

Crofting Reform (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Crofting Reform (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to reform and rename the Crofters Commission; to provide for the establishment of a new register of crofts and for registration of crofts in it; to make provision about the duties of crofters and certain owner-occupiers of crofts and for the enforcement of those duties; to make further amendments to the law on crofting; and for connected purposes.

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PART 1

REORGANISATION OF THE CROFTERS COMMISSION

The Crofting Commission

1 The Crofting Commission

- (1) The Crofters Commission is renamed and is to be known as the Crofting Commission.
- 10 (2) The “Crofters Commission” is the Commission—
- (a) established by section 1 of the Crofters (Scotland) Act 1955 (c.21); and
 - (b) continued in being by section 1 of the Crofters (Scotland) Act 1993 (c.44) (the “1993 Act”).
- (3) For schedule 1 to the 1993 Act, substitute the schedule contained in schedule 1.
- 15 (4) Any reference in any enactment to the Crofters Commission is, unless the contrary intention appears, to be construed as a reference to the Crofting Commission.

2 General functions of the Crofting Commission

- (1) In section 1 of the 1993 Act (constitution and general functions of Crofters Commission), for subsection (2) substitute—
- 20 “(2) The Commission have—
- (a) the general functions of—
 - (i) regulating crofting;
 - (ii) reorganising crofting;
 - (iii) promoting the interests of crofting;
 - 25 (iv) keeping under review matters relating to crofting; and

(b) such other functions conferred on them by or under this Act or under any other enactment.

(2A) In exercising their functions under subsection (2), the Commission must have regard to the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting.”

(2) After that section insert—

“2A Ministers’ power to modify functions of Commission

(1) The Scottish Ministers may, by order—

- (a) confer functions on;
- (b) remove functions from;
- (c) otherwise modify functions of,

the Commission.

(2) The Scottish Ministers may make an order under subsection (1) only where they consider it appropriate to do so to ensure that the Commission carry out their functions efficiently and effectively.

(3) An order under subsection (1) may—

- (a) confer on the Commission a function exercisable under this Act by the Scottish Ministers (other than a function to make regulations or orders);
- (b) modify any enactment (including this Act).

2B Annual report

(1) The Commission must make an annual report, on the exercise by them of their functions, to the Scottish Ministers.

(2) That report must also contain the Commission’s assessment of—

- (a) the issues affecting crofting communities; and
- (b) the contribution crofting has made to sustainable development.

(3) Before making an annual report, the Commission must consult—

- (a) each local authority in the area of which there are crofts; and
- (b) Highlands and Islands Enterprise.

(4) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report made to them under this section together with any comments on the report that they consider appropriate.

2C Duty to produce plan

(1) The Commission must, before the expiry of the period mentioned in subsection (2), prepare and submit to the Scottish Ministers a plan setting out their policy on how they propose to exercise their functions.

(2) That period is the period of 6 months beginning with the day after—

- (a) the day of the first election held in accordance with paragraph 7 of schedule 1 to elect persons to be members of the Commission;

(b) the day of each subsequent election.

(3) The Commission must, before preparing a plan under this section, consult—

(a) each local authority in the area of which there are crofts;

(b) Highlands and Islands Enterprise; and

(c) such other persons or bodies as the Commission consider appropriate.

(4) The Scottish Ministers may—

(a) approve the plan (with or without modifications); or

(b) reject the plan and direct the Commission to submit a revised plan.

(5) Where the Scottish Ministers approve the plan submitted under subsection (1) (including a revised plan submitted under subsection (4)(b)), the Commission must—

(a) send a copy of it to each local authority in the area of which there are crofts;

(b) make a copy of it available for public inspection at reasonable times; and

(c) publish it in such manner as the Commission consider appropriate.

(6) The Commission—

(a) may, from time to time;

(b) must, if required to do so by the Scottish Ministers,

vary the plan.

(7) Where the Commission, under subsection (6), vary the plan—

(a) the Commission must submit it to the Scottish Ministers; and

(b) subsections (3) to (5) apply to the variation of a plan as they apply to the preparation of a plan under subsection (1).

2D Status of plan

(1) The Commission, in exercising their functions, must have regard to any plan approved and published under section 2C.

(2) The Land Court may have regard to any such plan when considering an appeal against—

(a) any decision, determination or direction of; or

(b) the imposition of a condition by,

the Commission on an application made to them under this Act.”.

PART 2

THE CROFTING REGISTER

*Duty to establish and maintain register***3 The Crofting Register**

- 5 (1) The Keeper of the Registers of Scotland must establish and maintain a public register of crofts.
- (2) The register established under subsection (1) is to be known as the Crofting Register.
- (3) In this Part—
- the “Keeper” means the Keeper of the Registers of Scotland;
- 10 the “register” means the Crofting Register; and
- “registered” means registered in the register; and cognate expressions are to be construed accordingly.

*Registration***4 First registration**

- 15 (1) An unregistered croft must be registered—
- (a) in the case of a new croft, subject to section 3AA of the 1993 Act, on the determination under section 3A(1) or, as the case may be, (2) of that Act to constitute the land or holding as a croft;
- (aa) in the case of an owner-occupied croft—
- 20 style="padding-left: 80px;">(i) subject to subsection (4C), on the transfer (whether or not for valuable consideration) of the ownership of the croft;
- (ii) on the taking, in relation to the croft, of any step mentioned in subsection (3) (or, in the case of a step mentioned in paragraph (m) of that subsection, in accordance with that paragraph);
- 25 style="padding-left: 40px;">(b) in any other case, on the taking, in relation to the croft, of any step mentioned in subsection (3) (or, in the case of a step mentioned in paragraph (m) of that subsection, in accordance with that paragraph).
- (2) An unregistered croft may be registered on an application being made by a person mentioned in subsection (2A).
- 30 (2A) The persons are—
- (a) the owner of the land on which the croft is situated;
- (b) the landlord;
- (c) the crofter;
- (d) where the croft is an owner-occupied croft, the owner-occupier crofter.
- 35 (3) The steps referred to in subsection (1)(aa)(ii) and (b)(ii) are—
- (a) the making of an application for a direction enlarging the croft under section 4(3) of the 1993 Act;
- (b) the making of an application for consent to exchange the croft under section 4A of that Act;

- (c) the making of an application for consent to assign the croft under section 8 of that Act;
- (d) the making of an application for consent to divide the croft—
- (i) under section 9 of that Act; or
 - (ii) under section 19D of that Act;
- (e) in the case of a bequest of the croft such as is mentioned in subsection (1)(a) of section 10 of that Act, the giving of notice under subsection (2) of that section of the acceptance of the bequest of that croft;
- (f) the giving of notice under section 11(1) of that Act in respect of the transfer of the tenancy of the croft in pursuance of section 16(2) of the Succession (Scotland) Act 1964 (c.41);
- (g) the making of an application under section 20(1) of the 1993 Act to resume the croft or part of the croft;
- (h) the making of an order for reversion of a resumption of the croft under section 21A(1) of that Act;
- (i) the making of an application—
- (i) for approval to the letting of the croft or any part of the croft under section 23(3) of that Act; or
 - (ii) for consent to the letting of the croft or any part of the croft under section 29A(1) of that Act other than such a letting under a short lease (within the meaning of section 29A(2) of that Act);
- (ia) the re-letting of the croft in accordance with proposals submitted under section 23(5) of that Act;
- (ib) the letting of the croft pursuant to a determination under section 23(5C) of that Act;
- (j) the making of an application for a decrofting direction—
- (i) by giving notice under section 24(2) of that Act;
 - (ii) by application under section 24(3) of that Act; or
 - (iii) by application under section 25(4) of that Act;
- (k) the division of the croft, or owner-occupied croft, under section 26G of that Act;
- (l) the letting of the croft—
- (i) in accordance with proposals submitted under section 26J(1) of that Act; or
 - (ii) pursuant to a decision under section 26J(4) of that Act;
- (m) the preparation, under section 38(8)(a) of that Act, of a reorganisation scheme which includes provision—
- (i) forming the croft;
 - (ii) making any change to, or in relation to, the croft;

and in such a case, the croft may not be registered until the condition mentioned in paragraph (a) or (b) of section 39(1) (whichever first occurs) is satisfied in relation to the scheme;

(n) the making of an application by the crofter of the croft for a part of a common grazing to be apportioned under section 52(4) of that Act.

(4) The Scottish Ministers may, by order, modify subsection (3) so as to—

- (a) add a step to;
- (b) modify the description of a step in;
- (c) remove a step from,

that subsection provided that the transfer (whether or not for valuable consideration) of the ownership of any land on which the croft is situated must not be added as a step in that subsection, except in the case of an owner-occupied croft.

(4A) Where the Scottish Ministers exercise the power in subsection (4), they may by order modify Table 1 in schedule 1A so as to—

- (a) add a step to column 1 of that table;
- (b) modify the description of any step mentioned in that column;
- (c) remove a step from that column;
- (d) add a person to column 2 of that table;
- (e) modify the description of any person mentioned in that column;
- (f) remove a person from that column.

(4B) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(aa)(i) or (b)(i).

(4C) A person who, but for this subsection, would be required to register a croft by virtue of subsection (1)(aa)(i) or (b)(i), need not register the croft if a step mentioned in subsection (3) is taken in relation to the croft.

(5) In this Part—

“croft”—

(a) in relation to an unregistered croft, means—

- (i) a holding which is a croft within the meaning of section 3 of the 1993 Act; or
- (ii) a new croft;

(b) in relation to a registered croft, means a holding which is a croft within the meaning of section 3ZA of that Act;

“first registration” (except in relation to a common grazing or land held runrig) means the registration of an unregistered croft;

“new croft” means land or a holding in relation to which the Commission have made a determination, under section 3A(1) or, as the case may be, (2) of the 1993 Act, to constitute the land or holding as a croft.

5 Registration of events affecting registered crofts

(1) The following events in relation to a registered croft must be registered, that is—

- (za) in the case of an owner-occupied croft—

- (i) the transfer (whether or not for valuable consideration) of ownership of the croft;
 - (ii) the taking, in relation to the croft, of any step mentioned in subsection (2);
- (zb) in any other case—

- 5
- (i) the transfer (whether or not for valuable consideration) of the ownership of any land on which the croft is situated;
 - (ii) a change of landlord of the croft;
 - (iii) the taking, in relation to the croft, of any step mentioned in subsection (2).

(1A) But subsection (1) does not apply to a croft—

- 10
- (a) which was registered as a result of the taking of a step mentioned in subsection (3) of section 4 (other than a step mentioned in paragraph (e), (f), (h), (ia), (ib), (k), (l) or (m) of that subsection); and
 - (b) in respect of which a step mentioned in subsection (2) constitutes a change affecting the croft which requires to be notified to the Keeper under section 9;

15 and such a croft is referred to in this Act as a “first registered croft”.

(2) The steps referred to in subsection (1)(za)(ii) and (zb)(iii) are—

- (a) the enlargement of the croft under section 4 of the 1993 Act;
- (b) the exchange of the croft under section 4A of that Act;
- (c) the assignation of the croft under section 8 of that Act;
- 20 (d) the division of the croft—
 - (i) under section 9 of that Act; or
 - (ii) under section 19D of that Act;
- (e) in the case of a bequest of the croft such as is mentioned in subsection (1)(a) of section 10 of that Act, the giving of notice under subsection (2) of that section of the acceptance of the bequest of that croft;
- 25 (f) the transfer of the crofter’s interest in a lease of the croft under section 16(2) of the Succession (Scotland) Act 1964 (c.41);
- (g) the giving of authorisation to resume the croft or part of the croft under section 20(1) of the 1993 Act;
- 30 (h) the granting under section 20(1C) of that Act of an extension of the period for which resumption of the croft is authorised;
- (i) the making of a determination under section 20(1F) of that Act converting a temporary resumption of the croft into an ordinary resumption;
- (j) the making of an order under section 21A of that Act that land resumed under section 20 is to revert to being a croft;
- 35 (k) the letting (or, as the case may be, re-letting) of the croft—
 - (i) (or part of the croft) under section 23(3) of that Act;
 - (ii) in accordance with proposals submitted under section 23(5) of that Act;
 - (iii) pursuant to a determination under section 23(5C) of that Act;

- (iv) (or part of the croft) under section 29A(1) of that Act other than such a letting under a short lease (within the meaning of section 29A(2) of that Act);
- 5 (l) the making of a decrofting direction under section 24(2) or, as the case may be, (3) of that Act;
- (m) the division of the croft, or owner-occupied croft, under section 26G of that Act;
- (n) the letting of the croft—
- (i) in accordance with proposals submitted under section 26J(1) of that Act;
- (ii) pursuant to a decision under section 26J(4) of that Act;
- 10 (o) the making of a change to, or in relation to, the croft by virtue of a provision of a reorganisation scheme prepared under section 38(8)(a) of that Act;
- (p) the apportionment of a part of a common grazing to the crofter of the croft under section 52(4) of that Act;
- 15 (q) the bringing to an end, under subsection (12) of section 52 of that Act, of an apportionment of a part of a common grazing to the crofter of the croft under subsection (4) of that section.
- (3) The Scottish Ministers may, by order, modify subsection (2) so as to—
- (a) add a step to;
- (b) modify the description of a step in;
- 20 (c) remove a step from,
- that subsection.
- (4) Where the Scottish Ministers exercise the power in subsection (3), they may by order modify Table 2 in schedule 1A so as to—
- (a) add a step to column 1 of that table;
- 25 (b) modify the description of any step mentioned in that column;
- (c) remove a step from that column;
- (d) add a person to column 2 of that table;
- (e) modify the description of any person mentioned in that column;
- (f) remove a person from that column.
- 30 (5) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(a).

5A Persons responsible for applications for registration

- (1) An application for first registration of a croft is to be submitted—
- 35 (a) in the case of a transfer of ownership of a owner-occupied croft such as is mentioned in section 4(1)(aa)(i), by the person to whom such ownership is transferred;
- (b) in the case of a transfer of ownership of land such as is mentioned in section 4(1)(b)(i), by the person to whom such ownership is transferred;

(c) in the case of a step mentioned in section 4(3), by the person mentioned in the entry in column 2 of Table 1 in schedule 1A which corresponds to the entry relating to that step in column 1 of that table.

5 (2) An application for registration of an event in relation to a registered croft is to be submitted—

(a) in the case of a transfer of ownership of a owner-occupied croft such as is mentioned in section 5(1)(za)(i), by the person to whom such ownership is transferred;

10 (b) in the case of a transfer of ownership of land such as is mentioned in section 5(1)(zb)(i), by the person to whom such ownership is transferred;

(c) in the case of a change of landlord of the croft, by the person who is the new landlord;

15 (d) in the case of a step mentioned in section 5(2), by the person mentioned in the entry in column 2 of Table 2 in schedule 1A which corresponds to the entry relating to that step in column 1 of that table.

6 Applications for registration

(1) Subject to subsection (7A), an application for registration, and the fee payable in respect of such registration, is to be submitted to the Crofting Commission.

20 (2) An application for first registration is to be submitted, in the case of a new croft, at the same time as an application under section 3A(1) or, as the case may be, (2) of the 1993 Act.

(4) The Commission must, as soon as reasonably practicable after receiving an application for registration—

25 (a) in the case of an application for first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(m)), check the information contained in or accompanying the application against the information relating to the croft, if any, in the Register of Crofts; and

(b) subject to section 3AA of the 1993 Act and to subsections (5) and (6), forward—

(i) the application, together with any comments they may have on it; and

30 (ii) the fee payable in respect of it,

to the Keeper.

(5) The Commission may, before forwarding an application for registration to the Keeper, require the applicant to provide them with such further information relating to the application as they consider appropriate.

35 (6) The Commission may refuse to forward an application for registration if—

(a) a requirement made under subsection (5) is not complied with;

(aa) the application is frivolous or vexatious;

(b) the fee payable in respect of the registration has not been tendered;

(ba) there is a material inaccuracy in the application; or

40 (c) they consider that the Keeper would otherwise not accept the application under section 7(2).

- (b) such an application having been made—
 - (i) the application has been abandoned; or
 - (ii) the Court makes no order or makes an order under section 12(2)(b).

