



# Crofting Reform (Scotland) Act 2010

## 2010 asp 14

### 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.
- (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.
- (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.

#### **Commencement Information**

- I1** S. 1(1)(2)(4) in force at 1.4.2012 by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**
- I2** S. 1(3) in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5, 8)
- I3** S. 1(3) in force at 1.4.2012 in so far as not already in force by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**

#### **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—
  - “(2) The Commission have—
    - (a) the general functions of—

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- (i) regulating crofting;
- (ii) reorganising crofting;
- (iii) promoting the interests of crofting;
- (iv) keeping under review matters relating to crofting; and
- (b) such other functions conferred on them by or under this Act or under any other enactment.

(2A) In exercising their functions under subsection (2), the Commission must have regard to—

- (a) the desirability of supporting population retention—
  - (i) in the crofting counties; and
  - (ii) in any area for the time being designated as mentioned in section 3A(1)(b) and in which there are crofts; and
- (b) the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting.”.

(2) After section 2 of that Act 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.

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## **2C Duty to produce plan**

- (1) The Commission must, before the expiry of the period mentioned in subsection (2), prepare and submit to the Scottish Ministers a plan setting out their policy on how they propose to exercise their functions.
- (2) That period is the period of 6 months beginning with the day after—
  - (a) the day of the first election held in accordance with paragraph 7 of schedule 1 to elect persons to be members of the Commission;
  - (b) the day of each subsequent election.
- (3) The Commission must, before preparing a plan under this section, consult—
  - (a) each local authority in the area of which there are crofts;
  - (b) Highlands and Islands Enterprise; and
  - (c) such other persons or bodies as the Commission consider appropriate.
- (4) The Scottish Ministers may—
  - (a) approve the plan (with or without modifications); or
  - (b) reject the plan and direct the Commission to submit a revised plan.
- (5) Where the Scottish Ministers approve the plan submitted under subsection (1) (including a revised plan submitted under subsection (4)(b)), the Commission must—
  - (a) send a copy of it to each local authority in the area of which there are crofts;
  - (b) make a copy of it available for public inspection at reasonable times; and
  - (c) publish it in such manner as the Commission consider appropriate.
- (6) The Commission—
  - (a) may, from time to time;
  - (b) must, if required to do so by the Scottish Ministers,vary the plan.
- (7) Where the Commission, under subsection (6), vary the plan—
  - (a) the Commission must submit it to the Scottish Ministers; and
  - (b) subsections (3) to (5) apply to the variation of a plan as they apply to the preparation of a plan under subsection (1).

## **2D Status of plan**

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

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#### Commencement Information

- I4** S. 2(1) in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)
- I5** S. 2(2) in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)
- I6** S. 2(2) in force at 1.4.2012 in so far as not already in force by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**

## PART 2

### THE CROFTING REGISTER

#### *Duty to establish and maintain register*

#### 3 The Crofting Register

- (1) The Keeper of the Registers of Scotland must establish and maintain a public register of crofts, common grazings and land held runrig.
- (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.

#### Commencement Information

- I7** S. 3 in force at 30.10.2012 by S.S.I. 2012/288, art. 3(1)(a)(2), **Sch. 1 Pt. 1**

#### *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 the case of an owner-occupied croft, subject to subsection (9), on the transfer (whether or not for valuable consideration) of the ownership of the croft;
  - (c) in any case other than the case of a new croft, on the taking, in relation to the croft, of any step mentioned in subsection (4) (or, in the case of a step mentioned in paragraph (p) of that subsection, in accordance with that paragraph).

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- (2) An unregistered croft may be registered on an application being made by a person mentioned in subsection (3).
- (3) The person is—
- (a) the owner of the land on which the croft is situated;
  - (b) the landlord;
  - (c) the crofter;
  - (d) where the croft is an owner-occupied croft, the owner-occupier crofter.
- (4) The steps referred to in subsection (1)(c) are—
- (a) the making of an application for a direction enlarging the croft under section 4(4) of the 1993 Act;
  - (b) the making of an application for consent to exchange the croft under section 4A of that Act;
  - (c) the making of an application for consent to assign the croft under section 8 of that Act;
  - (d) the making of an application for consent to divide the croft—
    - (i) under section 9 of that Act; or
    - (ii) under section 19D of that Act;
  - (e) in the case of a bequest of the croft such as is mentioned in subsection (1)(a) of section 10 of that Act, the giving of notice under subsection (2) of that section of the acceptance of the bequest of that croft;
  - (f) the giving of notice under section 11(1) of that Act in respect of the transfer of the tenancy of the croft in pursuance of section 16(2) of the Succession (Scotland) Act 1964 (c.41);
  - (g) the making of an application under section 20(1) of the 1993 Act to resume the croft or part of the croft;
  - (h) the making of an order for reversion of a resumption of the croft under section 21A(1) of that Act;
  - (i) the making of an application for approval to the letting of the croft or any part of the croft under section 23(3) of that Act;
  - (j) the re-letting of the croft in accordance with proposals submitted under section 23(5) of that Act;
  - (k) the letting of the croft pursuant to a determination under section 23(5C) of that Act;
  - (l) 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; <sup>F1</sup>...
    - <sup>F2</sup>(*ia*) by application under section 24A(1) of that Act; or]
    - (iii) by application under section 25(4) of that Act;
  - (m) the division of the croft, or owner-occupied croft, under section 26G of that Act;
  - (n) the letting of the croft—
    - (i) in accordance with proposals submitted under section 26J(1) of that Act; or
    - (ii) pursuant to a decision under section 26J(8) of that Act;

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- (o) the making of an application for consent to the letting of the croft or any part of the croft under section 29A(1) of that Act other than such a letting under a short lease (within the meaning of section 29A(4) of that Act);
  - (p) the preparation, under section 38(8)(a) of that Act, of a reorganisation scheme which includes provision—
    - (i) forming the croft;
    - (ii) making any change to, or in relation to, the croft;
 and in such a case, the croft may not be registered until the condition mentioned in paragraph (a) or (b) of section 39(1) of that Act (whichever first occurs) is satisfied in relation to the scheme;
  - (q) the making of an application by the crofter of the croft for a part of a common grazing to be apportioned under section 52(4) of that Act.
- (5) The Scottish Ministers may, by order, modify subsection (4) so as to—
- (a) add a step to;
  - (b) modify the description of a step in;
  - (c) remove a step from,
- that subsection.
- (6) But an order under subsection (5) may not add, as a step to subsection (4), the transfer (whether or not for valuable consideration) of the ownership of any land on which the croft is situated.
- (7) Where the Scottish Ministers exercise the power in subsection (5), they may by order modify Table 1 in schedule 2 so as to—
- (a) add a step to column 1 of that table;
  - (b) modify the description of any step mentioned in that column;
  - (c) remove a step from that column;
  - (d) add a person to column 2 of that table;
  - (e) modify the description of any person mentioned in that column;
  - (f) remove a person from that column.
- (8) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(b).
- (9) A person who, but for this subsection, would be required to register an owner-occupied croft by virtue of subsection (1)(b), need not register the croft if a step mentioned in subsection (4) is taken in relation to the croft.
- (10) In sections 5 to 19, “first registration” means the registration of an unregistered croft.
- (11) 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;

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“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.

#### Textual Amendments

- F1** Word in s. 4(4)(l) omitted (retrospective to 1.10.2011) by virtue of [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\), ss. 3, 6, Sch. para. 2\(2\)\(a\)](#)
- F2** S. 4(4)(l)(ia) inserted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\), ss. 3, 6, Sch. para. 2\(2\)\(b\)](#)

#### Commencement Information

- I8** S. 4 in force at 30.10.2012 for specified purposes by [S.S.I. 2012/288, art. 3\(1\)\(a\)\(2\), Sch. 1 Pt. 1](#)

## 5 Registration of events affecting registered crofts

- (1) The following events in relation to a registered croft must be registered, that is—
- (a) in the case of an owner-occupied croft, the transfer (whether or not for valuable consideration) of ownership of the croft;
  - (b) in any case other than the case of an owner-occupied croft—
    - (i) the transfer (whether or not for valuable consideration) of the ownership of any land on which the croft is situated;
    - (ii) a change of landlord of the croft;
  - (c) in any case, the taking, in relation to the croft, of any step mentioned in subsection (3).
- (2) But subsection (1) does not apply to a croft—
- (a) which was registered as a result of the taking of a step mentioned in subsection (4) of section 4 (other than a step mentioned in paragraph (e), (f), (h), (j), (k), (m), (n) or (p) of that subsection); and
  - (b) in respect of which a step mentioned in subsection (3) constitutes a change affecting the croft which requires to be notified to the Keeper under section 10.
- (3) The steps referred to in subsection (1)(c) 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) in the case of a bequest of the croft such as is mentioned in subsection (1) (a) of section 10 of that Act, the giving of notice under subsection (2) of that section of the acceptance of the bequest of that croft;
  - (f) the 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 section 20(1C) of that Act of an extension of the period for which resumption of the croft is authorised;

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- (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 letting (or, as the case may be, re-letting) of the croft—
    - (i) (or part of the croft) under section 23(3) of that Act;
    - (ii) in accordance with proposals submitted under section 23(5) of that Act;
    - (iii) pursuant to a determination under section 23(5C) of that Act;
    - (iv) (or part of the croft) under section 29A(1) of that Act other than such a letting under a short lease (within the meaning of section 29A(4) of that Act);
  - (l) the making of a decrofting direction under section 24(2) or [F3(3) or, as the case may be, 24B(1)] of that Act;
  - (m) the division of the croft, or owner-occupied croft, under section 26G of that Act;
  - (n) the letting of the croft—
    - (i) in accordance with proposals submitted under section 26J(1) of that Act;
    - (ii) pursuant to a decision under section 26J(8) of that Act;
  - (o) the making of a change to, or in relation to, the croft by virtue of a provision of a reorganisation scheme prepared under section 38(8)(a) of that Act;
  - (p) the apportionment of a part of a common grazing to the crofter of the croft under section 52(4) of that Act;
  - (q) the bringing to an end, under subsection (12) of section 52 of that Act, of an apportionment of a part of a common grazing to the crofter of the croft under subsection (4) of that section.
- (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) Where the Scottish Ministers exercise the power in subsection (4), they may by order modify Table 2 in schedule 2 so as to—
- (a) add a step to column 1 of that table;
  - (b) modify the description of any step mentioned in that column;
  - (c) remove a step from that column;
  - (d) add a person to column 2 of that table;
  - (e) modify the description of any person mentioned in that column;
  - (f) remove a person from that column.
- (6) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(a) and (b)(i).



