

CROFTING REFORM (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Revised Explanatory Notes are published to accompany the Crofting Reform (Scotland) Bill (introduced in the Scottish Parliament on 9 December 2009) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill makes provision to reform and rename the Crofters Commission and to modify its statutory functions. It will establish a new map-based Crofting Register that will be maintained by the Keeper of the Registers of Scotland, and which will be developed over time through regulatory trigger points that will require crofts to be registered. The Bill defines a category of owner-occupiers known as "owner-occupier crofters" and imposes duties on them and on tenant crofters in relation to residency, misuse and neglect of crofts. The Bill also amends provisions in the Crofters (Scotland) Act 1993 (referred to in these Explanatory Notes as "the 1993 Act") on decrofting, resumption, re-letting of vacant crofts, obtaining consent to certain regulatory matters, succession and appeals. A number of other minor and technical amendments to crofting law are made.

PART 1 – REORGANISATION OF THE CROFTERS COMMISSION

The Crofting Commission

Section 1: The Crofting Commission

5. Subsection (1) renames the “Crofters Commission” the “Crofting Commission” to reflect the changes in function as described in section 2 of the Bill. Subsection (3) replaces schedule 1 of 1993 Act with a new schedule 1. Subsection (4) states that where reference is made to the Crofters Commission in any enactment that this is a reference to the Crofting Commission unless there is a clear intention to the contrary.

Section 2: General functions of the Crofting Commission

6. Section 2 of the Bill relates to the general functions of the Commission and makes amendments to the general functions that were conferred on the Crofters Commission under the 1993 Act. Subsection (1) replaces section 1(2) of the 1993 Act. The effect of this replacement is that the Commission will continue to have responsibility for reorganising, regulating and for keeping under review matters relating to crofting. The Commission will also be responsible for promoting the interests of crofting, however, the Commission will no longer have responsibility for the development of crofting, which was transferred to Highlands and Islands Enterprise on 1 April 2009 through administrative means. A new subsection (2A) provides that the Commission must, in exercising their functions, have regard to the effect of changes in the amount of land held in crofting tenure on the sustainability of crofting.

7. Subsection (2) inserts four new sections into the 1993 Act – sections 2A, 2B, 2C and 2D. Section 2A enables the Scottish Ministers to confer, remove and modify the functions of the Commission by order, however subsection (2) only permits such changes where it is appropriate to do so to ensure that the Commission carries out its functions efficiently and effectively. New section 2B requires the Commission to report on its performance, and the Commission is also required to assess the issues affecting crofting communities and the contribution crofting has made to sustainable development. In carrying out this requirement, the Commission is required to consult each local authority in the area where there are crofts and Highlands and Islands Enterprise. The Scottish Ministers are required to lay a copy of the annual report before the Scottish Parliament with any appropriate comments.

8. Section 2C requires the Commission to produce a plan setting out its policy on how it proposes to carry out its functions. This plan must be submitted to the Scottish Ministers within 6 months from the day after the first election of members of the Commission or the day after subsequent elections. This will enable members to create policies as to the running of the Commission once they are appointed. Subsection (3) requires that the Commission consult with each local authority in areas where there are crofts, Highlands and Islands Enterprise and any other persons or bodies the Commission considers appropriate before preparing its plan. Subsection (4) allows Ministers to approve the plan or reject it and direct the Commission to submit a revised plan. Furthermore, subsection (7) requires that where the Commission wish to vary their plan, they must consult on the new proposal and seek Ministers’ approval, as outlined in subsections (3) and (4). Once approved, the Commission must make the plan available, as outlined in subsection (5).

9. Section 2D refers to the status of a plan approved under section 2C and obliges the Commission to have regard to its approved plan when discharging any of its functions. Also, where the Scottish Land Court is considering an appeal against a decision by the Commission, they too may have regard to this plan.

PART 2 – THE CROFTING REGISTER

Duty to establish and maintain register

Section 3: The Crofting Register

10. Section 3 provides for the establishment of a new public register of crofts to be held by the Keeper of the Registers of Scotland (referred to hereafter as “the Keeper”). Subsection (2) provides for this register to be known as the “Crofting Register”. At present, section 41 of the 1993 Act confers responsibility on the Commission to compile and maintain a Register of Crofts. This register is an administrative register, does not contain maps or information on the boundaries of crofts and often relies upon crofters and owner-occupiers informing the Commission when there is a change to the extent of, or interests in the croft. The Commission will maintain the Register of Crofts until such time as it has been completely replaced by the Crofting Register. The Commission will continue to keep administrative records of regulatory decisions it has taken in relation to crofts, however, the new Crofting Register will provide a definitive and current record of the extent of, and interests in, a croft. Once the Crofting Register is complete, it will be necessary to repeal the provisions relating to the current register.

Registration

Section 4: First registration

11. Section 4 outlines the circumstances under which a croft may be registered for the first time on the Crofting Register. Where details of a croft are not registered on the Crofting Register, subsection (1) requires that the croft must be registered in the following instances: upon the creation of a new croft under section 3A(1) or (2) of the 1993 Act; upon the transfer of an owner-occupied croft; and in the event of a regulatory trigger that is identified under subsection (3). Under subsection (2), an unregistered croft may be registered voluntarily. Subsection (2A) defines the persons eligible to apply to register an unregistered croft.

12. Subsection (3) sets out the trigger events which will require the first registration of crofts and owner-occupied crofts. These trigger events relate to an application for a regulatory decision that would impact on the extent of a croft or the interests in a croft. In some cases, the trigger event relates to the giving of notice to the Commission under the 1993 Act.

13. The person who has responsibility for the first registration of a croft will vary depending on the regulatory trigger. Table 1 of Schedule 1A lists those who are responsible for applying for registration in each case. The Crofting Commission must not take forward a regulatory application it receives unless a registration form has been received for the croft that is the subject of the regulatory application within six months of the regulatory application being made.

14. Subsection (4) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring first registration. However, it will not be possible add the transfer of ownership of any

land on which a croft is situated as an event. Subsection (4A) provides that where the Scottish Ministers exercise the power in subsection (4) they may by order modify Table 1 in Schedule 1A which lists the people who are responsible for making registration applications under section 4(3). Subsection (4B) allows the Scottish Ministers to make regulations about when ownership of an owner-occupied croft is to be treated as being transferred. Subsection (5) defines what is meant by the terms “croft”, “first registration” and “new croft”.

Section 5: Registration of events affecting registered crofts

15. In order to ensure that any changes to the extent of, or interests in, a croft are captured in the Crofting Register, this section outlines the circumstances in which the Crofting Register must be amended. Subsection (1)(za) states that where an owner-occupied croft is transferred or a trigger event in subsection (2) occurs, the register must be amended. Subsection (1)(zb)(i) requires the transfer of the ownership of any land on which the croft is situated to be registered. Subsection (1)(zb)(ii) requires the change in landlord to be registered. Subsection (1)(zb)(iii) requires an amendment to the registration details of a registered croft on the taking of a trigger event listed in subsection (2). Subsection (1A) provides that, where first registration of a croft is triggered by certain regulatory applications, there is no need for a separate application to amend the register as a result of the outcome of the regulatory application. Instead the applicant should notify the Commission of any resulting change to the croft. The Commission will notify the Keeper who will amend the register under section 9.

16. Subsection (3) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring amendment to the Crofting Register. As outlined in paragraph 13, depending on the associated regulatory application, the person applying to register the croft, or in this case amend the register will vary. Table 2 in Schedule 1A lists those who are responsible for making applications under section 5(2).

17. Subsection (4) provides that where the Scottish Ministers exercise the power in subsection (3), they may by order modify Table 2 in Schedule 1A, containing the list of persons responsible for making applications for subsequent registration.

18. Subsection (5) allows the Scottish Ministers to make regulations about when ownership of an owner-occupied croft or the land on which a croft is situated is to be treated as being transferred.

Section 5A: Persons responsible for applications for registration

19. Section 5A makes provision about who is responsible for making applications for registration in relation to crofts. In the case of the transfer of the ownership of an owner-occupied croft or the land on which a croft is situated, the new owner is required to make the application for registration. In the case of a change of landlord of a registered croft, the new landlord is required to apply for registration. On first registration, the person mentioned in the entry in column 2 of Table 1 in Schedule 1A is responsible for the application in relation to a trigger event in section 4(3). On subsequent registration, the person who is mentioned in the entry in column 2 of Table 2 in Schedule 1A is responsible for the application in relation to a trigger event in section 5(2).

Section 6: Applications for registration

20. Section 6 outlines the process for registering an interest in a croft or, where a croft has already been registered, the process for amending this registration. Subsection (1) states that an application to register a croft must be submitted to the Crofting Commission along with registration payment unless it is the Commission submitting the application.

21. Subsection (2) provides that an application for first registration of a new croft must be submitted at the same time as the application to constitute the land as a croft.

22. Subsection (4) requires the Commission, as soon as reasonably practicable after receiving the registration application, to check the information contained in the registration application against the Register of Crofts if the application is for first registration (except where the application relates to a new croft or is a result of a reorganisation scheme) and, to forward the application with any comments and the registration payment to the Keeper. Subsection (5) enables the Commission, before forwarding the registration to the Keeper, to request further information in relation to the application.