8 Completion of registration

- 5 (1) The Keeper must complete registration—
- (a) in the case of a first registration, by making up a registration schedule for the croft in the register in accordance with section 10;
 - (b) in the case of a registered croft, by making such amendment as is necessary to the registration schedule of the croft;
 - 10 (c) in either case, by making such consequential amendments in the register as are necessary.
- (2) Where the Keeper completes registration under subsection (1), the Keeper must issue to the applicant a certificate, authenticated as the Keeper considers appropriate—
- (a) confirming the registration;
 - 15 (b) in the case of a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(m)), noting that the registration may be challenged under section 12(1);
 - (c) containing such other information as the Keeper considers appropriate.
- 20 (2A) Where, by virtue of being the applicant, the Commission receive a certificate under subsection (2), they must send a copy of the certificate to the crofter of the croft to which the certificate relates.
- (3) Where the certificate relates to a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(k) or (m)), the Keeper must at the same time send a copy of it to the Commission.
- 25 (4) A certificate issued under subsection (2) is to be accepted for all purposes as sufficient evidence of the registration of the croft.
- (5) In this Part, “certificate of registration” means a certificate issued under subsection (2).

9 Completion of registration: further provision on first registrations

- 30 (1) This section applies where, in relation to a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(m))—
- (a) no application is made to the Land Court under section 12(1) before the expiry of the period mentioned in section 11(5); or
 - (b) such an application having been made—
 - (i) the application has been abandoned; or
 - 35 (ii) the Court makes no order or makes an order under section 12(2)(b).
- (2) Subject to subsection (3), the Keeper must—
- (a) make such amendment as is necessary of the registration schedule of the croft; and
 - (b) make such consequential amendments in the register as are necessary.
- (3) Where—

(a) the application for first registration was made as a result of the taking, in relation to a croft, of a step mentioned in subsection (3) of section 4 (other than a step mentioned in paragraph (e), (f), (h), (ia), (ib), (k), (l) or (m) of that subsection); and

(b) the Keeper is notified, in accordance with the provisions of this section, of a change affecting the croft as a result of the taking of that step,

the Keeper must amend the registration schedule or, as the case may be, the register accordingly.

(3A) The person taking the step mentioned in paragraph (a), (b), (c), (g), (i)(i), (i)(ii) or (n) of subsection (3) of section 4 must, within 3 months of the granting of the application mentioned in the step, notify the Commission that a change such as is mentioned in subsection (3) has taken effect.

(3B) Where the Commission is not notified of a change in accordance with subsection (3A), the change is (notwithstanding any provision to the contrary) deemed not to have taken effect.

(3C) As soon as reasonably practicable after being notified under subsection (3A), the Commission must notify the Keeper accordingly.

(3D) Where a change such as is mentioned in subsection (3) is a result of the taking of a step mentioned in paragraph (d)(i), (d)(ii), (j)(i), (j)(ii) or (j)(iii) of subsection (3) of section 4, the Commission must notify the Keeper of that change in accordance with subsection (3E).

(3E) Notification under subsection (3D) must be given—

(a) in the case of the division of a croft under section 9 or 19D of the 1993 Act, as soon as reasonably practicable after the Commission consent to the division (such division taking effect only on receipt of the notification);

(b) in the case of the decrofting of a croft pursuant to a direction under section 24(2) or (3) of that Act, as soon as reasonably practicable after the direction is made (the decrofting taking effect only on receipt of the notification);

(c) in the case of the decrofting of a croft pursuant to a direction under section 24(3) of that Act resulting from an application under section 25(4) of that Act, as soon as reasonably practicable after the Commission are notified under section 25(4ZB)(a) of that Act of an acquisition.

(4) The Keeper must issue to the applicant a certificate, authenticated as the Keeper considers appropriate—

(a) confirming that the registration of the croft may no longer be challenged under section 12(1);

(b) containing such other information as the Keeper considers appropriate.

(5) The Keeper must at the same time send a copy of the certificate to the Commission.

(6) A certificate issued under subsection (4) is to be accepted for all purposes as sufficient evidence of the registration of the croft.

The registration schedule

10 The registration schedule

(1) The Keeper must make up and maintain a registration schedule of every croft registered in the register.

(2) The Keeper must enter in the registration schedule—

(a) a description of the land which comprises the croft that must consist of or include a description of it based on the Ordnance Map or such other map as the Keeper considers appropriate;

(b) the name and designation of, as the case may be—

(i) any tenant of the croft;

(ii) any owner-occupier crofter of the croft;

(iii) any landlord of the croft;

(iv) any owner of the croft;

(d) such other information as the Keeper considers appropriate.

(2A) Where the description of the land which comprises a croft (a “later croft”) would include land mentioned in subsection (2B) (“registered land”), the Keeper—

(a) may not include the registered land in the description of the later croft entered in the registration schedule of that croft;

(b) may enter a description of the land comprising the later croft which omits the registered land.

(2B) The land referred to in subsection (2A) is land which is already entered in the registration schedule of—

(a) another croft;

(b) a common grazing; or

(c) land held runrig,

as part of the description of the land which comprises that other croft, that common grazing or, as the case may be, that land held runrig.

(3) The Keeper must issue, to any person applying, a copy, authenticated as the Keeper considers appropriate, of any registration schedule or any part thereof.

(4) A copy issued under subsection (3) is to be known as an office copy and is to be accepted for all purposes as sufficient evidence of the contents of the original registration schedule.

(5) The Scottish Ministers may, by order, modify subsection (2) so as to add to the matters mentioned there any other matters that they consider should be included in the registration schedule of a croft.

Challenge to first registration

11 Notification of first registration

(1) Subject to subsection (2), the Commission must, on receipt of a certificate of registration under section 8(2) or, as the case may be, (3), notify any persons mentioned in subsection (3) of the matters mentioned in subsection (4).

- (2) The Commission need not notify a person mentioned in subsection (3)—
- (a) where that person is the applicant for registration; or
 - (b) where the certificate of registration issued under section 8(2) relates to a first registration as a result of the taking of the step mentioned in section 4(3)(m).
- 5 (3) Those persons are—
- (a) the owner of the croft;
 - (b) the landlord of the croft;
 - (c) the crofter of the croft;
 - (d) the owner-occupier crofter of the croft;
 - 10 (e) the owner of any adjacent croft;
 - (f) the landlord of any adjacent croft;
 - (g) the crofter of any adjacent croft;
 - (h) the owner-occupier crofter of any adjacent croft;
 - (i) the owner of any adjacent land (not being land which is an adjacent croft);
 - 15 (j) the occupier of any adjacent land (not being land which is an adjacent croft).
- (4) Those matters are—
- (a) that the croft has been registered;
 - (b) the description of the croft as it is entered in the registration schedule;
 - 20 (c) the names and designations of any persons entered in the registration schedule in accordance with section 10(2)(b);
 - (d) the right to challenge the registration by applying to the Land Court under section 12(1);
 - (e) the period, mentioned in subsection (5), before the end of which such a challenge must be brought.
- 25 (5) That period is the period of 9 months beginning with the date on which the Commission issue notification under subsection (1).
- (6) The applicant, on receipt of the certificate under section 8(2) relating to a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(m)), must give public notice of the registration of the croft
- 30 by—
- (a) placing an advertisement, for two consecutive weeks, in a local newspaper circulating in the area where the croft is situated; and
 - (b) affixing a conspicuous notice in the prescribed form to a part of the croft.
- 35 (6A) The applicant must take all reasonable steps to ensure that the notice mentioned in subsection (6)(b) continues to be displayed throughout the period mentioned in subsection (5).
- (7) In subsection (6)(b), “prescribed” means prescribed by the Scottish Ministers by order.

11A Power of entry etc. where Commission is applicant

- (1) The section applies where, by virtue of being the applicant for registration, the Commission are required to affix a notice in accordance with section 11(6)(b).
- (2) A person authorised by the Commission may enter the croft for the purposes of—
- 5 (a) affixing the notice;
- (b) complying with section 11(6A); and
- (c) removing the notice in accordance with subsection (3)(b).
- (3) The Commission must—
- 10 (a) when affixing the notice, take all reasonable care not to damage the croft or the part of the croft to which the notice is affixed; and
- (b) remove the notice no later than one week after the end of the period mentioned in section 11(5).
- (4) Subsections (2) to (4) of section 56 of the 1993 Act apply for the purposes of subsection (2) as they apply for the purposes of subsection (1) of that section.

12 Challenge to first registration

- (1) Any person to whom notice is given under section 11(1), or who otherwise is aggrieved by the registration of the croft to which the notice relates, may apply before the end of the period mentioned in section 11(5) to the Land Court for an order under subsection (2)(a) or (b).
- 20 (1A) A person applying under subsection (1) must, as soon as reasonably practicable after doing so, notify the Keeper.
- (1B) Where an application under subsection (1) is made after the end of the period mentioned in section 11(5), the Court may, on cause shown, deal with the application as if it had been made before the end of that period.
- 25 (1C) Subsection (1) does not apply as respects the registration of a croft as a result of the taking of a step mentioned in section 4(3)(m).
- (2) On receipt of such an application, the Court may—
- (a) make an order that the entry in the register relating to the croft be removed;
- (b) make an order that the entry in the register relating to the croft be modified;
- 30 (c) make no order.
- (2A) Where subsection (2B) applies, the Court must, if making an order such as is mentioned in subsection (2)(b), declare the boundary of the croft to be that which, in all the circumstances, it considers appropriate.
- (2B) This subsection applies where—
- 35 (a) the application challenging the registration raises a question as to the boundaries of the croft; and
- (b) the evidence available to the Court is insufficient to enable any boundary to be clearly determined.
- (6) Where the Court makes an order under subsection (2)(a) or (b), the Keeper must make such amendment to the registration schedule of the croft and to the register as is
- 40 necessary.

*Removal of resumed and decrofted crofts from register***12A Resumed and decrofted crofts**

- (1) The Keeper must—
- (a) where subsection (2) applies, remove the entry in the register relating to the resumed croft;
 - (b) where subsection (3) applies, remove the entry in the register relating to the croft in relation to which a decrofting direction has been made.
- (2) This subsection applies where—
- (a) a registered croft has been resumed by virtue of an authorisation under section 20(1) of the 1993 Act;
 - (b) no order has been made under section 21A(1) of that Act that the land so resumed revert to being a croft; and
 - (c) the period of 20 years beginning with when the resumption was authorised has ended.
- (3) This subsection applies where—
- (a) a decrofting direction under section 24(2) or, as the case may be, (3) of the 1993 Act was made in relation to a registered croft;
 - (b) the Land Court has not revoked the direction by virtue of section 24(8B) of that Act or by virtue of any other enactment; and
 - (c) the period of 20 years beginning with the making of direction has ended.
- (4) This section applies to a part of a croft as it applies to a whole croft with the modification that references in subsection (1) to removing entries in the register are to be read as references to modifying such entries.

*Rectification and indemnity***14 Rectification of the register**

- (1) The Keeper—
- (a) may rectify the register in accordance with subsections (1A) to (1C);
 - (b) must rectify the register on being ordered to do so by any court.
- (1A) Where a mistake in the register arises as a consequence of a mistake in an application for registration (not being a mistake to which subsection (1B) applies), the Keeper may rectify the register to correct the mistake on the application of the person who made that application (the “original applicant”).
- (1B) Where a mistake in the register arises as a consequence of a mistake made by the Commission when forwarding an application for registration under section 6(4)(b), the Keeper may so rectify the register on the application of—
- (a) the Commission; or
 - (b) the original applicant.

(1C) Where a mistake in the register arises as a consequence of a mistake by the Keeper when making up or amending a registration schedule or making consequential amendments to the register, the Keeper may so rectify the register whether on the application of any person to do so or not.

5 (1D) Without prejudice to any enactment or rule of law, the powers of the court include power to make orders for the purposes of subsection (1)(b).

(2) Where the Keeper rectifies the register under this section, the Keeper must give written notice of the rectification to—

(a) any person appearing to the Keeper to be affected by it;

10 (b) the Crofting Commission.

(3) In this section—

“court” means the Court of Session, the Land Court or the sheriff;

“mistake” includes something mistakenly omitted and something mistakenly included;

15 “rectify”, in relation to the register, means to correct any inaccuracy in it by entering something in, amending something in or removing something from the register; and “rectification” is to be construed accordingly.

14A Rectification following first registration

20 (1) This section applies where, in the case of a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(3)(m))—

(a) the Keeper rectifies the register under section 14(1)(a) to correct a material inaccuracy; and

(b) the register is rectified before the end of the period mentioned in section 11(5) (no application under section 12(1) having been made).

25 (2) The Keeper must issue a fresh certificate of registration and sections 8(3) to (5), 9, 11 and 12 apply to that certificate as they apply to a certificate of registration issued under section 8(2).

30 (3) If the rectification of the register was to correct a mistake arising as a consequence of a mistake by the Keeper when making up or amending a registration schedule or making consequential amendments to the register, the Keeper is liable for any costs incurred by any person in connection with complying with section 11.

35 (4) If the rectification of the register was to correct a mistake arising as a consequence of a mistake made by the Commission when forwarding the application for registration under section 6(4)(b), the Commission is liable for any costs incurred by any person in connection with complying with section 11.

(5) In this section—

“material inaccuracy” means an inaccuracy relating to any matter mentioned in section 10(2);

“mistake” has the meaning given by section 14(3).

15 Indemnity in respect of loss

- (1) A person who suffers loss as a result of a matter mentioned in subsection (2) is to be indemnified by the Keeper in respect of that loss.
- (2) Those matters are—
- 5 (a) a mistake in the register made by the Keeper when making up or amending a registration schedule or making consequential amendments in the register, the correction of which would require rectification of the register;
- (b) a rectification of the register under section 14(1) to correct such a mistake;
- (c) the refusal of the Keeper to make such a rectification;
- 10 (d) the loss or destruction of any document while lodged with the Keeper;
- (e) a mistake such as is mentioned in paragraph (a) in any certificate of registration or in any information given by the Keeper in writing or in such other manner as may be prescribed by rules made under section 16(1).
- (3) No indemnity is payable in relation to a mistake such as is mentioned in subsection (2)(a) until a decision has been made about whether to rectify the register for the purpose of correcting the mistake; and the loss suffered as a result of that mistake is to be determined in the light of that decision.
- 15 (3A) A person who, as a result of a mistake mentioned in subsection (3B)—
- (a) takes a step mentioned in subsection (3C); and
- 20 (b) suffers a loss in so doing,
- is to be indemnified by the Commission in respect of that loss.
- (3B) That mistake is a mistake in the register arising as a consequence of a mistake made by the Commission when forwarding the application for registration under section 6(4)(b).
- (3C) Those steps are—
- 25 (a) the submitting of a fresh application for registration;
- (b) the making of an application for rectification of the register under section 15(1B).
- (3D) Subsection (3A) applies whether or not the register is rectified to correct the mistake referred to in that subsection.
- (6) In this section, “mistake” has the meaning given by section 14(3).

*Rules***16 Rules and fees**

- (1) The Scottish Ministers may, after consultation with the Keeper and the Commission, make rules—
- 35 (a) regulating the making up and keeping of the register (including the form and manner in which the register is made available to the public);
- (b) prescribing the form of any search, report or other document to be issued or used in connection with this Part and regulating the issuing of any such document;
- (ba) prescribing the form of application for registration;
- (c) regulating the procedure on application for any registration;

- (d) prescribing the form of deeds relating to registered crofts;
 - (e) concerning such other matters as seem to Ministers to be necessary or proper in order to give full effect to the purposes of this Part.
- (2) The Scottish Ministers may, by order, prescribe the fees payable in respect of registration and in respect of provision by the Keeper of searches, reports, certificates or other documents or copies of documents or of information from the register.
- (3) An order under subsection (2) may include provision about—
- (a) the circumstances in which a person making an application for first registration is to be entitled to a reduction in the fee that would otherwise be payable in respect of such registration;
 - (b) the amount or, as the case may be, method of calculating that reduction; and
 - (c) the manner in which that reduction is to be achieved (whether by way of discount, repayment or otherwise and including any effect that reduction may have on the operation of section 6(1) and (4)(b)(ii)).

Appeals

17 Appeals

- (1) A person aggrieved by any act or omission of the Keeper under this Part may appeal any issue of fact or law arising from that act or omission to the Land Court.
- (2) On an appeal under this section, the Court may order the Keeper to take such remedial action as the order may specify, including action to rectify the register.

Consequential amendments of the 1993 Act

18 Meaning of “croft” etc.

- (1) In section 3 of the 1993 Act (meaning of croft and crofter)—
- (a) in subsection (1), after “subsection (2) below” insert “and to section 3ZA(2)(a)”;
 - (b) in subsection (3), at the beginning insert “Subject to section 3ZA(2)(c).”.

- (2) After section 3 insert—

“3ZA Registered crofts

- (1) This section applies where a holding situated—
- (a) in the crofting counties; or
 - (b) as is mentioned in section 3A(1)(b),
- is registered in the Crofting Register.
- (2) For the purposes of this Act—
- (a) the holding is, from the date of registration, a croft;
 - (b) the land which comprises the croft (including any right or land mentioned in section 3(4)) is determined by the description of that land in the registration schedule of the croft; and
 - (c) from the date of registration, any person for the time being entered in the registration schedule of the croft as the tenant of the croft is a crofter.