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### Textual Amendments

- F3** Words in s. 5(3)(l) substituted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\)](#), ss. 3, 6, [Sch. para. 2\(3\)](#)

### Commencement Information

- I9** [S. 5](#) in force at 30.10.2012 for specified purposes by [S.S.I. 2012/288](#), art. 3(1)(a)(2), [Sch. 1 Pt. 1](#)

VALID FROM 30/11/2012

## 6 Persons responsible for applications for registration

- (1) An application for first registration of a croft is to be submitted—
  - (a) in the case of a transfer of ownership of an owner-occupied croft such as is mentioned in section 4(1)(b), by the person to whom such ownership is transferred;
  - (b) in the case of a step mentioned in section 4(4), by the person mentioned in the entry in column 2 of Table 1 in schedule 2 which corresponds to the entry relating to that step in column 1 of that table.
- (2) An application for registration of an event in relation to a registered croft is to be submitted—
  - (a) in the case of a transfer of ownership of a owner-occupied croft such as is mentioned in section 5(1)(a), by the person to whom such ownership is transferred;
  - (b) in the case of a transfer of ownership of land such as is mentioned in section 5(1)(b)(i), by the person to whom such ownership is transferred;
  - (c) in the case of a change of landlord of the croft, by the person who is the new landlord;
  - (d) in the case of a step mentioned in section 5(3), by the person mentioned in the entry in column 2 of Table 2 in schedule 2 which corresponds to the entry relating to that step in column 1 of that table.

VALID FROM 30/11/2012

## 7 Applications for registration

- (1) Subject to subsection (7), an application for registration, and the fee payable in respect of such registration, is to be submitted to the Commission.
- (2) An application for first registration is to be submitted, in the case of a new croft, at the same time as an application under section 3A(1) or, as the case may be, (2) of the 1993 Act.
- (3) The Commission must, as soon as reasonably practicable after receiving an application for registration—
  - (a) in the case of an application for first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(4)(p)),

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- 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 (4) and (5), 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.
- (4) 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.
- (5) The Commission may refuse to forward an application for registration if—
- (a) a requirement made under subsection (4) is not complied with;
- (b) the application is frivolous or vexatious;
- (c) the fee payable in respect of the registration has not been tendered;
- (d) there is a material inaccuracy in the application; or
- (e) they consider that the Keeper would otherwise not accept the application under section 8(2).
- (6) 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.
- (7) This section does not apply to an application for registration by the Commission (a “Commission application”); and the reference in section 8(1) to an application for registration forwarded under subsection (3)(b) of this section is, in relation to a Commission application, to be construed as a reference to the Commission application submitted to the Keeper.
- (8) In subsection (5)(d), “material inaccuracy” means an inaccuracy relating to any matter mentioned in section 11(2).

VALID FROM 30/11/2012

## **8 Acceptance of applications for registration**

- (1) Subject to subsection (2), the Keeper must accept an application for registration forwarded under section 7(3)(b) if it is accompanied by such documents and other evidence as the Keeper may require.
- (2) An application for registration must 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) the information otherwise contained in or accompanying it would not enable the Keeper to make up or, as the case may be, amend the registration schedule of the croft;
- (c) in a case where the application relates to a registered croft, the application does not bear a reference to the registration schedule of that croft;

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- (d) payment of the fee payable in respect of such registration has not been tendered.
- (3) But the Keeper may accept an application for registration despite the fact that the description of the croft includes land which is already entered in the registration schedule of—
  - (a) another croft;
  - (b) a common grazing; or
  - (c) land held runrig,as part of the description of the land which comprises that other croft, that common grazing or, as the case may be, that land held runrig.
- (4) On receipt of an application for registration, the Keeper must without delay note the date of receipt.
- (5) That date is deemed for the purposes of this Part as the date of registration provided the Keeper, after examination, accepts the application and, in the case of a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(4)(p))—
  - (a) no application is made to the Land Court under section 14(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 14(4)(b).

VALID FROM 30/11/2012

## **9 Completion of registration**

- (1) The Keeper must complete registration—
  - (a) in the case of a first registration, by making up a registration schedule for the croft in the register in accordance with section 11;
  - (b) in the case of a registered croft, by making such amendment as is necessary to the registration schedule of the croft;
  - (c) in either case, by making such consequential amendments in the register as are necessary.
- (2) Where the Keeper completes a first registration under subsection (1), the Keeper must issue to the applicant a certificate, authenticated as the Keeper considers appropriate—
  - (a) confirming the registration;
  - (b) (except where the first registration is of a new croft or is as a result of the taking of the step mentioned in section 4(4)(p)), noting that the registration may be challenged under section 14(1);
  - (c) containing such other information as the Keeper considers appropriate.
- (3) Where, by virtue of being the applicant, the Commission receive a certificate under subsection (2), they must send a copy of the certificate to the crofter or owner-occupier crofter of the croft to which the certificate relates.

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- (4) When issuing a certificate under subsection (2) (other than one relating to the first registration of a new croft or a first registration as a result of the taking of the step mentioned in section 4(4)(m) or (p)), the Keeper must at the same time send a copy of it to the Commission.
- (5) A certificate issued under subsection (2) is to be accepted for all purposes as sufficient evidence of the registration of the croft.
- (6) In this Part, “certificate of registration” means a certificate issued under subsection (2).

VALID FROM 30/11/2012

## **10 Completion of registration: further provision on first registrations**

- (1) This section applies where, in relation to a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(4)(p))—
  - (a) no application is made to the Land Court under section 14(1) before the expiry of the period mentioned in section 12(5); 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 14(4)(b).
- (2) Subject to subsection (3), the Keeper must—
  - (a) make such amendment as is necessary of the registration schedule of the croft; and
  - (b) make such consequential amendments in the register as are necessary.
- (3) Where—
  - (a) the application for first registration was made as a result of the taking, in relation to a croft, of a step mentioned in subsection (4) of section 4 (other than a step mentioned in paragraph (e), (f), (h), (j), (k), (m), (n) or (p) of that subsection); and
  - (b) the Keeper is notified, in accordance with the provisions of this section, of a change affecting the croft as a result of the taking of that step,
 the Keeper must amend the registration schedule or, as the case may be, the register accordingly.
- (4) The person taking the step mentioned in paragraph (a), (b), (c), (g), (i), (o) or (q) of subsection (4) of section 4 must, within 3 months of the granting of the application mentioned in the step, notify the Commission that a change such as is mentioned in subsection (3) has taken effect.
- (5) Where the Commission are not notified of a change in accordance with subsection (4), the change is (notwithstanding any provision to the contrary) deemed not to have taken effect.
- (6) As soon as reasonably practicable after being notified under subsection (4), the Commission must notify the Keeper accordingly.

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**Changes to legislation:** There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)

- (7) Where a change such as is mentioned in subsection (3) is a result of the taking of a step mentioned in paragraph (d)(i), (d)(ii), (l)(i), (l)(ii) [<sup>F4</sup>, (l)(ia)] or (l)(iii) of subsection (4) of section 4, the Commission must notify the Keeper of that change in accordance with subsection (8).
- (8) Notification under subsection (7) must be given—
- (a) in the case of the division of a croft under section 9 or 19D of the 1993 Act, as soon as reasonably practicable after the Commission consent to the division (such division taking effect only on receipt of the notification);
  - (b) in the case of the decrofting of a croft pursuant to a direction under section 24(2) or (3) [<sup>F5</sup> or 24B(1)] of that Act, as soon as reasonably practicable after the direction is made (the decrofting taking effect only on receipt of the notification);
  - (c) in the case of the decrofting of a croft pursuant to a direction under section 24(3) of that Act resulting from an application under section 25(4) of that Act, as soon as reasonably practicable after the Commission are notified under section 25(4ZB)(a) of that Act of an acquisition.

#### Textual Amendments

- F4** Word in s. 10(7) inserted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\)](#), ss. 3, 6, [Sch. para. 2\(4\)\(a\)](#)
- F5** Words in s. 10(8)(b) inserted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\)](#), ss. 3, 6, [Sch. para. 2\(4\)\(b\)](#)

### *The registration schedule*

## 11 The registration schedule

- (1) The Keeper must make up and maintain a registration schedule of every croft registered in the register.
- (2) The Keeper must enter in the registration schedule—
- (a) a description of the land which comprises the croft that must consist of or include a description of it based on the ordnance map or such other map as the Keeper considers appropriate;
  - (b) the name and designation of, as the case may be—
    - (i) any tenant of the croft;
    - (ii) any owner-occupier crofter of the croft;
    - (iii) any landlord of the croft;
    - (iv) any owner of the croft;
  - (c) such other information as the Keeper considers appropriate.
- (3) Where the description of the land which comprises a croft (a “later croft”) would include land mentioned in subsection (4) (“registered land”), the Keeper—
- (a) may not include the registered land in the description of the later croft entered in the registration schedule of that croft;
  - (b) may enter a description of the land comprising the later croft which omits the registered land.

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- (4) The land referred to in subsection (3) is land which is already entered in the registration schedule of—
- (a) another croft;
  - (b) a common grazing; or
  - (c) land held runrig,
- as part of the description of the land which comprises that other croft, that common grazing or, as the case may be, that land held runrig.
- (5) The Keeper must issue, to any person applying, a copy, authenticated as the Keeper considers appropriate, of any registration schedule or any part thereof.
- (6) A copy issued under subsection (5) is to be known as an office copy and is to be accepted for all purposes as sufficient evidence of the contents of the original registration schedule.
- (7) The Scottish Ministers may, by order, modify subsection (2) so as to add to the matters mentioned there any other matters that they consider should be included in the registration schedule of a croft.