23. Subsection (6) outlines the circumstances in which the Commission can refuse to forward an application. These are: the applicant has not provided the Commission with further information as requested under subsection (5); the application is frivolous or vexatious; the applicant has not submitted payment for registration; there is a material inaccuracy in the application or the Commission consider that the Keeper would otherwise not accept the application under section 7(2). Where the Commission refuses to forward an application, the applicant may appeal against that decision to the Land Court. Subsection (7A) disapplies subsections (1), (4) to (7) for applications for registration by the Commission. Subsection (9) defines “material inaccuracy” as an inaccuracy relating to any matter mentioned in section 10(2).

Section 7: Acceptance of applications for registration

24. Section 7 outlines the circumstances in which a registration application should be accepted by the Keeper. Whilst subsection (1) requires the Keeper to accept a registration application provided it is accompanied by any documents and other evidence that the Keeper requires, subsection (2) outlines the circumstances by which the Keeper must reject an application. The grounds for rejecting an application are that: the boundary of the croft is not sufficiently described by an Ordnance Survey map or such other map required by the Keeper; the information in or accompanying the application would not enable the Keeper to make up or amend the registration schedule of the croft; where the application is to amend the registration of a registered croft, the application does not refer to the registration schedule of that croft; or no registration fee has been tendered.

25. Subsection (2A) allows the Keeper to accept an application for registration which includes land which is already registered as part of another croft, or a common grazing or land held runrig. Where the Keeper does accept such an application, section 10(2A) provides that she must not include the land that is already registered elsewhere in the registration schedule for the croft.

26. Subsection (3) requires the Keeper to note the date of receipt of registration. Subsection (4) states that the date of receipt of registration will be deemed the date of registration where, (under subsection (5)) the application has been accepted by the Keeper and where (under subsection (6)) there has been no challenge to the registration under section 12(1) or, where such a challenge was made, the application has been abandoned or the Court has decided to either make no order or make an order under section 12(2)(b). In the latter case, the Keeper will be informed of any amendment required to the registration.

Section 8: Completion of registration

27. Subsection (1) requires the Keeper to complete registration for a newly registered croft by making a registration schedule for it, or, where the croft is already registered, by amending the registration schedule and in both cases by making consequential changes to the register as necessary (for example, where ownership of land is transferred, the name of the landowner featured on the registration schedule would be amended accordingly). Under subsection (2), the applicant receives a certificate which confirms the registration of a croft; advises that, in the case of the first registration of a croft (other than a new croft or where a croft is registered as a result of the preparation of a reorganisation scheme), the registration is open to challenge; and contains such other information as the Keeper considers appropriate. Subsection (2A) requires the Commission to send a copy of the certificate of registration to the crofter where it is the Commission that applied for the first registration. Subsection (3) requires the Keeper to send a copy of the certificate to the Commission in the event of a first registration, except in the case of a new croft or where the Commission are the applicant as they will have received the certificate under section 8(2). Under subsection (4), a registration certificate is sufficient evidence of the registration of the croft.

Section 9: Completion of registration: further provision on first registrations

28. Section 9 applies to the first registration of a croft that is not a new croft or a croft which is first registered as a result of the preparation of a reorganisation scheme (because in those cases it is not possible to challenge the first registration of the croft under section 12) It applies where there has been no challenge to the first registration under section 12, or any challenge has been unsuccessful or led to the entry in the register for the croft being modified but not removed.

29. Subsection (2) states that the Keeper is required to amend the registration schedule and make any consequential adjustments to the register.

30. Under subsection (3) the Keeper is required to amend the register in the event that a regulatory application that triggered a requirement to register the croft is granted. For example, where a regulatory application to enlarge a croft has been agreed, then the register will be amended accordingly. Applicants applying for a regulatory application relating to enlargement, exchange, assignation, resumption, consent to letting or apportionment of a common grazing, must notify the Commission within three months of the application being granted that the change to the croft has taken effect. If the Commission is not notified within the necessary timescale, the regulatory activity will be deemed not to have taken effect. Once the Commission are notified they must notify the Keeper to enable the Keeper to update the registration details for that croft. When the regulatory application is for division or decrofting, the Commission will notify the Keeper that the application has been granted and the Keeper will amend the Register. Where the application is to decroft and the crofter intends to acquire the land, the crofter must

notify the Commission when the land has been acquired. The Commission will then notify the Keeper that the land has been acquired, and the Keeper will amend the Register, without the need for a separate application for registration in each case.

31. Subsection (4) requires the Keeper to issue a certificate that the registration of a croft may no longer be challenged under section 12(1). The certificate may also contain such other information as the Keeper considers appropriate.

The registration schedule

Section 10: The registration schedule

32. Subsection (1) requires the Keeper to make up and maintain a registration schedule of every croft registered in the Crofting Register. Subsection (2) outlines the information that must be contained on the registration schedule. This includes a map-based description of the registered croft (which will provide certainty over the full extent of the land) and the name and designation of persons with an interest in the croft i.e. any crofter, owner-occupier crofter, landlord or owner. The registration schedule must also contain any other information that the Keeper considers appropriate. Subsection (2A) provides that where an application for registration of a croft includes land which is registered as part of another croft, or a common grazing or land held runrig, the Keeper may not enter that land in the registration schedule of the croft but may register the croft omitting that land.

33. Subsection (3) requires the Keeper to issue a copy of the registration schedule or part of the registration schedule upon request. Subsection (4) requires that this is to be known as an office copy and will act as sufficient evidence of the information pertaining to an interest in a croft held on the register. Subsection (5) allows the Scottish Ministers, by order, to modify section 10(2) to add to the matters mentioned there any other matters they consider should be included in the registration schedule.

Challenge to first registration

Section 11: Notification of first registration

34. Section 11 outlines the process by which persons with an interest must be notified of a first registration to the Crofting Register. Subsection (1) requires the Commission, upon receipt of a certificate of registration from the Keeper under section 8(2) or (3), to notify the persons specified in subsection (3) of the matters outlined in subsection (4). Those matters are: that the croft has been registered; the description of the croft included in the registration schedule; the names and designations of persons included in the registration schedule; the right to challenge the registration; and the period by which such a challenge must be brought. The person who registers the croft may vary according to the regulatory trigger point. Notification under subsection (3) will ensure that any person with an interest is aware of the registration. The Commission need not notify persons of a croft which is first registered as a result of the preparation of a reorganisation scheme, as there is a separate appeal available in relation to reorganisations schemes and the first registration of such a croft cannot be challenged under section 12. Subsection (5) states that the period of challenge is 9 months beginning with the date on which the Commission issue notification under subsection (1). Subsection (6) requires the applicant, upon receipt of the registration certificate, to give public notice of registration, except in the case of a new croft or a croft affected by a reorganisation scheme. They must do this by

placing an advert in a local newspaper for two consecutive weeks and affixing a conspicuous notice to the registered croft in the form prescribed by the Scottish Ministers. Subsection (6A) requires the applicant to also take all reasonable steps to ensure that the notice continues to be displayed throughout the period in subsection (5).

Section 11A: Power of entry etc. where Commission is applicant

35. Section 11A gives a person authorised by the Commission the power to enter a croft in order to affix a notice that will give notification that the croft has been registered on the Crofting Register. They will only have this power where the Commission is the person applying to register a croft onto the Crofting Register. They will also have to power to enter the croft if the notice is no longer on display and to remove it following the 9 month period that the notice has to be displayed for. Subsection (3) requires the Commission to take all reasonable care not to damage the croft or the part of the croft to which the notice is affixed and to remove the notice no later than one week after the end of the period mentioned in section 11(5).

36. This section also attaches provisions relating to entry that apply under section 56 of the 1993 Act such as the requirement to produce identification if required, to give notice of their intention to enter on to the croft, and a criminal sanction for persons obstructing a persons entry on to a croft.

Section 12: Challenge to first registration

37. Section 12 sets out the circumstances in which a challenge may be brought against a croft registration. The registration of the croft is open to challenge for a nine month appeal period. It is only possible to challenge the boundaries etc. of a croft on first registration under section 12. Subsection (1) allows a person with an interest, or any other person who is aggrieved by the croft registration, to apply to the Land Court within the 9 month challenge period for the registration to be removed or modified. The person applying under subsection (1) must, as soon as reasonably practicable after doing, notify the Keeper. Subsection (1B) enables challenges to the first registration of an unregistered croft to be made after the end of the 9 month period if the Land Court consider there is just cause shown for the delay. The right to challenge the first registration of an unregistered croft is disapplied when the croft was registered as a result of a reorganisation scheme, as there is a separate appeal available against a reorganisation scheme.

38. Subsection (2) allows the Land Court, upon considering an appeal against the registration of a croft, to make an order for the registration to be removed from the Crofting Register, modify the entry or make no order. Subsection (2A) provides that when the Land Court has to determine the boundaries of a croft and there is insufficient evidence to enable them to be clearly determined when subsection (2B) applies, the Land Court must declare the boundary to be that which it considers appropriate. Subsection (6) requires the Keeper to make any amendments to the registration schedule of the croft and register which are necessary in the light of the Land Court's decision. The determination of the Land Court is subject to an appeal on a point of law to the Inner House of the Court of Session.

