

7. Draft Bill and Explanatory Notes

Crofting Reform (Scotland) Bill

[CONSULTATION DRAFT]

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Crofting Reform (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to reform the Crofters Commission and provide for the establishment of area crofting committees; to provide for the establishment of a new register of interests in crofts; to amend the law on crofters who fail to reside on or near their crofts, who breach the statutory conditions or who misuse or neglect their crofts; to amend the law on owner-occupiers of crofts; to provide for the granting of standard securities over crofts; to provide for the imposition of an occupancy requirement on dwellings on decrofted land; and for connected purposes.

PART 1

THE CROFTING 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.

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—
 - (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.”.
- (2) After section 2 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, in particular—
 - (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 functions conferred on them by or under this Act, 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) any area committees established by virtue of an order under section 2C(1);
 - (b) each local authority in the area of which there are crofts;
 - (c) 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.”.

Area crofting committees

3 Area crofting committees

- (1) After section 2B of the 1993 Act (as inserted by section 2(2)) insert—

“Area committees

2C Area committees

- (1) The Scottish Ministers may, by order, require the Commission to establish committees for such areas as Ministers specify in the order.
- (2) Each area specified in an order under subsection (1) is to be described—
 - (a) by reference to—
 - (i) the Ordnance map;
 - (ii) local government areas; or



- (b) by such other methods, or combination of methods, as the Scottish Ministers consider appropriate.
- (3) An order under subsection (1) may, in particular, provide about—
 - (a) the name by which each area is to be known;
 - (b) the name by which each area committee is to be known;
 - (c) such other matters relating to area committees as the Scottish Ministers consider appropriate.
- (4) Schedule 1A makes further provision about area committees.

2D Modification of area committees

The Scottish Ministers may, from time to time, by order, vary—

- (a) the number of areas for which there are to be area committees;
- (b) the descriptions of the areas specified in an order under section 2C(1);
- (c) the names by which such areas are to be known;
- (d) the names by which area committees are to be known.

Functions of area committees

2E Functions of area committees

- (1) The functions which an area committee is to exercise in relation to its area are the functions, conferred by or under this Act on the Commission, as are prescribed by the Scottish Ministers by order.
- (2) An order under subsection (1) may prescribe functions generally in relation to every area committee or individually in relation to each such committee.
- (3) Where an order under subsection (1) is in effect—
 - (a) any reference to the Commission exercising the function prescribed is to be read as a reference to the relevant area committee; and
 - (b) any provision of this Act which, in relation to such a function, applies to the Commission, applies to that committee.
- (4) In subsection (3), the “relevant area committee” is the area committee for the area in relation to which the function falls to be exercised.
- (5) An area committee must, in exercising its functions, comply with any written directions of a general or specific nature as the Commission may from time to time give to it.

Policies governing exercise of functions

2F Duty to produce plan

- (1) An area committee must, before the expiry of the period mentioned in subsection (2), prepare and submit to the Commission a plan setting out its policies on how it proposes to exercise its functions in relation to its area.
- (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 3 of schedule 1A to elect persons to be members of the committee; or
 - (b) the day of each subsequent election.
- (3) The committee must, before preparing a plan, consult—
 - (a) crofters within the committee’s area;
 - (b) the relevant local authority;
 - (c) other persons or bodies as appear to the committee to be representative of the interests of crofters, landlords or other persons concerned with crofting in the committee’s area;
 - (d) such other persons as the committee considers appropriate.
- (4) The Commission may—
 - (a) approve the plan (with or without modifications);
 - (b) reject the plan and direct the committee to submit a revised plan.
- (5) Where the Commission approve the plan, the committee must—
 - (a) send a copy of it to the relevant local authority;
 - (b) make a copy of it available for public inspection at reasonable times; and
 - (c) publish it in such manner as the committee considers appropriate.
- (6) The committee—
 - (a) may, from time to time;
 - (b) must, if required to do so by the Commission, vary the plan.
- (7) Where the committee, under subsection (6), varies the plan—
 - (a) the committee must submit it to the Commission; 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).
- (8) In this section, the “relevant local authority” is the local authority or, as the case may be, local authorities for the area which the committee represents.

2G Status of plan

An area committee, in exercising its functions, must have regard to any plan approved and published under section 2F.

Review of decisions of area committees

2H Review of decisions of area committees by Commission

- (1) The Scottish Ministers may, by order, provide for the review, by the Commission, of decisions of area committees taken in exercise of functions conferred on them by virtue of an order under section 2E.
- (2) An order under subsection (1) may, in particular, provide about—
 - (a) the decisions which may be reviewed;



- (b) the grounds on which decisions may be reviewed;
 - (c) time limits within which applications for review must be brought;
 - (d) the powers of the Commission on such applications;
 - (e) the effect of the making of applications on time limits for appealing decisions of committees to the Land Court;
 - (f) appeals to the Land Court from decisions of the Commission on applications for review.
- (3) An order under subsection (1) may not make provision the effect of which would be to remove the right of a person aggrieved by a decision of an area committee to appeal to the Land Court under section 52A.”.
- (2) After schedule 1 to the 1993 Act (as inserted by section 1(3) and schedule 1) insert the schedule contained in schedule 2.

PART 2

THE CROFTING REGISTER

4 The Crofting Register

- (1) The Keeper of the Registers of Scotland must establish and maintain a public register of interests in crofts.
- (2) An interest in a croft is—
 - (a) the right of a crofter to the tenancy of a croft;
 - (b) the right of an owner-occupier to an owner-occupied croft;
 - (c) the right of a creditor in a standard security granted over a croft; and
 - (d) the right of any person (other than an owner) in a common grazing.
- (3) The register established under subsection (1) is to be known as the Crofting Register.
- (4) The Keeper must make up and maintain a title sheet of an interest in a croft registered in the Crofting Register.
- (5) In this Part, “registered” means registered in the Crofting Register and cognate expressions are to be construed accordingly.

5 Further provision about the Crofting Register

- (1) The Scottish Ministers may, by regulations, make further provision regarding the Crofting Register established and maintained under section 4(1).
- (2) Without prejudice to the generality of subsection (1), the regulations may, in particular, make provision relating to any of the following matters.
- (3) The interests that qualify as interests in crofts.
- (4) The circumstances in which unregistered interests in crofts—
 - (a) may be registered;
 - (b) must be registered.
- (5) The circumstances in which dealings in registered interests in crofts—
 - (a) may be registered;

- (b) must be registered.
- (6) The form and content of applications for registration.
- (7) The procedure for determining applications for registration, including the criteria for accepting such applications.
- (8) The procedure and grounds for challenging the first registration of unregistered interests in crofts (other than standard securities over crofts).
- (9) The effects of registration.
- (10) The information to be entered in the title sheets of registered interests in crofts.
- (11) Rectification of inaccuracies in the register.
- (12) The circumstances in which the Keeper is to be required to indemnify persons for loss suffered as a result of, among other things, inaccuracies in the register.
- (13) Appeals against anything done (or omitted to be done) by the Keeper in relation to the register.
- (14) The circumstances in which a person may inspect and take copies of entries in the register (including the issuing of official extracts).
- (15) The fees to be payable in respect of, among other things, applications for registration and access to the register.