#### Commencement Information

**I10** S. 11 in force at 30.10.2012 for specified purposes by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

#### *Notification of first registration*

## 12 Notification of first registration

- (1) Subject to subsection (2), the Commission must, on receipt of a certificate of registration under section 9(2) or, as the case may be, a copy of such a certificate under section 9(4), notify any persons mentioned in subsection (3) of the matters mentioned in subsection (4).
- (2) The Commission need not notify a person mentioned in subsection (3)—
- (a) where that person is the applicant for registration; or
  - (b) where the certificate of registration issued under section 9(2) relates to a first registration as a result of the taking of the step mentioned in section 4(4)(p).
- (3) Those persons are—
- (a) the owner of the croft;
  - (b) the landlord of the croft;
  - (c) the crofter of the croft;
  - (d) the owner-occupier crofter of the croft;
  - (e) the owner of any adjacent croft;
  - (f) the landlord of any adjacent croft;
  - (g) the crofter of any adjacent croft;
  - (h) the owner-occupier crofter of any adjacent croft;
  - (i) the owner of any adjacent land (not being land which is an adjacent croft);
  - (j) the occupier of any adjacent land (not being land which is an adjacent croft).
- (4) The matters referred to in subsection (1) are—

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- (a) that the croft has been registered;
  - (b) the description of the croft as it is entered in the registration schedule;
  - (c) the names and designations of any persons entered in the registration schedule in accordance with section 11(2)(b);
  - (d) the right to challenge the registration by applying to the Land Court under section 14(1);
  - (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 9 months beginning with the date on which the Commission issue notification under subsection (1).
- (6) For the purposes of subsection (5), “the date on which the Commission issue notification under subsection (1)” means—
- (a) where notification under subsection (1) is issued on the same date to every person entitled to receive it, that date;
  - (b) where such notification is issued otherwise than is mentioned in paragraph (a), the date notification is issued to the last person entitled to receive it.
- (7) The Commission must notify the applicant of the date mentioned in subsection (5).
- (8) The applicant, on receipt of the certificate under section 9(2) relating to a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(4)(p)), must give public notice of the registration of the croft by—
- (a) placing an advertisement, for two consecutive weeks, in a local newspaper circulating in the area where the croft is situated; and
  - (b) affixing a conspicuous notice in the prescribed form to a part of the croft.
- (9) The applicant must take all reasonable steps to ensure that the notice mentioned in subsection (8)(b) continues to be displayed throughout the period mentioned in subsection (5).
- (10) In subsection (8)(b), “prescribed” means prescribed by the Scottish Ministers by order.

#### **Commencement Information**

**III** S. 12 in force at 30.10.2012 for specified purposes by [S.S.I. 2012/288](#), art. 3(1)(a)(2), [Sch. 1 Pt. 1](#)

VALID FROM 30/11/2012

### **13 Power of entry etc. where Commission are applicant**

- (1) This section applies where, by virtue of being the applicant for registration, the Commission are required to affix a notice in accordance with section 12(8)(b).
- (2) A person authorised by the Commission may enter the croft for the purposes of—
  - (a) affixing the notice;
  - (b) complying with section 12(9); and
  - (c) removing the notice in accordance with subsection (3)(b).

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- (3) The Commission must—
- (a) when affixing the notice, take all reasonable care not to damage the croft or the part of the croft to which the notice is affixed; and
  - (b) remove the notice no later than 1 week after the end of the period mentioned in section 12(5).
- (4) Subsections (2) to (4) of section 56 of the 1993 Act apply for the purposes of subsection (2) as they apply for the purposes of subsection (1) of that section.

VALID FROM 30/11/2012

### *Challenge to first registration*

#### **14 Challenge to first registration**

- (1) Subject to subsection (3), any person to whom notice is given under section 12(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 12(5) to the Land Court for an order under subsection (4)(a) or (b).
- (2) Where an application under subsection (1) is made after the end of the period mentioned in section 12(5), the Court may, on cause shown, deal with the application as if it had been made before the end of that period.
- (3) Subsection (1) does not apply as respects the registration of a croft as a result of the taking of the step mentioned in section 4(4)(p).
- (4) On receipt of an application under subsection (1), 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) Where subsection (6) applies, the Court must, if making an order such as is mentioned in subsection (4)(b), declare the boundary of the croft to be that which, in all the circumstances, it considers appropriate.
- (6) This subsection applies where—
  - (a) the application challenging the registration raises a question as to the boundaries of the croft; and
  - (b) the evidence available to the Court is insufficient to enable any boundary to be clearly determined.
- (7) Where the Court makes an order under subsection (4)(a) or (b), the Keeper must make such amendment to the registration schedule of the croft and to the register as is necessary.



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VALID FROM 30/11/2012

### *Removal of resumed and decrofted crofts from register*

#### **15 Resumed and decrofted crofts**

- (1) The Keeper must—
- (a) where subsection (2) applies, remove the entry in the register relating to the resumed croft;
  - (b) where subsection (3) applies, remove the entry in the register relating to the croft in relation to which a decrofting direction has been made.
- (2) This subsection applies where—
- (a) a registered croft has been resumed (whether before or after it was first registered) by virtue of an authorisation under section 20(1) of the 1993 Act;
  - (b) no order has been made under section 21A(1) of that Act that the land so resumed revert to being a croft; and
  - (c) the period of 20 years beginning with when the resumption was authorised has ended.
- (3) This subsection applies where—
- (a) a decrofting direction under section 24(2) or [<sup>F6</sup>(3) or, as the case may be, 24B(1)] of the 1993 Act was made in relation to a registered croft (whether made before or after it was first registered);
  - [<sup>F7</sup>(aa) in the case of a decrofting direction under section 24B(1), the Commission have not revoked the direction under section 25(3);]
  - (b) the Land Court has not revoked the direction by virtue of section 25(8B) of that Act or by virtue of any other enactment; and
  - (c) the period of 20 years beginning with the making of the direction has ended.
- (4) This section applies to a part of a croft as it applies to a whole croft with the modification that references in subsection (1) to removing entries in the register are to be read as references to modifying such entries.

#### **Textual Amendments**

- F6** Words in s. 15(3)(a) substituted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\)](#), ss. 3, 6, [Sch. para. 2\(5\)\(a\)](#)
- F7** S. 15(3)(aa) inserted (retrospective to 1.10.2011) by [Crofting \(Amendment\) \(Scotland\) Act 2013 \(asp 10\)](#), ss. 3, 6, [Sch. para. 2\(5\)\(b\)](#)

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VALID FROM 30/11/2012

### *Rectification and indemnity*

#### **16 Rectification of the register**

- (1) The Keeper—
  - (a) may rectify the register in accordance with subsections (2) to (4);
  - (b) must rectify the register on being ordered to do so by any court.
- (2) Where a mistake in the register arises as a consequence of a mistake in an application for registration (not being a mistake to which subsection (3) applies), the Keeper may rectify the register to correct the mistake on the application of the person who made that application (the “original applicant”).
- (3) Where a mistake in the register arises as a consequence of a mistake made by the Commission when forwarding an application for registration under section 7(3)(b) or when submitting (on their own behalf) an application for registration, the Keeper may so rectify the register on the application of—
  - (a) in either case, the Commission; or
  - (b) in the case of an application so forwarded, the original applicant.
- (4) Where a mistake in the register arises as a consequence of a mistake by the Keeper when making up or amending a registration schedule or making consequential amendments to the register, the Keeper may so rectify the register whether on the application of any person to do so or not.
- (5) Without prejudice to any enactment or rule of law, the powers of the court include power to make orders for the purposes of subsection (1)(b).
- (6) Where the Keeper rectifies the register under this section, the Keeper must give written notice of the rectification to—
  - (a) any person appearing to the Keeper to be affected by it;
  - (b) the Commission.
- (7) In this section—
 

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

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

“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.

#### **17 Rectification following first registration**

- (1) This section applies where, in the case of a first registration (other than of a new croft or other than as a result of the taking of the step mentioned in section 4(4)(p))—
  - (a) the Keeper rectifies the register under section 16(1)(a) to correct a material inaccuracy; and
  - (b) the register is rectified before the end of the period mentioned in section 12(5) (no application under section 14(1) having been made).

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- (2) The Keeper must issue a fresh certificate of registration and sections 9(4) to (6), 10, 12 and 14 apply to that certificate as they apply to a certificate of registration issued under section 9(2).
- (3) If the rectification of the register was to correct a mistake arising as a consequence of a mistake by the Keeper when making up or amending a registration schedule or making consequential amendments to the register, the Keeper is liable for any costs incurred by any person in connection with complying with section 12.
- (4) If the rectification of the register was to correct a mistake arising as a consequence of a mistake made by the Commission when forwarding the application for registration under section 7(3)(b) or when submitting (on their own behalf) an application for registration, the Commission are liable for any costs incurred by any person in connection with complying with section 12.
- (5) In this section—
  - “material inaccuracy” has the meaning given by section 7(8);
  - “mistake” has the meaning given by section 16(7).

## **18 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—
  - (a) a mistake in the register made by the Keeper when making up or amending a registration schedule or making consequential amendments in the register, the correction of which would require rectification of the register;
  - (b) a rectification of the register under section 16(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;
  - (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 19(1).
- (3) But the Keeper is not liable to indemnify a person under subsection (1) in relation to a mistake such as is mentioned in subsection (2)(a) if—
  - (a) the existence of the mistake was, or ought to have been, known to—
    - (i) the person seeking indemnity for loss; or
    - (ii) any person acting as solicitor or other legal adviser of that person, at the time of registration (construed as including completion of registration under section 9 or 10 and notification under section 21);
  - (b) the mistake relates to an inaccuracy in the delineation of any boundaries shown in a registration schedule, being an inaccuracy which could not have been rectified by reference to the ordnance map or to such other map as the Keeper, for the purposes of section 11(2)(a), considers appropriate; or
  - (c) the loss was caused by the fraudulent or careless act or omission of the person seeking indemnity for loss.
- (4) 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

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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.

- (5) A person who, as a result of a mistake mentioned in subsection (6)—
- (a) takes a step mentioned in subsection (7); and
  - (b) suffers a loss in so doing,
- is to be indemnified by the Commission in respect of that loss.
- (6) That mistake is a mistake in the register arising as a consequence of a mistake made by the Commission when forwarding the application for registration under section 7(3)(b) or when submitting (on their own behalf) the application for registration.
- (7) Those steps are—
- (a) the submitting of a fresh application for registration;
  - (b) the making of an application for rectification of the register under section 16(3).
- (8) Subsection (5) applies whether or not the register is rectified to correct the mistake referred to in that subsection.
- (9) In this section, “mistake” has the meaning given by section 16(7).