Removal of resumed and decrofted crofts from register

Section 12A: Resumed and decrofted crofts

39. Section 12A requires the Keeper to remove resumed and decrofted crofts from the Crofting Register after 20 years. This is because a resumption can be reversed for up to 20 years.

Rectification and indemnity

Section 14: Rectification of the register

40. This section makes provision for the rectification of the Crofting Register. Subsection (1) enables the Keeper to rectify the register, when there is a mistake in the application for registration by the applicant; when there is a mistake in the register as a result of a mistake by the Commission in handling the application; when a mistake is by the Keeper when registering the application or when the Land Court or another court orders the Keeper to rectify the register. Subsection (2) requires that the Keeper must give written notice of any rectification to any person affected by the rectification and the Commission. Subsection (3) defines what is meant by “court”, “mistake” and “rectify”.

Section 14A: Rectification following first registration

41. This section provides that where the Register is rectified in relation to a first registration during the challenge period, it is necessary to re-notify the registration and the challenge period begins again. Subsection (3) requires that the Keeper or the Commission must pay for any expenses incurred in re-notifying the registration, where the rectification is as a result of an error by the Keeper or by the Crofting Commission in handling the application.

Section 15: Indemnity in respect of loss

42. Section 15 sets out the circumstances in which the Keeper will be required to indemnify a person suffering a loss resulting from the Crofting Register. Subsection (2) sets out the matters which result in indemnifiable loss. These are: a mistake in the register made by the Keeper in making up or amending a registration schedule or making consequential amendments, the correction of which would require rectification of the register; a rectification of the register under section 14(1) to correct such a mistake; the refusal of the Keeper to make such a rectification; the loss or destruction of any document lodged with the Keeper; and a mistake, in any certificate of registration or information given by the Keeper in writing or in a manner prescribed under section 16(1), which reflects a mistake made in the register by the Keeper, the correction of which would require rectification under section 14(1). Subsection (3) states that no indemnity will be payable in relation to an error by the Keeper until a decision has been taken to rectify the register and any loss suffered is reviewed in light of any rectification. Subsection (3A) provides that the Commission is liable to indemnify a person for loss suffered where that person is required to submit a fresh application for registration or apply for rectification of the Register as a result of a mistake made by the Commission when forwarding an application for registration to the Keeper. Subsection (6) defines “mistake” as having the meaning given by section 14(3).

Rules

Section 16: Rules and fees

43. Section 16 outlines the matters in respect of which the Scottish Ministers, after consultation with the Keeper and the Commission, may make rules. Subsection (1) states that rules may regulate the making up and keeping of the register, including the form and manner in which the register is made available to the public. They may also prescribe the form of any search, report or other document to be issued or used in connection with the register and regulate the issuing of any such document. They may also prescribe the form of application for registration and may make rules which regulate the procedure for registration application or the form of deeds relating to registered crofts. Finally, rules may be made in relation to such matters as the Scottish Ministers deem be necessary or proper in order to give full effect to the purposes of Part 2. Subsection (2) enables the Scottish Ministers to prescribe by order the fees payable in respect of registration and in respect of any searches, reports, certificates or other documents or copies of documents provided by the Keeper. Subsection (3) enables the order to include circumstances in which a person is entitled to a reduction in fees for applications for registration, including the amount of or method of calculating that reduction, and the manner in which that reduction is to be achieved.

Appeals

Section 17: Appeals

44. Section 17 outlines the circumstances in which an appeal against an act or omission of the Keeper may be made. Subsection (1) allows for a person aggrieved by an act (or omission) of the Keeper to appeal any issue of fact or law arising from the act or omission to appeal to the Lands Tribunal for Scotland. Subsection (2) allows the Lands Tribunal to direct the Keeper to take remedial action which may include rectification of the register.

Consequential amendments of the 1993 Act

Section 18: Meaning of “croft” etc.

45. Section 18 sets out new meanings of a croft and a crofter which will be inserted after section 3 of the 1993 Act. This section adds an additional meaning of a croft to the 1993 Act. The effect of registration is therefore to provide legal certainty that the holding is a croft. Subsection (2) inserts new section 3ZA into the 1993 Act. This new section applies to any holding, situated in the crofting counties or new areas to crofting, which is registered in the Crofting Register. Section 3ZA(2) states that the holding is a croft from the date of registration; that the land which comprises the croft is determined by its description in the registration schedule; and that, from the date of a registration, any person entered in the registration schedule as the tenant of the croft is the crofter. Subsection (6) confirms that nothing in this section affects whether, before registration, a holding was a croft or any person was a tenant of it. The effect of registration, therefore, removes any dubiety over who has the rights and responsibilities conferred by the 1993 Act.

Section 19: Registration of new crofts

46. Section 19 makes amendments of the 1993 Act. Subsection (4) inserts new section 3AA dealing with registration of new crofts. New section 3AA will apply where the Commission has

made a determination under section 3A(1) or (2) of the 1993 Act to constitute land, or as the case may be, a holding as a croft. Section 3AA(2) prevents the Commission from forwarding an application to register a new croft in the Crofting Register to the Keeper until the period of appeal outlined in section 52A(2)(b) of the 1993 Act has expired or, where such an appeal is made to the Land Court, it is abandoned or the Court upholds the Commission's decision under 3A(1) of the 1993 Act. There is an opportunity to challenge an application for the establishment of a new croft under section 52A of the 1993 Act.

47. In relation to a decision to establish a new croft under section 3A(2) of the 1993 Act, where the application to create the new croft has been submitted by the tenant of a holding, the Commission must not forward an application to register the croft unless satisfied: 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 constituting the holding as a croft; that the applicant and owner have agreed that no amount in compensation is to be payable; or that any amount payable by virtue of section 3B (which sets out how the amount of compensation is to be determined in the absence of agreement) has been duly paid. The applicant will receive a certificate of registration from the RoS. Subsection (6) makes consequential amendments to section 3B of the 1993 Act. There is therefore no right to challenge the registration of a new croft under section 12 of the Bill.

48. In relation to a decision to establish a new croft under section 3A(2) of the 1993 Act, where the application to create the new croft has been submitted by the tenant of a holding, the Commission must not forward an application to register the croft unless satisfied: 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 constituting the holding as a croft; that the applicant and owner have agreed that no amount in compensation is to be payable; or that any amount payable by virtue of section 3B (which sets out how the amount of compensation is to be determined in the absence of agreement) has been duly paid. Subsection (5) makes consequential amendments to section 3B of the 1993 Act.

Registration of common grazings

Section 19A: First registration of common grazings

49. Section 19A provides for the first registration of an unregistered common grazing by the Crofting Commission. It also requires first registration of a new common grazing once the Crofting Commission has made a determination to constitute land as a common grazing and the associated appeal period of 42 days has ended. The section also defines 'first registration' in relation to an unregistered common grazing and defines 'new common grazing'.

Section 19B: Registration of events affecting registered common grazings

50. Section 19B provides the regulatory triggers that require an application for subsequent registration to amend the entry in the Register for a registered common grazing. This includes a requirement in subsection (1) for the transfer of ownership of land on which a registered common grazing is situated to be registered. Subsection (2) lists various regulatory events which must be registered. Subsection (3) provides that no separate application is needed under subsection (2) if one is also needed in relation to a croft under section 5. Subsection (4) allows the Scottish Ministers to make regulations about when ownership of land is to be treated as being

transferred for the purposes of subsection (1). Subsection (5) enables the Scottish Ministers, by order to modify the regulatory triggers.

Section 19C: Applications for registration: common grazings

51. Section 19C sets out the process for the submission of an application for the first registration of a new common grazing or to register a regulatory trigger event which affects the registration details of a registered common grazing. Subsection (4) requires the Commission to forward the application and associated fee to the Keeper as soon as reasonably practicable after receiving the application. Subsection (5) allows the Commission to ask the applicant for further information. Subsection (6) sets out the circumstances in which the Commission may refuse to forward an application for registration, including in the case of a material inaccuracy in the application. Subsection (7) provides that a refusal to forward an application may be appealed to the Land Court. Subsections (8), (9), (10) and (11) set out the registration and notification process for the first registration of a common grazing by the Commission. Subsection (12) defines “material inaccuracy”.

Section 19D: Registration of new common grazings

52. Section 19D amends section 51A of the 1993 Act, so a new common grazing is no longer constituted by being entered in the Register of Crofts. A new section 51B is inserted into the 1993 Act to provide that a new common grazing must be registered in the Crofting Register. Subsection (2) provides that an application for registration must not be forwarded to the Keeper until the appeal period set out in 52A(2)(b) has expired, or any appeal has been abandoned or determined by the Land Court. Subsection (3) provides that the date of registration in the Crofting Register is the date the land becomes a common grazing.

Section 19E: Application of Act to common grazings

53. Section 19E introduces Schedule 1B which applies sections of the Bill relating to the registration of crofts to the registration of common grazings.

