

Crofting Reform (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 35-EN. A Policy Memorandum is printed separately as SP Bill 35-PM.

Crofting Reform (Scotland) Bill

[AS INTRODUCED]

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

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PART 1

REORGANISATION OF THE CROFTERS COMMISSION

The Crofting Commission

1 The Crofting Commission

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

2 General functions of the Crofting Commission

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

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

(2) After that section insert—

“2A Ministers’ power to modify functions of Commission

(1) The Scottish Ministers may, by order—

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

the Commission.

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

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

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

2B Annual report

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

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

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

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

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

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

2C Duty to produce plan

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

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

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

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

- (a) each local authority in the area of which there are crofts;
(b) Highlands and Islands Enterprise; and
(c) such other persons or bodies as the Commission consider appropriate.
- (4) The Scottish Ministers may—
- 5 (a) approve the plan (with or without modifications); or
(b) reject the plan and direct the Commission to submit a revised plan.
- (5) Where the Scottish Ministers approve the plan submitted under subsection (1) (including a revised plan submitted under subsection (4)(b)), the Commission must—
- 10 (a) send a copy of it to each local authority in the area of which there are crofts;
(b) make a copy of it available for public inspection at reasonable times; and
(c) publish it in such manner as the Commission consider appropriate.
- (6) The Commission—
- 15 (a) may, from time to time;
(b) must, if required to do so by the Scottish Ministers, vary the plan.
- (7) Where the Commission, under subsection (6), vary the plan—
- (a) the Commission must submit it to the Scottish Ministers; and
20 (b) subsections (3) to (5) apply to the variation of a plan as they apply to the preparation of a plan under subsection (1).

2D Status of plan

- (1) The Commission, in exercising their functions, must have regard to any plan approved and published under section 2C.
- 25 (2) The Land Court may have regard to any such plan when considering an appeal against—
- (a) any decision, determination or direction of; or
(b) the imposition of a condition by,
the Commission on an application made to them under this Act.”.

30 **PART 2**

THE CROFTING REGISTER

Duty to establish and maintain register

3 The Crofting Register

- 35 (1) The Keeper of the Registers of Scotland must establish and maintain a public register of crofts.
- (2) The register established under subsection (1) is to be known as the Crofting Register.

(3) In this Part—

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

the “register” means the Crofting Register; and

“registered” means registered in the register; and cognate expressions are to be construed accordingly.

*Registration***4 First registration**

(1) An unregistered croft must be registered—

(a) in the case of a new croft, subject to section 3AA of the 1993 Act, on the determination under section 3A(1) or, as the case may be, (2) of that Act to constitute the land or holding as a croft;

(b) in any other case—

(i) on the transfer (whether or not for valuable consideration) of the ownership of any land on which the croft is situated;

(ii) on the taking, in relation to the croft, of any step mentioned in subsection (3).

(2) An unregistered croft may be registered, on an application being made, if the Keeper considers it expedient that the croft be registered.

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

(a) the making of an application for a direction enlarging the croft under section 4(3) of the 1993 Act;

(b) the making of an application for consent to exchange the croft under section 4A of that Act;

(c) the making of an application for consent to assign the croft under section 8 of that Act;

(d) the making of an application for consent to divide the croft—

(i) under section 9 of that Act; or

(ii) under section 19D of that Act;

(e) the giving of notice under section 10(2) of that Act of the acceptance of a bequest of the croft;

(f) the making of an application for consent to transfer the crofter’s interest in a lease of the croft under section 16(2) of the Succession (Scotland) Act 1964 (c.41);

(g) the making of an application—

(i) under section 20(1) of the 1993 Act to resume the croft or part of the croft;

(ii) under section 20(1C) of that Act to extend the period for which a resumption is authorised; or

(iii) under section 20(1F) of that Act to convert a temporary resumption into an ordinary resumption;

- (h) the making of an application for reversion of a resumption of the croft under section 21A(1) of that Act;
- (i) the making of an application—
 - (i) for approval to the letting of the croft under section 23(3) of that Act; or
 - (ii) for consent to the letting of the croft under section 29A(1) of that Act;
- (j) the making of an application for a decrofting direction—
 - (i) by giving notice under section 24(2) of that Act;
 - (ii) by application under section 24(3) of that Act; or
 - (iii) by application under section 25(4) of that Act.

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

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

that subsection.

(5) In this Part—

“croft”—

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

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

(ii) a new croft;

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

“first registration” means the registration of an unregistered croft;

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

5 Registration of events affecting registered crofts

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

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

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

- (a) the enlargement of the croft under section 4 of the 1993 Act;
- (b) the exchange of the croft under section 4A of that Act;
- (c) the assignation of the croft under section 8 of that Act;
- (d) the division of the croft—
 - (i) under section 9 of that Act; or

- (ii) under section 19D of that Act;
 - (e) the giving of notice under section 10(2) of that Act of the acceptance of the bequest of a croft;
 - (f) the transfer of the crofter's interest in a lease of the croft under section 16(2) of the Succession (Scotland) Act 1964 (c.41);
 - (g) the giving of authorisation to resume the croft or part of the croft under section 20(1) of the 1993 Act;
 - (h) the granting under 20(1C) of that Act of an extension of the period for which resumption of the croft is authorised;
 - (i) the making of a determination under section 20(1F) of that Act converting a temporary resumption of the croft into an ordinary resumption;
 - (j) the making of an order under section 21A of that Act that land resumed under section 20 is to revert to being a croft;
 - (k) the granting—
 - (i) of approval to the letting of a croft under section 23(3) of that Act;
 - (ii) of consent to the letting of a croft under section 29A(1) of that Act;
 - (l) the making of a decrofting direction under section 24(2) or, as the case may be, (3) of that Act.
- (3) The Scottish Ministers may, by order, modify subsection (2) so as to—
- (a) add a step to;
 - (b) modify the description of a step in;
 - (c) remove a step from,
- that subsection.