### *Rules and fees*

## **19 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 (including the form and manner in which the register is made available to the public);
  - (b) prescribing the form of any search, report or other document to be issued or used in connection with this Part and regulating the issuing of any such document;
  - (c) prescribing the form of application for registration;
  - (d) regulating the procedure on application for any registration;
  - (e) prescribing the form of deeds relating to registered crofts;
  - (f) concerning such other matters as seem to Ministers to be necessary or proper in order to give full effect to the purposes of this Part.
- (2) The Scottish Ministers may, by order, prescribe the fees payable in respect of registration and in respect of provision by the Keeper of searches, reports, certificates or other documents or copies of documents or of information from the register.
- (3) An order under subsection (2) may include provision about—
- (a) the circumstances in which a person making an application for first registration is to be entitled to a reduction in the fee that would otherwise be payable in respect of such registration;
  - (b) the amount of or, as the case may be, method of calculating that reduction; and

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- (c) the manner in which that reduction is to be achieved (whether by way of discount, repayment or otherwise and including any effect that reduction may have on the operation of sections 7(1) and (3)(b)(ii) and 8(2)(d)).

#### Commencement Information

**I12** S. 19 in force at 30.10.2012 by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

VALID FROM 30/11/2012

### *Appeals*

#### **20 Appeals**

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

VALID FROM 30/11/2012

### *Notification of change to registration schedule*

#### **21 Notification of change to registration schedule**

- (1) Where the registration schedule of a croft or an owner-occupied croft is amended as a result of an event such as is mentioned in section 5(1) taking place, the Keeper must give written notification of the amendment—
- (a) to the person who applied to register the event by virtue of that section; and
  - (b) where that person is not the Commission, to the Commission.
- (2) Where, by virtue of being the applicant, the Commission receive notification under subsection (1)(a), they must send a copy of the notification to the crofter or, as the case may be, owner-occupier crofter of the croft to which the notification relates.
- (3) Where the registration schedule of a croft, or, in relation to a croft, the register, is amended in accordance with subsection (3) of section 10, the Keeper must give written notification of the amendment—
- (a) to—
    - (i) the person who made the application mentioned in paragraph (a) of that subsection; or
    - (ii) where that person is no longer the crofter, or the owner-occupier crofter, of the croft as a result of the granting of the application mentioned in section 4(4)(b), (c) or (o), the person who is for the time being the crofter or, as the case may be, owner-occupier crofter of the croft; and
  - (b) to the Commission.

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- (4) Subsection (5) applies where, as a result of an order under section 14(4) or 20(2), or under section 26K(9), 52A(4A) or 53(3) of the 1993 Act, an amendment is made to—
- (a) the registration schedule of a croft;
  - (b) the register.
- (5) The Keeper must give written notification to—
- (a) any person appearing to the Keeper to be affected by the amendment; and
  - (b) the Commission.

VALID FROM 30/11/2012

*Consequential amendments of the 1993 Act*

**22 Meaning of “croft” etc.**

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

**“3ZA Registered crofts**

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

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VALID FROM 30/11/2013

## **23 Registration of new crofts**

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

### **“3AA Registration of new crofts**

- (1) This section applies where the Commission make a determination to exercise their power under section 3A(1) or, as the case may be, (2), to constitute land or, as the case may be, a holding as a croft.
- (2) The application for registration of the land or holding in the Crofting Register must not be forwarded to the Keeper under section 7(3)(b) of the Crofting Reform (Scotland) Act 2010 (asp 14)—
  - (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
  - (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission's determination under section 3A(1) or, as the case may be, (2).
- (3) In the case of an application for registration of a holding in relation to which a determination under section 3A(2) is made, the Commission must not forward the application unless they are satisfied—
  - (a) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being constituted as a croft and that the amount has been duly paid;
  - (b) that the applicant and the owner have agreed that no amount in compensation is to be so payable; or
  - (c) that any such amount found, by virtue of section 3B, to be so payable has been duly paid.”.
- (5) In section 3B of the 1993 Act (compensation for constituting holding as a croft), in subsection (1), for “subsection (4)(b)(i) or (ii) of that section” substitute “section 3AA(3)(a) or (b)”.

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)*

### Registration of common grazings

VALID FROM 30/11/2012

#### 24 First registration of common grazings

- (1) An unregistered common grazing—
  - (a) must be registered, in the case of a new common grazing, subject to section 51B of the 1993 Act, on the determination under section 51A(1) of that Act to constitute the land as a common grazing;
  - (b) may be registered, in any other case, on an application being made by the Commission.
- (2) Where land is registered under subsection (1), for the purposes of this Act—
  - (a) the land is, from the date of registration, a common grazing; and
  - (b) the land which comprises the common grazing is determined by the description of that land in the registration schedule of the common grazing.
- (3) Nothing in this section affects whether, before the date of registration, the land was a common grazing.
- (4) In this Part, “new common grazing” means land in relation to which the Commission have made a determination, under section 51A(1) of the 1993 Act, to constitute the land as a common grazing.

#### 25 Registration of events affecting registered common grazings

- (1) The following events in relation to a registered common grazing must be registered, that is—
  - (a) the transfer (whether or not for valuable consideration) of the ownership of any land on which the common grazing is situated;
  - (b) the taking, in relation to the common grazing, of a step mentioned in subsection (2).
- (2) The steps referred to in subsection (1)(b) are—
  - (a) the giving of authorisation to resume the common grazing or part of the common grazing under section 20(1) of the 1993 Act;
  - (b) the granting under section 20(1C) of that Act of an extension of the period for which resumption of the common grazing is authorised;
  - (c) the making of a determination under section 20(1F) of that Act converting a temporary resumption of the common grazing into an ordinary resumption;
  - (d) the making of an order under section 21A of that Act that land resumed under section 20 of that Act is to revert to being a common grazing;
  - (e) the enlargement of the common grazing under section 51 of that Act;
  - (f) the termination of all or part of a person's share in the common grazing under section 52(1E)(b)(i) of that Act;
  - (g) the apportionment—
    - (i) of a share or part of a share in the common grazing under section 52(1E)(b)(ii) of that Act;



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*Changes to legislation:* There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)

- (ii) of the common grazing, or part of the common grazing, under 52(3) of that Act;
    - (iii) of a part of the common grazing under section 52(4) of that Act;
  - (h) the extension, under subsection (11) of section 52 of that Act, of any period for which a part of the common grazing is apportioned under subsection (10) of that section;
  - (i) the bringing to an end, under subsection (12) of section 52 of that Act, of an apportionment of the common grazing or part of the common grazing made in pursuance of subsection (3) or (4) of that section;
  - (j) the making of a determination under section 52(14) of that Act as to shares in the common grazing;
  - (k) the transfer (whether or not for valuable consideration) by a person who holds a right in the common grazing of that right to another person.
- (3) But no application for registration of a step mentioned in paragraph (g)(iii), or paragraph (i), of subsection (2) need be submitted if an application for registration of such a step is submitted by virtue of section 5.
- (4) The Scottish Ministers may, by regulations, make provision about when ownership is to be treated as transferred for the purposes of subsection (1)(a).
- (5) The Scottish Ministers may, by order, modify subsection (2) so as to—
  - (a) add a step to;
  - (b) modify the description of a step in;
  - (c) remove a step from,that subsection.

#### Commencement Information

**I13** S. 25 in force at 30.10.2012 for specified purposes by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

VALID FROM 30/11/2012

## 26 Applications for registration: common grazings

- (1) An application for—
  - (a) first registration of a new common grazing; or
  - (b) registration of an event affecting a registered common grazing (other than one which falls to be submitted by the Commission),and the fee payable in respect of such registration, is to be submitted to the Commission.
- (2) An application for first registration of a new common grazing is to be submitted at the same time as an application under section 51A(1) of the 1993 Act.
- (3) An application for registration of an event affecting a registered common grazing is to be submitted—
  - (a) in the case of the transfer of the ownership of any land on which the common grazing is situated, by the person to whom such ownership is transferred;
  - (b) in the case of a step mentioned in section 25(2)—

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- (i) in accordance with the requirements of the 1993 Act; or
  - (ii) in the absence of such requirements, as soon as reasonably practicable after the step is taken.
- (4) In respect of an application submitted to the Commission under this section, the Commission must, subject to section 51B of the 1993 Act and to subsections (5) and (6), forward—
  - (a) the application, together with any comments they may have on it; and
  - (b) the fee payable in respect of it,to the Keeper as soon as reasonably practicable.
- (5) The Commission may, before forwarding an application for registration to the Keeper, require the applicant to provide them with such further information relating to the application as they consider appropriate.
- (6) The Commission may refuse to forward an application for registration if—
  - (a) a requirement under subsection (5) is not complied with;
  - (b) the application is frivolous or vexatious;
  - (c) the fee payable in respect of registration has not been tendered;
  - (d) there is a material inaccuracy in the application; or
  - (e) they consider that the Keeper would otherwise not accept the application under section 8(2).
- (7) Where the Commission refuse to forward an application for registration, section 52A of the 1993 Act applies as if that refusal were a decision of the Commission on an application to them under that Act.
- (8) An application for first registration of a common grazing by the Commission is to be submitted to the Keeper.
- (9) Before submitting such an application, the Commission must consult—
  - (a) the owner of the common grazing; and
  - (b) where there is a grazings committee or grazings constable, that committee or that constable.
- (10) Where there is no grazings committee or grazings constable, the Commission must notify, in such manner as they consider appropriate (including by means of advertisement), all persons who hold a right in the common grazing of the application.
- (11) Any person notified under subsection (10) may make representations to the Commission in respect of the proposed application.
- (12) In subsection (6)(d), “material inaccuracy” means an inaccuracy relating to any matter mentioned in section 11(2) (as that section applies, with the modifications specified in schedule 3, to common grazings).
- (13) In this section, “first registration” means the registration of an unregistered common grazing.
- (14) Section 7 does not apply to applications for registration of a common grazing.

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**Changes to legislation:** There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)

VALID FROM 30/11/2013

## 27 Registration of new common grazings

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

### “51B Registration of new common grazings

- (1) Subsection (2) applies where the Commission make a determination to exercise their power under section 51A(1) to constitute land as a common grazing.
- (2) The application for registration of the land in the Crofting Register must not be forwarded to the Keeper under section 26(4) of the 2010 Act—
  - (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
  - (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission's determination under section 51A(1).”.