PART 3

DUTIES OF CROFTERS AND OWNER-OCCUPIERS

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

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

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

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

5AA Crofters: residency duty

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

- (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 5; or
 - (b) fails to put the croft to any such 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,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) In this section, "purposeful use" means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.
 - (7) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (3) so as to substitute different standards for those for the time being mentioned in that subsection."
- (4) Section 22 (absentee crofters) is repealed.
 - (5) In section 5A(2)(a)(ii) of the 1993 Act, for "section 5B" substitute "section 26A".
 - (6) In section 23(4) of the 1993 Act, for "subsection (3) of section 22" substitute "subsections (5) and 6 of section 26H".
 - (7) In section 24(2) of the 1993 Act, for "section 22(1)" substitute "section 26H(1)".
 - (8) In section 26(3) of the 1993 Act, for "5B" substitute "26H".
 - (9) In section 41(2)(cd)(ii) of the 1993 Act, for "section 22(1)" substitute "section 26H(1)".

Owner-occupied crofts: owner-occupiers' duties

7 Owner-occupied crofts: owner-occupiers' duties

- (1) After section 19A of the 1993 Act insert—

"Owner-occupied crofts: duties

19B Meaning of "owner-occupied croft" and "owner-occupier"

- (1) In this Act, an "owner-occupier" means—
 - (a) a person who owns a croft of which the person was the crofter at the time of acquiring it;
 - (b) a successor in title to such a person.
- (2) In this Act, an "owner-occupied croft" means a croft (or any part of a croft) which is—
 - (a) owned by an owner-occupier; and
 - (b) occupied by—
 - (i) the owner-occupier; or

- (ii) a tenant of the owner-occupier by virtue of a lease under section 29A.

19C Owner-occupied crofts: owner-occupiers' duties

- (1) An owner-occupier must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the owner-occupier—
 - (a) must be ordinarily resident on, or within 16 kilometres of, the owner-occupier's croft;
 - (b) must not misuse or neglect the croft;
 - (c) must—
 - (i) cultivate every part of the croft; or
 - (ii) put every part of it to another purposeful 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 misuses a croft where the owner-occupier—
 - (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use; or
 - (b) fails to put the croft to any such use.
- (4) For the purposes of subsection (2)(b), an owner-occupier 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).
- (5) But where the owner-occupier, 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,the owner-occupier's so engaging or refraining is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.
- (6) If, immediately before the coming into force of section 7(1) of the Crofting Reform (Scotland) Act 2009 (asp 00), 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 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.
- (7) In this section, "purposeful use" means any planned and managed use which does not adversely affect the owner-occupied croft, the public interest or the use of adjacent land.



- (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.”
- (2) In section 23 of the 1993 Act (vacant crofts), after subsection (2) insert—
“(2A) This section does not apply to an owner-occupied croft.”

Commission consent to absence from crofts

8 Consent to absence from crofts

After section 21A of the 1993 Act insert—

“Consent to absence from crofts

21B Commission consent to absence from crofts

- (1) A crofter or an owner-occupier may apply to the Commission for consent to be ordinarily resident other than on, or within 16 kilometres of, the 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 16 kilometres of, the 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;
 - (b) if the applicant is a crofter, the landlord of the croft,of their decision and the reasons for making it.

21C Extension of consent to 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 to absence

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

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

Enforcement of duties of crofters and owner-occupiers

9 Enforcement of duties of crofters and owner-occupiers

After section 26 of the 1993 Act insert—

“Enforcement of duties

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

- (1) This section and section 26B apply where the Commission consider that—
- (a) a crofter is not complying with—
 - (i) the duty mentioned in section 5AA (crofters: residency duty);
 - (ii) a duty mentioned in section 5B (duty not to misuse or neglect croft);
 - (b) an owner-occupier is not complying with—
 - (i) the duty mentioned in section 19C(2)(a) (the owner-occupier residency duty);
 - (ii) any of the other duties mentioned in section 19C(2).
- (2) In this Act—
- the “residency duty” means a duty referred to in paragraphs (a)(i) and (b)(i) of subsection (2);
 - the “other duties” means the duties referred to in paragraphs (a)(ii) and (b)(ii) of that subsection.
- (3) In sections 26B and 26C, the “relevant person” means the crofter (in the case of a croft) or the owner-occupier (in the case of an owner-occupied croft).

26B Notice of suspected breach of duty

- (1) The Commission must—
- (a) 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;
 - (b) where there is a standard security over the croft, send a copy of the notice to the creditor in the security.
- (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”).
- (3) The Commission must have regard to any representations received within the representation period.



- (4) The Commission may also have regard to any representations received after the end of the representation period.
- (5) The Commission must, before the expiry of the period of 14 days beginning with the day on which the representation period ends, decide whether the duty is being complied with.

26C Undertakings: general

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

26D Types of undertaking

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

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

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

- (a) the period for giving an undertaking under section 26C has not expired;
- (b) an undertaking has been given under section 26C and the period for complying with the undertaking has not expired;
- (c) an undertaking given under section 26C has been complied with;
- (d) in the case of a crofter—
 - (i) the Commission have consented to the subletting 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—
 - (i) the Commission have consented to the letting of the croft under section 29A;
 - (ii) an application for consent to let has been made under section 29A and has not been determined;
- (f) in the case of failure to comply with the residency duty—
 - (i) the Commission have consented to the absence under section 21B;
 - (ii) an application for consent to absence has been made under section 21B(1), 21C(1) or 21D(1) 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 referred to in subsection (2) unless they consider that there is a good reason not to.
- (2) The actions mentioned in subsection (1) are—
 - (a) in the case of a crofter, the tenancy termination procedure under section 26H;
 - (b) in the case of an owner-occupier, the letting procedure under section 26J.

26G Division of croft before taking action

- (1) Before taking action under section 26H or 26J, the Commission may, if they are satisfied that the condition mentioned in subsection (2) is met, divide a croft or an owner-occupied croft into two or more parts.
- (2) The condition referred to in subsection (1) is that, having had 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;
 - (d) such other matters as the Commission consider appropriate, the Commission consider that it is fair to divide the croft.
- (3) Where a croft has been divided under subsection (1), the Commission may take action under section 26H or 26J—
- (a) in respect of the whole croft; or
 - (b) in respect of any part of the croft.

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 latest notification under subsection (2).
- (5) If the crofter fails to give up occupation of the croft on or before the day on which the order takes effect, the Commission may apply to the sheriff for warrant for ejection of the crofter.
- (6) The sheriff must grant the warrant for ejection, except on cause shown by the crofter.
- (7) The Commission may recover from the crofter the expenses incurred by them—
 - (a) in making any application under subsection (5);
 - (b) in executing any warrant granted under subsection (6).
- (8) A crofter whose tenancy is terminated by an order under subsection (1) has the same rights and liabilities relating to compensation as if the crofter had renounced the tenancy at the date at which the order under subsection (1) takes effect.

26J Owner-occupiers: letting procedure

- (1) The Commission must, unless they consider that there is a good reason not to, direct the owner-occupier to submit a proposal for letting the croft.
- (2) If, before the expiry of the period of 28 days beginning with the day on which the direction under subsection (1) is given—
 - (a) the owner-occupier has not made a proposal for letting; or
 - (b) the owner-occupier has made a proposal for letting which has not been approved by the Commission,

- the Commission must proceed in accordance with subsections (3) and (4).
- (3) The Commission must, by public notification, invite applications for letting the owner-occupied croft before the expiry of the period specified in the notification.
 - (4) When the period of notification has ended, the Commission must decide—
 - (a) to which of the applicants (if any) to let the owner-occupied croft; and
 - (b) after consulting the owner-occupier, on what conditions to let the croft.
 - (5) Where an owner-occupied croft has been let on conditions set by the Commission under subsection (4)(b), the owner-occupier may, before the expiry of the period of 28 days beginning with the day of the letting, apply to the Land Court for a variation of the conditions so set.
 - (6) If the Land Court, on an application under subsection (5), varies the conditions of let, any variation takes effect as from the date of the letting.