- (4) Section 3 (other than subsection (2)) does not apply.
- (5) Section 3(2) applies to subsection (2)(a) of this section as it applies to subsection (1) of section 3.
- (6) Nothing in this section affects whether, before the date of registration, the holding was a croft or any person was the tenant of it.”.

19 Registration of new crofts

- (1) Section 3A of the 1993 Act (new crofts) is amended as follows.
- (2) In subsections (1) and (2), the words from “by entering” to the end are, in both subsections, repealed.
- (3) Subsection (4) is repealed.
- (4) After section 3A insert—

“3AA Registration of new crofts

- (1) This section applies where the Commission make a determination to exercise their power under section 3A(1) or, as the case may be, (2), to constitute land or, as the case may be, a holding as a croft.
- (2) The application for registration of the land or holding in the Crofting Register must not be forwarded to the Keeper under section 6(4)(b) of the Crofting Reform (Scotland) Act 2010 (asp 00)—
- (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
- (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission’s determination under section 3A(1) or, as the case may be, (2).
- (3) In the case of an application for registration of a holding in relation to which a determination under section 3A(2) is made, the Commission must not forward the application unless they are satisfied—
- (a) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being constituted as a croft and that the amount has been duly paid;
- (b) that the applicant and the owner have agreed that no amount in compensation is to be so payable; or
- (c) that any such amount found, by virtue of section 3B, to be so payable has been duly paid.”.
- (5) In section 3B of the 1993 Act (compensation for constituting holding as a croft), in subsection (1), for “subsection (4)(b)(i) or (ii) of that section” substitute “section 3AA(3)(a) or (b)”.

Registration of common grazings

19A First registration of common grazings

- (1) An unregistered common grazing—

(a) must be registered, in the case of a new common grazing, subject to section 51B of the 1993 Act, on the determination under section 51A(1) of that Act to constitute the land as a common grazing;

5 (b) may be registered, in any other case, on an application being made by the Commission.

(2) In this Part—

“first registration” in relation to an unregistered common grazing, means the registration of that common grazing;

10 “new common grazing” means land in relation to which the Commission have made a determination, under section 51A(1) of the 1993 Act, to constitute the land as a common grazing.

19B Registration of events affecting registered common grazings

(1) The following events in relation to a registered common grazing must be registered, that is—

15 (a) the transfer (whether or not for valuable consideration) of the ownership of any land on which the common grazing is situated;

(b) the taking, in relation to the common grazing, of a step mentioned in subsection (2).

(2) The steps referred to in subsection (1)(b) are—

20 (a) the giving of authorisation to resume the common grazing or part of the common grazing under section 20(1) of the 1993 Act;

(b) the granting under section 20(1C) of that Act of an extension of the period for which resumption of the common grazing is authorised;

25 (c) the making of a determination under section 20(1F) of that Act converting a temporary resumption of the common grazing into an ordinary resumption;

(d) the making of an order under section 21A of that Act that land resumed under section 20 of that Act is to revert to being a common grazing;

(e) the enlargement of the common grazing under section 51 of that Act;

30 (f) the termination of all or part of a person’s share in the common grazing under section 52(1E)(b)(i) of that Act;

(g) the apportionment—

(i) of a share or part of a share in the common grazing under section 52(1E)(b)(ii) of that Act;

35 (ii) of the common grazing, or part of the common grazing, under 52(3) of that Act;

(iii) of a part of the common grazing under section 52(4) of that Act;

(h) the extension, under subsection (11) of section 52 of that Act, of any period for which a part of the common grazing is apportioned under subsection (10) of that section;

- (i) the bringing to an end, under subsection (12) of section 52 of that Act, of an apportionment of the common grazing or part of the common grazing made in pursuance of subsection (3) or (4) of that section;
- 5 (j) the making of a determination under section 52(14) of that Act as to shares in the common grazing;
- (k) the transfer (whether or not for valuable consideration) by a person who holds a right in the common grazing of that right to another person.
- (3) But no application for registration of a step mentioned in paragraph (g)(iii) or paragraph (i) of subsection (2) need be submitted if an application for registration of such a step is submitted by virtue of section 5.
- 10 (4) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(a).
- (5) The Scottish Ministers may, by order, modify subsection (2) so as to—
- 15 (a) add a step to;
- (b) modify the description of a step in;
- (c) remove a step from,
- that subsection.

19C Applications for registration: common grazings

- (1) An application for—
- 20 (a) first registration of a new common grazing; or
- (b) registration of an event affecting a registered common grazing (other than one which falls to be submitted by the Commission),
- and the fee payable in respect of such registration, is to be submitted to the Commission.
- (2) An application for first registration of a new common grazing is to be submitted at the same time as an application under section 51A(1) of the 1993 Act.
- 25 (3) An application for registration of an event affecting a registered common grazing is to be submitted—
- (a) in the case of the transfer of the ownership of any land on which the common grazing is situated, by the person to whom such ownership is transferred;
- 30 (b) in the case of a step mentioned in 19B(2)—
- (i) in accordance with the requirements of the 1993 Act; or
- (ii) in the absence of such requirements, as soon as reasonably practicable after the step is taken.
- (4) In respect of an application submitted to the Commission under this section, the Commission must, subject to section 51B of the 1993 Act and to subsections (5) and (6), forward—
- 35 (a) the application, together with any comments they may have on it; and
- (b) the fee payable in respect of it,
- to the Keeper as soon as reasonably practicable.

- (5) The Commission may, before forwarding an application for registration to the Keeper, require the applicant to provide them with such further information relating to the application as they consider appropriate.
- (6) The Commission may refuse to forward an application for registration if—
- 5 (a) a requirement under subsection (5) is not complied with;
- (b) the application is frivolous or vexatious;
- (c) the fee payable in respect of registration has not been tendered;
- (d) there is a material inaccuracy in the application; or
- 10 (e) they consider that the Keeper would otherwise not accept the application under section 7(2).
- (7) Where the Commission refuse to forward an application for registration, section 52A of the 1993 Act applies as if that refusal were a decision of the Commission on an application to them under that Act.
- (8) An application for first registration of a common grazing by the Commission is to be
- 15 submitted to the Keeper.
- (9) Before submitting such an application, the Commission must consult—
- (a) the owner of the common grazing; and
- (b) where there is a grazings committee or grazings constable, that committee or that constable.
- 20 (10) Where there is no grazings committee or grazings constable, the Commission must notify, in such manner as they consider appropriate (including by means of advertisement), all persons who hold a right in the common grazing of the application.
- (11) Any person notified under subsection (10) may make representations to the Commission in respect of the proposed application.
- 25 (12) In subsection (6)(d), “material inaccuracy” means an inaccuracy relating to any matter mentioned in section 10(2) (as that section applies, with the modifications specified in schedule 1B, to common grazings).
- (13) Section 6 does not apply to applications for registration of a common grazing.

19D Registration of new common grazings

- 30 (1) In subsection (1) of section 51A of the 1993 Act (new common grazings), the words from “by entering” to the end of the subsection are repealed.
- (2) After that section insert—

“51B Registration of new common grazings

- 35 (1) Subsection (2) applies where the Commission make a determination to exercise their power under section 51A(1) to constitute land as a common grazing.
- (2) The application for registration of the land in the Crofting Register must not be forwarded to the Keeper under section 19C(4) of the 2010 Act—
- (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
- 40 (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission’s determination under section 51A(1).

- (3) Where land in respect of which a determination under section 51A(1) is made is registered in the Crofting Register the land is, for the purposes of this Act and from the date of registration, a common grazing.”

19E Application of Act to common grazings

5 Schedule 1B, which applies certain provisions of this Act relating to crofts to common grazings, has effect.

Offences

19F Transfer of land containing crofts: offences

- (1) A person commits an offence if—
- 10 (a) ownership of an owner-occupied croft having been transferred to the person as is mentioned in section 4(1)(aa)(i); or
- (b) ownership of land having been transferred to the person as is mentioned in section 4(1)(b)(i),
- 15 the person fails within one year of the transfer to apply to register the owner-occupied croft or, as the case may be, a croft situated on the land.
- (2) A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the owner-occupied croft or, as the case may be, a croft mentioned in subsection (1).
- (3) But an offence under subsection (1) or (2) cannot be committed by a person in respect of
- 20 a croft after the person is no longer required, by virtue of section 4(4C), to register the croft.
- (4) Where there is more than one croft situated on land such as is mentioned in section 4(1)(b)(i), separate offences under subsection (1) or (2) may be committed in respect of each such croft.
- 25 (5) A person commits an offence if—
- (a) ownership of an owner-occupied croft having been transferred to the person as is mentioned in section 5(1)(za)(i); or
- (b) ownership of land having been transferred to the person as is mentioned in section 5(1)(zb)(i),
- 30 the person fails within one year of the transfer to apply to register the transfer.
- (6) A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the transfer mentioned in subsection (5).
- (7) A person who commits an offence under subsection (1), (2), (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

35 19G Change of landlord: offences

- (1) A person commits an offence if, having become the landlord of a croft, the person fails, within one year of becoming such a landlord, to apply to register the change of landlord in accordance with section 5(1)(zb)(ii).

- (2) A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the change of landlord mentioned in subsection (1).
- (3) But no offence is committed under this section by a person who becomes the landlord of a croft by virtue of the transfer of ownership of land on which the croft is situated.
- (4) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

19H Transfer of land on which common grazing is situated: offences

- (1) A person commits an offence if, ownership of land such as is mentioned in section 19B(1)(a) having been transferred to the person, the person fails within one year of the transfer to apply to register the transfer.
- (2) A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the transfer mentioned in subsection (1).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Lands held runrig

19I Lands held runrig

- (1) Unregistered land held runrig may be registered on an application being made by the Commission.
- (2) An application for first registration of land held runrig is to be submitted to the Keeper.
- (3) Before submitting such an application the Commission must—
- (a) consult the owner of the land; and
 - (b) notify, in such manner as they consider appropriate (including by means of advertisement), all persons who are holders of the land held runrig.
- (4) Any person notified under subsection (3) may make representations to the Commission in respect of the application.
- (5) The following events in relation to registered land held runrig must be registered, that is—
- (a) the apportionment of the land under section 52(8) of the 1993 Act;
 - (b) the extension, under subsection (11) of section 52 of that Act, of any period for which a part of the land is apportioned under subsection (10) of that section.
- (6) An application for registration of an event mentioned in subsection (5), and the fee payable in respect of such registration, is to be submitted to the Commission.
- (7) In respect of such an application, the Commission must, subject to subsections (8) and (9), forward—
- (a) the application, together with any comments they may have on it; and
 - (b) the fee payable in respect of it,
- to the Keeper as soon as reasonably practicable.

“Crofters’ duties relating to residency, misuse and neglect of crofts

5AA Crofters: residency duty

A crofter must be ordinarily resident on, or within 32 kilometres of, that crofter’s croft.”.

5 (3) For section 5B substitute—

“5B Crofters: duty not to misuse or neglect croft

(1) A crofter must not misuse or neglect the crofter’s croft.

(2) A crofter misuses a croft where the crofter—

10 (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is consented to under section 5C(4);

(b) fails to use the croft for the purposes of its being cultivated; or

(c) fails to put the croft to any such purposeful use.

15 (3) A crofter neglects a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).

(4) But where the crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—

20 (a) the natural beauty of the locality of the croft; or

(b) the flora and fauna of that locality,

the crofter’s so engaging or refraining is not to be treated as misuse or neglect as respects the croft.

25 (5) If, immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not to be treated as misuse or neglect as respects the croft.

30 (7) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (3) so as to substitute different standards for those for the time being mentioned in that subsection.

5C Crofters: duty to cultivate and maintain

(1) A crofter must comply with each of the duties set out in subsection (2).

35 (2) Those duties are that the crofter—

(a) must—

(i) cultivate the croft; or

(ii) put it to another purposeful use,

so that every part of the croft is cultivated or put to such use;

(b) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).

5 (3) Without prejudice to the generality of paragraph (b) of subsection (2), in determining whether that paragraph is complied with regard is to be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes, iris and harmful weeds.

10 (4) A crofter may only put the croft to a use mentioned in subsection (2)(a)(ii) if—

(a) the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or

(b) the Commission have consented to the use.

15 (5) But a crofter may not apply to the Commission for consent under subsection (4)(b) until (the earlier of)—

(a) the landlord has refused consent (or granted consent subject to conditions unacceptable to the crofter); or

(b) the period of 28 days, commencing with the date on which the request for the consent of the landlord was made, has expired.

20 (6) The Commission must, on receipt of such an application for consent—

(a) consult, as regards the proposed purposeful use, the landlord and the members of the crofting community in the locality of the land; and

(b) if the proposed purposeful use—

(i) constitutes a change for which planning permission is required; or

(ii) by virtue of any enactment (other than this Act) requires any other permission or approval,

require it to be shown that the permission or approval has been given.

(7) The Commission must decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.

30 (8) In this Act—

“cultivate” includes the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands;

35 “purposeful use” means any planned and managed use which does not adversely affect—

(a) the croft;

(b) the public interest;

(c) the interests of the landlord or (if different) the owner; or

(d) the use of adjacent land.”.

Duties of owner-occupier crofters

21 Duties of certain owner-occupiers of crofts

After section 19A of the 1993 Act insert—

“Owner-occupied crofts: duties of certain owners

19B Meaning of “owner-occupier crofter” etc.

(1) In this Act, a person is an “owner-occupier crofter” if all the conditions in subsections (1A) to (1C) are satisfied.

(1A) The first condition is that the person is the owner of a croft.

(1B) The second condition is that the person—

(a) was the crofter of the croft at the time of acquiring it (or is such a crofter’s successor in title);

(b) acquired title to the croft as the nominee of a crofter (or is such a nominee’s successor in title); or

(c) purchased the croft from the constituting landlord (or is such a purchaser’s successor in title).

(1C) The third condition is that the croft has not been let to any person as a crofter either by virtue of section 26J or otherwise—

(a) at any time since it was acquired as mentioned in subsection (1B)(a) or (b); or

(b) at any time since it was constituted as mentioned in subsection (3)(a).

(2) In this Act, an “owner-occupied croft” means a croft owned by an owner-occupier crofter; and “owner-occupier’s croft” is to be construed accordingly.

(3) For the purposes of subsection (1B)(c), the “constituting landlord” is—

(a) the owner of the land at the time the land was constituted as a croft under section 3A; or

(b) such an owner’s successor in title immediately before the croft is sold to the purchaser mentioned in subsection (1B)(c).

19C Duties of owner-occupier crofters

(1) An owner-occupier crofter must comply with each of the duties set out in subsection (2).

(2) Those duties are that the owner-occupier crofter—

(a) must be ordinarily resident on, or within 32 kilometres of, the owner-occupier’s croft;

(b) must not misuse or neglect the croft;

(c) must—

(i) cultivate the croft; or

(ii) put it to another purposeful use,

so that every part of the croft either is cultivated or is put to such use;

(d) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).

(3) For the purposes of subsection (2)(b), an owner-occupier crofter misuses an owner-occupied croft where the owner-occupier crofter—

(a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use;

(b) fails to use the croft for the purpose of its being cultivated; or

(c) fails to put the croft to any such purposeful use.

(4) For the purposes of subsection (2)(b), an owner-occupier crofter neglects an owner-occupied croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).

(4A) Without prejudice to the generality of paragraph (d) of subsection (2), in determining whether that paragraph is complied with regard is to be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes, iris and harmful weeds.

(5) But where the owner-occupier crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—

(a) the natural beauty of the locality of the owner-occupied croft; or

(b) the flora and fauna of that locality,

the owner-occupier crofter's so engaging or refraining is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

(6) If, immediately before the coming into force of section 21 of the Crofting Reform (Scotland) Act 2010 (asp 00), the owner-occupied croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of schedule 2 to this Act (as that paragraph applied immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7)), any continuation of use for that occupation is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

(8) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (4) so as to substitute different standards for those for the time being mentioned in that subsection.

19D Division of owner-occupied crofts

(1) An owner-occupier crofter may not sell any part of the owner-occupier's croft without first dividing the croft into the part which the owner-occupier crofter proposes to sell and the part which the owner-occupier crofter proposes to retain.

(2) The owner-occupier crofter may so divide that owner-occupier's croft only if the owner-occupier crofter first obtains the consent of the Commission to that division.