Offences

Section 19F: Transfer of land containing crofts: offences

54. Section 19F provides that it is an offence when a new landowner fails, within a year of land being transferred to them, to register an unregistered croft situated on that land, or to register the change of ownership in relation to a registered croft on that land. It is also an offence when a new owner of an owner-occupied croft fails to register the croft, if unregistered, or the transfer of ownership, if the croft is registered. There is a further offence attached to this provision of failing at the end of each subsequent year to apply to register the croft or the change of ownership. There is a separate offence for each croft concerned. The fine is up to level 3 on the standard scale.

Section 19G: Change of landlord: offences

55. Section 19G provides that it is an offence where a new landlord fails to register the change of landlord of a registered croft. There is a further offence of failing at the end of each

subsequent year to register that change. This offence is subject to a fine of up to level 3 on the standard scale.

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

56. Section 19H makes provision to create offences when a new landowner fails, within a year of land being transferred to them, to register the transfer where a registered common grazing is situated on that land. There is a further offence attached to this provision of failing at the end of each subsequent year to apply to register the transfer. The fine is up to level 3 on the standard scale.

Lands held runrig

Section 19I: Lands held runrig

57. Section 19I provides for the Crofting Commission to apply to the Keeper for the first registration of unregistered land held runrig. Subsection (3) requires the Commission to consult the owner of the land and notify all holders of the land before submitting an application for first registration. Subsection (4) allows any person notified to make representations to the Commission. Subsection (5) provides that the regulatory trigger events of apportionment or an extension of an apportionment of registered land held runrig must be registered. Subsection (6) requires an application for subsequent registration to be submitted to the Commission, and subsection (7) requires the Commission to forward the application and associated fee to the Keeper. Subsection (8) allows the Commission to ask the applicant for further information. Subsection (9) sets out the circumstances in which the Commission may refuse to forward an application for registration, including in the case of a material inaccuracy in the application. Subsection (10) enables an appeal to the Land Court to be made where the Commission refuse to forward an application for registration.

58. Subsection (11) excludes section 6 of this Act from applying to applications for the registration of land held runrig. Subsection (12) and (13) apply sections 7 to 17 with such modifications as are necessary, in relation to lands held runrig as they apply in relation to common grazings by virtue of Schedule 1B. Subsection (14) applies the definition of “material inaccuracy” in section 10(2) to section 19I. Subsection (15) provides the Scottish Ministers with an order making power to modify subsection (5) to add, modify or remove a regulatory event which triggers subsequent registration. Subsection (16) defines “first registration” in relation to unregistered land held runrig as being the registration of that land.

PART 3 – DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS

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

Section 20: Duties relating to residency, misuse and neglect of crofts

59. This section amends the 1993 Act to clearly set out a tenant crofter’s duties in relation to residing within a certain distance of the croft and putting the croft to some form of productive use. There is currently a power in section 22 of the 1993 Act for the Commission to terminate the tenancy of the crofter where they are not currently resident on, or within 16 kilometres of, the croft, where it is in the general interest of the crofting community. Section 20 replaces this with a clear set of duties on the tenant crofter in respect of residency on, and misuse and neglect of,

crofts. Subsection (2) inserts a new section 5AA into the 1993 Act, clearly setting out the duty of tenant crofters to be ordinarily resident on, or within 32 kilometres of, the croft they tenant.

60. Subsection (3) replaces section 5B of the 1993 Act and places a clear duty on tenant crofters not to misuse or neglect the crofts they tenant and provides a new section 5C of the Act placing a duty on tenant crofters to cultivate and maintain the croft. The current legislation allows for a landlord, or the Commission with the consent of the landlord, to apply to the Land Court for an order terminating the tenancy of a crofter in cases of misuse or neglect. Subsection (2) of new section 5B sets out the statutory definitions of “misuse” that the Commission must use to determine whether misuse takes place. These are that the tenant crofter wilfully and knowingly uses the croft other than to cultivate it or put it to an approved purposeful use; fails to cultivate it; or fails to put it to any such purposeful use. Subsection (3) sets out the statutory definition of “neglect” that the Commission must use to determine whether neglect is taking place and details the relevant regulations containing the relevant standards. This is that the tenant crofter is not keeping the croft in good agricultural and environmental condition.

61. Subsection (4) of new section 5B does, however, permit tenant crofters to act in a way that would otherwise constitute misuse or neglect without that being treated as a breach of the duty, provided such actions are taken to conserve the natural beauty, or the flora and fauna, of the locality. Subsection (5) of new section 5B also allows tenant crofters to continue using the croft for a subsidiary or auxiliary occupation, if that use was permitted immediately prior to 28 January 2008 (the date section 7 of the Crofting Reform etc. Act 2007 came into force), without that being treated as misuse or neglect.

62. Subsection (7) provides the Scottish Ministers with power to amend, by order, the meaning of neglect so as to substitute different standards.

63. New section 5C places a duty on tenant crofters to cultivate and maintain the croft. Subsection (2) defines the duties as cultivating the croft or putting it to another purposeful use so that every part of the croft meets these criteria, and keeping the croft in a fit state for cultivation. Subsection (3) requires the Commission to take into account, in determining if these duties have been complied with, whether appropriate measures have been taken to control or eradicate the items detailed.

64. Subsection (4) requires a crofter to receive the consent of the landlord and the Commission before putting the croft to another purposeful use. Subsection (5) prevents a crofter from applying for such consent from the Commission until the landlord has given consent or the conditions of consent have been agreed, or 28 days has expired since the crofter sought the landlord’s consent.

65. Subsection (6) requires the Commission to consult the landlord and members of the crofting community relating to the croft to be put to another purposeful use on the application. The Commission must also be satisfied that, where planning consent, or any other formal approval, is required to deliver the purposeful use, that such approval has been granted.

66. Subsection (7) places a time limit of 28 days for the Commission to decide the application and allows it to place conditions if consenting. Subsection (8) defines “cultivate” and “purposeful use” for the purposes of the whole of the 1993 Act.

Duties of owner-occupier crofters

Section 21: Duties of certain owner-occupiers of crofts

67. Section 21 inserts new sections 19B to 19D into the 1993 Act covering owner-occupier crofters. Section 19B(1) provides that a person is an “owner-occupier crofter” if the conditions in subsections (1A)-(1C) are satisfied. Those conditions are: the person is the owner of a croft; the person was the tenant crofter who exercised the right to buy the croft, a crofter’s nominee or an individual who purchased the croft from the landlord who created the croft (or a successor in title to these persons); and the croft has not been let to any person as a crofter since it was acquired from the landlord or constituted as a croft. Section 19B(2) defines “owner-occupied croft” and “owner-occupier’s croft”.

68. New section 19C sets out the same duties for owner-occupier crofters as those placed on tenant crofters. Subsection (2) of new section 19C requires owner-occupiers to be ordinarily resident on, or within 32 kilometres of, the croft; to not misuse or neglect the croft; to cultivate the croft or otherwise put it to purposeful use; and to keep the croft in a fit state for cultivation.

69. Subsection (3) and subsection (4) of new section 19C respectively set out the statutory definitions of “misuse” and “neglect” for owner-occupied crofts, in the same terms as apply to tenanted crofts. Subsection (4A) requires the Commission to take into account, in determining if these duties have been complied with, whether appropriate measures have been taken to control or eradicate the items detailed. Subsection (5) of new section 19C also provides that owner-occupier crofters may act in a way that would otherwise constitute misuse or neglect, if such actions are taken to conserve the natural beauty, or the flora and fauna, of the locality.

70. Subsection (6) of new section 19C also provides that owner-occupier crofters may continue using the croft for a subsidiary or auxiliary occupation, if permitted immediately prior to the date on which section 21 of this Bill comes into force, without that being treated as misuse or neglect. Subsection (8) provides the Scottish Ministers with power to amend, by order, the meaning of neglect.

71. Section 21 also introduces new section 19D which prevents an owner-occupier from selling any part of an owner-occupied croft without first dividing the croft with the consent of the Commission. This matches the position for tenant crofters who must obtain the consent of the Commission before they may divide their crofts. Subsection (2A) provides that the Commission must not determine an application for consent to divide an owner-occupier croft, unless an application for first registration of the owner-occupier croft is made within 6 months. The Commission does not need to consider the application for consent until an application for first registration is submitted.

72. Subsection (3) ensures that the division of a registered owner-occupied croft is registered by requiring registration to take place within 3 months of the granting of the consent to the division by the Commission or the consent will expire, and providing that the division takes effect on the date of registration. Subsection (3A) requires the Keeper to make up and maintain a new registration schedule in respect of the new croft created by the division.

73. Subsection (4) declares that any sale of part of an owner-occupied croft which is not a new croft created through division approved by the Commission is null and void; and subsection

(5) allows the Commission to declare the original croft vacant. Subsection (6) provides definitions of “division”, “original croft” and “new croft” for the purposes of this section.

Commission consent for absence from croft

Section 22: Consent for absence from croft

74. This section inserts new sections 21B, 21C and 21D into the 1993 Act. These introduce a new concession for both owner-occupier and tenant crofters to be absent from their crofts with the permission of the Commission. This is done on the understanding that there may be valid reasons for absence. Under the 1993 Act, absent owner-occupier crofters could be required to submit letting proposals and absent tenants could have their tenancies terminated for failing to reside on, or near, their croft.

