the Sheriff Court or the Court of Session. As noted above, the Scottish Land Court also has jurisdiction to deal with some land cases. At the request of parties, it can also act as an arbiter to deal with any type of dispute.

167. Parties to a dispute before the Lands Tribunal are usually entitled to have the evidence and submissions tested by a hearing in open court. However, if parties agree that a hearing is not needed a case can be dealt with by way of written submissions, which will generally be quicker and less costly than a hearing.

168. There is a right of appeal against the decision of the Lands Tribunal to the Court of Session on a point of law only.

## **Commentary on sections**

### *Section 35 – the Scottish Land Court*

169. Section 35 confirms that the Court is to continue in being without interruption. It also gives effect to schedule 1 which sets out afresh the constitution of the Court, its jurisdiction, powers and related matters.

### *Section 36 – merger of the Scottish Land Court and the Lands Tribunal for Scotland*

170. This section provides for the transfer of the main aspects of the Tribunal to the Court, including its jurisdiction, ongoing proceedings, staff, property etc. This is to happen on a day (or days) appointed by Ministers using the commencement regulations. The provision offers flexibility as it is expected that it may take some time for full implementation to occur.

171. The members of the Tribunal are not being transferred by the Bill. Instead, they are authorised to sit in the Court and hear and determine matters within the jurisdiction of the Court.

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<sup>4</sup> Such as an Act of Parliament or a statutory instrument

The transfer of the Tribunal members will occur at a later date by different legislative means. In the meantime, the pay and conditions of those members remains the same.

*Section 37 - savings etc.*

172. This section ensures that the transfer of jurisdiction from the Tribunal to the Court does not have an effect on the manner in which any proceedings which are ongoing is handled by the Court.

*Section 38 - power to make further provision in connection with the merger etc.*

173. Section 38 enables the Scottish Ministers to make regulations about the various things being transferred. This reflects that there are often detailed matters that come to light and which need to be picked up in the course of implementation (such as the terms and conditions of staff).

*Section 39 – transitory provision: eligibility of suitable members of the Lands Tribunal for Scotland to sit in Upper Tribunal*

174. This section permits the members of the Tribunal to sit in the Upper Tribunal in the same manner as members of the Court will be able to during the period that it takes for the merger to be fully implemented.

### **PART 3 – GENERAL**

*Section 40 – minor and consequential provision*

175. This section introduces schedule 2 which contains a number of minor and consequential amendments made in respect of both Part 1 and Part 2 of the Bill.

*Section 41 – regulations*

176. This section makes further provision about the regulation-making powers that the Bill confers on the Scottish Ministers (other than those relating to commencement). In particular, it makes clear that the powers can also be used to make different provision for different purposes and areas and includes power to make incidental, supplemental, consequential, transitional, transitory or saving provision.

*Section 42 - ancillary provision*

177. This section confers a power on the Scottish Ministers to make ancillary provision by regulations.

178. Subsection (2) provides that the power to make ancillary provision can be used to modify enactments. The word enactment is defined for this purpose by schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, it includes Acts of the Scottish Parliament and Acts of the UK Parliament. There is a general presumption that a regulation-making power cannot be used to modify Acts. Subsection (2) overcomes that presumption.

179. Subsection (3) provides for ancillary regulations to be subject to the affirmative procedure if they textually amend an Act of the Scottish Parliament or the UK Parliament, but otherwise they are subject to the negative procedure.

#### *Section 43 – commencement*

180. This section deals with how the Bill may be brought into force. Except in the case of the listed sections of Part 3 of the Bill, the other provisions will be brought into force by regulations made by the Scottish Ministers.

181. Regulations bringing sections into force may include different provision for different purposes or areas and may include transitional, transitory or saving provision. Commencement regulations are not subject to any parliamentary procedure.

#### *Section 44 - short title*

182. This section names the Bill. The short title is how the Bill may be referred to or cited in legal proceedings.

### **SCHEDULE 1 – THE SCOTTISH LAND COURT**

183. Schedule 1 restates the constitution and jurisdiction of the Scottish Land Court. This was previously contained in the Scottish Land Court Act 1993 (SLC 1993).

#### **Part 1 – administration and organisation**

##### *Incorporation*

184. Paragraph 1 restates that the Court is a body corporate with a common seal that is to be judicially noticed.<sup>5</sup>

##### *Appointment of members and Chair of the Court*

185. Paragraph 2 sets out the membership of the court and how members are to be appointed. It should be read with paragraph 7 of schedule 2 (which contains an amendment to the Judiciary and Courts Act 2008).