6 Applications for registration

- (1) An application for registration, and the fee payable in respect of such registration, is to be submitted to the Crofting Commission.
- (2) An application for first registration is to be submitted—
 - (a) in the case of a new croft, at the same time as an application under section 3A(1) or, as the case may be, (2) of the 1993 Act;
 - (b) in the case of the transfer of the ownership of any land on which the croft is situated, as soon as reasonably practicable after that ownership is transferred;
 - (c) in the case of a step mentioned in section 4(3), at the same time as the step is taken.
- (3) An application for registration of an event affecting a registered croft is to be submitted—
 - (a) in the case of the transfer of the ownership of any land on which the croft is situated, as soon as reasonably practicable after that ownership is transferred;
 - (b) in the case of a step mentioned in section 5(2), as soon as reasonably practicable after the step is taken.
- (4) The Commission must—

(a) check the information contained in or accompanying the application against the information relating to the croft, if any, in the Register of Crofts; and

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

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

(ii) the fee payable in respect of it,

to the Keeper.

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

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

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

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

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

(7) Where the Commission refuse to forward an application for registration, section 52A of the 1993 Act applies as if that refusal were a decision of the Commission on an application to them under that Act.

(8) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsections (2)(b) and (3)(a).

7 Acceptance of applications for registration

(1) Subject to subsection (2), the Keeper must accept an application for registration forwarded under section 6(4)(b) if it is accompanied by such documents and other evidence as the Keeper may require.

(2) An application for registration need not be accepted by the Keeper if—

(a) it relates to a croft which is not sufficiently described to enable the Keeper to identify it by reference to the Ordnance Map or such other map as the Keeper may require;

(b) it is frivolous or vexatious;

(c) in a case where the application relates to a registered croft, the application does not bear a reference to the title sheet of that croft;

(d) payment of the fee payable in respect of such registration has not been tendered.

(3) On receipt of an application for registration, the Keeper must without delay note the date of receipt.

(4) That date is deemed for the purposes of this Part as the date of registration provided subsection (5) and, in the case of a first registration (other than of a new croft), subsection (6) apply.

(5) This subsection applies where—

(a) the application, after examination by the Keeper, is accepted; or

(b) the application is not accepted on grounds that it does not comply with subsection (2) but, without being rejected by the Keeper or withdrawn by the applicant, is subsequently accepted by the Keeper on being satisfied that it does so comply or has been made to so comply.

5 (6) This subsection applies where—

(a) no application is made to the Land Court under section 12(1); or

(b) such an application having been made—

(i) the application has been abandoned; or

(ii) the Court makes no order or makes an order under section 12(2)(b).

10 **8 Completion of registration**

(1) The Keeper must complete registration—

(a) in the case of a first registration, by making up a title sheet for the croft in the register in accordance with section 10;

15 (b) in the case of a registered croft, by making such amendment as is necessary to the title sheet of the croft;

(c) in either case, by making such consequential amendments in the register as are necessary.

(2) Where the Keeper completes registration under subsection (1), the Keeper must issue to the applicant a certificate, authenticated as the Keeper considers appropriate—

20 (a) confirming the registration;

(b) in the case of a first registration (other than of a new croft), noting that the registration may be challenged under section 12(1);

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

25 (3) Where the certificate relates to a first registration (other than of a new croft), the Keeper must at the same time send a copy of it to the Commission.

(4) A certificate issued under subsection (2) is to be accepted for all purposes as sufficient evidence of the registration of the croft.

(5) In this Part, “certificate of registration” means a certificate issued under subsection (2).

9 Completion of registration: further provision on first registrations

30 (1) This section applies where, in relation to a first registration (other than of a new croft)—

(a) no application is made to the Land Court under section 12(1) before the expiry of the period mentioned in section 11(5); or

(b) such an application having been made—

(i) the application has been abandoned; or

35 (ii) the Court makes no order or makes an order under section 12(2)(b).

(2) Subject to subsection (3), the Keeper must—

(a) make such amendment as is necessary of the title sheet of croft; and

(b) make such consequential amendments in the register as are necessary.

- (3) Where—
- (a) the application for first registration was made as a result of the taking, in relation to a croft, of a step mentioned in section 4(3); and
 - (b) the Keeper is notified, before the expiry of the period of 6 months beginning with the day on which the certificate of registration is issued under section 8(2), of a change affecting the croft as a result of the taking of that step,
- the Keeper must amend the title sheet or, as the case may be, the register accordingly.
- (4) The Keeper must issue to the applicant a certificate, authenticated as the Keeper considers appropriate—
- (a) confirming that the registration of the croft may no longer be challenged under section 12(1);
 - (b) containing such other information as the Keeper considers appropriate.
- (5) The Keeper must at the same time send a copy of the certificate to the Commission.
- (6) A certificate issued under subsection (4) is to be accepted for all purposes as sufficient evidence of the registration of the croft.

The title sheet

10 The title sheet

- (1) The Keeper must make up and maintain a title sheet of every croft registered in the register.
- (2) The Keeper must enter in the title sheet—
- (a) a description of the land which comprises the croft that must consist of or include a description of it based on the Ordnance Map or such other map as the Keeper considers appropriate;
 - (b) the name and designation of, as the case may be—
 - (i) any tenant of the croft;
 - (ii) any owner-occupier crofter of the croft;
 - (iii) any landlord of the croft;
 - (iv) any owner of the croft;
 - (c) any exclusion of indemnity under section 15(4) in respect of the croft;
 - (d) such other information as the Keeper considers appropriate.
- (3) The Keeper must issue, to any person applying, a copy, authenticated as the Keeper considers appropriate, of any title sheet or any part thereof.
- (4) A copy issued under subsection (3) is to be known as an office copy and is to be accepted for all purposes as sufficient evidence of the contents of the original title sheet.

*Challenge to first registration***11 Notification of first registration**

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

12 Challenge to first registration

- 35 (1) Any person to whom notice is given under section 11(1), or who otherwise is aggrieved by the registration of the croft to which the notice relates, may apply before the end of the period mentioned in section 11(5) to the Land Court for an order under subsection (2)(a) or (b).

- (2) On receipt of such an application, the Court may—
- (a) make an order that the entry in the register relating to the croft be removed;
 - (b) make an order that the entry in the register relating to the croft be modified;
 - (c) make no order.
- 5 (3) Before making a decision under subsection (2), the Court—
- (a) must afford the persons mentioned in subsection (4) the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence;
 - (b) may, whether or not any such representations are made, hold a hearing.
- 10 (4) Those persons are—
- (a) the applicant under subsection (1);
 - (b) any person mentioned in section 11(3);
 - (c) the Crofting Commission;
 - (d) the Keeper;

15 (e) any other person the Court considers has an interest.
- (5) The Court must give written notice of its decision under subsection (2) to the persons mentioned in subsection (4) before the expiry of the period of 21 days beginning with the date on which the decision is made.
- 20 (6) Where the Court makes an order under subsection (2)(a) or (b), the Keeper must make such amendment to the title sheet of the croft and to the register as is necessary.