26K Appeals

- (1) A person may appeal to the Land Court against a decision of the Commission under section 26C—
 - (a) not to accept an undertaking;
 - (b) to impose conditions on such an undertaking.
- (2) A person may appeal to the Land Court against the making by the Commission of—
 - (a) an order under section 26H; or
 - (b) a direction under section 26J.
- (3) An appeal under subsection (1) or (2) is to be made by way of stated case and must be made before the expiry of the period of 21 days beginning with the day on which the decision, order or direction is made.
- (4) An appeal under subsection (1) or (2) may be made only on one or more of the following grounds—
 - (a) that the Commission erred in law;
 - (b) that the Commission made a finding as to a fact material to the decision, order or direction but did not have sufficient evidence on which to base that finding;
 - (c) that the Commission acted contrary to natural justice;
 - (d) that the Commission took into account certain irrelevant or immaterial considerations;
 - (e) that the Commission failed to take into account certain relevant or material considerations;
 - (f) that the Commission exercised their discretion in an unreasonable manner.
- (5) In an appeal under this section, the Land Court may—
 - (a) confirm or revoke the decision, order or direction;



- (b) direct the Commission to make a different decision, order or direction;
 - (c) remit the case to the Commission without so directing them.
- (6) The Commission must give effect to the decision of the Land Court on an appeal under this section.”.

Letting of owner-occupied crofts

10 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) Notwithstanding any enactment or rule of law, an owner-occupier may let the owner-occupied croft (or any part of it) for a period not exceeding 10 years.
- (2) Before letting the croft, the owner-occupier must obtain the written consent of the Commission.
- (3) The Commission may, in giving their consent to a proposed lease of a croft, impose such conditions (other than any relating to rent) as they consider appropriate.
- (4) A lease is void if it is granted—
 - (a) without the Commission’s consent; or
 - (b) otherwise than in accordance with such conditions as the Commission may impose.
- (5) In an application for consent under subsection (2), the following special conditions apply for the purposes of section 58A(6)(b)(ii)—
 - (a) that there are reasonable grounds for concern as regards the use which the proposed tenant intends to make of the croft; and
 - (b) that the proposed tenant will not be ordinarily resident on, or within 16 kilometres of, the croft.
- (6) The Commission may terminate a lease granted under this section if—
 - (a) a condition imposed under subsection (3) is breached; or
 - (b) the tenant fails to comply with a condition of let (other than any relating to rent).
- (7) Subsections (2) to (6) do not apply to the letting of any dwelling-house, or other building forming part of the croft, to holiday visitors.

29B Status of tenant of owner-occupier

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

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

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

PART 4

STANDARD SECURITIES OVER CROFTS

Grant of standard securities by crofters

11 Grant of standard securities by crofters

- (1) The Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) is amended as follows.
- (2) In section 9 (the standard security)—
 - (a) after subsection (2) insert—

“(2ZA) It is competent to grant and record in the Crofting Register a standard security over a registered croft.

(2ZB) Such a standard security is to be expressed in (or as nearly as may be in) one of the forms set out in schedule 2 to this Act.”; and
 - (b) in subsection (8), after paragraph (b) insert—

“(ba) the “Crofting Register” means the register established and maintained under section 4(1) of the Crofting Reform (Scotland) Act 2009 (asp 00);

(bb) a “registered croft” is a croft registered in that register under or by virtue of any provision of that Act;”.
- (3) In section 20 (creditor’s rights on debtor’s failure to comply with calling-up notice)—
 - (a) in subsection (3), at the beginning insert “Subject to subsection (5A),”; and
 - (b) after subsection (5) insert—

“(5A) Where the debtor in the standard security is a crofter (within the meaning of section 3(3) of the Crofters (Scotland) Act 1993 (c.44)), paragraph 8 of schedule 2A to that Act is to apply in place of subsections (3) and (4).”.
- (4) In section 28 (foreclosure)—
 - (a) in subsection (3)—
 - (i) for “or by an examination” substitute “, by an examination”; and
 - (ii) at the end insert “or, in the case of an application relating to a standard security over a registered croft, by an examination of the title sheet of the security subjects in the Crofting Register”; and
 - (b) in subsection (5), at the end insert “or, in the case of a decree relating to a standard security over a registered croft, for registering in the Crofting Register”.
- (5) In section 30 (interpretation)—
 - (a) in subsection (1)—
 - (i) after the definition of “debt” and “creditor” and “debtor” insert—

““Crofting Register” has the meaning given by section 9(8);”; and
 - (ii) after the definition of “Register of Sasines” insert—

““registered croft” has the meaning given by section 9(8);”; and
 - (b) after subsection (2) insert—



“(3) For the purpose of construing this Part in relation to the creation of a security over a registered croft and to any subsequent transactions connected with that security—

“convey” or “dispone” means assign;

“conveyance” or “disposition” means assignation;

“duly recorded” means registered in the Crofting Register;

“proprietor” means the crofter;

“security subjects” means the croft tenancy subject to the security.”.

12 Right of crofter’s creditor to be overriding interest on landlord’s title

(1) The Land Registration (Scotland) Act 1979 (c.33) is amended as follows.

(2) In section 28(1) (interpretation)—

(a) after the definition of “ARTL System” insert—

““Crofting Register” means the register established and maintained under section 4(1) of the Crofting Reform (Scotland) Act 2009 (asp 00);”;

(b) in the definition of “overriding interest”—

(i) in paragraph (c), the words from “a crofter” to “1955, or” are repealed; and

(ii) after that paragraph insert—

“(ca) a crofter or cottar within the meaning of section 3(3) or 12(5) respectively of the Crofters (Scotland) Act 1993 (c.44);

(cb) a creditor in a standard security—

(i) granted over a registered croft; and

(ii) registered in the Crofting Register by virtue of section 9(2ZA) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35);”;

(c) after the definition of “Register of Sasines” insert—

““registered croft” means a croft registered in the Crofting Register under or by virtue of any provision of the Crofting Reform (Scotland) Act 2009 (asp 00);”.

Creditors’ rights under 1993 Act where securities granted over crofts

13 Enlargement of croft: consent of creditor

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

“4 Enlargement of crofts

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

(a) which is not a croft; and

(b) which does not form part of a croft,

agrees to grant a tenancy of that land to a crofter of a croft.

- (2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of the croft.
- (3) Where there is a standard security over the croft, the crofter must obtain the prior consent in writing of the creditor in the security to the application.
- (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, 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) 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.”.

14 Statutory conditions: rights of creditor

- (1) Section 5 of the 1993 Act (the statutory conditions) is amended as follows.
- (2) After subsection (1A) insert—

“(1B) Where there is a standard security over the croft, the landlord must, in addition, serve a copy of the notice on the creditor in the security.”.
- (3) For subsection (7) substitute—

“(7) Before the croft is put to any such use as is mentioned in paragraph 3(b) of the statutory conditions, the crofter must apply for and obtain the written consent of the landlord.