75. Section 21B permits the Commission to consent to tenant crofters and owner-occupier crofters being ordinarily resident further than 32 kilometres from the croft. This consent can be granted where the Commission has received an application under subsection (1) (which, in the case of an application by a tenant crofter, has also been copied to the landlord of the croft under subsection (2)). Subsection (3) of new section 21B states that the Commission may grant consent only if they consider there is a good reason for a tenant or owner-occupier crofter to be ordinarily resident further than 32 kilometres from the croft. Subsection (4) empowers the Commission to attach conditions, including a time limit, to any consent that it grants in this context.

76. Subsection (5) of new section 21B requires the Commission to make a decision on any application to be absent within 28 days of the date of application. The appeal provisions in section 52A of the 1993 Act apply to the Commission’s decision under subsection (5). Subsection (6) requires the Commission to inform the applicant and, where the applicant is a tenant crofter, the landlord of their decision and the reasons for making it.

77. New section 21C permits an applicant to whom the Commission has granted time-limited consent to be absent from the croft to apply to extend the duration of such an absence.

78. New section 21D permits an applicant to whom the Commission has granted conditional consent, other than condition time-limiting the consent, to make an application to have the condition varied.

Enforcement of duties of crofters and owner-occupier crofters

Section 23: Enforcement of duties of crofters and certain owner-occupiers

79. This section inserts 9 new sections into the 1993 Act (sections 26A to 26C, and 26E to 26K) setting out the arrangements for the enforcement of duties placed on tenant crofters and owner-occupier crofters.

80. New section 26A sets out to whom, and in what circumstances, new section 26B applies in commencing the enforcement provisions where the Commission considers that tenant crofters and owner-occupier crofters are not fulfilling their duties to reside on, or within 32 km of, the croft, not to misuse or neglect the croft, and to cultivate and maintain the croft. Subsections (1A)

and (1B) provide that crofters and owner-occupier crofters are deemed to be complying with their duties (other than the duty not to misuse the croft) where a crofter's subtenant or an owner-occupier's tenant under a short lease is complying with those duties. Subsection (2) defines "relevant person" for the purposes of sections 26B, 26C and 26K.

81. New section 26B requires the Commission to give written notice to those it considers are not fulfilling the duties inserted by sections 20 and 21 of the Bill, unless it considers there is good reason not to. Subsection (2) requires the written notice to explain why the Commission considers duties are not being complied with and to give notification that a person subject to the notice may make representations to the Commission within a "representation period" of 28 days of issue of the written notice. Where notice is given to a tenant crofter, a copy must be sent to their landlord. Section 26B(3) requires the Commission to consider all representations made within the representation period, although they may also consider representations made later (subsection (4)). Subsection (5) requires the Commission to decide whether or not the duties are being complied with no later than 14 days after the "representation period" ends.

82. New section 26C sets out the steps that the Commission must take if they decide, under section 26B(5), that a duty is not being complied with, prior to proceeding with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must give written notice to the person in breach providing an opportunity for them to make an undertaking to remedy the breach and comply with the duty that has been breached within a period considered by the Commission to be reasonable. New section 26C(2) details the information a written notice must contain and requires that, where notice is given to a tenant crofter, a copy must be sent to their landlord. Subsection (3) permits the Commission to place conditions upon an undertaking given and subsection (4) requires the Commission to decide whether or not to accept an undertaking within 28 days of it being offered.

83. New section 26E sets out the circumstances in which the Commission may not proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may not proceed or take further enforcement action if the period for giving or complying with an undertaking has not expired or if an undertaking has been complied with. The Commission may also not take further enforcement action where it has consented to, or a tenant crofter has applied for consent (where that has not been decided upon) to, sublet the croft or, in the case of an owner-occupier crofter, the Commission has consented to, or the owner-occupier has applied for consent (where that has not been decided upon) to, let the croft on a "short lease" (within the meaning of new section 29A). Nor may the Commission take further enforcement action in respect of a failure to comply with the residency duty where they have either consented to the absence or are still in the process of considering an application for consent for absence, extending a period of absence or varying an absence condition.

84. New section 26F places a duty on the Commission to proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must take action, unless they consider there is a good reason not to, if they decide under section 26B(5) that a tenant crofter or owner-occupier crofter is not complying with any duty under this part of the Bill and none of the circumstances mentioned in new section 26E apply. Subsection (2) requires the Commission to proceed with tenancy termination in respect of tenant crofters, and letting procedures in respect of owner-occupier crofters.

85. New section 26G provides power to enable the Commission to divide a croft before they proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may take such action where it considers it fair to divide the croft, but only after having given due consideration to the factors stipulated by subsection (2) of section 26G. Subsection (2) states that the Commission must consider the use and occupation of the croft, the interests of the estate on which the (tenanted) croft is located, the sustainable development of the crofting community, and such other matters as the Commission deems appropriate. Subsection (3) provides for a division of a croft, or an owner-occupied croft, under this section to take effect on the date of registration. The Keeper must make up and maintain a new title sheet in respect of the new croft created by the division. Subsection (4) provides that, where a croft has been divided for failure to comply with the duties placed on the tenant crofter or owner-occupier crofter, the Commission may proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J in respect of either the whole of the original croft or any part of the croft. Subsection (4A) requires the Commission, where it decides to divide a croft under this section, to give written notice to the landlord of the division and the effective date of that division. Subsection (5) defines “division” and “new crofts” for the purposes of this section.

86. New section 26H sets out the procedures that the Commission must follow when terminating a croft tenancy. The Commission must, unless they consider there is a good reason not to, make an order terminating the tenancy of a tenant crofter if they are satisfied that it is in the general interest of the local crofting community. Subsections (2) to (4) require the order to be notified to both tenant crofter and landlord and to specify the date on which it takes effect (which must not be earlier than 28 days after the later notification of the action (whether that is to the tenant crofter or the landlord)). Subsections (5) and (6) provide for the ejection of the crofter if he or she fails to give up occupation of the croft. The sheriff may refuse to issue a warrant for eviction only where the crofter can show cause. Subsection (7) permits the Commission to recover the expenses of applying for a warrant for eviction, and executing that warrant, from the crofter. Subsection (8) gives a crofter whose tenancy has been terminated for failure to comply with duties under the Act the same rights (i.e. compensation for permanent improvements made to the croft) and liabilities (i.e. rent due) as if the crofter had voluntarily renounced their tenancy on the date on which the order terminating the tenancy takes effect. This provides all crofters with the same rights and liabilities irrespective of how tenancies are ended.

87. New section 26J sets out the procedures that the Commission must follow when requiring an owner-occupier crofter to submit letting proposals. Subsection (1) requires the Commission, unless they consider there is a good reason not to, to direct the owner-occupier crofter who has failed to comply with a duty under section 19C(2) to submit a proposal, within 28 days of the Commission’s direction, for letting the croft. Subsection (2) limits these letting proposals to a maximum of 3 potential tenants. Subsections (2A) and (2B) require the Commission to take action under subsections (3) and (4) where the owner-occupier crofter has not submitted a letting proposal within 28 days or has not had a letting proposal approved within 8 weeks of the direction having been given. Subsections (2C) provides that when the Commission direct an owner-occupier to submit proposals to let the owner-occupier croft, the let of that unregistered owner-occupier croft is void unless an application for first registration for an unregistered croft is submitted within 3 months beginning with the date of the letting. Subsection (2D) provides that when the Commission direct an owner-occupier to let a registered owner-occupier croft, any approval to a letting expires at the end of 3 months beginning with the date of letting approval

unless an application to amend the registration details of the registered owner-occupier croft is submitted within that period; the let takes effect on the date of registration.

88. Subsections (3) and (4) require the Commission to invite applications, by public notification, for letting and to set a time period within which applications may be received. When the time period set in the public notification has ended, the Commission must decide to whom (if anyone) the croft should be let and, in consultation with the owner-occupier crofter, the conditions under which the croft is to be let. Where no applications are received, the Commission may choose not to let the croft, thereby rendering it a vacant croft. Subsection (4A) provides that the letting of an unregistered owner-occupier croft after the Commission has decided to which applicant to let an owner-occupier croft 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. Subsection (4B) requires an application for registration of a registered croft to be submitted within 3 months of the decision to let the croft being made and providing that the letting takes effect on the date of registration.

89. Subsection (5) allows the owner-occupier crofter to apply to the Scottish Land Court within 28 days of the letting date to vary the conditions set by the Commission. Any variation determined by the Scottish Land Court will take effect from the letting date (subsection (6)). This is similar to the existing procedures for requiring letting proposals under the vacant croft provisions in section 23 of the 1993 Act. A person to whom the owner-occupied croft is let under section 26J will, by virtue of section 3(3) of the 1993 Act, be a crofter.

90. New section 26K sets out the rights of appeal to the Scottish Land Court on section 26 issues. Subsections (A1), (1),(2) and (2A) set out the issues which may be appealed. These are: a decision of the Commission that a duty is not being complied with (section 26B(5)) or not to accept an undertaking or to impose conditions on an undertaking (section 26C); and an appeal against the division of a croft (section 26G); the making of an order by the Commission terminating a croft tenancy (section 26H); and a direction from the Commission for an owner-occupier to present letting proposals (section 26J). Subsection (3) provides that any appeal under this section must be made within 42 days of the decision, order or direction appealed against and subsection (4) defines the grounds on which an appeal may be made. Subsection (5) sets out the actions the Land Court may take in respect of an appeal and subsection (6) requires the Commission to give effect to the decision of the Land Court on an appeal under this section. Subsection (7) provides a power for the Land Court, following a decision on an appeal under this section, to order the Keeper to rectify the Crofting Register.