## 28 Application of Act to common grazings

Schedule 3, which applies certain provisions of this Act relating to crofts to common grazings, has effect.

### Commencement Information

**114** S. 28 in force at 30.10.2012 for specified purposes by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

VALID FROM 30/11/2012

### *Offences*

## 29 Transfer of land containing crofts: offences

- (1) A person commits an offence if, ownership of an owner-occupied croft having been transferred to the person as is mentioned in section 4(1)(b), the person fails within 1 year of the transfer to apply to register the owner-occupied croft.
- (2) A person commits an offence in respect of each further 1 year period where the person continues to fail to apply to register the owner-occupied croft mentioned in subsection (1).
- (3) But an offence under subsection (1) or (2) cannot be committed by a person in respect of an owner-occupied croft after the person is no longer required, by virtue of section 4(9), to register the owner-occupied croft.

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- (4) A person commits an offence if—
- (a) ownership of an owner-occupied croft having been transferred to the person as is mentioned in section 5(1)(a); or
  - (b) ownership of land having been transferred to the person as is mentioned in section 5(1)(b)(i),
- the person fails within 1 year of the transfer to apply to register the transfer.
- (5) A person commits an offence in respect of each further 1 year period where the person continues to fail to apply to register the transfer mentioned in subsection (4).
- (6) A person who commits an offence under subsection (1), (2), (4) or (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **30 Change of landlord: offences**

- (1) A person commits an offence if, having become the landlord of a croft, the person fails, within 1 year of becoming such a landlord, to apply to register the change of landlord in accordance with section 5(1)(b)(ii).
- (2) A person commits an offence in respect of each further 1 year period where the person continues to fail to apply to register the change of landlord mentioned in subsection (1).
- (3) But no offence is committed under this section by a person who becomes the landlord of a croft by virtue of the transfer of ownership of land on which the croft is situated.
- (4) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **31 Transfer of land on which common grazing is situated: offences**

- (1) A person commits an offence if, ownership of land such as is mentioned in section 25(1)(a) having been transferred to the person, the person fails within 1 year of the transfer to apply to register the transfer.
- (2) A person commits an offence in respect of each further 1 year period where the person continues to fail to apply to register the transfer mentioned in subsection (1).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## *Lands held runrig*

### **32 Lands held runrig**

- (1) Unregistered land held runrig may be registered on an application being made by the Commission.
- (2) An application for first registration of land held runrig is to be submitted to the Keeper.
- (3) Before submitting such an application the Commission must—
- (a) consult the owner of the land; and

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- (b) notify, in such manner as they consider appropriate (including by means of advertisement), all persons who are holders of the land held runrig.
- (4) Any person notified under subsection (3) may make representations to the Commission in respect of the application.
- (5) The following events in relation to registered land held runrig must be registered, that is—
  - (a) the apportionment of the land under section 52(8) of the 1993 Act;
  - (b) the extension, under subsection (11) of section 52 of that Act, of any period for which a part of the land is apportioned under subsection (10) of that section.
- (6) An application for registration of an event mentioned in subsection (5), and the fee payable in respect of such registration, is to be submitted to the Commission.
- (7) In respect of such an application, the Commission must, subject to subsections (8) and (9), forward—
  - (a) the application, together with any comments they may have on it; and
  - (b) the fee payable in respect of it,to the Keeper as soon as reasonably practicable.
- (8) 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.
- (9) The Commission may refuse to forward an application for registration if—
  - (a) a requirement under subsection (8) is not complied with;
  - (b) the application is frivolous or vexatious;
  - (c) the fee payable in respect of registration has not been tendered;
  - (d) there is a material inaccuracy in the application; or
  - (e) they consider that the Keeper would otherwise not accept the application under section 8(2).
- (10) 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.
- (11) Section 7 does not apply to applications for registration of land held runrig.
- (12) Sections 8 to 21 apply, with such modifications as may be necessary, in relation to land held runrig as they apply in relation to common grazings.
- (13) The reference to sections in subsection (12) is, where those sections are modified for the purposes of their application in relation to common grazings, to those sections as so modified.
- (14) In subsection (9)(d), “material inaccuracy” means an inaccuracy relating to any matter mentioned in section 11(2) (as that section applies, by virtue of subsection (12), to lands held runrig).
- (15) The Scottish Ministers may, by order, modify subsection (5) so as to—
  - (a) add an event to;
  - (b) modify the description of an event in;
  - (c) remove an event from,

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that subsection.

- (16) In subsection (2), “first registration” means the registration of unregistered land held runrig.

#### Commencement Information

**I15** S. 32 in force at 30.10.2012 for specified purposes by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

## PART 3

### DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS

*Crofters' duties relating to residency, use, misuse and neglect of crofts*

#### **33 Duties relating to residency, use, misuse and neglect of crofts**

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

*“Crofters' duties relating to residency, use, misuse and neglect of crofts*

##### **5AA Crofters: residency duty**

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

- (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—  
 (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is consented to under section 5C(4);  
 (b) fails to use the croft for the purposes of its being cultivated; or  
 (c) fails to put the croft to any such purposeful use.  
 (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—  
 (a) the natural beauty of the locality of the croft; or  
 (b) the flora and fauna of that locality,

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

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

### **5C Crofters: duty to cultivate and maintain**

- (1) A crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the crofter—
  - (a) must—
    - (i) cultivate the croft; or
    - (ii) put it to another purposeful use,  
so that every part of the croft which is capable of being cultivated or put to another purposeful use either is cultivated or is put to such use;
  - (b) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).
- (3) Without prejudice to the generality of paragraph (b) of subsection (2), in determining whether that paragraph is complied with, regard is to be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes and harmful weeds.
- (4) A crofter may only put the croft to a use mentioned in subsection (2)(a)(ii) if—
  - (a) the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or
  - (b) the Commission have consented to the use.
- (5) But a crofter may not apply to the Commission for consent under subsection (4)(b) until—
  - (a) the landlord has refused consent (or granted consent subject to conditions unacceptable to the crofter); or
  - (b) the period of 28 days, commencing with the date on which the request for the consent of the landlord was made, has expired,whichever occurs first.
- (6) The Commission must, on receipt of such an application for consent—
  - (a) consult, as regards the proposed purposeful use, the landlord and the members of the crofting community in the locality of the land; and
  - (b) if the proposed purposeful use—

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- (i) constitutes a change for which planning permission is required; or
  - (ii) by virtue of any enactment (other than this Act) requires any other permission or approval,
- require it to be shown that the permission or approval has been given.
- (7) The Commission must decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.
- (8) In this Act—
- “cultivate” includes the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands;
- “purposeful use” means any planned and managed use which does not adversely affect—
- (a) the croft;
  - (b) the public interest;
  - (c) the interests of the landlord or (if different) the owner; or
  - (d) the use of adjacent land.”.

#### Commencement Information

**I16** S. 33 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

#### *Duties of owner-occupier crofters*

### 34 Duties of certain owner-occupiers of crofts

After section 19A of the 1993 Act insert—

*“Owner-occupied crofts: duties of certain owners*

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

- (1) In this Act, a person is an “owner-occupier crofter” if all the conditions in subsections (2) to (4) are satisfied.
- (2) The first condition is that the person is the owner of a croft.
- (3) The second condition is that the person—
  - (a) was the crofter of the croft at the time of acquiring it (or is such a crofter's successor in title);
  - (b) acquired title to the croft as the nominee of a crofter (or is such a nominee's successor in title); or
  - (c) purchased the croft from the constituting landlord (or is such a purchaser's successor in title).
- (4) The third condition is that the croft has not been let to any person as a crofter either by virtue of section 26J or otherwise—



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- (a) at any time since it was acquired as mentioned in subsection (3)(a) or (b); or
  - (b) at any time since it was constituted as mentioned in subsection (6)(a).
- (5) 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.
- (6) For the purposes of subsection (3)(c), the “constituting landlord” is—
- (a) the owner of the land at the time the land was constituted as a croft under section 3A; or
  - (b) such an owner’s successor in title immediately before the croft is sold to the purchaser mentioned in subsection (3)(c).

### **19C Duties of owner-occupier crofters**

- (1) An owner-occupier crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the owner-occupier crofter—
- (a) must be ordinarily resident on, or within 32 kilometres of, the owner-occupier’s croft;
  - (b) must not misuse or neglect the croft;
  - (c) must—
    - (i) cultivate the croft; or
    - (ii) put it to another purposeful use,so that every part of the croft which is capable of being cultivated or put to another purposeful use either is cultivated or is put to such use;
  - (d) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).
- (3) For the purposes of subsection (2)(b), an owner-occupier crofter misuses an owner-occupied croft where the owner-occupier crofter—
- (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use;
  - (b) fails to use the croft for the purpose of its being cultivated; or
  - (c) fails to put the croft to any such purposeful use.
- (4) For the purposes of subsection (2)(b), an owner-occupier crofter neglects an owner-occupied croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).
- (5) Without prejudice to the generality of paragraph (d) of subsection (2), in determining whether that paragraph is complied with, regard is to be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes and harmful weeds.
- (6) But where the owner-occupier crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—

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- (a) the natural beauty of the locality of the owner-occupied croft; or
- (b) the flora and fauna of that locality,

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

- (7) If, immediately before the coming into force of section 34 of the Crofting Reform (Scotland) Act 2010 (asp 14), the owner-occupied croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of schedule 2 to this Act (as that paragraph applied immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7)), any continuation of use for that occupation is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.
- (8) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (4) so as to substitute different standards for those for the time being mentioned in that subsection.

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

- (1) An owner-occupier crofter may not transfer (whether or not for valuable consideration) ownership of any part of the owner-occupier's croft without first dividing the croft into the part which the owner-occupier crofter proposes to transfer and the part which the owner-occupier crofter proposes to retain.
- (2) The owner-occupier crofter may so divide that owner-occupier's croft only if the owner-occupier crofter first obtains the consent of the Commission to that division.
- (3) Where consent is applied for under subsection (2) in relation to an unregistered owner-occupied croft, the Commission—
  - (a) must not grant that consent unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
  - (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the owner-occupied croft is submitted.
- (4) In relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft)—
  - (a) any consent of the Commission given by virtue of subsection (2) to a division of the owner-occupied croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the division takes effect on the date of registration.
- (5) The Keeper must make up and maintain a registration schedule in accordance with section 11 of the 2010 Act in respect of a new croft created by a division under this section.
- (6) Any transfer of ownership 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 transfer ownership of that part, is null and void.