(7A) If the landlord does not consent or consents subject to conditions which the crofter considers unacceptable, the crofter may apply to the Commission for consent to the use.

(7B) Where there is a standard security over the croft—
 - (a) the crofter must also apply for and obtain the written consent of the creditor in the security;
 - (b) if the creditor in the security does not consent, no application may be made under subsection (7A).”.
- (4) For subsection (8) substitute—

“(8) An application for consent under subsection (7A) may not be made before the expiry of the period of 28 days beginning with the day on which application for consent under subsection (7) or, as the case may be, (7B)(a) is made, whichever is the latter.”.
- (5) In subsection (9), for “subsection (8)” substitute “subsection (7A)”.



15 Breach of statutory conditions: notice to creditor

- (1) Section 5A of the 1993 Act (complaint of breach of statutory conditions) is amended as follows.
- (2) For subsection (4) substitute—
 - “(4) Before making the application, the Commission must give written notice of the breach complained of—
 - (a) to the crofter;
 - (b) where there is a standard security over the croft, to the creditor in the security.
- (4A) The notice must give the crofter the opportunity to remedy the breach before the expiry of such reasonable period as the Commission specify in the notice.”.

16 Renunciation of tenancy: consent of creditor

- (1) Section 7 of the 1993 Act (renunciation of tenancy) is amended as follows.
- (2) After subsection (1) insert—
 - “(1A) Where there is a standard security over a croft, the crofter may not give notice under subsection (1) without obtaining the consent in writing of the creditor in the security.”.

17 Assignment of croft: consent of creditor

- (1) Section 8 of the 1993 Act (assignment of crofts) is amended as follows.
- (2) After subsection (1) insert—
 - “(1A) Where there is a standard security over the croft, the crofter must, in addition, obtain the consent in writing of the creditor in the security to the assignment.”.
- (3) In subsection (5), after “Commission” where it first occurs insert “or, where subsection (1A) applies, the creditor”.

18 Division of crofts: consent of creditor

- (1) Section 9 of the 1993 Act (division of crofts) is amended as follows.
- (2) After subsection (1) insert—
 - “(1A) Where there is a standard security over the croft, the crofter must, in addition, obtain the consent in writing of the creditor in the security to the division.”.

19 Removal of crofter: notice to creditor

- (1) Section 26 of the 1993 Act (removal of crofter) is amended as follows.
- (2) For subsection (1) substitute—
 - “(1) Where—
 - (a) one year’s rent of a croft is unpaid;
 - (b) a crofter has broken one or more of the statutory conditions (other than the condition as to payment of rent); or

- (c) a crofter has breached the duty mentioned in section 5B(1),
the landlord may apply to the Land Court for an order under subsection (1B).
- (1A) The landlord must give written notice of the application—
- (a) to the crofter;
 - (b) where there is a standard security over the croft, to the creditor in that security.
- (1B) The Land Court may, after considering any objections stated by the crofter or, as the case may be, creditor, make an order—
- (a) terminating the tenancy;
 - (b) declaring the croft to be vacant;
 - (c) for the removal of the tenant from the croft.”.

20 Reorganisation schemes: notice to creditor

- (1) Section 38 of the 1993 Act (reorganisation schemes) is amended as follows.
- (2) In subsection (10), after paragraph (b) insert—
“(ba) where there is a standard security over a croft in the township, the creditor in the security;”.

21 Duty of creditors to provide information to Commission

- (1) Section 40 of the 1993 Act (power of Commission to obtain information) is amended as follows.
- (2) In subsection (1), after “holding,” where it second occurs, insert “or, where the holding is a croft over which there is a standard security, the creditor in the security;”.
- (3) In subsection (2), for “or executor” substitute “, executor or creditor”.

Rights of crofters’ creditors on calling-up etc.

22 Rights of crofters’ creditors on calling-up or default

- (1) The 1993 Act is amended as follows.
- (2) After section 53B insert—

“Rights of crofters’ creditors

53C Rights of crofter’s creditors on calling-up or default

- (1) This section and schedule 2A apply where any of the circumstances mentioned in subsections (2) to (4) arise in relation to a registered croft over which there is a standard security.
- (2) The creditor has served a calling-up notice and the period specified in the notice has expired without the notice being complied with.
- (3) The creditor has served notice of default and—
 - (a) the period specified in the notice has expired without any objection under section 22(1) of the 1970 Act being received and without the default being purged; or



- (b) the court has, by virtue of section 22(2) of that Act, upheld the notice (whether or not varied under that subsection) and the default has not been purged.
- (4) The creditor has obtained warrant from the court by virtue of section 22(3) or 24 of the 1970 Act to exercise any of the remedies mentioned in paragraph 10 of schedule 3 to that Act.
- (5) In this section and in schedule 2A—
 - the “1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35);
 - a “calling-up notice” is a notice served by virtue of section 19 of and paragraph 8 of schedule 3 to the 1970 Act;
 - a “notice of default” is a notice served by virtue of section 21 of the 1970 Act.”.
- (3) After schedule 2 to the 1993 Act insert the schedule in schedule 3.

PART 5

THE OCCUPANCY REQUIREMENT

The occupancy requirement

23 The occupancy requirement

- (1) The owner of a decrofted dwelling must ensure that the occupancy requirement is complied with.
- (2) The occupancy requirement is that the decrofted dwelling must be occupied as a permanent residence.
- (3) A decrofted dwelling is occupied as a permanent residence if subsections (4) and (5) are satisfied.
- (4) The decrofted dwelling must be occupied by a person.
- (5) The person occupying the decrofted dwelling must do so for at least 183 days in each residence year.
- (6) In this Part, “owner” means—
 - (a) a person having a right of ownership in the decrofted dwelling which is capable of being registered in the Land Register;
 - (b) a successor in title to such a person.

24 Decrofted dwellings

- (1) A dwelling is a decrofted dwelling if it is on relevant decrofted land and subsection (2), (3) or (4) applies.
- (2) The dwelling is on the relevant decrofted land when the land is decrofted.
- (3) The dwelling is built on the relevant decrofted land after the land is decrofted.
- (4) The dwelling is created by the conversion or other adaptation of a building (other than a dwelling) which is—
 - (a) on the relevant decrofted land when it is decrofted; or

- (b) built on such land after it is decrofted.
- (5) In this section, “dwelling” means a building or any part of a building used (or intended for use) wholly or mainly as living accommodation.

25 Relevant decrofted land

- (1) Land is relevant decrofted land if it is land which ceases to be part of a croft on or after 13 May 2008, in accordance with subsection (2) or (3).
- (2) Land ceases to be part of a croft in accordance with this subsection where—
 - (a) the Commission make a direction under section 24(2) or (3) of the 1993 Act; or
 - (b) a direction made by the Commission under subsection (4) of section 25 of the 1993 Act has effect in accordance with the requirements of that subsection.
- (3) Land ceases to be part of a croft in accordance with this subsection where the Land Court makes an order under—
 - (a) section 15(1) of the 1993 Act;
 - (b) section 20(1) of the 1993 Act; or
 - (c) section 25(8B) of the 1993 Act.
- (4) Land is not relevant decrofted land if—
 - (a) in the case of a direction mentioned in subsection (2)—
 - (i) the notice under section 24(2) was given;
 - (ii) the application under section 24(3) or 25(4) was made, before 13 May 2008; or
 - (b) in the case of an order mentioned in subsection (3), the application was made before 13 May 2008.