(2A) Where consent is applied for under subsection (2) in relation to an unregistered owner-occupied croft, the Commission—

(a) must not grant that consent unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;

(b) need not, during that 6 month period, consider the application for consent until an application for first registration of the owner-occupied croft is submitted.

(3) In relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft)—

(a) any consent of the Commission given by virtue of subsection (2) to a division of the owner-occupied croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the division takes effect on the date of registration.

(3A) The Keeper must make up and maintain a registration schedule in accordance with section 10 of the 2010 Act in respect of the new croft created by a division under this section.

(4) Any sale of any part of an owner-occupied croft which is not a new croft created by a division under this section, and any deed purporting to sell that part, is null and void.

(5) Where the sale of a part of an owner-occupied croft is null and void under subsection (4), the Commission may declare the original croft vacant.

(6) In this section—

“division” means the division of an owner-occupied croft into two or more new crofts; and cognate expressions are to be construed accordingly;

“original croft” means the owner-occupier’s croft mentioned in subsection (1); and

“new crofts” mean each of the crofts created by the division of the original croft.”.

Commission consent for absence from croft

22 Consent for absence from croft

After section 21A of the 1993 Act insert—

“Consent for absence from croft

21B Commission consent for absence from croft

- 5 (1) A crofter or an owner-occupier crofter may apply to the Commission for consent to be ordinarily resident other than on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft.
- (2) Where an application under subsection (1) is made by a crofter, the crofter must send a copy of the application to the landlord of the croft.
- 10 (3) The Commission may grant consent only if they consider that there is a good reason for the person not to be ordinarily resident on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft.
- (4) The Commission may grant consent subject to such conditions as they consider it appropriate to impose which may, in particular, relate to the duration of absence.
- 15 (5) The Commission must make their decision on an application under subsection (1) before the expiry of the period of 28 days beginning with the date on which the application is made.
- (6) The Commission must notify—
- (a) the applicant; and
 - (b) if the applicant is a crofter, the landlord of the croft,
- 20 of their decision and the reasons for making it.

21C Extension of consent for absence

- 25 (1) Where the Commission have granted consent under section 21B subject to a condition as to the duration of absence, the applicant may, before the expiry of the period for which consent has been granted, apply to the Commission to extend the duration of the consent.
- (2) Subsections (2) to (6) of section 21B apply to an application under subsection (1) of this section as they apply to an application under section 21B(1).

21D Variation of condition in consent for absence

- 30 (1) Where the Commission have granted consent under section 21B subject to a condition (other than a condition as to the duration of absence), the applicant may, before the expiry of the period for which consent has been granted, apply to the Commission to vary the condition.
- (2) Subsections (2) to (6) of section 21B apply to an application under subsection (1) of this section as they apply to an application under section 21B(1).”.

Enforcement of duties of crofters and owner-occupier crofters

23 Enforcement of duties of crofters and certain owner-occupiers

After section 26 of the 1993 Act insert—

“Enforcement of duties

26A Enforcement of duties of crofters and owner-occupier crofters: general

- 5 (1) This section and section 26B apply where the Commission consider that—
- (a) a crofter is not complying with any of the duties mentioned in section 5AA, 5B or 5C;
 - (b) an owner-occupier crofter is not complying with any of the duties mentioned in section 19C(2).
- 10 (1A) Where a crofter has sublet the croft by virtue of a lease to which section 27 applies, the crofter is deemed to comply with the duties mentioned in subsection (1)(a) (other than the duty not to misuse the croft) if the crofter’s subtenant complies with the duties.
- 15 (1B) Where an owner-occupier crofter has let the croft by virtue of a lease to which section 29A applies, the owner-occupier crofter is deemed to comply with the duties mentioned in subsection (1)(b) (other than the duty not to misuse the croft) if the owner-occupier crofter’s tenant complies with the duties.
- (2) In sections 26B, 26C and 26K, the “relevant person” means the crofter (in the case of a croft) or the owner-occupier crofter (in the case of an owner-occupied croft).

26B Notice of suspected breach of duty

- 20 (1) The Commission must, unless they consider that there is a good reason not to, give the relevant person a written notice informing the person that the Commission consider that the duty is not being complied with.
- (2) The notice must—
- 25 (a) explain the reasons why the Commission consider that the duty is not being complied with;
 - (b) indicate that the relevant person may make representations to the Commission before the expiry of the period of 28 days beginning with the day on which notice is given to the person (the “representation period”); and
 - 30 (c) where given to a crofter, be copied to the landlord of the croft.
- (3) The Commission must have regard to any representations received within the representation period.
- (4) The Commission may also have regard to any representations received after the end of the representation period.
- 35 (5) The Commission must, before the expiry of the period of 14 days beginning with the day on which the representation period ends, decide whether the duty is being complied with.

26C Undertakings: general

- 5 (1) If the Commission decide that a duty is not being complied with, they must, before taking any action under section 26H or 26J, give the relevant person a written 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.
- 10 (2) The notice must—
- (a) explain that the relevant person must give the undertaking before the expiry of the period of 28 days beginning with the day on which the notice is given;
 - (b) explain that the giving of the undertaking by the person constitutes acceptance by the person that the duty is not being complied with;
 - (c) set out what the person must do to comply with the undertaking;
 - 15 (d) explain that if the person complies with the undertaking, no further action will be taken against the person in respect of the failure to comply with that duty; and
 - (e) where given to a crofter, be copied to the landlord of the croft.
- 20 (3) The Commission may accept an undertaking subject to such conditions as they consider appropriate.
- 25 (4) The Commission must decide whether to accept an undertaking before the expiry of the period of 28 days beginning with the day on which the relevant person offers to give the undertaking.

26E Circumstances where the Commission may not take action under section 26H or 26J

25 The Commission may not take any action under section 26H or 26J if—

- (a) the period for giving an undertaking under section 26C has not expired;
- (b) an undertaking has been given under section 26C and the period for complying with the undertaking has not expired;
- (c) an undertaking given under section 26C has been complied with;
- 30 (d) in the case of a crofter—
 - (i) the Commission have consented to the sublet of the croft under section 27;
 - (ii) an application for consent to sublet has been made under section 27 and has not been determined;
- 35 (e) in the case of an owner-occupier crofter—
 - (i) the Commission have consented to the let of the owner-occupier's croft on a lease to which section 29B applies;
 - (ii) an application for consent to such a lease has been made under section 29A and has not been determined;
- 40 (f) in the case of failure to comply with the residency duty—
 - (i) the Commission have consented to the absence under section 21B;

- (ii) an application for consent for absence, to extend a period of absence or to vary a condition imposed in respect of such absence has been made under section 21B, 21C or, as the case may be, 21D and has not been determined.

5 **26F Commission duty to take action under section 26H or 26J**

- (1) If—
 - (a) the Commission decide that a duty is not being complied with; and
 - (b) none of the circumstances mentioned in section 26E apply,the Commission must take one of the actions mentioned in subsection (2) unless they consider that there is a good reason not to.
- 10 (2) Those actions are—
 - (a) in the case of a crofter, the tenancy termination procedure under section 26H;
 - 15 (b) in the case of an owner-occupier crofter, the letting procedure under section 26J.

26G Division of croft before taking action

- (1) Before taking action under section 26H or 26J, the Commission may, if they are satisfied that it is fair to do so, divide a croft or, as the case may be, an owner-occupied croft.
- 20 (2) In satisfying themselves as mentioned in subsection (1), the Commission must have regard to—
 - (a) the use and occupation of the croft or owner-occupied croft;
 - (b) in the case of a croft, the interests of the estate in which the croft is located;
 - 25 (c) the sustainable development of the crofting community in the locality of the croft or owner-occupied croft;
 - (d) such other matters as the Commission consider appropriate.
- (3) Any division of a croft or an owner-occupied croft under subsection (1) takes effect—
 - 30 (a) as respects an application for first registration of the croft, or owner-occupied croft, submitted by virtue of section 4 of the 2010 Act, on the date of registration;
 - 35 (b) as respects an application for registration of the division of the croft, or owner-occupied croft, submitted by virtue of section 5 of that Act, on the date of registration.
- (3A) The Keeper must make up and maintain a registration schedule in accordance with section 10 of the 2010 Act in respect of a new croft created by a division under this section.
- 40 (4) Where a croft or owner-occupied croft has been divided under subsection (1), the Commission may take action under section 26H or 26J in respect of any or all of the new crofts created by the division.

(4A) The Commission must give written notice to the landlord of the croft of a division made under subsection (1), specifying the date on which the division took effect.

(5) In this section—

5 “division” means the division of a croft or an owner-occupied croft into two or more new crofts; and “divide” is to be construed accordingly; and “new crofts” mean each of the crofts created by a division under subsection (1).

26H Crofters: tenancy termination procedure

10 (1) If the Commission are satisfied that it is in the general interest of the crofting community in the locality of the croft, the Commission must make an order terminating the tenancy of the crofter unless they consider that there is a good reason not to.

(2) An order under subsection (1) must be notified to—

- 15 (a) the crofter; and
 (b) the landlord of the croft.

(3) An order under subsection (1) must specify the date on which it takes effect.

(4) An order under subsection (1) may not take effect before the expiry of the period of 28 days beginning with the later notification under subsection (2).

20 (5) If the crofter fails to give up occupation of the croft on or before the day on which the order takes effect, the Commission may apply to the sheriff for warrant for ejection of the crofter.

(6) The sheriff must grant the warrant for ejection, except on cause shown by the crofter.

25 (7) The Commission may recover from the crofter the expenses incurred by them—

- (a) in making any application under subsection (5);
 (b) in executing any warrant granted under subsection (6).

30 (8) A crofter whose tenancy is terminated by an order under subsection (1) has the same rights and liabilities relating to compensation as if the crofter had renounced the tenancy at the date on which the order under subsection (1) takes effect.

26J Owner-occupier crofters: letting procedure

35 (1) The Commission must, unless they consider that there is a good reason not to, direct the owner-occupier crofter to submit to them, before the expiry of the period of 28 days beginning with the day on which the direction is given, a proposal for letting the owner-occupier’s croft.

(2) No more than three proposals for letting the croft may be submitted in response to a direction given under subsection (1).

(2A) Where a proposal for letting the croft is submitted to the Commission in response to a direction given under subsection (1), they must approve or reject the proposal within the period of 8 weeks beginning with the day on which the direction was given.

5 (2B) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (3) and (4) if—

(a) no proposals for letting the croft are submitted by the owner-occupier crofter before the expiry of the period mentioned in subsection (1);

10 (b) the owner-occupier crofter has submitted one or two proposals for letting the croft within the period mentioned in subsection (1) and—

(i) all such proposals are rejected by the Commission; and

(ii) the period mentioned in subsection (1) has expired; or

15 (c) the owner-occupier crofter has submitted three proposals for letting the croft (within the period mentioned in subsection (1)) and the Commission has rejected all three.

(2C) Any letting of an unregistered owner-occupied croft in accordance with proposals submitted under subsection (1) is void unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.

20 (2D) In relation to a registered owner-occupied croft—

(a) any approval under subsection (2A) of a proposal for letting the owner-occupied croft under subsection (1) expires at the end of the period of 3 months beginning with the date on which the approval was given unless an application for registration of the letting of the owner-occupied croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

25 (b) the letting of the owner-occupied croft takes effect on the date of registration.

30 (3) The Commission must, by public notification, invite applications for letting the owner-occupied croft before the expiry of the period specified in the notification.

(4) When the period of notification has ended, the Commission must decide—

(a) to which of the applicants (if any) to let the owner-occupied croft; and

35 (b) after consulting the owner-occupier crofter, on what conditions to let the croft.

(4A) Any letting of an unregistered owner-occupied croft pursuant to a decision under subsection (4) is void unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.

40 (4B) In relation to a registered owner-occupied croft—

(a) any decision under subsection (4) to let the owner-occupied croft to an applicant is, at the end of the period of 3 months beginning with the date on which the decision was made, to be treated as if it had not been made unless an application for registration of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the letting of the owner-occupied croft takes effect on the date of registration.

(5) Where an owner-occupied croft has been let on conditions set by the Commission under subsection (4)(b), the owner-occupier crofter may, before the expiry of the period of 28 days beginning with the day of the letting, apply to the Land Court for a variation of the conditions so set.

(6) If the Land Court, on an application under subsection (5), varies the conditions of let, any variation takes effect as from the date of the letting.

26K Appeals

(A1) A relevant person may appeal to the Land Court against a decision of the Commission under section 26B(5) that a duty is not being complied with.

(1) A relevant person may appeal to the Land Court against a decision of the Commission under section 26C—

(a) not to accept an undertaking;

(b) to impose conditions on such an undertaking.

(2) A relevant person may appeal to the Land Court against—

(a) the making by the Commission of an order under section 26H; or

(b) the giving by the Commission of a direction under section 26J.

(2A) An appeal under subsection (2) may include an appeal against a division under section 26G of (as the case may be)—

(a) the croft; or

(b) the owner-occupied croft.

(3) An appeal under subsection (1) or (2) must be made before the expiry of the period of 42 days beginning with the day on which the decision, order or direction is made.

(4) An appeal under subsection (1) or (2) may be made only on one or more of the following grounds—

(a) that the Commission erred in law;

(b) that the Commission made a finding as to a fact material to the decision, order or direction but did not have sufficient evidence on which to base that finding;

(c) that the Commission acted contrary to natural justice;

(d) that the Commission took into account certain irrelevant or immaterial considerations;

(e) that the Commission failed to take into account certain relevant or material considerations;

- (f) that the Commission exercised their discretion in an unreasonable manner.
- (5) In an appeal under this section, the Land Court may—
- (a) confirm or revoke the decision, order or direction;
- (b) direct the Commission to make a different decision, order or direction;
- (c) remit the case to the Commission without so directing them.
- (6) The Commission must give effect to the decision of the Land Court on an appeal under this section.
- (7) The Land Court may, if it considers it appropriate in consequence of any decision on an appeal under subsection (2), order the Keeper to rectify the Crofting Register.”.

Letting of owner-occupied crofts

24 Letting of owner-occupied crofts

After section 29 of the 1993 Act insert—

“Letting of owner-occupied crofts

29A Letting of owner-occupied crofts

- (1) An owner-occupier crofter may not let the owner-occupier’s croft (or any part of it) without the consent of the Commission.
- (1A) Where consent is applied for under subsection (1) in relation to an unregistered owner-occupied croft (or any part of such an owner-occupied croft), the Commission—
- (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
- (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.
- (1B) In relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft), or any part of such a croft—
- (a) any consent under subsection (1) expires at the end of the period of 3 months beginning with the date on which such consent was granted unless an application for registration of the letting of the croft (or part of the croft) is made by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the letting of the croft (or part of the croft) takes effect on the date of registration.
- (2) The Commission may, in giving their consent to a proposed lease of an owner-occupied croft for a period not exceeding 10 years (a “short lease”), impose such conditions (other than any relating to rent) as they consider appropriate.
- (3) A lease is void if it is granted—
- (a) without the Commission’s consent;

(b) in the case of a short lease, otherwise than in accordance with such conditions as the Commission may impose.

(4) The Commission may terminate a short lease granted under this section if—

(a) a condition imposed under subsection (2) is breached; or

(b) the tenant fails to comply with a condition of let (other than any relating to rent).

(5) Subsections (1) to (4) do not apply to the letting of any dwelling-house or other building forming part of the owner-occupied croft to holiday visitors.

29B Status of tenant under a short lease

The tenant under a short lease of an owner-occupied croft is not to be treated as—

(a) a crofter; or

(b) the tenant under a lease constituting—

(i) a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11);

(ii) a short limited duration tenancy within the meaning of that Act; or

(iii) a limited duration tenancy within the meaning of that Act.”.

PART 4

FURTHER AMENDMENTS OF THE 1993 ACT

Disposal of croft land, resumption and decrofting

24A Limitation on crofter’s ability to nominate donee

In section 13 of the 1993 Act (authorisation of the Land Court of acquisition of croft land), after subsection (1) insert—

“(1A) For the purposes of subsection (1)(a), only a member of the crofter’s family may be the crofter’s nominee.”.

25 Extension of period during which sum is payable on disposal of croft land

In section 14(3) of the 1993 Act (consideration payable in respect of disposal of croft land), for “five” substitute “ten”.

26 Consideration of application to resume croft

After subsection (1A) of section 20 of the 1993 Act (resumption of croft or part of croft by landlord) insert—

“(1AA) In determining whether it is satisfied as mentioned in subsection (1) above (and, in particular, whether the reasonable purpose mentioned there relates to the public interest) the Land Court—

(a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1AC) below; and

(b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

and must authorise, or refuse to authorise, the resumption of the croft by the landlord accordingly.