Letting of owner-occupied crofts

Section 24: Letting of owner-occupied crofts

91. This section inserts 2 new sections into the 1993 Act (sections 29A and 29B) setting out the arrangements for the letting of owner-occupied crofts.

92. Section 29A requires the owner-occupier crofter to obtain the written consent of the Commission prior to any letting of an owner-occupied croft. That might be a letting to a tenant as a crofter or it might be a letting to a tenant under a short lease who, because of section 29B, does not have that status. Subsection (1A) requires that the Commission must not grant the consent unless an application for first registration of the owner-occupied croft is submitted by

the applicant within 6 months of the application for consent being made. The Commission need not consider the application until the registration application is submitted. Subsection (1B) requires registration to take place within 3 months of the consent to the letting being granted, and providing that the letting takes effect on the date of registration. Subsection (2) permits the Commission to impose conditions, other than in respect of rent, in giving their consent to a letting proposal where the letting is for a period of 10 years or less (a “short lease”). Subsection (3) makes void any lease granted without the Commission’s consent, and, where the lease is a short lease, any lease not granted in accordance with any conditions imposed by the Commission under subsection (2). Subsection (4) empowers the Commission to terminate a short lease if a condition it has attached to their consent has been breached or if the tenant fails to comply with a condition of let, other than in respect of rent. Subsection (5) clarifies that the conditions imposed under this section will not apply to the letting of the croft house, or other buildings on the croft, to holiday visitors.

93. Section 29B clarifies the status of a tenant under a short lease. Such tenants will be treated as neither a crofter nor a tenant under a tenancy under the Agricultural Holdings (Scotland) Act 2003. Consequently, they will not have the same legal rights as those types of tenants. By virtue of section 3(3) of the 1993 Act, a tenant of an owner-occupier’s croft on a lease other than a short lease or a holiday let will be a tenant crofter. As a result, the owner-occupier crofter becomes a landlord of a croft and the provisions relating to owner-occupier crofters will cease to apply.

PART 4 – FURTHER AMENDMENTS OF THE 1993 ACT

Disposal of croft land, resumption and decrofting

Section 24A: Limitation on crofter’s ability to nominate disponee

94. New section 24A inserts into section 13 of the 1993 Act (authorisation of the Land Court of acquisition of croft land) new subsection (1A) which clarifies that any nominee of the crofter exercising the right to buy the croft must be a family member.

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

95. Section 25 amends subsection (3) of section 14 of the 1993 Act to extend the period during which a crofter who has acquired croft land under section 13(1), or a member of that crofter’s family who has since obtained title to that land, must pay the landlord one half of the profit made following disposal of the land. The period is extended from 5 years to 10 years.

Section 26: Consideration of application to resume croft

96. Section 26 amends the 1993 Act by inserting new sections (1AA) to (1AD) into section 20 of the Act. Section 20 deals with resumption of croft land and the amendments will allow the Land Court to consider additional factors when determining applications to resume.

97. New subsection (1AA) details the additional matters which the Land Court may take into account in determining an application to resume croft land and, in particular, in relation to satisfying itself, under section 20(1) of the 1993 Act, that the proposed reasonable purpose for resumption relates to the public interest. Subsection (1AA)(a) allows the Court to take into

account the effect the proposed purpose for resumption will have on the issues detailed in new section (1AC). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Court to consider the effect the proposal to resume would have on the social and cultural benefits associated with crofting. Subsection (1AA)(b) allows the Court to consider the effects of the purpose of the application and reach its own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1AD) defines terms used in new section (1AA). Subsection (1AB) provides that new subsection (1AA) does not affect the requirement for the Land Court to extend the period of resumption in line with an extension of a relevant planning consent.

Section 27: Consideration of decrofting directions

98. Section 27 of the Bill amends the 1993 Act by inserting new sections (1A) to (1C) into section 25 of that Act. Section 25 of the 1993 Act deals with decrofting and the amendments will allow the Commission to consider additional factors when determining applications to decroft.

99. This will allow the Commission to take into consideration the same factors when determining applications to decroft land as the Land Court may consider when considering applications to resume croft land following the amendments made by section 26 of the Bill.

100. New subsection (1A) details the additional matters which the Commission may take into account in determining a decrofting application and, in particular, in relation to satisfying itself, under section 25(1)(a) of the 1993 Act, that the proposed reasonable purpose for decrofting relates to the public interest. Subsection (1A)(a) allows the Commission to take into account the effect the proposed purpose for decrofting will have on the issues detailed in new section (1B). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Commission to consider the effect the proposal to decroft would have on the social and cultural benefits associated with crofting. Subsection (1A)(b) allows the Commission to consider the effects of the purpose of the application and reach its own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1C) defines terms used in new subsection (1A).

Letting of vacant crofts

Section 28: Requirements to submit proposals for re-letting crofts

101. Section 28(2) amends section 11 of the 1993 Act, which covers transfers of crofts on intestacy. Subsection (2) requires that, where the Commission declare the croft vacant under section 11, a notice to the landlord under that section will require the landlord to submit proposals for re-letting the croft before the expiry of four months beginning on the day on which notice is given.

102. Section 28 also amends section 23 of the 1993 Act, which covers vacant crofts and the re-letting of crofts declared vacant under section 11. Subsection (4) amends section 23(5) so that,

where the croft is vacant, the landlord is required to submit letting proposals to the Commission within two months from notice being given under section 23(5). Subsection (5) inserts new subsection (5ZA) into section 23. These new subsections limit letting proposals to a maximum of 3 potential tenants when a croft becomes vacant and set out a clear process and timescales for submission and consideration of these proposals. These replace and clarify some of what was formerly provided in section 23(5), namely that, if no proposals are submitted within 2 months, the Commission must proceed to invite applications from prospective tenants under subsections (5B) and let the croft under subsection (5C). Subsection (5ZB) also provides that, if proposals are submitted within 2 months (or where, following the death of a crofter, a croft is declared vacant under section 11(8) of the 1993 Act (Intestacy), within 4 months), the Commission have a further month within which to approve or reject those proposals before they must proceed under subsections (5B) and (5C). If they approve a proposal, they need not so proceed.

103. Subsection (6) substitutes a new subsection (5A) for the existing subsection (5A) of section 23 of the 1993 Act. New subsection (5A) relates to the case where a croft is, under section 11(8) of the 1993 Act, declared vacant following the death of a crofter. It makes equivalent provision to that made by new subsection (5ZA) in relation to vacant crofts, except that in this case the period within which the landlord must submit re-letting proposals is 4 months.

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

104. Section 29 inserts a new subsection (3A) into section 24 of the 1993 Act (which deals with decrofting in the case of resumption or vacancy). New subsection (3A) will allow the Commission not to consider a decrofting application made by the landlord under section 24(3) if the Commission have given notice under section 11(8)(a) or 23(5) requiring re-letting proposals to be submitted and the period within which the proposals must be submitted has not expired. It also allows them not to consider such an application where, because no proposals have been submitted before the period has expired or, where proposals have been submitted, because none have been approved, the Commission are proceeding under section 23(5B) and (5C). So these provisions limit consideration by the Commission of decrofting applications in specific circumstances.

Enlargement of crofts

Section 30: Enlargement of crofts

105. Section 30 substitutes a new section 4 for that currently in the 1993 Act. Presently, the 1993 Act allows for the enlargement of a croft upon agreement between the crofter and the landlord and it is only where this enlargement would result in the croft area exceeding 30 hectares that a joint application from the landlord and the crofter must be submitted to the Commission for approval. As the intention is for the Crofting Register to capture any significant change in the extent of, or interests in, a croft, the new section 4 requires the Commission to approve any enlargement of a croft (regardless of the resulting size of the croft) and this in turn will require a first registration or amendment to the Crofting Register. Subsection (2A) prevents the Commission from granting a regulatory application to enlarge an unregistered croft unless an application to register the croft is made within 6 months of the regulatory application being made. It also allows the Commission not to consider a regulatory application during the 6 month period until an application for first registration is made. Subsection (3) of new section 4 allows the Commission to make a direction for the enlargement of a croft provided that the resulting

enlargement would be of benefit to the croft or the crofter and would not result in the area substantially exceeding 30 hectares. Subsection (4) provides that a direction enlarging an unregistered croft, or a croft which has been registered as a result of the application for enlargement, takes effect on either the date of the direction or the date of entry under the tenancy of the enlarged area, whichever is the latter. Subsection (4A) requires a registration application to be submitted within 3 months of the Commission's direction, otherwise the direction expires. It also provides that an enlargement only takes effect when registered.