186. Members are to be appointed by His Majesty following the recommendation of the First Minister. The process for selecting members for the First Minister to recommend is governed by the Judiciary and Courts (Scotland) Act 2008.

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<sup>5</sup> This means that any documents bearing the seal of the court will be recognised in court proceedings etc. without the need for any evidence to be led to establish that fact.

187. Before recommending a person for appointment as the Chair of the Court, the First Minister must consult the Lord President of the Court of Session. Upon appointment, the Chair has the same rank and tenure as a judge of the Court of Session.

188. The eligibility requirements for the Chair are set out in sub-paragraph (5). For a person to be eligible to be appointed Chair, the person must have been (for a period of 10 years or more)—

- a sheriff principal or sheriff,
- a member of the Faculty of Advocates,
- a solicitor advocate (that is, a solicitor who has obtained rights of audience in the Court of Session)
- a combination of two or more of the above positions.

189. A period of relevant training (most likely devilling to become an advocate) is not to interrupt the 10-year period in such a manner as to cause it to start again. This means that a person who became an advocate after being a solicitor advocate for 9 years (and so ceased being a solicitor advocate during the period of devilling), does not need to serve another 10 years as an advocate or sheriff before becoming eligible.

190. The membership of the Court must include a person who is able to speak the Gaelic language.

191. The eligibility of other persons to be members of the Court is to be set out in regulations made by the Scottish Ministers. Given the range of different types of case that the Court may consider, there may be different eligibility for different members in order to ensure that the Court has the necessary range of skills. This is especially the case if the jurisdiction of the Court is added to further using the powers under paragraph 16(2).

#### *Designation and functions of Deputy Chair*

192. The Scottish Ministers may designate a person to act as Deputy Chair in the event that the Chair is unavailable. Where the Chair directs the Deputy Chair to act on the Chair's behalf, the Chair needs to have the consent of the Scottish Ministers. This is likely to be an agreed set of circumstances. The Deputy Chair is also to act as Chair when directed to do so by the Scottish Ministers in the case of vacancy in the office of Chair or where the Chair is otherwise unable to act.

193. When not acting as Chair, the Deputy Chair can hear and determine cases in the same manner as other members of the Court.



194. A person can only be appointed as Deputy Chair if the person meets the eligibility criteria to be Chair.

*Principal Clerk*

195. The SCTS must appoint a suitable person to act as principal clerk. The SCTS will also ensure that there are sufficient staff for the court.

*Tenure of office and remuneration*

196. The salary and allowances of the Chair of the Court is unchanged from SLC 1993. Both are determined by the Treasury and paid by the SCTS. For the other members, the salary and allowances are to be determined by the Scottish Ministers and paid by the SCTS. All such sums are charged on the Scottish Consolidated Fund.

197. Special provision is made for the Deputy Chair to be paid such remuneration as appears to be reasonable by the Scottish Ministers in respect of the Deputy Chair exercising additional functions (i.e. when the Chair is unable to act, or a direction is in place). Former members of the Court who are nominated under paragraph 13 to sit in respect of particular pieces of work are paid in a similar manner (essentially, a day rate).

198. Expenses may be paid to the members of the Court (including the Chair), the Deputy Chair and former members as appropriate. The SCTS may determine different circumstances for when these are appropriate. These expenses are not charged on the Scottish Consolidated Fund. The routine expenditure of the Court is also to be paid by the SCTS.

*Quorum and delegation*

199. Paragraphs 9 to 12 set out the quorum of the Court. This provides that the Court is quorate if the Chair is sitting with one other member or there are three members (other than the Chair) sitting. The Court can also sit with fewer members by delegating its power to one or two members but where it does so, a decision of the Court is subject to review by the 2 or more members of the Court (or former nominate members of the Court), and the Chair, sitting together.

200. The Chair always has a casting vote.

*Eligibility to act as members of the Upper Tribunal for Scotland*

201. Members of the Court are often specialists in areas of law that are relevant for the work of the Upper Tribunal.

202. Paragraph 13 (together with consequential amendments to the Tribunals (Scotland) Act 2014 in Part 2 of schedule 2), create a process where the Chair can determine that a person is suitably qualified to sit in the Upper Tribunal. If that determination is made, the member can be

authorised under the 2014 Act to sit in the Upper Tribunal. As noted earlier, a transitional provision has been included so that members of the Lands Tribunal can also sit in the Upper Tribunal while the merger takes place.