Ranking

13 Ranking

- (1) Registered crofts are to rank according to the date of registration of those crofts.
- 25 (2) Where the date of registration of two or more crofts is the same, those crofts are to rank equally.

Rectification and indemnity

14 Rectification of the register

- (1) The Keeper—
- (a) may, whether on being requested to do so or not; and

30 (b) must, on being ordered to do so by the court, rectify the register.
- (2) Where the Keeper rectifies the register under subsection (1), the Keeper must give written notice of the rectification to—
- (a) any person appearing to the Keeper to be affected by it;

35 (b) the Crofting Commission.
- (3) In this section—

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

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

5 **15 Indemnity in respect of loss**

- (1) A person who suffers loss as a result of a matter mentioned in subsection (2) is to be indemnified by the Keeper in respect of that loss.
- (2) Those matters are—
- 10 (a) a mistake in the register made by the Keeper when making up or amending a title sheet or making consequential amendments in the register, the correction of which would require rectification of the register;
- (b) a rectification of the register under section 14(1) to correct such a mistake;
- (c) the refusal of the Keeper to make such a rectification;
- (d) the loss or destruction of any document while lodged with the Keeper;
- 15 (e) a mistake such as is mentioned in paragraph (a) in any certificate of registration or in any information given by the Keeper in writing or in such other manner as may be prescribed by rules made under section 16(1).
- (3) No indemnity is payable in relation to a mistake such as is mentioned in subsection (2)(a) until a decision has been made about whether to rectify the register for the purpose of correcting the mistake; and the loss suffered as a result of that mistake is to be determined in the light of that decision.
- 20 (4) The Keeper may, on registration in respect of a croft, exclude, in whole or in part, any right to indemnity under this section in respect of anything appearing in, or omitted from, the title sheet of that croft.
- 25 (5) The Scottish Ministers may, by order, prescribe circumstances in which there is to be no entitlement to indemnity under this section.
- (6) In subsection (2), “mistake” includes something mistakenly omitted and something mistakenly included.

Rules

30 **16 Rules and fees**

- (1) The Scottish Ministers may, after consultation with the Keeper and the Commission, make rules—
- (a) regulating the making up and keeping of the register;
- 35 (b) prescribing the form of any search, report or other document to be issued or used in connection with this Part and regulating the issuing of any such document;
- (c) regulating the procedure on application for any registration;
- (d) prescribing the form of deeds relating to registered crofts;
- (e) concerning such other matters as seem to Ministers to be necessary or proper in order to give full effect to the purposes of this Part.

- (2) The Scottish Ministers may, by order, prescribe the fees payable in respect of registration and in respect of provision by the Keeper of searches, reports, certificates or other documents or copies of documents or of information from the register.

Appeals

17 Appeals

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

Consequential amendments of the 1993 Act

18 Meaning of “croft” etc.

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

- (2) After section 3 insert—

“3ZA Registered crofts

- (1) This section applies where a holding situated—
- (a) in the crofting counties; or
 - (b) as is mentioned in section 3A(1)(b),
- is registered in the Crofting Register.
- (2) For the purposes of this Act—
- (a) the holding is, from the date of registration, a croft;
 - (b) the land which comprises the croft (including any right or land mentioned in section 3(4)) is determined by the description of that land in the title sheet of the croft; and
 - (c) from the date of registration, any person for the time being entered in the title sheet of the croft as the tenant of the croft is a crofter.
- (4) Section 3 (other than subsection (2)) does not apply.
- (5) Section 3(2) applies to subsection (2)(a) of this section as it applies to subsection (1) of section 3.
- (6) Nothing in this section affects whether, before the date of registration, the holding was a croft or any person was the tenant of it.
- (7) In this section—

“date of registration” is to be construed in accordance with section 7(4) of the Crofting Reform (Scotland) Act 2009 (asp 00); and

“title sheet” means the title sheet of the croft made up and maintained under section 10(1) of that Act.”.

19 Registration of new crofts

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

“3AA Registration of new crofts

- (1) This section applies where the Commission make a determination to exercise their power under section 3A(1) or, as the case may be, (2), to constitute land or, as the case may be, a holding as a croft.
- 10 (2) The application for registration of the land or holding in the Crofting Register must not be forwarded to the Keeper under section 6(4)(b) of the Crofting Reform (Scotland) Act 2009 (asp 00)—
- (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
- 15 (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission’s determination under section 3A(1) or, as the case may be, (2).
- (3) In the case of an application for registration of a holding in relation to which a determination under section 3A(2) is made, the Commission must not forward the application unless they are satisfied—
- 20 (a) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being constituted as a croft and that the amount has been duly paid;
- 25 (b) that the applicant and the owner have agreed that no amount in compensation is to be so payable; or
- (c) that any such amount found, by virtue of section 3B, to be so payable has been duly paid.”.
- 30 (5) In section 3B of the 1993 Act (compensation for constituting holding as a croft), in subsection (1), for “subsection (4)(b)(i) or (ii) of that section” substitute “section 3AA(3)(a) or (b)”.

PART 3

DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS

*Crofters’ duties relating to residency, misuse and neglect of crofts***20 Duties relating to residency, misuse and neglect of crofts**

- (1) The 1993 Act is amended as follows.
- (2) After section 5A insert—

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

5AA Crofters: residency duty

A crofter must be ordinarily resident on, or within 16 kilometres of, that crofter’s croft.”.

5 (3) For section 5B substitute—

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

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

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

10 (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is consented to under section 5(7);

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

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

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

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

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

(b) the flora and fauna of that locality,

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

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

30 (6) In this section, “purposeful use” means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.

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

Duties of owner-occupier crofters

21 Duties of certain owner-occupiers of crofts

After section 19A of the 1993 Act insert—

“Owner-occupied crofts: duties of certain owners

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

- (1) In this Act, a person is an “owner-occupier crofter” if—
- (a) the person is the owner of a croft;
 - 5 (b) the person—
 - (i) was the crofter of the croft at the time of acquiring it; or
 - (ii) is such a crofter’s successor in title;
 - (c) the croft is occupied by—
 - (i) the person; or
 - 10 (ii) a tenant by virtue of a lease to which section 29B applies;
 - (d) the croft has not, at any time since it was acquired as mentioned in paragraph (b)(i), been let to any person as a crofter either by virtue of section 26J or otherwise.
- (2) In this Act, an “owner-occupied croft” means a croft owned by an owner-occupier crofter; and “owner-occupier’s croft” is to be construed accordingly.