26 Residence year

- (1) For the purposes of sections 23(5) and 38(3), “residence year” means a calendar year beginning on 1 January and ending on 31 December.
- (2) The occupancy requirement does not apply to a decrofted dwelling—
 - (a) in the case of a dwelling which is on relevant decrofted land at the date on which the land is decrofted, until the beginning of the residence year following that in which the land is decrofted;
 - (b) in the case of a dwelling which is built on relevant decrofted land after the land is decrofted, until the beginning of the residence year following that in which the dwelling is built;
 - (c) in the case of a dwelling which is created by conversion or other adaptation, until the beginning of the residence year following that in which the dwelling is created.
- (3) Where there is a change of ownership of the decrofted dwelling, the occupancy requirement does not apply until the beginning of the residence year following that in which the change of ownership occurs.



27 Periods of non-occupation that are to be disregarded

- (1) For the purposes of section 23, a dwelling is not to be regarded as unoccupied—
 - (a) for the period during which an occupier of the dwelling—
 - (i) is a patient in hospital;
 - (ii) is in a care home;
 - (iii) is in local authority accommodation;
 - (iv) is serving in the armed forces;
 - (v) is detained;
 - (b) if a heritable creditor enters into possession or becomes the owner of the dwelling;
 - (c) if the owner dies, for the period during which the dwelling vests in an executor.
- (2) In this section—

“armed forces” means the naval, military or air forces of the Crown (including reserve forces);

“care home” means accommodation provided by a person carrying on a care home service within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8) (the “2001 Act”);

“detained” includes—

 - (a) detention in a prison, hospital or any place other than the dwelling by virtue of an order of a court;
 - (b) being held in custody at a place other than the dwelling;
 - (c) being required to stay at a place other than the dwelling by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (the “2003 Act”);

“hospital” includes—

 - (a) a health service hospital within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c.29) (the “1978 Act”);
 - (b) any accommodation provided or secured by a health board or the Scottish Ministers under the 1978 Act;
 - (c) a State hospital within the meaning of section 102 of the 1978 Act;
 - (d) a private psychiatric hospital within the meaning of section 77 of the 2001 Act;
 - (e) an independent hospital within the meaning of section 77 of the 2001 Act;

“local authority accommodation” means—

 - (a) accommodation provided as part of care and support services within the meaning of section 25 of the 2003 Act;
 - (b) accommodation provided under Part 2 of the Social Work (Scotland) Act 1968 (c.49).
- (3) The Scottish Ministers may, by order, modify subsection (1) or (2) so as to add items, remove items or vary the description of items.

28 Power to suspend or remove occupancy requirement

- (1) The owner of a decrofted dwelling may apply to the appropriate local authority for the occupancy requirement to be—
 - (a) suspended for a period; or
 - (b) removed.
- (2) In this Part, the “appropriate local authority” means the local authority in whose area the decrofted dwelling is situated.
- (3) An application under subsection (1) must be made in writing and may be made at any time.
- (4) An application under subsection (1)(a) may request that the occupancy requirement be suspended for a particular period of time or indefinitely.
- (5) If an application under subsection (1)(a) does not request that the occupancy requirement be suspended for a particular period of time, it is to be treated as a request for indefinite suspension.
- (6) Before deciding whether to suspend or remove the occupancy requirement, the appropriate local authority must have regard to—
 - (a) the demand in the locality of the dwelling for housing for use as a place of permanent residence; and
 - (b) such other matters as it considers appropriate.
- (7) In relation to an application under subsection (1)(a), the appropriate local authority may suspend the occupancy requirement for such period as may be requested or for such other period as the local authority considers appropriate.
- (8) The appropriate local authority must issue its decision before the expiry of the period of 2 months beginning with the day on which the application is made.
- (9) If the appropriate local authority fails to comply with subsection (8), the local authority must—
 - (a) explain the reasons why; and
 - (b) indicate when it expects to issue its decision.
- (10) The appropriate local authority must give the owner a notice setting out its decision and the reasons for that decision.
- (11) Failure to comply with subsection (6), (8), (9) or (10) does not affect the validity of the decision.

29 Guidance on suspension or removal of occupancy requirement

- (1) An appropriate local authority must have regard to any guidance given by the Scottish Ministers in relation to the exercise of functions under section 28.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
 - (a) such local authorities; and
 - (b) such other persons,



as the Scottish Ministers consider appropriate.

- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

30 Reinstatement of suspended occupancy requirement

- (1) Where an occupancy requirement has been suspended by an appropriate local authority under section 28, that local authority may, before the expiry of the period of suspension, reinstate the occupancy requirement.
- (2) Before reinstating an occupancy requirement, the appropriate local authority must give the owner of the decrofted dwelling a notice—
 - (a) explaining the intention to reinstate the occupancy requirement;
 - (b) setting out the reasons why it intends to do so; and
 - (c) indicating that the owner may make representations to the local authority before the expiry of the period of 14 days beginning with the day on which the notice is given to the owner (the “representation period”).
- (3) The appropriate local authority—
 - (a) must have regard to any representations received within the representation period;
 - (b) may also have regard to any representations received after the end of the representation period.
- (4) The appropriate local authority must issue its decision before the expiry of the period of 14 days beginning with the day on which the representation period ends.
- (5) The appropriate local authority must give the owner a notice setting out its decision and the reasons for that decision.
- (6) Failure to comply with subsection (2), (3), (4) or (5) does not affect the validity of the decision.

31 Appeal to sheriff in relation to decisions of local authority

- (1) An owner of a decrofted dwelling may appeal to the sheriff against a decision of an appropriate local authority—
 - (a) to refuse to suspend an occupancy requirement;
 - (b) to suspend an occupancy requirement for a period other than that requested by the owner;
 - (c) to refuse to remove an occupancy requirement;
 - (d) to reinstate an occupancy requirement.
- (2) An appeal under subsection (1) is to be made by summary application.
- (3) An appeal under subsection (1) may be made only on one or more of the following grounds—
 - (a) that the appropriate local authority erred in law;
 - (b) that the local authority’s decision was based on an incorrect material fact;
 - (c) that the local authority acted contrary to natural justice;

- (d) that the local authority exercised its discretion in an unreasonable manner.
- (4) An appeal under subsection (1) must be made before the expiry of the period of 21 days beginning with the day on which the decision appealed against is made.
- (5) For the purposes of subsection (1), the sheriff to whom an appeal is to be made is the sheriff for the area in which the dwelling is situated.
- (6) On an appeal under subsection (1), the sheriff may—
 - (a) confirm the decision;
 - (b) modify the decision;
 - (c) quash the decision;
 - (d) quash the decision and remit the matter, together with the reasons for the sheriff’s decision, to the appropriate local authority for further consideration;
 - (e) make such other order as the sheriff considers appropriate.
- (7) Where the sheriff remits the matter under subsection (6)(d), the sheriff may specify a period within which the appropriate local authority must issue a new decision.
- (8) The sheriff’s decision on an appeal under this section is final.