(1AB) Subsection (1AA) above is without prejudice to subsection (1D) below.

(1AC) The matters mentioned in subsection (1AA)(a) above are—

(a) the sustainability of—

(i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Land Court to be relevant;

(ii) the crofting community in that locality or the communities in such an area;

(iii) the landscape of that locality or such an area;

(iv) the environment of that locality or such an area;

(b) the social and cultural benefits associated with crofting.

(1AD) In subsection (1AA) above—

“development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8);

“planning permission” is to be construed in accordance with Part 3 of that Act;

“effect” includes both a positive and negative effect.”.

27 Consideration of decrofting directions

After subsection (1) of section 25 of the 1993 Act (provisions supplementary to section 24(3)) insert—

“(1A) In determining whether they are satisfied as mentioned in subsection (1)(a) above (and, in particular, whether the reasonable purpose mentioned there relates to the public interest), the Commission—

(a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1B) below; and

(b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

and must give the direction, or refuse to grant the application for it, accordingly.

(1B) The matters mentioned in subsection (1A)(a) above are—

- (a) the sustainability of—
 - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Commission to be relevant;
 - (ii) the crofting community in that locality or the communities in such an area;
 - (iii) the landscape of that locality or such an area;
 - (iv) the environment of that locality or such an area;
- (b) the social and cultural benefits associated with crofting.

(1C) In subsection (1A) above—

“development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8);

“planning permission” is to be construed in accordance with Part 3 of that Act;

“effect” includes both a positive and negative effect.”.

Letting of vacant crofts

28 Requirements to submit proposals for re-letting crofts

- (1) Section 11 of the 1993 Act (intestacy) is amended as follows.
- (2) In subsection (8)(a), after “them” insert “, before the expiry of the period of four months beginning with the day on which the notice is given,”.
- (3) Section 23 of the 1993 Act (vacant crofts) is amended as follows.
- (4) In subsection (5)—
 - (a) after “them” where it first occurs insert “, before the expiry of the period of two months beginning with the day on which the notice is given,”; and
 - (b) the words from “, and if,” to the end are repealed.
- (5) After that subsection insert—

“(5ZA) No more than three proposals may be submitted to the Commission in response to a notice given under subsection (5).

(5ZB) Where a proposal for letting the croft is submitted to the Commission in response to a notice given under subsection (5), they must approve or reject the proposal—

 - (a) in a case where the croft is declared vacant under section 11(8), within the period of five months beginning with the day on which the notice under section 11(8)(a) is given; or
 - (b) in any other case, within the period of three months beginning with the day on which the notice under subsection (5) was given.

(5ZC) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (5B) and (5C) if—

 - (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of two months mentioned in subsection (5);

(b) the landlord has submitted one or two proposals for letting the croft within the period of two months mentioned in subsection (5) and—

- (i) all such proposals are rejected by the Commission; and
 - (ii) the period of two months mentioned in subsection (5) has expired;
- or

(c) the landlord has submitted three proposals for letting the croft (within the period of two months mentioned in subsection (5)) and the Commission has rejected all three.”.

(6) For subsection (5A) substitute—

“(5A) Where a croft is declared vacant under section 11(8), the Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (5B) and (5C) if—

(a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of four months mentioned in section 11(8)(a);

(b) the landlord has submitted one or two proposals for letting the croft within the period of four months mentioned in section 11(8)(a) and—

- (i) all such proposals are rejected by the Commission; and
- (ii) the period of four months mentioned in section 11(8)(a) has expired; or

(c) the landlord has submitted three proposals for letting the croft (within the period of four months mentioned in section 11(8)(a)) and the Commission has rejected all three.”.

29 Application to decroft where action being taken to re-let vacant croft

In section 24 of the 1993 Act (decrofting in case of resumption or vacancy), after subsection (3) insert—

“(3A) The Commission need not consider any application made by the landlord under subsection (3) if—

(a) they have given notice, under section 11(8)(a) or 23(5), requiring the landlord to submit proposals for re-letting the croft and the period mentioned in section 11(8)(a) or, as the case may be, 23(5) within which such proposals must be submitted has not expired; or

(b) no such proposals having been submitted before the expiry of that period or, such proposals having been submitted, no such proposal having been approved, they are proceeding in accordance with subsections (5B) and (5C) of section 23.”.

Enlargement of crofts

30 Enlargement of crofts

For section 4 of the 1993 Act (enlargement of crofts) substitute—

“4 Enlargement of crofts

(1) This section applies where an owner of land—

- (a) which is not a croft; and
 - (b) which does not form part of a croft,
- agrees to grant a tenancy of that land to a crofter.

(2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant.

(2A) Where a croft such as is mentioned in subsection (2) is an unregistered croft, the Commission—

- (a) must not make a direction under subsection (3) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made;
- (b) need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.

(3) The Commission may make a direction if they are satisfied that the enlargement of the croft—

- (a) would be of benefit to the croft or to the crofter;
- (b) would not result in the area of the enlarged croft substantially exceeding 30 hectares.

(4) Where the Commission make a direction in relation to an unregistered croft or a first registered croft, the land forms part of the croft with effect from the later of—

- (a) the date of the direction; or
- (b) the date of entry under the tenancy.

(4A) Where the Commission make a direction in relation to a registered croft (other than a first registered croft)—

- (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the enlargement takes effect on the date of registration.

(5) For the purposes of section 6 and paragraph 1 of schedule 2, the rent payable for the enlarged croft is the rent agreed by the landlord and the crofter.”.

30A Enlargement of common grazings

For section 51 of the 1993 Act (enlargement of common grazings) substitute—

“51 Enlargement of common grazings

(1) This section applies where—

- (a) an owner of land to which this Act does not apply agrees to grant rights in any pasture or grazing land to the crofters sharing in a common grazing; and

- (b) the owner and the crofters agree that such land will form part of the common grazing.
- (2) The owner and the crofters may apply jointly to the Commission for a direction that the land is to form part of the common grazing.
- 5 (3) The Commission may make a direction if they are satisfied that the enlargement of the common grazing would be of benefit to the common grazing or the crofters sharing in it.
- (4) Where the Commission make a direction in relation to an unregistered common grazing, the land forms part of the common grazing from the later of—
- 10 (a) the date of the direction; or
- (b) the date on which the rights mentioned in subsection (1)(a) are first exercisable.
- (5) Where the Commission make a direction in relation to a registered common grazing—
- 15 (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the common grazing is submitted by virtue of section 19B of the 2010 Act before the expiry of that period;
- (b) the enlargement takes effect on the date of registration.”.

20 *Commission’s approval and consent*

31 Obtaining Commission approval or consent

- (1) Section 58A of the 1993 Act (obtaining Commission approval or consent) is amended as follows.
- (1A) At the beginning of subsection (3) insert “Subject to subsection (5B),”.
- 25 (2) In subsection (4)—
- (a) the word “or” immediately preceding paragraph (c) is repealed; and
- (b) at the end of that paragraph insert “; or
- (d) any other person the Commission consider has a relevant interest in the application”.
- 30 (3) After subsection (5) insert—
- “(5A) Despite subsection (4), the Commission may accept an objection submitted after the end of the 28-day period if they consider there is a good reason why the objection is late.
- (5B) Where the application is an application for consent to divide a croft under section 9 made by an executor under section 10(4A)—
- 35 (a) subsections (3) to (5A);
- (b) in subsection (6), the words “When those 28 days have elapsed”;
- (c) in subsection (12A), paragraph (b); and
- (d) subsections (16) and (17),
- 40 do not apply.”.

(4) In subsection (6)—

(a) after “Commission” insert “must, subject to subsection (6A), decide the application by”; and

(b) for paragraphs (a) and (b) substitute—

- 5 “(a) granting it;
(b) granting it subject to conditions; or
(c) refusing it.”.

(4A) After subsection (6) insert—

10 “(6A) Where—

(a) the application for consent to divide the croft is made by an executor under section 10(4A); and

(b) it relates to a bequest of the tenancy of the part of the croft comprising the site of the dwelling-house on or pertaining to the croft to one natural person and the tenancy of the remaining part to one other such person,

15 the Commission must grant the application (whether or not subject to conditions).”.

(5) For subsections (7) to (10) substitute—

20 “(7) In considering their decision on the application, the Commission must have regard to the following—

(a) in the case of an application relating to a croft—

(i) whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft;

(ii) whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4);

25 (b) the interests of the estate which comprises the land to which the application relates;

(c) the interests of the crofting community in the locality of that land;

(d) the sustainable development of that crofting community;

(e) the interests of the public at large;

30 (f) any objections received under subsection (4) or (5A);

(g) any plan of the Commission approved and published under section 2C;

(h) any other matter which the Commission consider relevant.”.

(6) In subsection (11), for the words “; and references in this section to their intervening are to their proceeding to such a determination” substitute “or grant it subject to conditions”.

35 (7) In subsection (12), the words “and give such notification as is mentioned in subsection (10)(a) above” are repealed.

(8) After subsection (12) insert—

40 “(12A) The Commission must, before the expiry of the period of 21 days beginning with the day on which the decision under subsection (6) is taken, give notice of that decision—

- (a) to the applicant;
- (b) to any person who objected under subsection (4) or (5A); and
- (c) where appropriate and in so far as not already given notice under paragraph (a) or (b), to—
 - (i) the crofter;
 - (ii) the owner-occupier crofter;
 - (iii) the landlord; and
 - (iv) as the case may be, the grazings committee.”.

(9) Subsections (13) to (15) are repealed.

(10) After section 58A insert—

“58B Variation of conditions on approval or consent

- (1) This section applies where the Commission grant, subject to conditions, an application under section 58A for their approval or consent.
- (2) The Commission may, on an application to them by the person who applied for the approval or consent (the “original applicant”), modify the conditions imposed by—
 - (a) varying a condition;
 - (b) removing a condition;
 - (c) adding a condition,as they consider appropriate.
- (3) Where the Commission so modify conditions they must, before the expiry of the period of 14 days beginning with the day on which they do so, give notice of their decision to—
 - (a) the original applicant;
 - (b) any other person who was given written notification under section 58(12A) of the decision to grant the approval or consent subject to conditions; and
 - (c) any other person the Commission consider has a relevant interest.
- (4) Subject to subsection (5), subsections (2) to (5A), (16) and (17) of section 58A apply to an application under subsection (2) of this section as they apply to an application under subsection (1) of that section.
- (5) Where the original applicant is an executor who applied under section 10(4A) for consent to divide a croft under section 9, subsections (3) to (5A), (16) and (17) do not apply.”.

Succession to crofts

31A Bequest of crofts

- (1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.
- (2) In subsection (1), for the words from “bequeath” to the end substitute—

- “(a) bequeath the tenancy of the whole of the crofter’s croft to any one natural person; or
- (b) bequeath the tenancy of that croft to two or more natural persons provided that—
- (i) each person would come into the place of the crofter in relation to the tenancy of part of the croft; and
- (ii) no part of the croft would, were all the bequests accepted, be untenanted.”.

(3) For subsection (2) substitute—

- “(2) A person to whom the tenancy of a croft (or of part of a croft) is bequeathed (in this section, the “legatee”) must, if the legatee accepts the bequest—
- (a) give notice of the bequest to the landlord; and
- (b) send a copy of the notice to the Commission,
- before the end of the period of 12 months beginning with the death of the crofter.”.

(4) For subsections (2B) to (4D) substitute—

- “(3) The bequest is null and void if—
- (a) in the case of a bequest such as is mentioned in subsection (1)(a), no notice is given (and no copy sent) in accordance with subsection (2) or (2A);
- (b) in the case of a bequest such as is mentioned in subsection (1)(b), any legatee fails to give notice (and send a copy) in accordance with subsection (2) or (2A).
- (4) Where, in the case of a bequest as is mentioned in subsection (1)(a), notice is given (and a copy sent) in accordance with subsection (2) or (2A), the legatee comes into the place of the deceased crofter (as from the date of death of that crofter) on the relevant date of registration.

(4A) Where—

- (a) a crofter bequeaths the tenancy of a croft as mentioned in subsection (1)(b); and
- (b) each legatee gives notice (and sends a copy) in accordance with subsection (2) or (2A),

the deceased crofter’s executor must apply to the Commission for consent under section 9 to divide the croft accordingly.

(4B) Where the Commission give their consent to the division of the croft under section 9, each legatee comes into the place of the deceased crofter in relation to that legatee’s new croft (as from the date of death of that crofter) on the relevant date.

(4C) The bequest is null and void if—

- (a) the Commission do not give their consent to the division of the croft under section 9; or

(b) such consent is given but an application for registration of the division is not made in accordance with subsection (3)(a) of that section.”.

(5) In subsection (4E)—

(a) at the beginning insert “Subject to subsection (4EA),”; and

(b) for “(2B), (4A) or, as the case may be, (4D)” substitute “(4) or, as the case may be, (4B)”.

(6) After that subsection insert—

“(4EA)Where, as a result of the Commission giving their consent to the division of the croft under section 9, two or more legatees come into the place of the deceased crofter, those legatees are jointly and severally liable for—

(a) the debts mentioned in subsection (4E)(a); and

(b) any expenses mentioned in subsection (4E)(b).”.

(7) After subsection (6) insert—

“(7) In subsection (4), the “relevant date of registration” is—

(a) where the croft was unregistered, the date of registration in relation to the application for registration of the croft by virtue of section 4(3)(e) of the 2010 Act;

(b) where the croft was registered, the date of registration in relation to the application for registration of the notice by virtue of section 5(2)(e) of that Act.

(8) In subsection (4B)—

“legatee’s new croft” means the new croft, formed by division under section 9, which corresponds to the part of the original croft bequeathed to the legatee (“division”, “new croft” and “original croft” being construed in accordance with section 9(6));

“relevant date” means—

(a) where the croft was unregistered, the date the Keeper of the Registers of Scotland receives notification of the Commission’s consent to divide the croft by virtue of section 9(3D) of the 2010 Act;

(b) where the croft was registered, the date of registration in relation to the application for registration of the division by virtue of section 5(2)(d)(i) of that Act.”.

Appeals

31B Appeals: procedure

(1) In the 1993 Act—

(a) in section 25(8) (provisions supplementary to section 24(3)), the words “by way of stated case” are repealed;

(b) in section 38A(1) (appeal to Land Court: special provision as respects reorganisation schemes), the words “by way of stated case” are repealed;

- (c) in section 52A(2)(a) (appeal to the Land Court: general), the words “by way of stated case,” are repealed.
- (2) In section 52A of that Act (appeal to the Land Court: general), after subsection (4) insert—
- 5 “(4A) The Commission may be a party to any appeal to the Land Court under this Act or in any proceedings on a question coming before that Court on an application under section 53(1) of this Act.”.

PART 5

GENERAL AND MISCELLANEOUS

10 **32 Pre-consolidation modifications of enactments relating to crofting**

- (1) The Scottish Ministers may, by order, make such modifications of enactments relating to crofting as in their opinion facilitate, or are otherwise desirable in connection with, the consolidation of the law on crofting.
- 15 (2) An order under this section may not be made unless a Bill consolidating the law on crofting has been introduced in the Scottish Parliament.
- (3) If an Act resulting from such a Bill is passed, the order comes into force by virtue of this subsection immediately before the commencement of that Act.

33 Subordinate legislation

- 20 (1) Any power conferred by this Act on the Scottish Ministers to make regulations, rules or orders is exercisable by statutory instrument.
- (2) Any such power—
- (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and
- 25 (b) includes power to make such transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.
- (3) Subject to subsections (4) and (5), a statutory instrument containing regulations, rules or an order under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No order under—
- 30 (a) section 32(1); or
- (b) section 34(1) containing provisions which add to, replace or omit any part of the text of any Act,

may be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Scottish Parliament.

- 35 (4A) Before laying a draft of a statutory instrument containing an order under section 32(1) before the Scottish Parliament, the Scottish Ministers must—
- (a) lay before the Scottish Parliament—
- (i) a copy of the proposed draft order;
- (ii) a statement of their reasons for proposing to make the draft order;

(b) publicise the proposed draft order in such a manner as they consider appropriate; and

(c) have regard to—

(i) any representations about the proposed draft order;

(ii) any resolution of the Scottish Parliament about the proposed draft order; and

(iii) any report by a committee of the Scottish Parliament about the proposed draft order,

made during such period, no shorter than 60 days and including at least 30 days during which the Scottish Parliament is not dissolved or in recess, as the Scottish Ministers may specify when laying the proposed draft order.

(5) Subsection (3) does not apply to an order under section 37(2).