19C Duties of owner-occupier crofters

- (1) An owner-occupier crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the owner-occupier crofter—
- 20 (a) must be ordinarily resident on, or within 16 kilometres of, the owner-occupier’s croft;
 - (b) must not misuse or neglect the croft;
 - (c) must—
 - (i) cultivate the croft; or
 - 25 (ii) put it to another purposeful use,
 so that every part of the croft either is cultivated or is put to such use;
 - (d) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).
- (3) For the purposes of subsection (2)(b), an owner-occupier crofter misuses an owner-occupied croft where the owner-occupier crofter—
- 30 (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use;
 - (b) fails to use the croft for the purpose of its being cultivated; or
 - 35 (c) fails to put the croft to any such purposeful use.

- 5 (4) For the purposes of subsection (2)(b), an owner-occupier crofter neglects an owner-occupied croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).
- (5) But where the owner-occupier crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—
- (a) the natural beauty of the locality of the owner-occupied croft; or
 - (b) the flora and fauna of that locality,
- 10 the owner-occupier crofter's so engaging or refraining is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.
- (6) If, immediately before the coming into force of section 21 of the Crofting Reform (Scotland) Act 2009 (asp 00), the owner-occupied croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of schedule 2 to this Act (as that paragraph applied immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7)), any continuation of use for that occupation is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.
- 15 (7) In this section, “purposeful use” means any planned and managed use which does not adversely affect the owner-occupied croft, the public interest or the use of adjacent land.
- 20 (8) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (4) so as to substitute different standards for those for the time being mentioned in that subsection.

25 **19D Division of owner-occupied crofts**

- (1) An owner-occupier crofter may not sell any part of the owner-occupier's croft without first dividing the croft into the part which the owner-occupier crofter proposes to sell and the part which the owner-occupier crofter proposes to retain.
- 30 (2) The owner-occupier crofter may so divide that owner-occupier's croft only if the owner-occupier crofter first obtains the consent of the Commission to that division.
- (3) Any division of an owner-occupied croft to which the Commission have given their consent by virtue of subsection (2) takes effect when such details of that division as the Keeper may require are entered in the Crofting Register.
- 35 (4) Any sale of any part of an owner-occupied croft which is not a new croft created by a division under this section, and any deed purporting to sell that part, is null and void.
- (5) Where the sale of a part of an owner-occupied croft is null and void under subsection (4), the Commission may declare the original croft vacant.
- 40 (6) In this section—
- “division” means the division of an owner-occupied croft into two or more new crofts; and cognate expressions are to be construed accordingly;

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

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

5 *Commission consent for absence from croft*

22 Consent for absence from croft

After section 21A of the 1993 Act insert—

“Consent for absence from croft

21B Commission consent for absence from croft

- 10 (1) A crofter or an owner-occupier crofter may apply to the Commission for consent to be ordinarily resident other than on, or within 16 kilometres of, the croft or, as the case may be, the owner-occupied croft.
- (2) Where an application under subsection (1) is made by a crofter, the crofter must send a copy of the application to the landlord of the croft.
- 15 (3) The Commission may grant consent only if they consider that there is a good reason for the person not to be ordinarily resident on, or within 16 kilometres of, the croft or, as the case may be, the owner-occupied croft.
- (4) The Commission may grant consent subject to such conditions as they consider it appropriate to impose which may, in particular, relate to the duration of absence.
- 20 (5) The Commission must make their decision on an application under subsection (1) before the expiry of the period of 28 days beginning with the date on which the application is made.
- (6) The Commission must notify—
- 25 (a) the applicant; and
- (b) if the applicant is a crofter, the landlord of the croft,
- of their decision and the reasons for making it.

21C Extension of consent for absence

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

35 **21D Variation of condition in consent for absence**

- (1) Where the Commission have granted consent under section 21B subject to a condition (other than a condition as to the duration of absence), the applicant may, before the expiry of the period for which consent has been granted, apply to the Commission to vary the condition.

- (2) Subsections (2) to (6) of section 21B apply to an application under subsection (1) of this section as they apply to an application under section 21B(1).”.

Enforcement of duties of crofters and owner-occupier crofters

23 Enforcement of duties of crofters and certain owner-occupiers

After section 26 of the 1993 Act insert—

“Enforcement of duties

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

- (1) This section and section 26B apply where the Commission consider that—

(a) a crofter is not complying with—

- (i) the duty mentioned in section 5AA;
(ii) a duty mentioned in section 5B;

(b) an owner-occupier crofter is not complying with—

- (i) the duty mentioned in section 19C(2)(a);
(ii) any of the other duties mentioned in section 19C(2).

- (2) In this Act—

the “residency duty” means the duty referred to in paragraphs (a)(i) and (b)(i) of subsection (1);

the “other duties” means the duties referred to in paragraph (b)(ii) of that subsection;

the “relevant person” means the crofter (in the case of a croft) or the owner-occupier crofter (in the case of an owner-occupied croft).

26B Notice of suspected breach of duty

- (1) The Commission must, unless they consider that there is a good reason not to, give the relevant person a written notice informing the person that the Commission consider that the duty is not being complied with.

- (2) The notice must—

(a) explain the reasons why the Commission consider that the duty is not being complied with; and

(b) indicate that the relevant person may make representations to the Commission before the expiry of the period of 28 days beginning with the day on which notice is given to the person (the “representation period”).

- (3) The Commission must have regard to any representations received within the representation period.

- (4) The Commission may also have regard to any representations received after the end of the representation period.

- (5) The Commission must, before the expiry of the period of 14 days beginning with the day on which the representation period ends, decide whether the duty is being complied with.

26C Undertakings: general

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

26D Types of undertaking

- 25
- (1) The undertakings referred to in section 26C(1) are—
- (a) the residency undertaking set out in subsection (2);
- (b) the misuse or neglect undertaking set out in subsection (3);
- (c) the general undertaking set out in subsection (4).
- (2) The residency undertaking means an undertaking to comply with the residency duty before the expiry of such period as the Commission consider reasonable.
- (3) The misuse or neglect undertaking means an undertaking to comply with the duty not to misuse or neglect the croft before the expiry of such period as the Commission consider reasonable.
- 30
- (4) The general undertaking means an undertaking to comply with any of the other duties before the expiry of such period as the Commission consider reasonable.