Section 30A: Enlargement of common grazings

106. Section 30A provides a replacement section 51 in the 1993 Act to align procedures for the enlargement of common grazings with those for the enlargement of crofts. Subsection (1) provides that this section applies when an owner provides non-croft land to form part of a common grazing. Subsection (2) allows the owner and crofters to apply jointly to the Commission for a direction for the land to form part of the common grazing. Subsection (3) requires the Commission, in approving the enlargement application, to be satisfied that the enlargement would benefit the common grazing or the crofters sharing in it. Subsection (4) provides that, where the common grazing is unregistered, the enlargement is effective from the date of the direction or the date on which the rights are first exercisable. Subsection (5) provides that the enlargement of a registered common grazing cannot take effect unless an application to register the enlargement is submitted within 3 months of the direction being made and only takes effect on the date of registration.

Commission's approval and consent

Section 31: Obtaining Commission approval or consent

107. Section 31 amends section 58A of the 1993 Act, which sets out the procedure to be followed in obtaining the consent or approval of the Commission. The main change is to make the current process simpler by requiring the Commission simply to approve applications for consent, reject them, or approve them subject to conditions (see section 31(4)). Subsection (2) extends subsection (4) of section 58A of the 1993 Act to allow any person the Commission considers to have a relevant interest in the application to object to that application. Subsection (3) amends section 58A to allow the Commission under new subsection (5A), to consider objections submitted after the 28 day period specified in section 58A(4) if they are satisfied that there is good reason why the objection was late. New subsection (5B) disapplies public notification and objection provisions in section 58A where an executor applies for the division of a croft pursuant to a bequest under section 10 of the 1993 Act.

108. Subsection (4) of section 31 amends section 58A(6) to set out more clearly the options open to the Commission in determining an application to which section 58A applies. Subsection (4A) requires the Commission to grant an application made by an executor to divide the site of the dwelling house from the remainder of the croft. Subsection (5) replaces sections 58A(7) to (10) with new subsection (7), which sets out the factors to which the Commission are to have regard when considering applications. Subsections (6) and (7) make consequential changes to section 58A.

109. Subsection (8) inserts a new subsection (12A) into section 58A of the 1993 Act and details those persons who are to be notified by the Commission of a decision on an application.

Subsection (10) inserts a new section 58B into the 1993 Act, which sets out the procedure for varying the conditions of approval or consent under section 58A as amended. Subsection (2) of new section 58B sets out the Commission's options for modification of a condition following application by the person who applied for the approval or consent and subsection (3) details those to be notified of the decision within 14 days of modification. Subsection (4) of new section 58B applies certain aspects of the section 58A procedures (e.g. the form in which an application must be made) to applications for modification of conditions under subsection (2) of section 58B. Subsection (5) disapplies public notification and objection provisions in section 58A where an executor applies for the division of a croft pursuant to a bequest under section 10 of the 1993 Act.

Succession to crofts

Section 31A: Bequest of crofts

110. Section 31A amends provisions relating to the bequest of the tenancy of a croft in section 10 of the 1993 Act to address various issues relating to bequests of crofts and intestacy. Subsection (2) provides for two types of bequests: the tenancy of the whole croft to one natural person and the tenancy of the croft to two or more individuals, providing that no part of the land subject to the bequest is left untenanted.

111. Subsection (3) requires the individual accepting the tenancy of the croft, or part thereof which is subject to the bequest, to give notice of the bequest to the landlord and copy that notice to the Commission, within 12 months of the death of the crofter.

112. Subsection (4) provides new subsections (3) to (7) for insertion into section 10 of the 1993 Act. New subsection (3) provides for the bequest to be null and void if: (a) no notice is given of the acceptance of the bequest of the croft and no copy of the notice is sent to the Commission where the croft is bequeathed to one person, or (b) where the croft is bequeathed to more than one individual, any of the legatees fails to give notice as required under subsection (3)(a). New subsection (4) provides for the legatee to take the place of the deceased crofter (as from the death of the crofter) when the details are entered on the Crofting Register, in a case where the croft is bequeathed to one person. Subsection (4A) requires the deceased crofter's executor to apply to the Commission for consent to divide the croft where two or more legatees accept the bequests for their parts of the croft where the croft is bequeathed to more than one person, and, following Commission consent, subsection (4B) provides for each legatee to take the place of the deceased crofter (as from the death of the crofter) when the details are entered on the Crofting Register. Subsection (4C) states that the bequest is null and void if the Commission does not consent to division of the croft or an application for division is not made as required under section 9(3)(a) of the 1993 Act.

113. Subsections (5) and (6) amend section 10 of the 1993 Act so that, where there is more than one legatee, all legatees are jointly and severally liable for the debts and expenses relating to the tenancy and its administration.

114. Subsection (7) defines the "relevant date of registration" in section 10(4) of the 1993 Act and "legatee's new croft" and related expressions and "relevant date" for the purposes of section 10(4B).

Appeals

Section 31B: Appeals: procedure

115. Section 31B(1) removes the requirement for an appeal to the Land Court to be by ‘stated case’ where it occurs in the Act. This allows for a simplified appeal process to the Land Court. Subsection (2) allows, but does not require, the Commission to be party to any appeal to, or proceedings before, the Land Court under the 1993 Act.

PART 5 – GENERAL AND MISCELLANEOUS

Section 32: Pre-consolidation modifications of enactments relating to crofting

116. This section of the Bill allows the Scottish Ministers to make an order modifying enactments relating to crofting, which they consider to facilitate, or are desirable for, consolidation of the law on crofting. Subsection (2) forbids the Scottish Ministers from making such an order unless a consolidation Bill has been introduced to the Scottish Parliament. Subsection (3) will result in the order modifying enactments coming into force immediately before the commencement of a consolidation Act resulting from such a Bill.

Section 33: Subordinate legislation

117. This section of the Bill sets out the procedures by which the Scottish Ministers will be able to exercise powers that the Bill gives them to make subordinate legislation. All regulations, rules and orders will be made by statutory instrument. Subsection (4A) sets out the procedure that must be followed before an order under section 32(1) may be laid before the Scottish Parliament.

Section 34: Ancillary provision

118. This section of the Bill enables the Scottish Ministers to make incidental, supplementary and consequential provision by order if they consider it to be appropriate for the purposes of the Bill or to be in consequence of, or for giving full effect to, any provision of the Bill. Subsection (2) allows for such an order to modify any enactment, including the Bill itself.

Section 35: Minor and consequential amendments and repeals

119. This section gives effect to schedule 2 of the Bill. Schedule 2 contains minor and consequential amendments and repeals of other legislation.

Section 36: Interpretation

120. This section defines a number of expressions as they are used in the Bill.

Section 37: Short title, commencement and Crown application

121. This section provides for the Bill to come into effect on a day or days appointed by order by the Scottish Ministers.

SCHEDULE 1 – THE CROFTING COMMISSION

122. Schedule 1 is introduced by section 1(3) of the Bill and replaces the existing schedule 1 to the 1993 Act.

123. Paragraph 1 of new schedule 1 to the 1993 Act establishes the status of the Crofting Commission. The Commission will be a corporate body. Sub-paragraph (3) states that the Commission's members and employees are not to be regarded as civil servants; however, paragraph 10(2) enables the Scottish Ministers to continue to supply staff to the Commission and such staff continue to be civil servants.

124. Paragraph 2 outlines the general powers of the Commission. Sub-paragraph (1) enables the Commission to do anything it considers necessary or expedient to enable it to effectively carry out its functions. Sub-paragraph (2)(d) gives the Commission the power to charge in respect of its functions and the Scottish Ministers the power to determine the appropriate level of fees.

125. Paragraph 3 outlines the proposed membership of the Commission. Sub-paragraph (1) indicates that there are to be a maximum of nine members, of whom no fewer than two should be persons appointed by the Scottish Ministers and no more than six should be elected members. There will therefore be two types of members: "elected members" and "appointed members". The Scottish Ministers are also to select one of the members (appointed or elected) of the Commission to be the convener although they may delegate this function to the Commission. The majority of the Commission are to be elected members unless such a majority cannot be maintained. This could occur if an elected member resigns or is removed from office and there are no other candidates available from the Commission elections (who originally polled too few votes to become a member of the Commission) to fill this role. Sub-paragraph (4) allows the Scottish Ministers to vary the number of members, elected members and appointed members by order but any order must ensure the elected members are always in the majority.

126. Paragraph 4 sets out the eligibility requirements for appointed members of the Commission. Each appointed member would need to have a knowledge of crofting and have no financial interest which could prejudice their role as a member. In addition, if none of the elected members speaks the Gaelic language, then at least one appointed members must speak the Gaelic language. Sub-paragraph (3) lists different types of interests which would not be considered interests that might prejudice the ability of an appointed member to carry out their functions.

127. Paragraph 5 enables the Scottish Ministers to determine the terms and conditions of appointment of an appointed member.

128. Paragraph 6 allows for members of the Commission to resign from office at any time provided they do so in writing to the Scottish Ministers. Sub-paragraph (2) allows a person who is no longer a member of the Commission to be re-appointed at a later date provided they were not removed from office by the Scottish Ministers. Sub-paragraph (3) allows the Scottish Ministers to appoint a replacement member of the Commission where an elected member resigns or otherwise ceases to be a member of the Commission (other than being removed from the

Commission) and is not replaced by another candidate from the elections as outlined in sub-paragraph (4).