34 Ancillary provision

(1) The Scottish Ministers may, by order, make such incidental, supplementary or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

35 Minor and consequential amendments and repeals

Schedule 2 makes minor modifications and modifications consequential on this Act.

36 Interpretation

(1) In this Act—

the “1993 Act” means the Crofters (Scotland) Act 1993 (c.44);

“certificate of registration” has the meaning given by section 8(5);

“the Commission” means the Crofting Commission;

“first registration” has the meaning given by section 4(5);

“Keeper” has the meaning given by section 3(3);

“new croft” has the meaning given by section 4(5);

“owner-occupied croft” has the meaning given by section 19B(2) of the 1993 Act (as inserted by section 21);

“owner-occupier crofter” is to be construed in accordance with section 19B(1) to (1C) of the 1993 Act (as inserted by section 21);

“register” has the meaning given by section 3(3);

“registered” and cognate expressions have the meanings given by section 3(3);

“registration schedule”, in relation to a croft, means the registration schedule of the croft made up and maintained under section 10(1).

(2) Other expressions used in this Act which are also used in the 1993 Act have the meanings given to them in that Act unless this Act provides otherwise.

37 Short title, commencement and Crown application

- (1) This Act is the Crofting Reform (Scotland) Act 2010.
- (2) This Act (other than this section and sections 33 and 34) comes into force on such day as the Scottish Ministers may by order appoint.
- 5 (3) Different days may be appointed for different purposes.
- (4) This Act binds the Crown.

SCHEDULE 1
(introduced by section 1(3))

THE CROFTING COMMISSION

“SCHEDULE 1
(introduced by section 1(6))”

THE CROFTING COMMISSION

Status

- 1 (1) The Commission are a body corporate.
- 10 (2) The Commission are not to be regarded as a servant of the Crown, nor are they to be regarded as having any status, privilege or immunity of the Crown.
- (3) The Commission’s members and employees are not to be regarded as civil servants.
- (4) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown.

General powers

- 15 2 (1) The Commission may do anything which they consider is necessary or expedient for the purpose of exercising or in connection with their functions.
- (2) In particular, the Commission may—
- 20 (a) co-operate with any person in the exercise of the Commission’s functions;
- (b) with the approval of the Scottish Ministers, acquire and dispose of land and other property;
- (c) enter into contracts;
- 25 (d) charge, in respect of such of their functions as may be prescribed by the Scottish Ministers, such reasonable amounts as may be so prescribed.

Membership

- 30 3 (1) Subject to sub-paragraph (2), the Commission are to consist of no fewer than five and no more than nine members as follows—
- (a) no fewer than two persons appointed by the Scottish Ministers (“appointed members”); and
- (b) no more than six persons elected by virtue of paragraph 7 (“elected members”).
- (2) The majority of members are to be elected members unless, by virtue of the appointment of a person by the Scottish Ministers under paragraph 6(3) or 9(3), such a majority cannot be maintained.
- 35

(3) The Scottish Ministers must select a member to chair the Commission (the “convener”).

(3A) The Scottish Ministers may delegate to the Commission the duty to select a member to chair the Commission.

(4) The Scottish Ministers may, by order, modify sub-paragraph (1) above to alter—

- (a) the number of members;
- (b) the number of appointed members;
- (c) the number of elected members,

but such an order may not contain provision to the effect that the majority of members would not be elected members.

Appointed members: eligibility

4 (1) In appointing members of the Commission, the Scottish Ministers must—

(a) ensure—

- (i) that each person appointed has knowledge of crofting; and
- (ii) where sub-paragraph (2) applies, that at least one person appointed can speak the Gaelic language; and

(b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of a member.

(2) This sub-paragraph applies where none of the elected members can speak the Gaelic language.

(3) The fact that a person is—

- (a) a crofter;
- (b) a landlord of a croft;
- (c) an owner-occupier of a croft;
- (d) a cottar; or
- (e) a member of the family of any such person,

does not of itself constitute an interest mentioned in sub-paragraph (1)(b).

(4) No person may be appointed as a member of the Commission if that person is, or has at any time during the previous year been, a member of—

- (a) the House of Commons;
- (b) the Scottish Parliament;
- (c) the European Parliament.

Appointed members: terms of appointment

5 Subject to this schedule, an appointed member holds and vacates office on such terms and conditions as the Scottish Ministers determine.

Resignation and cessation of membership

- 6 (1) A person may resign office as a member of the Commission at any time by notice in writing to the Scottish Ministers.
- 5 (2) A person who ceases to be a member of the Commission (other than by virtue of being removed under paragraph 9) is eligible to be a member of the Commission again (whether by re-appointment or otherwise).
- (3) Where—
- 10 (a) an elected member resigns office under sub-paragraph (1) or otherwise ceases to be a member of the Commission (other than by virtue of being removed under paragraph 9); and
- (b) is not replaced by a person such as is mentioned in sub-paragraph (4) (whether because of the person's refusal to accept office as a member or otherwise),
- 15 the Scottish Ministers may appoint (in addition to any person appointed under paragraph 3) a person to be a member of the Commission.
- (4) The person referred to in sub-paragraph (3)(b) is a person who—
- (a) was a candidate in the election by virtue of which the elected member mentioned in sub-paragraph (3)(a) held office as a member;
- 20 (b) polled, in that election, fewer votes than the elected member so mentioned; and
- (c) by virtue of regulations made under paragraph 7, may hold office as a member of the Commission.

Elected members: regulations

- 25 7 (1) The Scottish Ministers may, by regulations, make provision for or in connection with the election of persons as members of the Commission.
- (2) Without prejudice to the generality of sub-paragraph (1), the regulations may, in particular, make provision relating to—
- 30 (a) the voting system to be used for such elections;
- (b) the frequency and timing of such elections;
- (c) the conduct of such elections;
- (ca) offences relating to such elections;
- (d) the constituencies (including boundaries) in which such elections may be held;
- 35 (e) persons who are eligible to vote in such elections (including by reference to the person's age);
- (f) the appointment of an individual to act as the returning officer for each constituency;
- (g) such an individual's—
- (i) functions;

- (ii) fees and expenses;
 - (iii) tenure and vacation of office;
 - (h) subject to sub-paragraph (3), persons who may, and may not, be candidates in elections such as are mentioned in sub-paragraph (1) (including by reference to the person's age);
 - (i) the number of members of the Commission who may be returned from each constituency;
 - (j) vacancies amongst elected members, including the circumstances in which a person who polled fewer votes in such an election than the person who polled most votes may hold office as a member of the Commission.
- (3) A person is entitled to stand for election as a member of the Commission provided that the person—
- (a) is aged 16 or older; and
 - (b) has been nominated by a person eligible to vote under sub-paragraph (2)(e).
- (4) A person who is the—
- (a) spouse;
 - (b) civil partner; or
 - (c) cohabitant,
- of a registered crofter eligible to vote in such elections is also eligible to vote.
- (5) In sub-paragraph (4), “cohabitant” means a member of a couple consisting of—
- (a) a man and a woman who are living together as if they were husband and wife; or
 - (b) two persons of the same sex who are living together as if they were civil partners.
- (6) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult such persons or bodies as they think appropriate on—
- (a) the constituency boundaries to be used; and
 - (b) the persons who are eligible to vote,
- in such elections.

Remuneration, allowances and pensions

- 8 (1) The Scottish Ministers must pay to the members of the Commission such remuneration and allowances as Ministers may determine.
- (2) The Scottish Ministers may—
- (a) pay (or make arrangements for the payment of);
 - (b) make payments towards the provision of; or

(c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances and gratuities to or in respect of such members and former members of the Commission as Ministers may determine.

5 (3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

Removal of members

10 9 (1) The Scottish Ministers may remove a member of the Commission from office, by giving notice in writing to the member, if satisfied that the member—

(a) is insolvent;

(b) has been convicted of a criminal offence in relation to which the member has been sentenced to imprisonment for a period of 3 months or more;

(c) is incapacitated by physical illness or mental disorder;

15 (d) has been absent from meetings of the Commission for a period exceeding 6 months without the permission of the convener;

(e) is otherwise unable or unfit to exercise the functions of a member or is unsuitable to continue as a member.

(2) In sub-paragraph (1)(a), a member is insolvent when—

20 (a) the member's estate is sequestrated;

(b) the member is adjudged bankrupt;

(c) a voluntary arrangement proposed by the member is approved;

25 (d) the member enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;

(e) the member grants a trust deed for creditors.

(3) Where—

(a) an elected member is removed from office under sub-paragraph (1); and

30 (b) is not replaced by a person such as is mentioned in sub-paragraph (4) (whether because of the person's refusal to accept office as a member or otherwise),

the Scottish Ministers may appoint (in addition to any person appointed under paragraph 3) a person to be a member of the Commission.

(4) The person referred to in sub-paragraph (3)(b) is a person who—

35 (a) was a candidate in the election by virtue of which the removed member held office as a member;

(b) polled, in that election, fewer votes than the removed member; and

(c) by virtue of regulations made under paragraph 7, may hold office as a member of the Commission.

Chief executive, staff and employees

- 10 (1) The Scottish Ministers must, after consultation with the convener of the Commission, appoint a chief executive of the Commission on such terms and conditions as Ministers may determine.
- 5 (2) The Scottish Ministers may provide the services of such staff to the Commission as the Commission consider appropriate.
- (3) The Commission may appoint such employees as the Commission consider appropriate.
- 10 (4) The Scottish Ministers may give directions to the Commission as to the appointment of employees under sub-paragraph (3).
- (5) Such directions may in particular relate to—
- (a) the number of appointments;
- (b) the terms and conditions of employment.
- 15 (6) The Commission must comply with any directions given under sub-paragraph (4).
- (7) The Commission may, with the approval of the Scottish Ministers—
- (a) pay (or make arrangements for the payment of);
- (b) make payments towards the provision of; or
- 20 (c) provide and maintain schemes (whether contributory or not) for the payment of,
- such pensions, allowances and gratuities to or in respect of such of their employees, or former employees, as the Commission may determine.
- (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for
- 25 loss of office.

Quorum

- 11 (1) The quorum of the Commission is five members.
- (2) Where there are three or more elected members, the quorum must include no fewer than three such members.

Committees

- 30 12 (1) The Commission must establish—
- (a) an audit committee; and
- (b) such other committees as they consider appropriate.
- (2) The audit committee and any other committee of the Commission must comply with any directions given to it by the Commission.
- 35 (3) The Commission may appoint as members of any of their committees persons who are not members of the Commission.

- (4) But no committee established under sub-paragraph (1) may consist entirely of such persons.
- (5) The Commission must pay to a person appointed under sub-paragraph (3) such remuneration and allowances as the Scottish Ministers may determine.

5 *Procedure*

- 13 (1) The Commission may regulate—
- (a) their own procedure; and
 - (b) the procedure of any of their committees (including any quorum).
- 10 (2) The convener must, if present, chair meetings of the Commission and any of their committees.
- (3) If the convener is not available to chair a meeting of the Commission or a committee, the convener is to appoint another member of the Commission to chair the meeting.
- 15 (4) The person chairing a meeting of the Commission or any committee has a casting vote.
- (5) The Commission must keep a record of their and their committees' meetings and decisions.
- 20 (6) The validity of any proceedings of the Commission or of any of their committees is not affected by any vacancy in membership nor by any defect in the appointment of a member.

Members' interests

- 25 14 (1) A member of the Commission or any other person who is in any way directly or indirectly interested in any matter brought up for consideration at a meeting of the Commission or of any committee of the Commission must disclose the nature of that interest to the meeting.
- (2) Such a disclosure must be recorded in the minutes of the meeting.
- (3) A member or other person making such a disclosure must not take part in any deliberation or decision of the Commission or of any committee of the Commission with respect to the matter to which the disclosure relates.

30 *Delegation of powers*

- 35 15 (1) The Commission may authorise—
- (a) any of their members;
 - (b) any of their committees;
 - (c) their chief executive;
 - (d) any person whose services are provided to them by the Scottish Ministers;
 - (e) any of their employees,

to exercise such of the Commission's functions (and to such extent) as they may determine.

- (2) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of their functions.

5 *Local assessors*

16 (1) The Commission may appoint a panel of suitable persons ("assessors") to act, when required to do so by the Commission, as assessors for the purpose of assisting the Commission in the local execution of their functions under this Act.

10 (1A) The Commission must, before exercising their powers under sub-paragraph (1), publish details of—

- (a) the methods to be used for the appointment of assessors; and
- (b) the role to be undertaken by assessors.

(1B) In exercising their powers under sub-paragraph (1), the Commission must—

- 15 (a) provide information to crofting communities about—
- (i) the appointment of assessors; and
 - (ii) the roles that assessors perform; and
- (b) keep under review—
- (i) the methods to be used for the appointment of assessors; and
 - (ii) the role to be undertaken by assessors.
- 20

(2) Assessors must be ordinarily resident in the crofting counties or in an area designated under section 3A(1)(b) of this Act.

(3) The Commission may make payments to assessors in respect of any—

- 25 (a) loss of earnings;
- (b) expenses (including travelling and subsistence expenses),

necessarily suffered or incurred by them for the purpose of enabling them to perform their duties as such assessors.

Location of office

17 The Commission—

- 30 (a) must have their principal office premises in the crofting counties;
- (b) must not determine where those premises are to be located without that location being approved by the Scottish Ministers; and
- (c) must comply with any direction as to the location of those premises given by Ministers.

35 *Finance*

18 (1) The Scottish Ministers may—

- (a) pay grants;
- (b) make loans,

to the Commission of such amounts as Ministers may determine.

- (2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may, from time to time after any grant is paid or loan is made, vary the terms and conditions on which it was paid or, as the case may be, made.

Accounts

19 (1) The Commission must—

- (a) keep proper accounts and accounting records;
- (b) prepare in respect of each financial year a statement of accounts.

(2) The Commission must send the statement of accounts to the Scottish Ministers by such date as Ministers may direct.

(3) The Commission must comply with any other directions which the Scottish Ministers may give them in relation to the matters mentioned in sub-paragraph (1).

(4) The Scottish Ministers must, as soon as reasonably practicable after receiving a statement of accounts from the Commission—

- (a) send them to the Auditor General for Scotland for auditing; and
- (b) lay the audited statement before the Scottish Parliament.

(5) The Commission must make their audited statement of accounts available so that they may be inspected by any person.

Provision of information to Scottish Ministers

20 The Commission must provide the Scottish Ministers with such information in respect of the exercise, or proposed exercise, of the Commission's functions as the Scottish Ministers may, from time to time, require.

Transfer of property, rights and liabilities

21 (1) Where the Scottish Ministers consider it necessary or expedient to do so to facilitate the exercise of functions by the Commission, they may transfer to the Commission any property, rights and liabilities to which Ministers are entitled or subject.

(2) Property, rights and liabilities may be so transferred to the Commission whether or not they are otherwise capable of being transferred by the Scottish Ministers.”.