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

- 35
- The Commission may not take any action under section 26H or 26J if—
- (a) the period for giving an undertaking under section 26C has not expired;
- (b) an undertaking has been given under section 26C and the period for complying with the undertaking has not expired;
- (c) an undertaking given under section 26C has been complied with;

- (d) in the case of a crofter—
- (i) the Commission have consented to the sublet of the croft under section 27;
 - (ii) an application for consent to sublet has been made under section 27 and has not been determined;
- (e) in the case of an owner-occupier crofter—
- (i) the Commission have consented to the let of the owner-occupier's croft on a lease to which section 29B applies;
 - (ii) an application for consent to such a lease has been made under section 29A and has not been determined;
- (f) in the case of failure to comply with the residency duty—
- (i) the Commission have consented to the absence under section 21B;
 - (ii) an application for consent for absence, to extend a period of absence or to vary a condition imposed in respect of such absence has been made under section 21B, 21C or, as the case may be, 21D and has not been determined.

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

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

26G Division of croft before taking action

- (1) Before taking action under section 26H or 26J, the Commission may, if they are satisfied that the condition mentioned in subsection (2) is met, divide a croft or, as the case may be, an owner-occupied croft.
- (2) That condition is that—
- (a) the Commission have regard to—
 - (i) the use and occupation of the croft or owner-occupied croft;
 - (ii) in the case of a croft, the interests of the estate in which the croft is located;
 - (iii) the sustainable development of the crofting community in the locality of the croft or owner-occupied croft;
 - (iv) such other matters as the Commission consider appropriate; and

(b) the Commission consider that it is fair to divide the croft or owner-occupied croft.

(3) Any division of a croft or an owner-occupied croft under subsection (1) takes effect when such details of that division as the Keeper may require are entered in the Crofting Register.

(4) Where a croft or owner-occupied croft has been divided under subsection (1), the Commission may take action under section 26H or 26J in respect of any or all of the new crofts created by the division.

(5) In this section—

“division” means the division of a croft or an owner-occupied croft into two or more new crofts; and “divide” is to be construed accordingly; and

“new crofts” mean each of the crofts created by a division under subsection (1).

26H Crofters: tenancy termination procedure

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

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

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

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

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

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

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

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

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

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

26J Owner-occupier crofters: letting procedure

- 5 (1) The Commission must, unless they consider that there is a good reason not to, direct the owner-occupier crofter to submit to them, before the expiry of the period of 28 days beginning with the day on which the direction is given, a proposal for letting the owner-occupier's croft.
- 10 (2) The Commission must proceed in accordance with subsections (3) and (4)—
- (a) where the owner-occupier crofter has not made a proposal for letting before the expiry of the period mentioned in subsection (1), on the expiry of that period; or
- (b) where such a proposal is submitted before the expiry of that period, before the expiry of the period of 8 weeks beginning with the day on which the direction is given unless the Commission approve the proposal.
- 15 (3) The Commission must, by public notification, invite applications for letting the owner-occupied croft before the expiry of the period specified in the notification.
- (4) When the period of notification has ended, the Commission must decide—
- (a) to which of the applicants (if any) to let the owner-occupied croft; and
- (b) after consulting the owner-occupier crofter, on what conditions to let the croft.
- 20 (5) Where an owner-occupied croft has been let on conditions set by the Commission under subsection (4)(b), the owner-occupier crofter may, before the expiry of the period of 28 days beginning with the day of the letting, apply to the Land Court for a variation of the conditions so set.
- 25 (6) If the Land Court, on an application under subsection (5), varies the conditions of let, any variation takes effect as from the date of the letting.

26K Appeals

- 30 (1) A person may appeal to the Land Court against a decision of the Commission under section 26C—
- (a) not to accept an undertaking;
- (b) to impose conditions on such an undertaking.
- (2) A person may appeal to the Land Court against—
- (a) the making by the Commission of an order under section 26H; or
- (b) the giving by the Commission of a direction under section 26J.
- 35 (3) An appeal under subsection (1) or (2) is to be made by way of stated case and must be made before the expiry of the period of 21 days beginning with the day on which the decision, order or direction is made.
- (4) An appeal under subsection (1) or (2) may be made only on one or more of the following grounds—
- 40 (a) that the Commission erred in law;

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

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

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

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

10 (f) that the Commission exercised their discretion in an unreasonable manner.

(5) In an appeal under this section, the Land Court may—

(a) confirm or revoke the decision, order or direction;

(b) direct the Commission to make a different decision, order or direction;

(c) remit the case to the Commission without so directing them.

15 (6) The Commission must give effect to the decision of the Land Court on an appeal under this section.”.

Letting of owner-occupied crofts

24 Letting of owner-occupied crofts

After section 29 of the 1993 Act insert—

20 *“Letting of owner-occupied crofts*

29A Letting of owner-occupied crofts

(1) An owner-occupier crofter may not let the owner-occupier’s croft (or any part of it) without the consent of the Commission.

25 (2) The Commission may, in giving their consent to a proposed lease of an owner-occupied croft for a period not exceeding 10 years (a “short lease”), impose such conditions (other than any relating to rent) as they consider appropriate.

(3) A lease is void if it is granted—

(a) without the Commission’s consent;

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

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

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

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

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

29B Status of tenant under a short lease

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

- (a) a crofter; or
- (b) the tenant under a lease constituting—
 - (i) a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11);
 - (ii) a short limited duration tenancy within the meaning of that Act; or
 - (iii) a limited duration tenancy within the meaning of that Act.”.

PART 4

FURTHER AMENDMENTS OF THE 1993 ACT

Disposal of croft land, resumption and decrofting

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

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

26 Consideration of application to resume croft

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

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

- (a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1AC) below; and
- (b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

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

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

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

- (a) the sustainability of—
 - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Land Court to be relevant;
 - (ii) the crofting community in that locality or the communities in such an area;
 - (iii) the landscape of that locality or such an area;

- (iv) the environment of that locality or such an area;
- (b) the social and cultural benefits associated with crofting.