Enforcement of occupancy requirement

32 Enforcement of occupancy requirement: general

- (1) In this Part, “authorised officer” means an officer of the appropriate local authority authorised by the appropriate local authority for the purposes of this section and sections 33 to 35.
- (2) An authorised officer may exercise the powers set out in sections 33 to 35 if the authorised officer believes it is necessary to do so for the purpose of ascertaining whether the owner of a decrofted dwelling is complying with the occupancy requirement.
- (3) An authorised officer must, if requested to do so, produce evidence of the officer’s authorisation.
- (4) Nothing in sections 33 to 35 authorises an authorised officer to require the disclosure of anything which a person would be entitled to refuse on grounds of confidentiality in proceedings in the Court of Session.

33 Power of entry

- (1) An authorised officer may enter any premises.
- (2) The power of entry is exercisable only at reasonable times.
- (3) An authorised officer may take into the premises such other persons as may be reasonably required for the purposes of assisting the authorised officer.
- (4) An authorised officer who enters any unoccupied premises must leave those premises as effectively secured against unauthorised entry as the authorised officer found them.
- (5) The authorised officer must give at least 24 hours’ notice before entering the premises unless the authorised officer considers that giving such notice would defeat the object of the proposed entry.



34 Warrants

- (1) A sheriff may by warrant authorise an authorised officer to enter premises.
- (2) A warrant may be granted only if the sheriff is satisfied, by evidence on oath—
 - (a) that there are reasonable grounds for the exercise of the power of entry in relation to the premises concerned; and
 - (b) that—
 - (i) the exercise of the right has been refused;
 - (ii) refusal is expected;
 - (iii) the premises are unoccupied;
 - (iv) the occupier is temporarily absent;
 - (v) an application for admission would defeat the object of the proposed entry.
- (3) A warrant authorises the authorised officer—
 - (a) to enter the premises—
 - (i) at any time; and
 - (ii) using reasonable force, if necessary;
 - (b) to search the premises;
 - (c) to take into the premises such other persons as may be reasonably required for the purposes of assisting the authorised officer;
 - (d) to take possession of any relevant document or information;
 - (e) to take copies of, or extracts from, such a document or such information;
 - (f) to ask any person in the premises such questions as the authorised officer considers it appropriate to ask.
- (4) An authorised officer who enters any unoccupied premises must leave those premises as effectively secured against unauthorised entry as the authorised officer found them.

35 Powers to obtain information

- (1) An authorised officer may require any person in the premises to produce any relevant document or information in the person's possession or under the person's control.
- (2) An authorised officer may take copies of, or extracts from, any document or information produced in accordance with subsection (1).
- (3) An authorised officer may ask any person in the premises such questions as the authorised officer considers it appropriate to ask.

36 Enforcement of occupancy requirement: offences

- (1) A person commits an offence if the person, without reasonable excuse—
 - (a) fails to produce a document or information required under section 35(1);
 - (b) intentionally obstructs an authorised officer (or a person assisting the authorised officer) in the exercise of functions under section 33, 34 or 35.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

37 Guidance on exercise of enforcement powers

- (1) An appropriate local authority must have regard to any guidance given by the Scottish Ministers in relation to the exercise of functions under sections 32 to 35.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
 - (a) such local authorities; and
 - (b) such other persons,as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

Penalties for breach of occupancy requirement

38 Breach of occupancy requirement: penalties

- (1) If an appropriate local authority is satisfied, on the balance of probabilities, that an owner of a decrofted dwelling has failed to comply with the occupancy requirement, the local authority must impose a penalty unless the local authority considers that the owner has a good reason for failing to comply.
- (2) The maximum amount of the penalty that may be imposed under subsection (1) is £5000.
- (3) Not more than one penalty may be imposed in respect of a decrofted dwelling in a single residence year.
- (4) If a decrofted dwelling is owned by more than one person, each is jointly and severally liable in respect of the penalty.
- (5) A penalty may not be imposed after the expiry of the period of 6 months beginning with the day on which it appears to the appropriate local authority that the owner has failed to comply with the occupancy requirement.
- (6) A penalty imposed under subsection (1) is recoverable as a debt.
- (7) The Scottish Ministers may, by order, modify subsection (2) so as to substitute for the amount for the time being specified there such other amount as they consider appropriate.

39 Breach of occupancy requirement: procedure

- (1) An appropriate local authority may not impose a penalty under section 38 unless the local authority has complied with the requirements of this section.
- (2) The first requirement is that the appropriate local authority must give the owner a notice informing the owner that the local authority considers that the owner has breached the occupancy requirement.
- (3) The notice under subsection (2) must—
 - (a) explain the reasons why the appropriate local authority considers that the owner has breached the occupancy requirement;



- (b) if the local authority intends to impose a penalty, set out the proposed amount of the penalty and the reasons for imposing it; and
 - (c) indicate that the owner may make representations to the local authority before the expiry of the period of 14 days beginning with the day on which notice is given to the owner (the “representation period”).
- (4) The second requirement is that the appropriate local authority must have regard to any representations received within the representation period.
- (5) The appropriate local authority may also have regard to any representations received after the end of the representation period.
- (6) The third requirement is that the appropriate local authority must, before the expiry of the period of 14 days beginning with the day on which the representation period ends, decide—
 - (a) whether the occupancy requirement has been breached; and
 - (b) whether to impose a penalty.
- (7) The fourth requirement is that the appropriate local authority must give the owner a notice setting out—
 - (a) its decision;
 - (b) the reasons for that decision;
 - (c) if the local authority has decided to impose a penalty—
 - (i) the reasons for that decision;
 - (ii) the amount of the penalty;
 - (iii) the manner in which the penalty is to be paid;
 - (d) if the local authority has decided not to impose a penalty, that decision;
 - (e) the right to appeal under section 41.

40 Guidance in relation to the imposition of penalties

- (1) An appropriate local authority must have regard to any guidance given by the Scottish Ministers in relation to the imposition of penalties under section 38.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
 - (a) such local authorities; and
 - (b) such other persons,as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

41 Appeal to sheriff against finding of breach or imposition of penalty

- (1) An owner of a decrofted dwelling may appeal to the sheriff against—

- (a) a decision of the appropriate local authority mentioned in section 39(7)(c) (imposing a penalty);
 - (b) a decision of the appropriate local authority mentioned in section 39(7)(d) (finding that the owner has breached the occupancy requirement but not imposing a penalty).
- (2) An appeal under subsection (1) is to be made by summary application.
- (3) An appeal under subsection (1) may be made only on one or more of the following grounds—
- (a) that the appropriate authority erred in law;
 - (b) that the local authority's decision was based on an incorrect material fact;
 - (c) that the local authority acted contrary to natural justice;
 - (d) that the local authority exercised its discretion in an unreasonable manner.
- (4) An appeal under subsection (1) must be made before the expiry of the period of 21 days beginning with the day on which the decision appealed against is made.
- (5) For the purposes of subsection (1), the sheriff to whom an appeal is to be made is the sheriff for the area in which the decrofted dwelling is situated.
- (6) On an appeal under subsection (1), the sheriff may—
- (a) confirm the decision;
 - (b) modify the decision;
 - (c) in an appeal against the imposition of a penalty, modify the amount of the penalty;
 - (d) quash the decision;
 - (e) quash the decision and remit the matter, together with the reasons for the sheriff's decision, to the appropriate local authority for further consideration;
 - (f) make such other order as the sheriff considers appropriate.
- (7) Where the sheriff remits the matter under subsection (6)(e), the sheriff may specify a period within which the appropriate local authority must issue a new decision.
- (8) The sheriff's decision on an appeal under this section is final.