SCHEDULE 1A
(introduced by section 5A)

PERSONS RESPONSIBLE FOR APPLICATIONS FOR REGISTRATION

TABLE 1

First registration

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Step	Person
The making of an application as mentioned in section 4(3)(a)	The crofter making the application
The making of an application as mentioned in section 4(3)(b)	The crofter who is the tenant of the croft at the time the application is made
The making of an application as mentioned in section 4(3)(c)	The crofter making the application
The making of an application as mentioned in section 4(3)(d)(i)	Where— (a) the application is made by a crofter, the crofter; (b) the application is made by an executor under section 10(4A) of that Act, the executor
The making of an application as mentioned in section 4(3)(d)(ii)	The owner-occupier crofter making the application
The giving of a notice as mentioned in section 4(3)(e)	The person who gave notice in accordance with subsection (2) or (2A) of section 10 of the 1993 Act
The giving of a notice as mentioned in section 4(3)(f)	The person by whom the tenancy of the croft is transferred
The making of an application as mentioned in section 4(3)(g)	The landlord making the application
The making of an order as mentioned in section 4(3)(h)	The relevant person (within the meaning of section 21A(6) of the 1993 Act) who applied for the order
The making of an application as mentioned in section 4(3)(i)(i)	The landlord making the application
The making of an application as mentioned in section 4(3)(i)(ii)	The owner-occupier crofter making the application
The re-letting of a croft as mentioned in section 4(3)(ia)	The person to whom the croft is re-let
The letting of a croft as mentioned in section 4(3)(ib)	The person to whom the croft is let

	croft as mentioned in section 5(2)(f)	11(2) of that Act
	The giving of authorisation as mentioned in section 5(2)(g)	The landlord who applied for that authorisation
5	The granting of an extension of the period for which resumption of a croft is authorised as mentioned in section 5(2)(h)	The landlord who applied under section 20(1C) of that Act for that extension
	The making of a determination as mentioned in section 5(2)(i)	The landlord who applied for that determination
10	The making of an order as mentioned in section 5(2)(j)	The person who applied for that order
	The letting of the croft as mentioned in section 5(2)(k)(i)	The landlord who applied for approval to the letting
15	The re-letting of the croft as mentioned in section 5(2)(k)(ii)	The landlord whose proposals for re-letting were approved under section 23(5ZA) of that Act
	The letting of the croft as mentioned in section 5(2)(k)(iii)	The person to whom the croft is let
	The letting of the croft as mentioned in section 5(2)(k)(iv)	The person to whom the croft is let
20	The making of a direction as mentioned in section 5(2)(l)	The landlord who applied for the direction
	The division of a croft as mentioned in section 5(2)(m)	The Commission
25	The letting of a croft as mentioned in section 5(2)(n)	The person to whom the croft is let
	The preparation of a reorganisation scheme as mentioned in section 5(2)(o)	The Commission
	The apportionment of a part of a common grazing as mentioned in section 5(2)(p)	The crofter who applied for the apportionment
30	The bringing to an end of an apportionment as mentioned in section 5(2)(q)	The person who applied under section 52(12) of that Act

SCHEDULE 1B
(introduced by section 19E)

APPLICATION OF ACT TO COMMON GRAZINGS

- 1 Section 7 applies to an application for registration forwarded under subsection (4) of
5 section 19C or submitted under subsection (9) of that section as it applies to an
application for registration mentioned in section 7, with the following modifications—
- (a) in subsection (1), for “section 6(4)(b)” substitute “subsection (4) of 19C or
submitted under subsection (9) of that section”;
 - (b) for “croft”, in each place where it appears in subsections (2), (2A) and (4),
10 substitute “common grazing”;
 - (c) in subsection (2A), for “common grazing”, in each place where it appears,
substitute “croft”.
- 2 Section 8 applies to registration relating to a common grazing as it applies to registration
relating to a croft, with the following modifications—
- (a) for “croft”, in each place where it appears in subsections (1), (2) and (4),
15 substitute “common grazing”;
 - (b) in subsection (2A), for “the crofter of the croft” substitute “any grazings
committee, or grazings constable, appointed in respect of the common grazing”;
 - (c) subsection (3) is omitted.
- 3 Section 9 applies to a first registration of a common grazing as it applies to a first
20 registration of a croft, with the following modifications—
- (a) for “croft”, where it appears in each of subsections (1) and (2), substitute
“common grazing”;
 - (b) subsections (3) to (3E) and (5) are omitted.
- 4 Section 10 applies to a common grazing as it applies to a croft, with the following
25 modifications—
- (a) for “croft”, in each place where it appears in subsections (1), (2)(a), (2A), (2B)
and (5), substitute “common grazing”;
 - (b) for paragraph (b) of subsection (2) substitute—
30 “(b) the name and address of the owner of the common grazing;
(ba) details of any croft of which a right in the common grazing forms part
(including, where the croft is registered, a reference to the registration
schedule of the croft);
(bb) the name and designation of, as the case may be—
35 (i) any tenant of such a croft;
(ii) any owner-occupier crofter of such a croft;
(iii) any landlord of such a croft;
(iv) any owner of such a croft;
40 (bc) the name and designation of any other person who holds a right in the
common grazing;”;

(c) in subsection (2B), for “common grazing”, in each place where it appears, substitute “croft”.

5 Section 11 applies to a certificate of registration relating to a common grazing received under section 8(2) as it applies to a certificate of registration relating to a croft received
5 under section 8(2) or, as the case may be, (3), with the following modifications—

(a) in subsection (3)—

(i) for “croft”, where it appears in each of paragraphs (a) and (b), substitute “common grazing”;

(ii) paragraphs (c) and (d) are omitted;

10 (iii) after paragraph (d) insert—

“(da)the grazings committee or grazings constable (or, where there is no such committee or constable, any person of whom the Commission are aware who holds a right in the common grazing);”;

15 (iv) for “croft”, where it appears in each of paragraphs (e), (f) and (h), substitute “land”;

(v) in paragraph (g) for “of any adjacent croft” substitute “, or any other tenant, of any adjacent land”;

(vi) paragraph (i) is omitted;

20 (vii) in paragraph (j), the words “(not being land which is an adjacent croft)” are omitted;

(b) in subsection (4)—

(i) for “croft”, where it appears in each of paragraphs (a) and (b), substitute “common grazing”;

25 (ii) in paragraph (c), for “10(2)(b)” substitute “paragraphs (b), (bb) and (bc) of section 10(2) (as it applies to common grazings)”;

(iii) after paragraph (c), insert—

“(ca) the details of any crofts entered in the registration schedule in accordance with paragraph (ba) of section 10(2) (as it applies to common grazings);”;

30 (c) for “croft”, in each place where it appears in subsection (6), substitute “common grazing”.

6 Section 11A applies to a notice required to be affixed under section 11(6)(b) to a common grazing as it applies to such a notice relating to a croft, with the modification that for “croft”, in each place where it appears in subsections (2) and (3)(a), there is
35 substituted “common grazing”.

7 Section 12 applies to registration of a common grazing (other than a new common grazing) as it applies to registration of a croft, with the modification that for “croft”, where it appears in each of subsections (1A), (2)(a) and (b), (2A), (2B) and (6), there is substituted “common grazing”.

40 8 Section 12A applies to a resumed common grazing as it applies to a resumed croft, with the following modifications—

(a) for “croft”, in each place where it appears in subsections (1)(a), (2) and (4), substitute “common grazing”;

(b) subsections (1)(b) and (3) are omitted.

9 Section 14 applies to rectifications relating to common grazings as it applies to rectifications relating to other matters, with the modification that in subsection (1B) for “6(4)(b)” there is substituted “19C(4)”.

5 10 Section 14A applies to a rectification of the register relating to a common grazing as it applies to such rectifications relating to other matters, with the following modifications—

(a) in subsection (1), for “croft” substitute “common grazing”;

(b) subsection (4) is omitted.

10 11 Section 15 applies to an entitlement to indemnity relating to a common grazing as it applies to an entitlement to indemnity relating to other matters, with the modification that in subsection (3B) for “6(4)(b)” there is substituted “19C(4)”.

12 Section 16 applies to the making of rules and orders in relation to common grazings as it applies to the making of rules and orders in relation to other matters, with the
15 modification that in subsection (1)(d), for “crofts” there is substituted “common grazings”.

13 Section 17 applies to an act or omission of the Keeper relating to a common grazing as it applies to an act or omission of the Keeper relating to any other matter.

SCHEDULE 2

(introduced by section 35)

20

MINOR AND CONSEQUENTIAL MODIFICATIONS

Small Landholders (Scotland) Act 1911

1 (1) The Small Landholders (Scotland) Act 1911 (c.49) is amended as follows.

(2) In section 10 (additional statutory conditions), after subsection (2) insert—

25 “(2A) Where the holding of a new holder as mentioned in the further proviso to subsection (2) is situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts), the reference to the Board in that subsection is to be construed as a reference to the Crofting Commission.”.

30 (3) In section 16 (amendment of law as to enlargement of holdings)—

(a) in the proviso to subsection (1)—

(i) after “Board”, where it first occurs, insert “(or, in the case of applications mentioned in subsection (1A), the Crofting Commission)”; and

35 (ii) after “Board”, where it second occurs, insert “(or, as the case may be, the Crofting Commission)”; and

(b) after that subsection, insert—

40 “(1A) The applications referred to in subsection (1) which are to be made to the Crofting Commission are those for enlargement of holdings situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts).”.

- (4) In section 17 (amendment of law as to vacant holdings)—
- (a) the existing provision becomes subsection (1) of that section; and
 - (b) after that subsection add—
 - “(2) In the application of subsection (1) to holdings situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts), references to the Board are to be construed as references to the Crofting Commission.”.
- (5) In section 32 (provisions as to statutory small tenants)—
- (a) in subsection (3), after “Board” insert “or, in the case of a holding mentioned in subsection (3A), the Crofting Commission”;
 - (b) after that subsection, insert—
 - “(3A) The holding referred to in subsection (3) is a holding situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts).”; and
 - (c) after subsection (12), insert—
 - “(12A) In the application of subsection (12) to landlords and tenants of holdings situated as mentioned in subsection (3A), the reference to the Board is to be construed as a reference to the Crofting Commission.”.

Succession (Scotland) Act 1964

- 2 (1) The Succession (Scotland) Act 1964 (c.41) is amended as follows.
- (2) In section 16 (provisions relating to leases)—
- (a) in subsection (2A)—
 - (i) paragraph (a) and the word “and” immediately following it are repealed; and
 - (ii) in paragraph (b), for the words from “other” to “subsection)”, substitute “lease (other than the lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c.44))”;
 - (b) in subsection (3)(b)—
 - (i) at the beginning insert “subject to subsection (3A)”; and
 - (ii) sub-paragraph (ib) is repealed; and
 - (c) after subsection (3) insert—
 - “(3A) In the case of an interest in an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c.44), the period for the purposes of subsection (3)(b) is 24 months.”.
- 3 (3) Section 16A (application of section 58A of the 1993 Act to applications for consent under section 16(2A)) is repealed.

Crofters (Scotland) Act 1993

- 3 (1) The 1993 Act is amended as follows.

(2) In section 1 (constitution and general functions of the Crofters Commission), subsections (4) and (5) are repealed.

(3) In section 2 (particular powers and duties of the Commission), the following are repealed—

5 (a) in subsection (1)—

(i) the word “developing”; and

(ii) in paragraph (a), the words from “, the improvement” to the end; and

(b) subsections (2) and (4).

(4) In section 3A (new crofts), paragraph (a) of subsection (12) is repealed.

10 (5) In section 4A (exchange of crofts)—

(a) after subsection (2), insert—

“(2A) Where consent is applied for under subsection (1) in relation to an unregistered croft (or any part of such a croft), the Commission—

15 (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;

(b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.

20 (2B) In relation to a registered croft, or any part of such a croft, (other than a first registered croft)—

(a) any consent of the Commission to the exchange of the croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the exchange of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the exchange takes effect on the date of registration.”; and

(b) subsection (3) is repealed.

(5A) In section 5 (the statutory conditions), subsections (1A), (2A), (2B) and (7) to (10) are repealed.

30 (6) In section 5A (complaint of breach of statutory conditions), in subsection (2)(a)(ii), for “section 5B” substitute “section 26B”.

(7) In section 8 (assignment of croft)—

(a) after subsection (1) insert—

35 “(1A) Where a crofter applies for consent to assign a croft by virtue of subsection (1), the crofter must—

(a) notify the Commission as to where the proposed assignee would intend, following any such assignment, ordinarily to reside; and

(b) provide the Commission with any other information it requests in connection with the application.

40 (1B) Where consent is applied for under subsection (1) in relation to an unregistered croft, the Commission—

(a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;

(b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.”;

(b) subsection (2) is repealed;

(c) in subsection (6), at the beginning, insert “In relation to an unregistered croft or a first registered croft,”; and

(d) after that subsection insert—

“(6A) In relation to a registered croft (other than a first registered croft)—

(a) any consent of the Commission given under this section to an assignment expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the assignment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the assignment takes effect on the date of registration.”.

(8) In section 9 (division of croft)—

(a) after subsection (1) insert—

“(1A) Where consent is applied for under subsection (1) in relation to an unregistered croft, the Commission—

(a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;

(b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.”;

(b) subsection (2) is repealed; and

(c) for subsection (3), substitute—

“(3) In relation to a registered croft (other than a first registered croft)—

(a) any consent of the Commission given under this section to a division of the croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the division takes effect on the date of registration.

(3A) The Keeper must make up and maintain a registration schedule in accordance with section 10 of the 2010 Act in respect of a new croft created by a division under this section.”.

(10) In section 11 (intestacy)—

(a) in subsection (1)—

(i) for “furnish” substitute “give notice of the transfer containing”; and

(ii) for “the landlord shall notify the Commission accordingly” substitute “at the same time as giving the notice the executor must send a copy of the notice to the Commission”;

(b) after that subsection insert—

5 “(1A) A transfer such as is mentioned in subsection (1) takes effect in relation to an application for registration of—

(a) the giving of notice under that subsection by virtue of section 4 of the 2010 Act; or

(b) the transfer by virtue of section 5 of that Act,

10 on the date of registration.”;

(c) in subsection (2)—

(i) for “12” substitute “24”; and

(ii) for “furnished to the landlord particulars of any transferee” substitute “given the landlord any notice”;

15 (d) in subsection (3)—

(i) in paragraph (c), for “10(2)” substitute “10”; and

(ii) paragraph (d) is repealed; and

(e) in subsection (4)—

(i) for “12” substitute “24”; and

20 (ii) for “furnished to the landlord particulars of any transferee” substitute “given the landlord any notice”.

(10A) In section 20 (resumption of croft or part of croft by landlord)—

(a) after subsection (1) insert—

25 “(1ZA) Where an application is made under subsection (1) to resume an unregistered croft (or any part of such a croft), the Land Court—

(a) may not authorise the resumption unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application to resume the croft was made;

30 (b) need not, during that 6 month period, consider the application to resume the croft until an application for first registration of the croft is submitted.

(1ZB) In relation to a registered croft, or part of such a croft, (other than a first registered croft)—

35 (a) any authorisation under subsection (1) expires at the end of the period of 3 months beginning with the date on which such authorisation was given unless an application for registration of the giving of that authorisation is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

40 (b) the resumption takes effect on the date of registration.

(1ZC) In its application to a registered common grazing, section (1ZB) is to be construed as if the reference in paragraph (a) to section 5 of the 2010 Act were a reference to section 19B of that Act.”;

(b) after subsection (1C), insert—

5 “(1CA) In relation to a registered croft, or part of such a croft—

(a) the granting of any extension under subsection (1C) expires at the end of the period of 3 months beginning with the date on which the extension was granted unless an application for registration of the granting of the extension is submitted by virtue of section 5 of the 2010 Act before the
10 expiry of that period;

(b) the extension takes effect on the date of registration.

(1CB) In its application to an extension relating to a registered common grazing, section (1CA) is to be construed as if the reference in paragraph (a) to section 5 of the 2010 Act were a reference to section 19B of that Act.”;

15 (c) in subsection (1F), for the words “(1B) to (1D)” substitute “(1B), (1C) and (1D)”;

(d) after subsection (1F) add—

“(1G) In relation to a registered croft, or part of such a croft—

(a) any determination under subsection (1F) expires at the end of the period of 3 months beginning with the date on which the determination was made unless an application for registration of the making of the determination is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
20

(b) the conversion of the temporary resumption into an ordinary resumption takes effect on the date of registration.

25 (1H) In its application to a determination relating to a registered common grazing, section (1F) is to be construed as if the reference in paragraph (a) to section 5 of the 2010 Act were a reference to section 19B of that Act.”.

(10B) In section 21A (reversion of resumed land), after subsection (1) insert—

30 “(1A) In relation to land which, before being resumed as mentioned in subsection (1), was an unregistered croft (or part of such a croft), an order under that subsection does not take effect until the croft is registered by virtue of section 4 of the 2010 Act.

(1B) In relation to land which, before being resumed as mentioned in subsection (1), was a registered croft (or part of such a croft)—

35 (a) an order under that subsection expires at the end of the period of 3 months beginning with the date on which the order was made unless an application for registration of the making of the order is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the order takes effect on the date of registration.

40 (1C) In its application to a registered common grazing, section (1B) is to be construed as if the reference in paragraph (a) to section 5 of the 2010 Act were a reference to section 19B of that Act.”.

(10C) In section 21A (reversion of resumed land), subsection (3) is repealed.

(11) Section 22 (absentee crofters) is repealed.

(12) In section 23 (vacant crofts)—

(za) after subsection (3) insert—

“(3ZA) Where approval is applied for under subsection (3) in relation to an unregistered croft (or any part of such a croft), the Commission—

(a) may not grant that approval unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for approval was made;

(b) need not, during that 6 month period, consider the application for approval until an application for first registration of the croft is submitted.