(1AD) In subsection (1AA) above—

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

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

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

27 Consideration of decrofting directions

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

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

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

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

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

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

(a) the sustainability of—

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

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

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

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

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

(1C) In subsection (1A) above—

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

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

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

Letting of vacant crofts

28 Requirements to submit proposals for re-letting crofts

- (1) Section 11 of the 1993 Act (intestacy) is amended as follows.
- (2) In subsection (8)(a), after “them” insert “, before the expiry of the period of four months beginning with the day on which the notice is given,”.
- (3) Section 23 of the 1993 Act (vacant crofts) is amended as follows.
- (4) In subsection (5)—
- (a) after “them” where it first occurs insert “, before the expiry of the period of two months beginning with the day on which the notice is given,”; and
- (b) the words from “, and if,” to the end are repealed.
- (5) After that subsection insert—
- “(5ZA) The Commission must proceed in accordance with subsections (5B) and (5C)—
- (a) where no proposals are submitted before the expiry of the period of two months mentioned in subsection (5), on the expiry of that period;
- (b) where such proposals are submitted before the expiry of that period, before the expiry of the period of three months beginning with the day on which the notice under subsection (5) is given unless the Commission approve such a proposal.”.
- (6) For subsection (5A) substitute—
- “(5A) Where a croft is declared vacant under section 11(8), the Commission must proceed in accordance with subsections (5B) and (5C)—
- (a) where no proposals are submitted before the expiry of the period of four months mentioned in section 11(8)(a), on the expiry of that period;
- (b) where such proposals are submitted before the expiry of that period, before the expiry of the period of five months beginning with the day on which the notice under section 11(8)(a) is given unless the Commission approve such a proposal.”.

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

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

- “(3A) The Commission need not consider any application made by the landlord under subsection (3) if—
- (a) they have given notice, under section 11(8)(a) or 23(5), requiring the landlord to submit proposals for re-letting the croft and the period mentioned in section 11(8)(a) or, as the case may be, 23(5) within which such proposals must be submitted has not expired; or
- (b) no such proposals having been submitted before the expiry of that period or, such proposals having been submitted, no such proposal having been approved, they are proceeding in accordance with subsections (5B) and (5C) of section 23.”.

Enlargement of crofts

30 Enlargement of crofts

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

“4 Enlargement of crofts

- 5 (1) This section applies where an owner of land—
- (a) which is not a croft; and
- (b) which does not form part of a croft,
- agrees to grant a tenancy of that land to a crofter.
- 10 (2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant.
- (3) The Commission may make a direction if they are satisfied that the enlargement of the croft—
- (a) would be of benefit to the croft or to the crofter;
- (b) would not result in the area of the enlarged croft substantially exceeding
- 15 30 hectares.
- (4) Where the Commission make a direction, the land forms part of the croft with effect from the later of—
- (a) the date of the direction; or
- (b) the date of entry under the tenancy.
- 20 (5) For the purposes of section 6 and paragraph 1 of schedule 2, the rent payable for the enlarged croft is the rent agreed by the landlord and the crofter.”.

Commission’s approval and consent

31 Obtaining Commission approval or consent

- 25 (1) Section 58A of the 1993 Act (obtaining Commission approval or consent) is amended as follows.
- (2) In subsection (4)—
- (a) the word “or” immediately preceding paragraph (c) is repealed; and
- (b) at the end of that paragraph insert “; or
- 30 “(d) any other person the Commission consider has a relevant interest in the application”.
- (3) After subsection (5) insert—
- “(5A) Despite subsection (4), the Commission may accept an objection submitted after the end of the 28-day period if they consider there is a good reason why the objection is late.”.
- 35 (4) In subsection (6)—
- (a) after “Commission” insert “must decide the application by”; and
- (b) for paragraphs (a) and (b) substitute—

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

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

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

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

(i) whether any person is or will be ordinarily resident on, or within 16 kilometres of, the croft;

10 (ii) whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5(7);

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

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

15 (d) the sustainable development of that crofting community;

(e) the interests of the public at large;

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

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

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

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

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

(8) After subsection (12) insert—

25 “(12A)The Commission must, before the expiry of the period of 21 days beginning with the day on which the decision under subsection (6) is taken, give notice of that decision—

(a) to the applicant;

(b) to any person who objected under subsection (4) or (5A); and

30 (c) where appropriate and in so far as not already given notice under paragraph (a) or (b), to—

(i) the crofter;

(ii) the owner-occupier crofter;

(iii) the landlord; and

35 (iv) as the case may be, the grazings committee.”.

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

(10) After section 58A insert—

“58B Variation of conditions on approval or consent

- (1) This section applies where the Commission grant, subject to conditions, an application under section 58A for their approval or consent.
- (2) The Commission may, on an application to them by the person who applied for the approval or consent (the “original applicant”), modify the conditions imposed by—
- (a) varying a condition;
 - (b) removing a condition;
 - (c) adding a condition,
- as they consider appropriate.
- (3) Where the Commission so modify conditions they must, before the expiry of the period of 14 days beginning with the day on which they do so, give notice of their decision to—
- (a) the original applicant;
 - (b) any other person who was given written notification under section 58(12A) of the decision to grant the approval or consent subject to conditions; and
 - (c) any other person the Commission consider has a relevant interest.
- (4) Subsections (2) to (5A), (16) and (17) of section 58A apply to an application under subsection (2) of this section as they apply to an application under subsection (1) of that section.”.

PART 5

GENERAL AND MISCELLANEOUS

32 Pre-consolidation modifications of enactments relating to crofting

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

33 Subordinate legislation

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations, rules or orders is exercisable by statutory instrument.
- (2) Any such power—
- (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes; and
 - (b) includes power to make such transitory, transitional or saving provision as the Scottish Ministers consider necessary or expedient.

(3) Subject to subsections (4) and (5), a statutory instrument containing regulations, rules or an order under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) No order under—

5 (a) section 32(1); or

(b) section 34(1) containing provisions which add to, replace or omit any part of the text of any Act,

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

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

34 Ancillary provision

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

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

35 Minor and consequential amendments and repeals

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

36 Interpretation

(1) In this Act—

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

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

“the Commission” means the Crofting Commission;

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

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

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

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

“owner-occupied croft” and “owner occupier’s croft” have the meanings given by section 19B(2) of the 1993 Act (as inserted by section 21);

30 “owner-occupier crofter” has the meaning given by section 19B(1) of the 1993 Act (as inserted by section 21);

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

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

“title sheet” means the title sheet made up and maintained under section 10(1).