General

42 Keeping of records

Each appropriate local authority must keep such records as it considers appropriate to enable it to exercise its functions under this Act.

43 Duty to provide information to appropriate local authority

- (1) Where the Commission make a direction under section 24(2) or (3) or section 25(4) of, or paragraph 13(1) of schedule 2A to, the 1993 Act, they must, as soon as reasonably practicable, notify the appropriate local authority.
- (2) Where the Land Court makes an order under section 15(1), 20(1) or 25(8B) of the 1993 Act, it must, as soon as reasonably practicable, notify the appropriate local authority.
- (3) A notification under subsection (1) or (2) is to contain such information as the Scottish Ministers may, by order, specify.



44 Duty to co-operate

- (1) Each relevant authority must co-operate with each other relevant authority in the exercise of their respective functions under this Act.
- (2) The relevant authorities are—
 - (a) appropriate local authorities;
 - (b) the Commission.
- (3) Co-operation under this section may, in particular, include the transfer or exchange of information.

45 Methods for giving notice to owner

- (1) For the purposes of this Part, notice may be given to the owner—
 - (a) by sending a properly addressed letter to the owner—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)); or
 - (ii) by a postal service which provides for the delivery of the letter to be recorded;
 - (b) by delivering the notice to the owner.
- (2) For the purposes of subsection (1)(a), a letter is properly addressed if it is—
 - (a) sent to an individual at the last known address of the individual;
 - (b) sent to a body corporate at the registered or principal office of that body;
 - (c) sent to a firm at the principal office of the firm.
- (3) For the purposes of subsection (1)(b), a notice must be delivered—
 - (a) where the owner is an individual, to that individual;
 - (b) where the owner is a body corporate, to the company secretary or clerk of that body;
 - (c) where the owner is a firm, to a partner of the firm.
- (4) A notice which is sent in accordance with subsection (1)(a) is to be treated as being given on the third day after the day on which it is sent.

PART 6

GENERAL AND MISCELLANEOUS

Pre-consolidation modifications

46 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.

General and miscellaneous

47 Regulations and orders

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.
- (2) Subject to subsection (3), a statutory instrument containing such regulations or such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) No statutory instrument containing—
 - (a) regulations under section 5(1);
 - (b) an order under—
 - (i) section 27(3);
 - (ii) section 38(7);
 - (iii) section 46(1);
 - (iv) section 48(1),may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
- (4) Subsection (2) does not apply to an order under section 51(2).

48 Ancillary provision

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving 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).

49 Minor and consequential amendments and repeals

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

50 Interpretation

- (1) In this Act—
 - the “1993 Act” means the Crofters (Scotland) Act 1993 (c.44);
 - “appropriate local authority” has the meaning given by section 28(2);
 - “the Commission” means the Crofting Commission;
 - “decrofted dwelling” has the meaning given by section 24;
 - “interest in a croft” has the meaning given by section 4(2);
 - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);
 - “occupancy requirement” has the meaning given by section 23;



“owner”, in relation to a decrofted dwelling, has the meaning given by section 23(6);

“owner-occupied croft” has the meaning given by section 19B(2) of the 1993 Act (as inserted by section 7(1));

“owner-occupier” has the meaning given by section 19B(1) of the 1993 Act (as inserted by section 7(1));

“relevant decrofted land” has the meaning given by section 25;

“residence year” has the meaning given by section 26(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.

51 Short title and commencement

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

SCHEDULE 1
(introduced by section 1(3))
THE CROFTING COMMISSION

“SCHEDULE 1
(introduced by section 1(6))
THE CROFTING COMMISSION

Status

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

General powers

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

Membership

- 3 (1) The Commission are to consist of no fewer than five and no more than nine members as follows—
 - (a) no fewer than three persons appointed by the Scottish Ministers (“appointed members”); and
 - (b) where one or more area committees are established by virtue of an order under section 2C(1), the chairpersons of such committees (“elected members”).
- (2) The Scottish Ministers must select one of the appointed members to chair the Commission (the “convener”).
- (3) The Scottish Ministers may, by order, modify sub-paragraph (1) to alter—



- (a) the number of members;
- (b) the number of appointed members.

Appointed members: eligibility

- 4 (1) In appointing members of the Commission, the Scottish Ministers must—
- (a) ensure—
 - (i) that each person appointed has knowledge of crofting; and
 - (ii) where sub-paragraph (2) applies, that at least one person appointed can speak the Gaelic language; and
 - (b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of a member.
- (2) This sub-paragraph applies where—
- (a) no area committees are established; or
 - (b) one or more such committees are established but no chairperson of such a committee can speak the Gaelic language.
- (3) The fact that a person is—
- (a) a crofter;
 - (b) a landlord of a croft;
 - (c) an owner-occupier of a croft;
 - (d) a cottar; or
 - (e) a member of the family of any such a person,
- does not of itself constitute an interest mentioned in sub-paragraph (1)(b).
- (4) No person may be appointed as a member of the Commission if that person is, or has at any time during the previous year been, a member of—
- (a) the House of Commons;
 - (b) the Scottish Parliament;
 - (c) the European Parliament.

Appointed members: terms of appointment

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

Terms of office etc.

- 6 (1) An elected member continues to hold office despite the holding of an election in relation to the area committee of which that member is the chairperson.
- (2) But such a member ceases to hold office on the appointment, following such an election, of any other person as chairperson of the committee.

- (3) A person may resign office as a member of the Commission at any time by giving notice in writing to the Scottish Ministers.
- (4) A person who ceases to be a member of the Commission (other than by virtue of being removed under paragraph 8) is eligible to be a member of the Commission again (whether by re-appointment or otherwise).

Remuneration, allowances and pensions

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

Removal of members

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



- (d) the member enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
- (e) the member grants a trust deed for creditors.

Chief executive, staff and employees

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

Quorum

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

Committees

- 11 (1) The Commission must establish—
- (a) an audit committee; and

- (b) where the Scottish Ministers make an order under section 2C(1), such area committees as are required by virtue of that order.
- (2) The Commission may also establish such other committees as they consider appropriate.
- (3) The audit committee and any other committee of the Commission (other than an area committee) must comply with any directions given to it by the Commission.
- (4) The Commission may appoint as members of any of their committees (other than area committees) persons who are not members of the Commission.
- (5) But no committee established under sub-paragraph (1)(a) or (2) may consist entirely of such persons.
- (6) The Commission must pay to a person appointed under sub-paragraph (4) such remuneration and allowances as the Scottish Ministers may determine.

Procedure

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

Member's interests

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



Delegation of powers

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

Location of office

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

Finance

- 16 (1) The Scottish Ministers may—
- (a) pay grants;
 - (b) make loans,
- to the Commission of such amounts as Ministers may determine.
- (2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may, from time to time after any grant is paid or loan is made, vary the terms and conditions on which it was paid or, as the case may be, made.

Accounts

- 17 (1) The Commission must—
- (a) keep proper accounts and accounting records;
 - (b) prepare in respect of each financial year a statement of accounts.
- (2) The Commission must send the statement of accounts to the Scottish Ministers

- (3) The Commission must comply with any other directions which the Scottish Ministers may give them in relation to the matters mentioned in sub-paragraph (1).
- (4) The Scottish Ministers must, as soon as reasonably practicable after receiving a statement of accounts from the Commission—
 - (a) send them to the Auditor General for Scotland for auditing; and
 - (b) lay the audited statement before the Scottish Parliament.
- (5) The Commission must make their audited statement of accounts available so that they may be inspected by any person.