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- (7) Where the transfer of ownership of a part of an owner-occupied croft is null and void under subsection (6), the Commission may declare the original croft vacant.
- (8) 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.”.

#### Commencement Information

**I17** S. 34 in force at 22.12.2010 for specified purposes by S.S.I. 2010/437, art. 3, Sch. (with art. 4)

**I18** S. 34 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with arts. 4, 5(2), 5(3))

#### *Commission consent for absence from croft*

### **35 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**

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

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)*

### 21C Extension of consent for absence

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

### 21D Variation of condition in consent for absence

- (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)."

#### Commencement Information

**I19** S. 35 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

### *Enforcement of duties of crofters and owner-occupier crofters*

## 36 Information as to compliance with duties: annual notices

After section 40 of the 1993 Act insert—

### “40A Annual notices

- (1) The Commission must—
  - (a) by notice given to each crofter, require the crofter to provide the Commission with the information mentioned in subsection (2);
  - (b) by notice given to each owner-occupier crofter, require the crofter to provide the Commission with the information mentioned in subsection (3).
- (2) The information referred to in subsection (1)(a) is—
  - (a) whether or not the crofter is complying with the duties mentioned in sections 5AA, 5B and 5C;
  - (b) where the crofter is not complying with one or more of those duties—
    - (i) in the case of the duty mentioned in section 5AA, whether the Commission have granted consent under section 21B;
    - (ii) in any case (other than the duty not to misuse the croft), whether a subtenant of the crofter by virtue of a lease to which section 27 applies is complying with the duty; and

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- (c) information relating to any other matter the Commission may require.
- (3) The information referred to in subsection (1)(b) is—
- (a) whether or not the owner-occupier crofter is complying with the duties mentioned in section 19C(2);
  - (b) where the owner-occupier crofter is not complying with one or more of those duties—
    - (i) in the case of the duty mentioned in section 19C(2)(a), whether the Commission have granted consent under section 21B;
    - (ii) in any case (other than the duty not to misuse the croft), whether a tenant of the crofter by virtue of a short lease (within the meaning of section 29A) is complying with the duty; and
  - (c) information relating to any other matter the Commission may require.
- (4) The first notices under subsection (1) must be given as soon as reasonably practicable after the end of the period of 1 year beginning with the day section 36 of the 2010 Act comes into force.
- (5) Subsequent notices must be given as soon as reasonably practicable after the end of each successive 1 year period.
- (6) Subsection (2) of section 40 applies to a notice given under subsection (1) of this section as it applies to a notice served under subsection (1) of that section.
- (7) Section 55(1A) does not apply to a notice given under subsection (1).”.

**Commencement Information**

**I20** S. 36 in force at 1.4.2012 by S.S.I. 2011/334, art. 3(1)(b)(2), Sch. Pt. 2

**37 Enforcement of duties of crofters and certain owner-occupiers**

After section 26 of the 1993 Act insert—

*“Investigation of suspected breach of duty*

**26A Commission's duty to investigate suspected breach of duty**

- (1) This section applies where the Commission receive—
- (a) a report from a grazings committee under section 49A(1) which includes information on a matter mentioned in subsection (2); or
  - (b) information in writing from a person mentioned in subsection (3) relating to such a matter.
- (2) The matter referred to in subsection (1) is that—
- (a) a crofter is not complying with a duty mentioned in section 5AA, 5B or 5C; or
  - (b) an owner-occupier crofter is not complying with a duty mentioned in section 19C(2).
- (3) The person referred to in subsection (1)(b) is—
- (a) a grazings committee;

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- (b) a grazings constable;
  - (c) an assessor appointed under paragraph 16 of schedule 1;
  - (d) a member of the crofting community within which the croft to which the matter mentioned in subsection (2) relates is situated.
- (4) The Commission must investigate whether or not the duty to which the report or, as the case may be, information relates is being complied with.
- (5) But the Commission need not do so where they consider the information included in the report or, as the case may be, received as mentioned in subsection (1)(b) is frivolous or vexatious.

### *Enforcement of duties*

#### **26B Enforcement of duties of crofters and owner-occupier crofters: general**

- (1) This section and section 26C apply where the Commission consider (whether following an investigation under section 26A(4) or otherwise) that—
- (a) a crofter is not complying with any of the duties mentioned in section 5AA, 5B or 5C;
  - (b) an owner-occupier crofter is not complying with any of the duties mentioned in section 19C(2).
- (2) For the purposes of subsection (1)(a)—
- (a) where a crofter has sublet the croft by virtue of a lease to which section 27 applies, the crofter is deemed to comply with the duties mentioned in that subsection (other than the duty not to misuse the croft) if the crofter's subtenant complies with the duties;
  - (b) where the Commission have granted consent under section 21B, the crofter is deemed to comply with the duty mentioned in section 5AA.
- (3) For the purposes of subsection (1)(b)—
- (a) where an owner-occupier crofter has let the croft by virtue of a short lease to which section 29A applies, the owner-occupier crofter is deemed to comply with the duties mentioned in that subsection (other than the duty not to misuse the croft) if the owner-occupier crofter's tenant complies with the duties;
  - (b) where the Commission have granted consent under section 21B, the owner-occupier crofter is deemed to comply with the duty mentioned in section 19C(2)(a).
- (4) In sections 26C, 26D and 26K, the “relevant person” means the crofter (in the case of a croft) or the owner-occupier crofter (in the case of an owner-occupied croft).

#### **26C 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.

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- (2) The notice must—
  - (a) explain the reasons why the Commission consider that the duty is not being complied with;
  - (b) indicate that the relevant person may make representations to the Commission before the expiry of the period of 28 days beginning with the day on which notice is given to the person (the “representation period”); and
  - (c) where given to a crofter, be copied to the landlord of the croft.
- (3) The Commission must have regard to any representations received within the representation period.
- (4) The Commission may also have regard to any representations received after the end of the representation period.
- (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.

#### **26D Undertakings: general**

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

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

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

- (a) the period for giving an undertaking under section 26D has not expired;

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- (b) an undertaking has been given under section 26D and the period for complying with the undertaking has not expired;
- (c) an undertaking given under section 26D 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 short lease (within the meaning of section 29A(4));
  - (ii) an application for consent to a lease has been made under section 29A and has not been determined;
- (f) in the case of failure to comply with a duty mentioned in section 5AA or 19C(2)(a)—
  - (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 it is fair to do so, divide a croft or, as the case may be, an owner-occupied croft.
- (2) In satisfying themselves as mentioned in subsection (1), the Commission must have regard to—
  - (a) the use and occupation of the croft or owner-occupied croft;
  - (b) in the case of a croft, the interests of the estate in which the croft is located;
  - (c) the sustainable development of the crofting community in the locality of the croft or owner-occupied croft;



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- (d) such other matters as the Commission consider appropriate.
- (3) Any division of a croft or an owner-occupied croft under subsection (1) takes effect—
  - (a) as respects an application for first registration of the croft, or owner-occupied croft, submitted by virtue of section 4 of the 2010 Act, on the date of registration;
  - (b) as respects an application for registration of the division of the croft, or owner-occupied croft, submitted by virtue of section 5 of that Act, on the date of registration.
- (4) The Keeper must make up and maintain a registration schedule in accordance with section 11 of the 2010 Act in respect of a new croft created by a division under this section.
- (5) 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.
- (6) Where a croft, other than an owner-occupied croft, is divided under subsection (1), the Commission must give written notice of the division to the landlord of the croft, specifying the date on which the division took effect.
- (7) 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).

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- (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**

- (1) The Commission must, unless they consider that there is a good reason not to, direct the owner-occupier crofter to submit to them, before the expiry of the period of 28 days beginning with the day on which the direction is given, a proposal for letting the owner-occupier's croft.
- (2) No more than three proposals for letting the croft may be submitted in response to a direction given under subsection (1).
- (3) Where a proposal for letting the croft is submitted to the Commission in response to a direction given under subsection (1), they must approve or reject the proposal within the period of 8 weeks beginning with the day on which the direction was given.
- (4) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (7) and (8) if—
- (a) no proposals for letting the croft are submitted by the owner-occupier crofter before the expiry of the period mentioned in subsection (1);
  - (b) the owner-occupier crofter has submitted one or two proposals for letting the croft within the period mentioned in subsection (1) and—
    - (i) all such proposals are rejected by the Commission; and
    - (ii) the period mentioned in subsection (1) has expired; or
  - (c) the owner-occupier crofter has submitted three proposals for letting the croft (within the period mentioned in subsection (1)) and the Commission have rejected all three.
- (5) Any letting of an unregistered owner-occupied croft in accordance with proposals submitted under subsection (1) is void unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.
- (6) In relation to a registered owner-occupied croft—
- (a) any approval under subsection (3) of a proposal for letting the owner-occupied croft under subsection (1) expires at the end of the period of 3 months beginning with the date on which the approval was given unless an application for registration of the letting of the owner-occupied croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the letting of the owner-occupied croft takes effect on the date of registration.
- (7) The Commission must, by public notification, invite applications for letting the owner-occupied croft before the expiry of the period specified in the notification.
- (8) 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

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- (b) after consulting the owner-occupier crofter, on what conditions to let the croft.
- (9) Any letting of an unregistered owner-occupied croft pursuant to a decision under subsection (8) is void unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.
- (10) In relation to a registered owner-occupied croft—
- (a) any decision under subsection (8) to let the owner-occupied croft to an applicant is, at the end of the period of 3 months beginning with the date on which the decision was made, to be treated as if it had not been made unless an application for registration of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the letting of the owner-occupied croft takes effect on the date of registration.
- (11) Where an owner-occupied croft has been let on conditions set by the Commission under subsection (8)(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.
- (12) If the Land Court, on an application under subsection (11), varies the conditions of let, any variation takes effect as from the date of the letting.