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

37 Short title, commencement and Crown application

- (1) This Act is the Crofting Reform (Scotland) Act 2009.
- (2) This Act (other than this section and sections 33 and 34) comes into force on such day as the Scottish Ministers may by order appoint.
- 5 (3) Different days may be appointed for different purposes.
- (4) This Act binds the Crown.

SCHEDULE 1
(introduced by section 1(3))

THE CROFTING COMMISSION

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

THE CROFTING COMMISSION

Status

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

General powers

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

Membership

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

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

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

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

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

Appointed members: eligibility

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

- (a) ensure—
 - (i) that each person appointed has knowledge of crofting; and
 - (ii) where sub-paragraph (2) applies, that at least one person appointed can speak the Gaelic language; and
- (b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of a member.

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

(3) The fact that a person is—

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

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

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

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

Appointed members: terms of appointment

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

Resignation and cessation of membership

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

Elected members: regulations

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

- (h) persons who may, and may not, be candidates in elections such as are mentioned in sub-paragraph (1) (including by reference to the person's age);
- (i) the number of members of the Commission who may be returned from each constituency;
- (j) vacancies amongst elected members, including the circumstances in which a person who polled fewer votes in such an election than the person who polled most votes may hold office as a member of the Commission.

Remuneration, allowances and pensions

- 8 (1) The Scottish Ministers must pay to the members of the Commission such remuneration and allowances as Ministers may determine.
- (2) The Scottish Ministers may—
- (a) pay (or make arrangements for the payment of);
 - (b) make payments towards the provision of; or
 - (c) provide and maintain schemes (whether contributory or not) for the payment of,
- such pensions, allowances and gratuities to or in respect of such members and former members of the Commission as Ministers may determine.
- (3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

Removal of members

- 9 (1) The Scottish Ministers may remove a member of the Commission from office, by giving notice in writing to the member, if satisfied that the member—
- (a) is insolvent;
 - (b) has been convicted of a criminal offence in relation to which the member has been sentenced to imprisonment for a period of 3 months or more;
 - (c) is incapacitated by physical illness or mental disorder;
 - (d) has been absent from meetings of the Commission for a period exceeding 6 months without the permission of the convener;
 - (e) is otherwise unable or unfit to exercise the functions of a member or is unsuitable to continue as a member.
- (2) In sub-paragraph (1)(a), a member is insolvent when—
- (a) the member's estate is sequestrated;
 - (b) the member is adjudged bankrupt;
 - (c) a voluntary arrangement proposed by the member is approved;

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

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

5 (3) Where—

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

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

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

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

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

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

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

Chief executive, staff and employees

20 10 (1) The Scottish Ministers must, after consultation with the convener of the Commission, appoint a chief executive of the Commission on such terms and conditions as Ministers may determine.

(2) The Scottish Ministers may provide the services of such staff to the Commission as the Commission consider appropriate.

25 (3) The Commission may appoint such employees as the Commission consider appropriate.

(4) The Scottish Ministers may give directions to the Commission as to the appointment of employees under sub-paragraph (3).

(5) Such directions may in particular relate to—

(a) the number of appointments;

30 (b) the terms and conditions of employment.

(6) The Commission must comply with any directions given under sub-paragraph (4).

(7) The Commission may, with the approval of the Scottish Ministers—

(a) pay (or make arrangements for the payment of);

35 (b) make payments towards the provision of; or

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

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

- (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

Quorum

- 5 11 (1) The quorum of the Commission is five members.
- (2) Where there are three or more elected members, the quorum must include no fewer than three such members.

Committees

- 10 12 (1) The Commission must establish—
- (a) an audit committee; and
- (b) such other committees as they consider appropriate.
- (2) The audit committee and any other committee of the Commission must comply with any directions given to it by the Commission.
- 15 (3) The Commission may appoint as members of any of their committees persons who are not members of the Commission.
- (4) But no committee established under sub-paragraph (1) may consist entirely of such persons.
- (5) The Commission must pay to a person appointed under sub-paragraph (3) such remuneration and allowances as the Scottish Ministers may determine.

Procedure

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

Members' interests

- 5
- 14 (1) A member of the Commission or any other person who is in any way directly or indirectly interested in any matter brought up for consideration at a meeting of the Commission or of any committee of the Commission must disclose the nature of that interest to the meeting.
- (2) Such a disclosure must be recorded in the minutes of the meeting.
- (3) A member or other person making such a disclosure must not take part in any deliberation or decision of the Commission or of any committee of the Commission with respect to the matter to which the disclosure relates.

10 *Delegation of powers*

- 15 (1) The Commission may authorise—
- (a) any of their members;
- (b) any of their committees;
- (c) their chief executive;
- 15 (d) any person whose services are provided to them by the Scottish Ministers;
- (e) any of their employees,
- to exercise such of the Commission's functions (and to such extent) as they may determine.
- 20 (2) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of their functions.

Local assessors

- 25 16 (1) The Commission may appoint a panel of suitable persons ("assessors") to act, when required to do so by the Commission, as assessors for the purpose of assisting the Commission in the local execution of their functions under this Act.
- (2) Assessors must be ordinarily resident in the crofting counties or in an area designated under section 3A(1)(b) of this Act.
- (3) The Commission may make payments to assessors in respect of any—
- 30 (a) loss of earnings;
- (b) expenses (including travelling and subsistence expenses),
- necessarily suffered or incurred by them for the purpose of enabling them to perform their duties as such assessors.

Location of office

- 35 17 The Commission—
- (a) must have their principal office premises in the crofting counties;

- (b) must not determine where those premises are to be located without that location being approved by the Scottish Ministers; and
- (c) must comply with any direction as to the location of those premises given by Ministers.

5 *Finance*

18 (1) The Scottish Ministers may—

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

to the Commission of such amounts as Ministers may determine.

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

Accounts

19 (1) The Commission must—

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

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

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

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

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

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

Provision of information to Scottish Ministers

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

Transfer of property, rights and liabilities

- 21 (1) Where the Scottish Ministers consider it necessary or expedient to do so to facilitate the exercise of functions by the Commission, they may transfer to the Commission any property, rights and liabilities to which Ministers are entitled or subject.
- 5
- (2) Property, rights and liabilities may be so transferred to the Commission whether or not they are otherwise capable of being transferred by the Scottish Ministers.”.