(3ZB) In relation to a registered croft, or any part of such a croft, (other than a first registered croft)—

(a) any approval under subsection (3) expires at the end of the period of 3 months beginning with the date on which such approval was granted unless an application for registration of the letting of the croft (or part of the croft) is made by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the letting of the croft (or part of the croft) takes effect on the date of registration.”;

(a) subsection (3A) is repealed;

(b) in subsection (4)—

(zi) after “above” insert “, subsection (5ZB) or subsection (5D),”;

(i) for “subsection (3) of section 22” substitute “subsections (5) and (6) of section 26H”;

(ii) for “it applies” substitute “they apply”; and

(iii) for “that subsection” substitute “subsection (5) of that section”;

(ba) after subsection (5ZA) (inserted by section 28 of this Act) insert—

“(5ZB) Any re-letting of an unregistered croft in accordance with proposals submitted under subsection (5) is null and void unless an application for first registration of the croft is submitted before the expiry of the period of 3 months beginning with the date of the re-letting.

(5ZC) In relation to a registered croft—

(a) any approval under subsection (5ZA) of proposals to re-let the croft under subsection (5) expires at the end of the period of 3 months beginning with the date on which such approval was given unless an application for registration of the re-letting of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the re-letting of the croft takes effect on the date of registration.”;

(bb) after subsection (5C) insert—

“(5D) Any letting of an unregistered croft pursuant to a determination under subsection (5C) is null and void unless an application for first registration of the croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.

5 (5E) In relation to a registered croft—

(a) any determination under subsection (5C) to let the croft to an applicant is, at the end of the period of 3 months beginning with the date on which the determination was made, to be treated as if it had not been made unless an application for registration of the re-letting of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the letting of the croft takes effect on the date of registration.”;

(bc) in subsection (6), for “one month” substitute “28 days”;

(bd) in subsection (10), for the words “by the tenant of the croft.” substitute “by—

15 (a) the tenant of the croft;

(b) the owner-occupier crofter of the croft;

(c) the subtenant of a sublet to which section 27 applies; or

(d) the tenant of a let to which section 29A applies.”;

(c) in subsection (12), at the beginning insert “Subject to subsection (12A),”; and

20 (d) after that subsection insert—

“(12A) Where the owner-occupier is an owner-occupier crofter, this section and section 24 have effect as if—

25 (a) the owner-occupier crofter were required under subsection (1) of this section, within one month of becoming such an owner-occupier crofter, to give notice to the Commission of that fact; and

(b) the reference to a landlord in subsection (2), and any reference to a landlord in section 24, included a reference to an owner-occupier crofter.”.

(13) In section 24 (decrofting where croft vacant for 6 months)—

30 (a) in subsection (2), for “section 22(1)” substitute “section 26H(1)”;

(b) after that subsection insert—

“(2ZA) But the Commission may not make a direction in accordance with subsection (2) in relation to an unregistered croft—

35 (a) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which notice under that subsection is given; and

(b) until such an application is submitted.”;

(c) after subsection (3A) (inserted by section 29 of this Act) insert—

40 “(3B) Where a direction is applied for under subsection (3) in relation to an unregistered croft, the Commission—

(a) may not make such a direction unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made;

5 (b) need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.

(3C) In relation to a registered croft (other than a first registered croft)—

10 (a) a direction under subsection (2) or (3) (other than one under subsection (3) given by virtue of section 25(4) of this Act) expires at the end of the period of 3 months beginning with the date on which the direction was made unless an application for registration of the making of the direction is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

15 (b) the direction takes effect on the date of registration.”.

(13A) In section 25 (provisions supplementary to section 24(3))—

(a) in subsection (4), at the beginning insert “Subject to subsections (4ZB) and (4ZD),”;

(b) after that subsection insert—

20 “(4ZA) Where a direction is applied for under subsection (4) in relation to an unregistered croft—

25 (a) the Commission may not make such a direction unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made;

(b) the Commission need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.

30 (4ZB) Where a direction under section 24(3) is made by virtue of an application under subsection (4) in relation to a first registered croft—

(a) the crofter who applied for the direction must, within 3 months of acquiring land or a site as mentioned in that subsection, notify the Commission of the acquisition;

(b) the direction—

35 (i) does not have effect unless the conditions in subsection (4) are satisfied;

(ii) takes effect on the giving of notification of the direction under section 9(3E)(c) of the 2010 Act.

(4ZC) Subsection (4ZD) applies to a direction under section 24(3) which is made—

40 (a) by virtue of an application under subsection (4); and

(b) in relation to a registered croft (other than a first registered croft).

(4ZD) The direction—

(a) does not have effect unless—

- (i) the conditions mentioned in subsection (4) are satisfied; and
- (ii) an application for registration of the making of the direction is made by virtue of section 5 of the 2010 Act before the expiry of the period of 5 years mentioned in that subsection;

5 (b) takes effect, if those conditions and the condition mentioned in paragraph (a)(ii) are satisfied on or before the date of registration, on the date of registration.”.

(14) In section 26 (removal of crofter)—

(a) in subsection (1)—

10 (i) the word “or” immediately preceding paragraph (b) is repealed; and

(ii) after that paragraph insert “, or

(c) a crofter has breached any duty mentioned in section 5B or 5C,”; and

(b) in subsection (3), for “5B” substitute “26H”.

(15) In section 27 (subletting by crofters), subsection (3) is repealed.

15 (15A) In section 30 (compensation to crofter for improvements)—

(a) in subsection (6A)(a), for “paragraph 3(b) of Schedule 2 to” substitute “section 5C(2)(a)(ii) of”; and

(b) in subsection (6B), for “5(7)(a)” substitute “5C(4)(a)”.

20 (15B) In section 31(1)(a) (permanent improvements made on crofts for purposes of subsidiary or auxiliary occupations), for “paragraph 3 of Schedule 2 to” substitute “section 5C(2)(a)(ii) of”.

(15C) In section 38 (reorganisation schemes), in subsection (10), after paragraph (c) insert—

“(ca) each owner-occupier crofter whose croft is situated in the township;”.

25 (15D) In section 38A (appeal to Land Court: special provision as respects reorganisation schemes), in subsection (1), after “the landlord of any such croft or” insert “any owner-occupier crofter whose croft is situated in the township or”.

(15E) In section 39 (putting into effect of reorganisation schemes)—

(a) in subsection (1A), at the beginning insert “Subject to subsection (2A),”;

(b) in subsection (2), at the beginning insert “Subject to subsection (2B),”;

30 (c) after subsection (2), insert—

“(2A) Before putting into effect a reorganisation scheme which contains provision—

(a) forming a croft;

(b) making any change to, or in relation to, a croft,

35 the Commission must submit, in accordance with Part 2 of the 2010 Act, an application for registration of the croft so formed, the croft affected by the change or, as the case may be, the change to the croft.

(2B) The date appointed under subsection (2) for the putting into effect of any provision of a reorganisation scheme in respect of which an application for registration under subsection (2A) is made is to be the date of registration.”.

40 (16) In section 40 (obtaining of information by Commission), after subsection (1) insert—

“(1A) The information mentioned in subsection (1) above includes the age and date of birth of the owner or occupier of the holding or such other person or class of person as may be specified in the notice.”

(17) In section 41(2) (information to be entered in Register of Crofts)—

5 (a) in paragraph (b), after “name” insert “, age and date of birth”; and

(b) in paragraph (cd)(ii), for “section 22(1)” substitute “section 26H(1)”.

(17A) In section 45(1) (former crofters and cottars who have acquired site of the dwelling-house), after paragraph (c) insert—

“(ca) an owner-occupier crofter;”.

10 (17B) In section 46 (owner-occupiers of like economic status as crofters and other persons)—

(a) in subsection (1), after “gas supplies” insert “for owner-occupier crofters and”;

(b) in subsection (4)—

(i) for paragraph (a) substitute—

“(a) for owner-occupier crofters; and”;

15 (ii) after paragraph (d) insert “; and

(e) for tenants of crofts or parts of crofts occupying under short leases granted as mentioned in section 29A,”.

(17C) In section 46A(1) (regulations concerning loans), after paragraph (b) insert—

“(ba) owner-occupier crofters;”.

20 (18) In section 50B (use of common grazing for other purposes), the following are repealed—

(a) in subsection (6), the words “, in such manner as the Commission may require,”; and

(b) subsections (7) to (15).

25 (18A) In section 52 (miscellaneous provisions as to common grazings, etc.)—

(a) after subsection (1E) insert—

“(1EA) Where the Commission make a determination under subsection (1E) that all or part of a person’s share in a registered common grazing is terminated—

30 (a) the Commission must, as soon as reasonably practicable after making the determination, submit an application for registration of the termination by virtue of section 19B of the 2010 Act;

(b) the termination takes effect on the date of registration.

(1EB) Any apportionment of all or part of a person’s share in a registered common grazing under subsection (1E) above takes effect, as respects an application for registration of the apportionment by virtue of section 19B of the 2010 Act, on the date of registration.”;

35 (b) after subsection (3) insert—

“(3A) In relation to a registered common grazing—

(a) any apportionment of the common grazing under subsection (3) expires at the end of the period of 3 months beginning with the date on which the common grazing was so apportioned unless an application for registration of the apportionment is submitted by virtue of section 19B of the 2010 Act before the expiry of that period;

(b) the apportionment takes effect on the date of registration.”;

(c) after subsection (5) insert—

“(5A) Where an application is made under subsection (4) by the crofter of an unregistered croft, the Commission—

(a) may not apportion a part of the common grazing unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application to apportion a part of the common grazing was made;

(b) need not, during that 6 month period, consider the application to apportion a part of the common grazing until an application for first registration of the croft is submitted.

(5B) Where an application under subsection (4) by the crofter of a registered croft (other than a first registered croft) is granted—

(a) the apportionment of a part of the common grazing expires at the end of the period of 3 months beginning with the date on which the part was so apportioned unless an application for registration of the apportionment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the apportionment takes effect on the date of registration.

(5C) In relation to a registered common grazing—

(a) any apportionment of a part of the common grazing under subsection (4) expires at the end of the period of 3 months beginning with the date on which the part was so apportioned unless an application for registration of the apportionment is submitted by virtue of section 19B of the 2010 Act before the expiry of that period;

(b) the apportionment of the part takes effect on the date of registration.

(5D) But subsection (5C) does not apply to an apportionment which takes effect by virtue of subsection (5B).”;

(d) after subsection (7) insert—

“(7A) Any transfer by a person who holds a right in a registered common grazing of that right to another person takes effect, as respects an application for registration of the transfer by virtue of section 19B of the 2010 Act, on the date of registration.”;

(e) after subsection (8) insert—

“(8A) Subsection (5C) applies to an apportionment under subsection (8) of registered lands held runrig as it applies to an apportionment under subsection (4) of a part of a registered common grazing, with the modification that the reference to section 19B is to be construed as a reference to section 19I.

(f) after subsection (11) insert—

“(11A) In relation to a registered common grazing—

(a) any extension under subsection (11) of the period for which a part of a registered common grazing is apportioned ceases to have effect at the end of the period of 3 months beginning with the date on which the period was so extended unless an application for registration of the extension is submitted by virtue of section 19B of the 2010 Act before the expiry of that 3 month period;

(b) the extension takes effect on the date of registration.

(11B) Subsection (11A) applies to registered land held runrig as it applies to a registered common grazing, with the modification that the reference to section 19B is to be construed as a reference to section 19I.”;

(g) after subsection (12) insert—

“(12A) Subsection (12B) applies to an application by the crofter of a registered croft (other than a first registered croft) made under subsection (12) to bring to an end an apportionment made in pursuance of subsection (4).

(12B) Where the application is granted—

(a) the granting of the application expires at the end of the period of 3 months beginning with the date of the granting unless an application for registration of the bringing to an end of the apportionment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the bringing to an end of the apportionment takes effect on the date of registration.

(12C) Where it is determined under subsection (12)(b)(iii) that an apportionment of a registered common grazing is to come to an end, the apportionment comes to an end, as respects an application for registration of the bringing of it to an end by virtue of section 19B of the 2010 Act, on the date of registration.

(12D) But subsection (12C) does not apply to an apportionment the bringing to an end of which takes effect by virtue of subsection (12B).”;

(h) after subsection (14) insert—

“(14A) Any determination under subsection (14) takes effect, as respects an application for registration of the making of the determination by virtue of section 19B of the 2010 Act, on the date of registration.”;

(i) in subsection (15), for “(14)” substitute “(14A)”.

(19) In section 52A (appeals)—

(za) after subsection (4) insert—

“(4A) The Court may, if it considers it appropriate in consequence of any decision on an appeal under subsection (1), order the Keeper to rectify the Crofting Register.”;

(a) subsection (5) is repealed;

(aa) in subsection (6), the words “10(4B),” are repealed; and

(b) subsection (7) is repealed.

(19A) In section 53 (jurisdictional provisions)—

(a) in the proviso to subsection (1), after paragraph (i) insert—

“(ia) any question that may be raised under section 12(1) of the 2010 Act (including a question that could have been raised under that section had an application been made before the end of the period mentioned in section 11(5) of that Act);” and

(b) after subsection (2) insert—

“(3) The Court may, if it considers it appropriate in consequence of any determination under subsection (1), order the Keeper to rectify the Crofting Register.”.

(19B) In section 56 (powers of entry and inspection), in subsection (1), after “Act” insert “or, in the case of the Commission, by the 2010 Act”.

(20) For section 60 (regulations) substitute—

“60 Regulations and orders

(1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing such regulations or such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) No statutory instrument containing—

(a) an order under—

(i) section 2A(1);

(ii) section 5B(7);

(iii) section 19C(8);

(iv) paragraph 3(4) of schedule 1;

(b) regulations under paragraph 7(1) of schedule 1,

may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

(21) In section 61(1) (interpretation)—

(za) after the definition of “the 1997 Act”, insert—

““the 2010 Act” means the Crofting Reform (Scotland) Act 2010 (asp 00);”

(a) in the definition of “the Commission”, for “Crofters” substitute “Crofting”;

(b) for the definitions of “croft” and “crofter” substitute—

““croft”—

(a) in relation to a croft other than one registered in the Crofting Register, has the meaning given by section 3;

(b) in relation to a croft registered in that register, has the meaning given by section 3ZA(2)(a);

“crofter”—

(a) in relation to a croft other than one registered in the Crofting Register, has the meaning given by section 3;

(b) in relation to a croft registered in that register, has the meaning given by section 3ZA(2)(c);”;

5 (ba) after the definition of “croft land” insert—

““cultivate” has the meaning given by section 5C(8);”;

(bb) after the definition of “croft land” insert—

““date of registration” (other than in section 3) is to be construed in accordance with section 7(4) of the 2010 Act”;

10 (bc) after the definition of “enactment” insert—

““first registered croft” is to be construed in accordance with section 5(1A) of the 2010 Act;

“first registration”, in relation to an unregistered croft or unregistered owner-occupied croft, means the registration of the croft or owner-occupied croft in the Crofting Register;”;

15

(c) after the definition of “functions” insert—

““Keeper” means the Keeper of the Registers of Scotland;”;

(d) in the definition of “landlord” —

(i) in paragraph (a), after “croft” where it first occurs insert “other than one registered in the Crofting Register”;

20

(ii) after that paragraph insert—

“(aa) in the case of a croft registered in that register, the person for the time being entered in the registration schedule of the croft as the landlord of it;”;

25

(e) after the definition of “landlord” insert—

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);”;

(f) after the definition of “National Trust for Scotland” insert—

““owner-occupied croft” and “owner-occupier’s croft” have the meanings given by section 19B(2);

30

“owner-occupier crofter” is to be construed in accordance with section 19B(1) to (1C);”;

(fa) after the definition of “public notification” insert—

““purposeful use” has the meaning given by section 5C(8);

35

“registered”, in relation to a croft, an owner-occupied croft or a common grazing, means registered in the Crofting Register; and “unregistered” and other cognate expressions are to be construed accordingly;”;

(g) after the definition of “registered” (as inserted by sub-sub-paragraph (fa)) insert—

““registration schedule” means the registration schedule of the croft made up and maintained under section 10(1) of the 2010 Act;”.

40

(22) In Schedule 2 (the statutory conditions)—

- (a) paragraphs 3, 3A and 3B are repealed;
- (b) in paragraph 13, the definitions of “cultivate” and “purposeful use” are repealed.

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 4 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)
5 (devolved public bodies), for “The Crofters Commission” substitute “The Crofting
 Commission”.

Crofting Reform (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to reform and rename the Crofters Commission; to provide for the establishment of a new register of crofts and for registration of crofts in it; to make provision about the duties of crofters and certain owner-occupiers of crofts and for the enforcement of those duties; to make further amendments to the law on crofting; and for connected purposes.

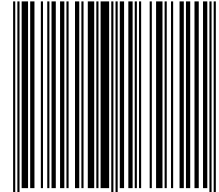
Introduced by: Richard Lochhead
On: 9 December 2009
Supported by: Roseanna Cunningham
Bill type: Executive Bill

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