129. Paragraph 7 enables the Scottish Ministers to make regulations governing the elections of members of the Commission. Under sub-paragraph (2), such regulations may include provision for the voting system to be used during these elections and their frequency and timings. They will make provision for the conduct of elections and the constituencies in which an election would be held. The regulations will enable the Scottish Ministers to create offences relating to such elections and will determine who will be eligible to vote during elections. They will also provide for the appointment of a returning officer to oversee the running of the elections and will determine that officer's functions; fees and expenses; and tenure and vacation of office. The regulations will determine who may and may not stand for elections, including by reference to a person's age. The number of members returned from each constituency will be decided. Where there is a vacancy on the Commission, the regulations will outline the circumstances in which a person, who has polled fewer votes during an election than the person vacating membership of the Commission, might fill the vacancy. A person is entitled to stand for election as a member of the Commission provided that the person is aged sixteen or older and has been nominated by a person eligible to vote. The schedule also provides that persons able to vote includes a spouse, civil partner or cohabitant of a crofter who is eligible to vote. Finally, the Scottish Ministers must consult with appropriate persons or bodies on boundaries of constituencies and the persons eligible to vote prior to making the regulations.

130. Paragraph 8 requires the Scottish Ministers to determine the rate of remuneration and allowances for members and to pay such remuneration and allowances. It also allows the Scottish Ministers to make arrangements for the payment of pensions, allowances and gratuities to current and former members of the Commission.

131. Paragraph 9 sets out the circumstances in which the Scottish Ministers may remove a member from office. This requires Ministers to give notice to the member in writing if they are satisfied that the member: is insolvent; has been convicted of a criminal offence which results in imprisonment for 3 months or more; is incapacitated by physical illness or mental disorder; has been absent from meetings of the Commission for 6 months or more without the convener's permission; or is otherwise deemed unable or unfit to exercise their functions as a member. Sub-paragraph (2) sets out the circumstances in which a member will be considered insolvent. Where there is a vacancy in the Commission as a result of an elected member being removed from office, the regulations will outline the circumstances in which a person, who has polled fewer votes during an election than the person vacating membership of the Commission, might fill the vacancy.

132. Paragraph 10 sets out the arrangements for the appointment of the chief executive and staff of the Commission. Sub-paragraph (1) requires the Scottish Ministers to consult with the convener of the Commission before appointing a chief executive. As is currently the case under the 1993 Act, under sub-paragraph (2) the Scottish Ministers will continue to be able to provide staff to the Commission and such staff will remain civil servants. Sub-paragraph (3) also provides the Commission with the ability to appoint its own employees, which will provide it with flexibility in the long term to meet staffing requirements. Sub-paragraphs (4) to (6) provide the Scottish Ministers with the ability to make directions to the Commission (which must be complied with) in relation to the number of employees who may be appointed and their terms and conditions of employment. Sub-paragraph (7) provides the Commission with the power to

pay, or make arrangements for the payment of, such pensions, allowances and gratuities as the Commission determines. This is subject to the approval of the Scottish Ministers.

133. Paragraph 11 provides for the quorum of the Commission to be five and, provided there are three or more elected members, it must include no fewer than three elected members, ensuring that crofters are always in the majority when a decision is being taken by the Commission. There will always be at least three elected members unless more than three members have been replaced due to resignation or through removal from office.

134. Paragraph 12 sets out requirements for the Commission to establish committees, including an audit committee and such other committees as they consider appropriate. Sub-paragraph (3) allows the Commission to appoint members to their committees but does not require these persons to be members of the Commission. Sub-paragraph (4) qualifies this by preventing any committee from consisting solely of non-members of the Commission.

135. Paragraph 13 sets out the procedure of the Commission and its committees. Sub-paragraph (1) allows for the Commission to determine its own procedure and the procedure of its committees. Sub-paragraphs (2) and (3) require the convener of the Commission to chair meetings or to appoint another member to act as chair where they are unavailable. Sub-paragraph (6) enables the Commission, or committees of the Commission, to continue with their proceedings even where a vacancy arises on the Commission or committee or where there has been a defect in the appointment of a member.

136. Paragraph 14 deals with member interests, with sub-paragraph (1) requiring a member of the Commission or a person with a direct or indirect interest in any matter being considered at a meeting of the Commission to disclose their interests. Sub-paragraph (3) prevents a person who has declared an interest from taking part in any deliberation or decision on a matter in which they have an interest.

137. Paragraph 15 will allow the Commission to delegate its functions. Sub-paragraph (1) provides for the Commission to delegate its functions to: any of its members; any of its committees; their chief executive; any person whose services are provided to them by the Scottish Ministers; and any of their employees. The Commission will have the ability to determine the type of functions it can delegate and the extent to which these functions can be carried out on its behalf. Sub-paragraph (2) specifies that the Commission continue to have responsibility for the exercise of their functions even after a function has been delegated.

138. Paragraph 16 enables the Commission to appoint a panel of local assessors to assist them in the local execution of their functions. The Commission are required, prior to appointing assessors, to publish information on the methods to be used for the appointment of assessors and their role, and to provide information relating to this to crofting communities and to keep these matters under review. Assessors are required to be resident in the crofting counties or in the new areas to crofting, and sub-paragraph (3) enables the Commission to pay them for any expenses or loss of earnings resulting from their role.

139. Paragraph 17 requires the Commission to have its main office in the crofting counties. The Commission's determination of the location of its premises must be approved by the Scottish Ministers.

140. Paragraph 18 sets out proposed financial arrangements for the Commission. Sub-paragraph (1) enables the Scottish Ministers to pay grants or make loans to the Commission. This allows the Scottish Ministers to provide the Commission with grant-in-aid. Sub-paragraph (2) enables the Scottish Ministers to determine the terms and conditions of such loans and grants and sub-paragraph (3) allows Ministers to vary these terms and conditions.

141. Paragraph 19 requires the Commission to prepare accounts. Sub-paragraph (1) requires the Commission to keep a proper set of accounting records and prepare a statement of accounts each year. This statement of accounts must be sent to the Scottish Ministers on a specified date as directed. Sub-paragraph (5) requires the Commission to make audited accounts available for public inspection.

142. Paragraph 20 requires the Commission to provide the Scottish Ministers with information on the exercise or proposed exercise of their functions as required.

143. Paragraph 21 enables the Scottish Ministers to transfer property, rights and liabilities to the Commission where it is considered expedient to do so.

SCHEDULE 1A – PERSONS RESPONSIBLE FOR APPLICATIONS FOR REGISTRATION

144. Schedule 1A provides two tables. Table 1 defines the person responsible, in relation to each regulatory trigger event in section 4(3), for an application for the first registration of an unregistered croft. Table 2 defines the person responsible, in relation to each regulatory trigger event in section 5(3), for an application to amend the registration details of a registered croft.

SCHEDULE 1B – APPLICATION OF ACT TO COMMON GRAZINGS

145. Schedule 1B is introduced by section 19D of the Bill. It applies sections 7 – 17 of the Bill in relation to common grazings as they apply in relation to crofts, subject to certain modifications. Sections 7 – 17 of the Bill make certain provisions on the registration of crofts.

SCHEDULE 2 – MINOR AND CONSEQUENTIAL MODIFICATIONS

146. Schedule 2 makes minor and consequential amendments to the Small Landholders (Scotland) Act 1911; the Succession (Scotland) Act 1964; the Crofters (Scotland) Act 1993; and the Ethical Standards in Public Life etc. (Scotland) Act 2000.

147. Schedule 2 makes particular provision in relation to the transfer of responsibility for small landholdings. It extends the Commission's regulatory powers for small landholdings in the crofting counties to include any areas designated by order as new crofting areas. Also, small landholdings in Scotland have previously been regulated by the Scottish Ministers as the successor to the Board of Agriculture, with the most frequent regulatory action being in relation to vacant holdings, and similar to decrofting procedures. Schedule 2 to the Bill amends the Small Landholders (Scotland) Act 1911 to extend the powers of the Commission in the crofting counties to include any areas designated by order, to regulate vacant holdings; regulate construction of additional dwellings; regulate merger and amalgamation of holdings; and suggest model forms of agreements. Where two or more landhold units have been amalgamated, or a

*These documents relate to the Crofting Reform (Scotland) Bill as amended at Stage 2
(SP Bill 35A)*

landhold unit joined with a larger unit the resultant holding is deemed to be a larger agricultural unit, currently this would render them ineligible for conversion to crofts, however the Bill makes provision for the acceptance of applications even if a landhold holding is comprised within a larger agricultural unit.

148. Schedule 2 amends section 16 of the Succession (Scotland) Act 1964 so that the Commission's consent is no longer required to the transfer of the tenancy of a croft on the intestacy of a deceased crofter. It also repeals section 16A of that Act, which makes provision about obtaining Commission consent to such a transfer. It also extends the period within which a tenancy may be transferred under section 16 following the death of the crofter from 12 to 24 months.

149. Schedule 2 makes various consequential changes to the Crofters (Scotland) Act 1993 in relation to all Parts of this Bill.

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(SP Bill 35A)*

CROFTING REFORM (SCOTLAND) BILL

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