SCHEDULE 2
(introduced by section 35)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Small Landholders (Scotland) Act 1911

- 1 (1) The Small Landholders (Scotland) Act 1911 (c.49) is amended as follows.
- (2) In section 10 (additional statutory conditions), after subsection (2) insert—
- 15 “(2A) Where the holding of a new holder as mentioned in the further proviso to subsection (2) is situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts), the reference to the Board in that subsection is to be construed as a reference to the Crofting Commission.”.
- 20 (3) In section 16 (amendment of law as to enlargement of holdings)—
- (a) in the proviso to subsection (1)—
- (i) after “Board”, where it first occurs, insert “(or, in the case of applications mentioned in subsection (1A), the Crofting Commission)”; and
- 25 (ii) after “Board”, where it second occurs, insert “(or, as the case may be, the Crofting Commission)”; and
- (b) after that subsection, insert—
- “1A) The applications referred to in subsection (1) which are to be made to the Crofting Commission are those for enlargement of holdings situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts).”.
- 30 (4) In section 17 (amendment of law as to vacant holdings)—
- (a) the existing provision becomes subsection (1) of that section; and
- (b) after that subsection add—
- “2) In the application of subsection (1) to holdings situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts), references to the Board are to be construed as references to the Crofting Commission.”.
- 35 (5) In section 32 (provisions as to statutory small tenants)—
- (a) in subsection (3), after “Board” insert “or, in the case of a holding mentioned in subsection (3A), the Crofting Commission”;
- 40

(b) after that subsection, insert—

“(3A) The holding referred to in subsection (3) is a holding situated in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993 (c.44) (new crofts).”; and

5 (c) after subsection (12), insert—

“(12A) In the application of subsection (12) to landlords and tenants of holdings situated as mentioned in subsection (3A), the reference to the Board is to be construed as a reference to the Crofting Commission.”.

Succession (Scotland) Act 1964

10 2 (1) The Succession (Scotland) Act 1964 (c.41) is amended as follows

(2) In section 16 (provisions relating to leases)—

(a) in paragraph (a) of subsection (2A), after “shall” insert “, in the circumstances mentioned in subsection (2B) below only.”; and

(b) after subsection (2A) insert—

15 “(2B) The circumstances mentioned in subsection (2A) are that the Crofting Commission have—

(a) given notice under section 23(5) of the Crofters (Scotland) Act 1993 (vacant crofts) requiring the landlord of the croft to submit proposals for re-letting the croft; or

20 (b) directed the owner-occupier crofter of the croft to submit a proposal for letting the croft under section 26J of that Act (owner-occupier crofters: letting procedure).”.

(3) In section 16A (application of section 58A of the 1993 Act to applications for consent under section 16(2A)), subsection (2) is repealed.

Crofters (Scotland) Act 1993

25 3 (1) The 1993 Act is amended as follows.

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

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

(a) in subsection (1)—

(i) the word “developing”; and

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

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

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

(5) In section 4A (exchange of crofts), subsection (3) is repealed.

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

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

(a) after subsection (1) insert—

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

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

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

(b) subsection (2) is repealed.

(8) In section 9 (division of croft), subsection (2) is repealed.

(9) In section 10 (bequest of croft), the following are repealed—

(a) in subsection (2B), the words from “if” to “below,”;

(b) in subsection (2C)—

(i) the word “and” where it first occurs;

(ii) in paragraph (a), the words “the legatee is a member of the deceased crofter’s family”; and

(iii) paragraph (b) and the word “or” immediately preceding it;

(c) subsections (3) to (4D); and

(d) in subsection (4E), the words “, (4A) or, as the case may be, (4D)”.

(10) In section 11 (intestacy), paragraph (d) of subsection (3) is repealed.

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

(12) In section 23 (vacant crofts)—

(a) subsection (3A) is repealed;

(b) in subsection (4)—

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

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

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

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

(d) after that subsection insert—

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

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

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

(13) In section 24(2) (decrofting where croft vacant for 6 months), for “section 22(1)” substitute “section 26H(1)”.

- (14) In section 26 (removal of crofter)—
- (a) in subsection (1)—
 - (i) the word “or” immediately preceding paragraph (b) is repealed; and
 - (ii) after that paragraph insert “, or
 - 5 “(c) a crofter has breached the duty mentioned in section 5B(1),”; and
 - (b) in subsection (3), for “5B” substitute “26H”.
- (15) In section 27 (subletting by crofters), subsection (3) is repealed.
- (16) In section 40 (obtaining of information by Commission), after subsection (1) insert—
- 10 “(1A) The information mentioned in subsection (1) above includes the age and date of birth of the owner or occupier of the holding or such other person or class of person as may be specified in the notice.”.
- (17) In section 41(2) (information to be entered in Register of Crofts)—
- (a) in paragraph (b), after “name” insert “, age and date of birth”; and
 - (b) in paragraph (cd)(ii), for “section 22(1)” substitute “section 26H(1)”.
- 15 (18) In section 50B (use of common grazing for other purposes), the following are repealed—
- (a) in subsection (6), the words “, in such manner as the Commission may require,”; and
 - (b) subsections (7) to (15).
- 20 (19) In section 52A (appeals), the following are repealed—
- (a) subsection (5)(a); and
 - (b) subsection (7).
- (20) For section 60 (regulations) substitute—
- “60 Regulations and orders**
- 25 (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.
- (2) Subject to subsection (3), a statutory instrument containing such regulations or such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- 30 (3) No statutory instrument containing—
- (a) an order under—
 - (i) section 2A(1);
 - (ii) section 5B(7);
 - (iii) section 19C(8);
 - 35 (iv) paragraph 3(4) of schedule 1;
 - (b) regulations under paragraph 7(1) of schedule 1,
- may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

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

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

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

““croft”—

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

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

“crofter”—

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

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

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

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

(d) in the definition of “landlord”—

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

(ii) after that paragraph insert—

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

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

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

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

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

30 “owner-occupier crofter” has the meaning given by section 19B(1);”;
and

(g) after the definition of “the site of the dwellinghouse” insert—

““title sheet” means the title sheet of the croft made up and maintained under section 10(1) of Crofting Reform (Scotland) Act 2009 (asp 00);”.

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

35 4 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies), for “The Crofters Commission” substitute “The Crofting Commission”.

Crofting Reform (Scotland) Bill

[AS INTRODUCED]

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

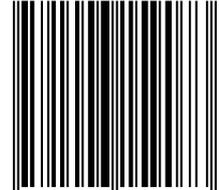
Introduced by: Richard Lochhead
On: 9 December 2009
Supported by: Roseanna Cunningham
Bill type: Executive Bill

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