203. Paragraph 14 of schedule 1 applies the fitness to practice provisions that exist for sheriff principals, sheriffs and summary sheriffs to members of the Court. Those provisions are contained in sections 21 to 25 of the Courts Reform (Scotland) Act 2014<sup>6</sup> (with a slight adaptation to make them work for members of the Court).

## **Part 2 – Jurisdiction of the Court**

204. The competence and jurisdiction of the Court is entirely contained in statute. It does not have common law powers. Paragraph 15 confirms that the Court has competence and jurisdiction over the matters and appeals listed or described in Part 2 of schedule 1 as well as in respect of anything conferred upon it by another piece of legislation. In some cases, such as agriculture and crofting, the conferral is contained in other legislation but also referred to in Part 2 in order to assist users.

205. The Scottish Ministers may make regulations adjusting the jurisdiction of the Court. Those regulations may modify Part 2 of schedule 1 (in order to make matters accessible) and are always subject to the affirmative procedure.

206. The jurisdiction set out in Part 2 lists the matters that were contained in SLC 1993 and the Lands Tribunal Act 1949. In addition, the Court's jurisdiction has been increased to include:

- access rights under the Land Reform (Scotland) Act 2003
- appeals relating to community rights to buy and crofting community rights to buy under the Land Reform (Scotland) Acts 2003 and 2016
- the March Dykes Acts and Runrig Lands Act 1695 and the Division of Commonties Act 1695
- applications relating to the succession to certain leases.

## **Part 3 – rules, procedure, expenses and powers**

### *Rules of Court*

207. Paragraph 26 provides that the procedural rules of the Court are now to be made by the Court of Session by means of an act of sederunt following consultation with the Scottish Civil Justice Council (SCJC). This brings the Court into line with the manner in which other civil court

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<sup>6</sup> For an explanation of those provisions see paragraphs 45 to 50 of [Courts Reform \(Scotland\) Act 2014 - Explanatory Notes](https://www.legislation.gov.uk/asp/2014/18/notes/division/3/1/2/9) (<https://www.legislation.gov.uk/asp/2014/18/notes/division/3/1/2/9>)

rules are made. Consequential amendments to the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 are made in schedule 2 to facilitate this.

#### *Procedure*

208. Paragraph 27 enables the Chair of the Court to select members of the Court to hear particular types of case and also to allocate members to a pool which reflects the subject matter of cases (and therefore the particular qualifications and expertise) that members allocated to that pool may hear and determine.

209. Paragraph 28 replicates the special provision from section 1(6A) of the Lands Tribunal Act 1949 relating to the selection of members for dealing with cases under section 57 or 97 of the Land Clauses Consolidation (Scotland) Act 1845.

#### *Powers*

210. Paragraph 29 restates the powers of the Court contained in the SLC 1993.

#### *Finality of decisions and special cases*

211. Paragraph 30 largely restates what was contained in SLC 1993 (see section 1(7) and (7A)).

212. In sub-paragraph (2), there is no mention of the specific Acts of the Scottish Parliament that were contained in section 1(7) of SLC 1993 as that is rendered unnecessary by the meaning of enactment being capable to include those Acts now that the provision is in an Act of the Scottish Parliament and subject to ILRA. (Under the Interpretation Act 1978, an Act of the Scottish Parliament is not considered an enactment.)

213. Sub-paragraph (4) removes the right to a review of a delegated decision in respect of any question (other than an appeal) arising under Part 3 of the Land Reform (Scotland) Act 2003.

#### *Expenses, Enforcement and Accounts*

214. Paragraphs 31 to 33 restate the existing provisions of SLC 1993.

#### *Interpretation*

215. Paragraph 34 sets out (primarily for ease of reference) the definition of words and expressions used in schedule 1.

## **SCHEDULE 2 – MINOR AND CONSEQUENTIAL AMENDMENTS**

### **Part 1 – Crofting reform**

216. Paragraph 1 of schedule 2 makes a number of minor and consequential changes to the Crofters (Scotland) Act 1993.

217. Sub-paragraph (2) repeals subsection (3) of section 2 of the 1993 Act which required the Commission to send to the principal clerk of the Land Court every order, consent, authorisation etc. that the Commission thought ought to be recorded in the Crofters Holding Book.