### **26K Appeals**

- (1) A relevant person may appeal to the Land Court against a decision of the Commission under section 26C(5) that a duty is not being complied with.
- (2) A relevant person may appeal to the Land Court against a decision of the Commission under section 26D—
- (a) not to accept an undertaking;
  - (b) to impose conditions on such an undertaking.
- (3) A relevant person may appeal to the Land Court against—
- (a) the making by the Commission of an order under section 26H; or
  - (b) the giving by the Commission of a direction under section 26J.
- (4) An appeal under subsection (3) may include an appeal against a division under section 26G of (as the case may be)—
- (a) the croft; or
  - (b) the owner-occupied croft.
- (5) An appeal under subsection (2) or (3) must be made before the expiry of the period of 42 days beginning with the day on which the decision, order or direction is made.
- (6) An appeal under subsection (2) or (3) may be made only on one or more of the following grounds—
- (a) that the Commission erred in law;
  - (b) that the Commission made a finding as to a fact material to the decision, order or direction but did not have sufficient evidence on which to base that finding;

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- (c) that the Commission acted contrary to natural justice;
  - (d) that the Commission took into account certain irrelevant or immaterial considerations;
  - (e) that the Commission failed to take into account certain relevant or material considerations;
  - (f) that the Commission exercised their discretion in an unreasonable manner.
- (7) 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.
- (8) The Commission must give effect to the decision of the Land Court on an appeal under this section.
- (9) The Land Court may, if it considers it appropriate in consequence of any decision on an appeal under subsection (3), order the Keeper to rectify the Crofting Register.”

#### **Commencement Information**

**I21** S. 37 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5(3))

*Grazings committees: duty to report misuse etc.*

### **38 Grazings committees: duty to report breaches of crofters' and owner-occupier crofters' duties etc.**

After section 49 of the 1993 Act insert—

#### **“49 A Grazings committees: duty to report**

- (1) Each grazings committee must report to the Commission on—
- (a) the condition of the common grazing;
  - (b) the condition of every croft of a crofter sharing in the grazing;
  - (c) the condition of every owner-occupied croft of an owner-occupier crofter sharing in the grazing;
  - (d) any other matter the Commission may require.
- (2) Where the committee consider that—
- (a) a crofter sharing in the grazing is not complying with a duty mentioned in section 5AA, 5B or 5C;
  - (b) an owner-occupier crofter sharing in the grazing is not complying with a duty mentioned in section 19C(2),
- the report under subsection (1) must also include information on that matter.
- (3) A report under subsection (1) may also include information on any other matter affecting—

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- (a) the common grazing;
  - (b) crofting in any township associated with the grazing,  
as the committee consider appropriate.
- (4) The first report under subsection (1) must be submitted as soon as reasonably practicable after the end of the period of 1 year beginning with the day section 38 of the 2010 Act comes into force.
- (5) Each subsequent report must be submitted as soon as reasonably practicable after the end of each successive period of 5 years.”.

#### Commencement Information

**I22** S. 38 in force at 1.4.2012 by S.S.I. 2011/334, art. 3(1)(b)(2), Sch. Pt. 2

#### *Letting of owner-occupied crofts*

### **39 Letting of owner-occupied crofts**

After section 29 of the 1993 Act insert—

#### *“Letting of owner-occupied crofts*

##### **29A Letting of owner-occupied crofts**

- (1) An owner-occupier crofter may not let the owner-occupier's croft (or any part of it) without the consent of the Commission.
- (2) Subject to subsection (7), where consent is applied for under subsection (1) in relation to an unregistered owner-occupied croft (or any part of such an owner-occupied croft), the Commission—
  - (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
  - (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.
- (3) Subject to subsection (8), in relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft), or any part of such a croft—
  - (a) any consent under subsection (1) expires at the end of the period of 3 months beginning with the date on which such consent was granted unless an application for registration of the letting of the croft (or part of the croft) is made by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the letting of the croft (or part of the croft) takes effect on the date of registration.

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- (4) 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.
- (5) A lease is void if it is granted—
  - (a) without the Commission's consent;
  - (b) in the case of a short lease, otherwise than in accordance with such conditions as the Commission may impose.
- (6) The Commission may terminate a short lease granted under this section if—
  - (a) a condition imposed under subsection (4) is breached; or
  - (b) the tenant fails to comply with a condition of let (other than any relating to rent).
- (7) Subsection (2) does not apply to an application for consent to a proposed lease which is a short lease.
- (8) Subsection (3) does not apply to—
  - (a) consent under subsection (1) to a short lease; or
  - (b) the letting of the croft (or part of the croft) on a short lease.
- (9) Where, by virtue of a lease granted under this section, a right in a common grazing is let to the tenant under the lease—
  - (a) that tenant comes into the place of the owner-occupier crofter in relation to any matter which concerns the right; and
  - (b) any grazings regulations applicable to the grazing apply to the tenant accordingly.
- (10) Subsections (1) to (6) 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.”.

#### **Commencement Information**

**I23** S. 39 in force at 22.12.2010 for specified purposes by S.S.I. 2010/437, art. 3, Sch. (with art. 4)

**I24** S. 39 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with arts. 4, 5(3))

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## PART 4

### FURTHER AMENDMENTS OF THE 1993 ACT

#### *Disposal of croft land, resumption and decrofting*

#### **40 Limitation on crofter's ability to nominate donee**

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

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

#### **Commencement Information**

**I25** S. 40 in force at 1.7.2011 by S.S.I. 2010/437, art. 3, Sch. (with arts. 4, 5(1))

#### **41 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”.

#### **Commencement Information**

**I26** S. 41 in force at 1.7.2011 by S.S.I. 2010/437, art. 3, Sch. (with arts. 4, 5(2))

#### **42 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—

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- (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.”.

#### **Commencement Information**

**I27** S. 42 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)

### **43 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—



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“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.”.

#### Commencement Information

**I28** S. 43 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

### *Letting of vacant crofts*

#### **44 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 4 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 2 months beginning with the day on which the notice is given,”; and
  - (b) the words from “, and if,” to the end are repealed.
- (5) After that subsection insert—
  - (5ZA) No more than three proposals may be submitted to the Commission in response to a notice given under subsection (5).
  - (5ZB) Where a proposal for letting the croft is submitted to the Commission in response to a notice given under subsection (5), they must approve or reject the proposal—
    - (a) in a case where the croft is declared vacant under section 11(8), within the period of 5 months beginning with the day on which the notice under section 11(8)(a) is given; or
    - (b) in any other case, within the period of 3 months beginning with the day on which the notice under subsection (5) was given.
  - (5ZC) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (5B) and (5C) if—
    - (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of 2 months mentioned in subsection (5);
    - (b) the landlord has submitted one or two proposals for letting the croft within the period of 2 months mentioned in subsection (5) and—
      - (i) all such proposals are rejected by the Commission; and
      - (ii) the period of 2 months mentioned in subsection (5) has expired; or
    - (c) the landlord has submitted three proposals for letting the croft (within the period of 2 months mentioned in subsection (5)) and the Commission have rejected all three.”.

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(6) For subsection (5A) substitute—

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

- (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of 4 months mentioned in section 11(8)(a);
- (b) the landlord has submitted one or two proposals for letting the croft within the period of 4 months mentioned in section 11(8)(a) and—
  - (i) all such proposals are rejected by the Commission; and
  - (ii) the period of 4 months mentioned in section 11(8)(a) has expired; or
- (c) the landlord has submitted three proposals for letting the croft (within the period of 4 months mentioned in section 11(8)(a)) and the Commission have rejected all three.”.

**Commencement Information**

**I29** S. 44 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

**45 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.”.

**Commencement Information**

**I30** S. 45 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

*Enlargement of crofts and common grazings*

**46 Enlargement of crofts**

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

**“4 Enlargement of crofts**

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

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)*

- (a) which is not a croft; and
  - (b) which does not form part of a croft,
- agrees to grant a tenancy of that land to a crofter.
- (2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant.
- (3) Where a croft such as is mentioned in subsection (2) is an unregistered croft, the Commission—
- (a) must not make a direction under subsection (4) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made;
  - (b) need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.
- (4) The Commission may make a direction if they are satisfied that the enlargement of the croft—
- (a) would be of benefit to the croft or to the crofter;
  - (b) would not result in the area of the enlarged croft substantially exceeding 30 hectares.
- (5) Where the Commission make a direction in relation to an unregistered croft or a first registered croft, the land forms part of the croft with effect from the later of—
- (a) the date of the direction; or
  - (b) the date of entry under the tenancy.
- (6) Where the Commission make a direction in relation to a registered croft (other than a first registered croft)—
- (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the enlargement takes effect on the date of registration.
- (7) 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.
- (8) In subsections (5) and (6), “first registered croft” means a croft mentioned in section 5(2) of the 2010 Act.”.

#### **Commencement Information**

**I31** S. 46 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with arts. 4, 5(3))

## **47 Enlargement of common grazings**

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

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)*

### **“51 Enlargement of common grazings**

- (1) This section applies where—
  - (a) an owner of land to which this Act does not apply agrees to grant rights in any pasture or grazing land to the crofters sharing in a common grazing; and
  - (b) the owner and the crofters agree that such land will form part of the common grazing.
- (2) The owner and the crofters may apply jointly to the Commission for a direction that the land is to form part of the common grazing.
- (3) The Commission may make a direction if they are satisfied that the enlargement of the common grazing would be of benefit to the common grazing or the crofters sharing in it.
- (4) Where the Commission make a direction in relation to an unregistered common grazing, the land forms part of the common grazing from the later of—
  - (a) the date of the direction; or
  - (b) the date on which the rights mentioned in subsection (1)(a) are first exercisable.
- (5) Where the Commission make a direction in relation to a registered common grazing—
  - (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the common grazing is submitted by virtue of section 25 of the 2010 Act before the expiry of that period;
  - (b) the enlargement takes effect on the date of registration.”.

#### **Commencement Information**

**I32** S. 47 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5(3))

### *Commission's approval and consent*

#### **48 Obtaining Commission approval or consent**

- (1) Section 58A of the 1993 Act (obtaining Commission approval or consent) is amended as follows.
- (2) At the beginning of subsection (3), insert “ Subject to subsection (5B), ”.
- (3) In subsection (4)—
  - (a) the word “or” immediately preceding paragraph (c) is repealed; and
  - (b) at the end of that paragraph insert “; or
    - (d) any other person the Commission consider has a relevant interest in the application,”.
- (4) After subsection (5) insert—

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“(5A) Despite subsection (4), the Commission may accept an objection submitted after the end of the 28-day period if they consider there is a good reason why the objection is late.