218. Sub-paragraph (3) amends section 2C of the 1993 Act to change the requirement on the Commission to produce a plan setting its policy on how it intends to exercise its functions from 6 months after an election of members to 12 months after an election.

219. Sub-paragraphs (4), (5), (6), (9), (10), (11), (12), (13), (21)(a), (23) and (24)(c) make amendments to a variety of sections in consequence of the new definition of crofting community in section 19.

220. Sub-paragraph (7) is intended to clarify the correct interpretation of section 10 of the 1993 Act.

221. Sub-paragraphs (8) and (17) add civil partners in sections 17(6) (provision supplementary to sections 13 and 15) and section 36(1)(b) and (5) (compensation to cottar for improvements) of the 1993 Act.

222. Sub-paragraph (14) amends section 27 of the 1993 Act to confirm that the maximum duration of a sublease of a croft is 10 years. This addresses a potential misinterpretation of the existing provision where some thought that a longer period was possible with the permission of the crofter's landlord. Following the adjustment, the Commission clearly cannot consent to a sublease for a period longer than 10 years and any sublease without the consent of the Commission is null and void. The Commission can consider an application for a new sublease at the end of the period, however.

223. Sub-paragraph (15) removes spent references to section 28 of the 1993 Act, which was repealed by section 11(2) the Crofting Reform etc. Act 2007.

224. Sub-paragraphs (16), (19) and (20) are minor technical amendments. Section 50B(7) to (15) of the 1993 Act were introduced by the Crofting Reform etc Act 2007 and specified the means by which the Commission were to take a decision on an application under s50B. However, when these subsections were repealed by schedule 4, paragraph 3(30)(b) of the Crofting Reform Act

2010 some references to the repealed sections were not dealt with, and these sub-paragraphs address that.

225. Sub-paragraph (18) amends section 41 of the 1993 Act to include references to owner-occupier crofters. It also makes consequential changes in response to provision enabling common grazings to be used for an environmental purpose.

226. Sub-paragraph 21(b) removes the restriction that prevented land contiguous to a croft being constituted as a new common grazings; and sub-paragraph 21(c) is consequential to section 18 which introduces new processes for agreeing to use common grazings land for an environmental purpose.

227. Sub-paragraph (22) amends section 52 of the 1993 Act (miscellaneous provision relating to common grazings) to remove a perceived ambiguity relating to the date when an apportionment takes effect and when the decision to apportion expires. It does this by making clear that the date of the Commission decision on the apportionment is separate from when it takes effect and marks the point at which certain time periods start to run.

228. Sub-paragraph (24)(a) and (b) change, in relation to the Commission, “convener” to “chair” (which is the title more commonly used in practice for the person holding such office).

## **Part 2 – The Scottish Land Court**

229. Part 2 of schedule 2 contains minor and consequential amendments relating to the merger of the Court and the Tribunal.

230. Paragraph 3 makes consequential amendments to the Lands Tribunal Act 1949 to reflect the transfer of jurisdiction to the Court. It does not, however, dissolve the Tribunal or transfer the members.

231. Paragraphs 4, 6 and 10 make consequential amendments to adjust the transfer of jurisdiction to the Court in respect of the access rights, crofting community right to buy, the community right to buy and succession to certain leases.

232. Paragraph 5 repeals SLC 1993 as it will no longer be required.

233. Paragraph 7 amends the Judiciary and Courts (Scotland) Act 2008 to bring the Chair and members of the court within the judicial appointment process operated by the Judicial Appointment Board for Scotland.

234. Paragraph 8 amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to enable the SCJC to be involved in the preparation of procedural rules for the Court.

*This document relates to the Crofting and Scottish Land Court Bill (SP Bill 71) as introduced in the Scottish Parliament on 2 June 2025*

235. Paragraph 9 amends the Tribunals (Scotland) Act 2014 to authorise members of the Court to sit in the Upper Tribunal. The process for doing so is very similar to that for the authorisation of sheriffs. The Chair of the Court can already sit in the Upper Tribunal.



*This document relates to the Crofting and Scottish Land Court Bill (SP Bill 71) as introduced in the Scottish Parliament on 2 June 2025*

# **CROFTING AND SCOTTISH LAND COURT BILL**

## **EXPLANATORY NOTES**

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