(5B) Where the application is an application for consent to divide a croft under section 9 made by an executor under section 10(4A)—

- (a) subsections (3) to (5A);
- (b) in subsection (6), the words “When those 28 days have elapsed”;
- (c) in subsection (12A), paragraph (b); and
- (d) subsections (16) and (17),

do not apply.”.

(5) In subsection (6)—

- (a) after “Commission” insert “ must, subject to subsection (6A), 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.”.

(6) After subsection (6) insert—

“(6A) Where—

- (a) the application for consent to divide the croft is made by an executor under section 10(4A); and
- (b) it relates to a bequest of the tenancy of the part of the croft comprising the site of the dwelling-house on or pertaining to the croft to one natural person and the tenancy of the remaining part to one other such person,

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

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

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

- (a) in the case of an application relating to a croft—
  - (i) whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft;
  - (ii) whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4);
- (b) the interests of the estate which comprises the land to which the application relates;
- (c) the interests of the crofting community in the locality of that land;
- (d) the sustainable development of that crofting community;
- (e) the interests of the public at large;
- (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.”.

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- (8) 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 ”.
- (9) In subsection (12), the words “and give such notification as is mentioned in subsection (10)(a) above” are repealed.
- (10) After subsection (12) insert—
- “(12A) The Commission must, before the expiry of the period of 21 days beginning with the day on which the decision under subsection (6) is taken, give notice of that decision—
- (a) to the applicant;
- (b) to any person who objected under subsection (4) or (5A); and
- (c) where appropriate and in so far as not already given notice under paragraph (a) or (b), to—
- (i) the crofter;
- (ii) the owner-occupier crofter;
- (iii) the landlord; and
- (iv) as the case may be, the grazings committee.”.
- (11) Subsections (13) to (15) are repealed.
- (12) 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 58A(12A) of the decision to grant the approval or consent subject to conditions; and
- (c) any other person the Commission consider has a relevant interest.
- (4) Subject to subsection (5), subsections (2) to (5A), (16) and (17) of section 58A apply to an application under subsection (2) of this section as they apply to an application under subsection (1) of that section.

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- (5) Where the original applicant is an executor who applied under section 10(4A) for consent to divide a croft under section 9, subsections (3) to (5A), (16) and (17) do not apply.”.

#### Commencement Information

- I33** S. 48(7) in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)
- I34** S. 48(7) in force at 1.4.2012 in so far as not already in force by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**

### *Succession to crofts*

#### **49 Bequest of crofts**

- (1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.
- (2) In subsection (1), for the words from “bequeath” to the end substitute—
- “(a) bequeath the tenancy of the whole of the crofter's croft to any one natural person; or
- (b) bequeath the tenancy of that croft to two or more natural persons provided that—
- (i) each person would come into the place of the crofter in relation to the tenancy of part of the croft; and
- (ii) no part of the croft would, were all the bequests accepted, be untenanted.”.
- (3) For subsection (2) substitute—
- “(2) A person to whom the tenancy of a croft (or of part of a croft) is bequeathed (in this section, the “legatee”) must, if the legatee accepts the bequest—
- (a) give notice of the bequest to the landlord; and
- (b) send a copy of the notice to the Commission,
- before the end of the period of 12 months beginning with the death of the crofter.”.
- (4) For subsections (2B) to (4D) substitute—
- “(3) The bequest is null and void if—
- (a) in the case of a bequest such as is mentioned in subsection (1)(a), no notice is given (and no copy sent) in accordance with subsection (2) or (2A);
- (b) in the case of a bequest such as is mentioned in subsection (1)(b), any legatee fails to give notice (and send a copy) in accordance with subsection (2) or (2A).
- (4) Where, in the case of a bequest as is mentioned in subsection (1)(a), notice is given (and a copy sent) in accordance with subsection (2) or (2A), the legatee comes into the place of the deceased crofter (as from the date of death of that crofter) on the relevant date of registration.

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(4A) Where—

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

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

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

(4C) The bequest is null and void if—

- (a) the Commission do not give their consent to the division of the croft under section 9; or
- (b) such consent is given but an application for registration of the division is not made in accordance with subsection (3)(a) of that section.”.

(5) In subsection (4E)—

- (a) at the beginning insert “ Subject to subsection (4EA), ”; and
- (b) for “(2B), (4A) or, as the case may be, (4D)” substitute “ (4) or, as the case may be, (4B) ”.

(6) After that subsection insert—

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

- (a) the debts mentioned in subsection (4E)(a); and
- (b) any expenses mentioned in subsection (4E)(b).”.

(7) After subsection (6) insert—

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

- (a) where the croft was unregistered, the date of registration in relation to the application for registration of the croft by virtue of section 4(4) (e) of the 2010 Act;
- (b) where the croft was registered, the date of registration in relation to the application for registration of the notice by virtue of section 5(3) (e) of that Act.

(8) In subsection (4B)—

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

“relevant date” means—

- (a) where the croft was unregistered, the date the Keeper receives notification of the Commission's consent to divide the croft by virtue of section 10(7) of the 2010 Act;



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- (b) where the croft was registered, the date of registration in relation to the application for registration of the division by virtue of section 5(3)(d)(i) of that Act.”.

#### Commencement Information

- I35** S. 49(1)-(3)(5)(6) in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5(3))  
**I36** S. 49(4) in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5(3))

### Appeals

#### 50 Appeals: procedure

- (1) In the 1993 Act—
- (a) in section 25(8) (provisions supplementary to section 24(3)), the words “by way of stated case” are repealed;
  - (b) in section 38A(1) (appeal to Land Court: special provision as respects reorganisation schemes), the words “by way of stated case” are repealed;
  - (c) in section 52A(2)(a) (appeal to the Land Court: general), the words “by way of stated case,” are repealed.
- (2) In section 52A of that Act (appeal to the Land Court: general), after subsection (4) insert—
- “(4B) The Commission may be a party to any appeal to the Land Court under this Act or in any proceedings on a question coming before that Court on an application under section 53(1) of this Act.”.

#### Commencement Information

- I37** S. 50(1) in force at 1.2.2011 by S.S.I. 2010/437, art. 3, **Sch.** (with arts. 4, 5(3))  
**I38** S. 50(2) in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)

## PART 5

### GENERAL AND MISCELLANEOUS

#### 51 Duty to report to the Scottish Parliament

- (1) The Scottish Ministers must lay before the Scottish Parliament, once every 4 years, a report on—
- (a) the economic condition of crofting;
  - (b) the measures taken to support crofting during the reporting period by—
    - (i) the Scottish Ministers;
    - (ii) the Commission;
  - (c) the further measures that the Scottish Ministers intend to take to address the economic condition of crofting.

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- (2) The first such report must be laid before the Scottish Parliament within 6 months of the date on which the Bill for this Act was passed.
- (3) In subsection (1) “reporting period” means—
  - (a) in the case of the first report, the period of 4 years preceding the laying of the report;
  - (b) in the case of each subsequent report, the period since the laying of the last report.

#### Commencement Information

**I39** S. 51 in force at 22.12.2010 by S.S.I. 2010/437, art. 3, Sch. (with art. 4)

### 52 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.

#### Commencement Information

**I40** S. 52 in force at 30.10.2012 by S.S.I. 2012/288, art. 3(1)(a)(2), Sch. 1 Pt. 1

### 53 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 (7), 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—
  - (a) section 52(1);
  - (b) section 54(1) containing provisions which add to, replace or omit any part of the text of any Act; or
  - (c) section 57(2) bringing any of sections 3 to 32 into force,
 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.

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- (5) Before laying a draft of an order under section 52(1) before the Scottish Parliament, the Scottish Ministers must—
- (a) lay before the Parliament—
    - (i) a copy of the proposed draft order;
    - (ii) a statement of their reasons for proposing to make the draft order;
  - (b) publicise the proposed draft order in such a manner as they consider appropriate; and
  - (c) have regard to—
    - (i) any representations about the proposed draft order;
    - (ii) any resolution of the Parliament about the proposed draft order; and
    - (iii) any report by a committee of the Parliament for the time being appointed by virtue of the standing orders of the Parliament about the proposed draft order, made during the period mentioned in subsection (6).
- (6) The period is such period of 60 days or longer (including at least 30 days on which the Scottish Parliament is not dissolved or in recess) as the Scottish Ministers specify when laying the draft order.
- (7) Subsection (3) does not apply to an order under section 57(2).

#### 54 Ancillary provision

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

#### 55 Minor and consequential amendments and repeals

Schedule 4 makes minor modifications and modifications consequential on this Act.

#### Commencement Information

- I41** S. 55 in force at 22.12.2010 for specified purposes by S.S.I. 2010/437, art. 3, Sch. (with art. 4)
- I42** S. 55 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with arts. 4, 6, 7)
- I43** S. 55 in force at 1.4.2012 for specified purposes by S.S.I. 2011/334, art. 3(1)(b)(2), Sch. Pt. 2

#### 56 Interpretation

- (1) In this Act—
- the “1993 Act” means the Crofters (Scotland) Act 1993 (c.44);
  - “certificate of registration” has the meaning given by section 9(6);
  - “the Commission” means the Crofting Commission;
  - “first registration” has the meaning given by section 4(10);
  - “Keeper” has the meaning given by section 3(3);
  - “new croft” has the meaning given by section 4(11);

*Status: Point in time view as at 30/10/2012. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010. (See end of Document for details)*

“owner-occupied croft” has the meaning given by section 19B(5) of the 1993 Act (as inserted by section 34);

“owner-occupier crofter” is to be construed in accordance with section 19B(1) to (4) of the 1993 Act (as inserted by section 34);

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

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

“registration schedule”, in relation to a croft, a common grazing or land held runrig, means the registration schedule of the croft, common grazing or, as the case may be, land held runrig made up and maintained under section 11(1).

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

#### **Commencement Information**

**I44** S. 56 in force at 22.12.2010 by S.S.I. 2010/437, art. 3, Sch. (with art. 4)

### **57 Short title, commencement and Crown application**

- (1) This Act is the Crofting Reform (Scotland) Act 2010.
- (2) This Act (other than this section and sections 53 and 54) comes into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be appointed for different purposes.
- (4) This Act binds the Crown.

**Status:**

Point in time view as at 30/10/2012. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010.