Provision of information to Scottish Ministers

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

Transfer of property, rights and liabilities

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

SCHEDULE 2

(introduced by section 3(2))

AREA CROFTING COMMITTEES

“SCHEDULE 1A

(introduced by section 2C(4))

AREA COMMITTEES

Membership

- 1 (1) A committee is to consist of no fewer than five and no more than 12 members (“assessors”) as follows—
- (a) no more than seven persons elected in accordance with paragraph 3 (“elected assessors”);
 - (b) no more than two persons appointed by the local authority in accordance with paragraph 4 (“local authority assessors”); and
 - (c) subject to sub-paragraph (2), no more than three persons appointed by the Commission in accordance with paragraph 5 (“appointed assessors”).



- (2) If fewer than seven persons are elected in accordance with paragraph 3, the Commission may appoint such other persons as appointed assessors as they consider appropriate.
 - (3) But the Commission may not appoint a person as an appointed assessor if the appointment would result in assessors who are crofters or owner-occupiers not constituting a majority of the committee.
 - (4) The elected assessors must select one of their number to chair the committee (the “chairperson”).
 - (5) Where there are no elected assessors, the Commission must appoint one of the appointed assessors as chairperson.
- 2 (1) The Scottish Ministers may, by order, modify paragraph 1(1) to vary (generally in relation to every committee or individually in relation to each committee)—
- (a) the minimum and maximum number of assessors on the committee;
 - (b) the number of—
 - (i) elected assessors;
 - (ii) appointed assessors;
 - (iii) local authority assessors,on the committee.
- (2) No order under sub-paragraph (1) may modify paragraph 1(1) in such a way that elected assessors do not constitute a majority of the committee.

Election of assessors

- 3 (1) The Scottish Ministers may, by regulations, provide as to—
- (a) the election of persons as elected assessors;
 - (b) the matters mentioned in paragraph 6(4) to (6);
 - (c) the circumstances in which a person is disqualified from being an elected assessor;
 - (d) the effects of such disqualification.
- (2) Regulations under sub-paragraph (1) may, in particular, provide about—
- (a) the conduct of elections;
 - (b) the registration of electors (including the circumstances in which alterations in the register of electors can be disregarded);
 - (c) the combination of polls at elections for elected assessors with polls at other elections;
 - (d) determining the dates of polls at elections (including the first such election);
 - (e) the circumstances in (and procedures by) which the result of an election can be questioned;
 - (f) applying (with or without modifications) any provision made by virtue of any enactment relating to local government elections.

Local authority assessors: appointment

- 4 (1) For the purposes of paragraph 1(1)(b)—
- (a) the local authority which is to appoint persons as local authority assessors is the authority responsible for the area which the committee represents;
 - (b) where two or more local authorities are responsible for that area, the number of assessors to be appointed by each is to be specified by the Scottish Ministers in the order under section 2C(1).
- (2) A local authority may appoint as local authority assessors only persons who are members of that authority.
- (3) In appointing persons as local authority assessors, a local authority must—
- (a) ensure that each person appointed has knowledge of crofting; and
 - (b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of an assessor.
- (4) The fact that a person is—
- (a) a crofter;
 - (b) a landlord of a croft;
 - (c) an owner-occupier of a croft;
 - (d) a cottar; or
 - (e) a member of the family of any such a person,
- does not of itself constitute an interest mentioned in sub-paragraph (3)(b).
- (5) No person may be appointed as a local authority assessor unless that person ordinarily resides within the area which the committee represents.

Appointed assessors: appointment

- 5 (1) In appointing persons as appointed assessors, the Commission must—
- (a) ensure that each person appointed has knowledge of crofting; and
 - (b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of an assessor.
- (2) The fact that a person is—
- (a) a crofter;
 - (b) a landlord of a croft;
 - (c) an owner-occupier of a croft;
 - (d) a cottar; or
 - (e) a member of the family of any such a person,
- does not of itself constitute an interest mentioned in sub-paragraph (1)(b).



- (3) No person may be appointed as an appointed assessor unless that person ordinarily resides within the area which the committee represents.

Terms of office and tenure

- 6 (1) Subject to this schedule, an assessor (other than an elected assessor) holds and vacates office on such terms and conditions as the Commission may determine.
- (2) An assessor (other than an elected assessor) holds office for the period beginning with the date of that person's appointment and ending with the day of the next following election in the area which the committee represents.
- (3) A local authority assessor ceases to hold office if that assessor ceases to be a member of the local authority which appointed that assessor.
- (4) An elected assessor holds office for a period beginning with the day after the day of the election at which the assessor was elected and ending with the day of the next following election in the area which the committee represents.
- (5) A person may resign office as an assessor at any time by giving notice in writing to the Commission.
- (6) A person who ceases to be an assessor (otherwise than by virtue of being removed under paragraph 11) is eligible for reappointment or, as the case may be, re-election.

Quorum

- 7 The quorum of the committee is five assessors, of whom the majority must be assessors who are crofters or owner-occupiers.

Procedure

- 8 (1) The committee may regulate its own procedure.
- (2) The chairperson must, if present, chair meetings of the committee.
- (3) If the chairperson is not available to chair a meeting of the committee, the chairperson is to appoint another assessor to chair the meeting.
- (4) The person chairing a meeting of the committee has a casting vote.
- (5) The committee must keep a record of its meetings and decisions.
- (6) The validity of any proceedings of the committee is not affected by any vacancy in membership nor by any defect in the appointment or election of an assessor.

Member's interests

- 9 (1) An assessor who is in any way directly or indirectly interested in any matter brought up for consideration at a meeting of the committee must disclose the nature of that interest to the meeting.
- (2) Such a disclosure must be recorded in the minutes of the meeting.

- (3) The assessor making such a disclosure must not take part in any deliberation or decision of the committee with respect to the matter to which the disclosure relates.

Remuneration

- 10 The Commission must pay to assessors such sums as the Commission consider appropriate to reimburse any loss of earnings or any expenses (including travelling and subsistence expenses) incurred by them in, or in connection with, the exercise of their functions as assessors.

Removal of assessors

- 11 (1) The Commission may remove an assessor (other than an elected assessor) from office, by giving notice in writing to the assessor, if satisfied that the assessor—
 - (a) is insolvent;
 - (b) has been convicted of a criminal offence in relation to which the assessor has been sentenced to imprisonment for a period of 3 months or more;
 - (c) is incapacitated by physical illness or mental disorder;
 - (d) has been absent from meetings of the committee for a period exceeding 6 months without the permission of the chairperson;
 - (e) is otherwise unable or unfit to exercise the functions of, or is unsuitable to continue as, an assessor.
- (2) In sub-paragraph (1)(a), an assessor is insolvent when—
 - (a) the assessor's estate is sequestrated;
 - (b) the assessor is adjudged bankrupt;
 - (c) a voluntary arrangement proposed by the assessor is approved;
 - (d) the assessor enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
 - (e) the assessor grants a trust deed for creditors.
- (3) The Commission may remove an elected assessor from office, by giving notice in writing to the assessor, if satisfied that the assessor is or has become disqualified from office.

Vacancies

- 12 (1) This paragraph applies where a person (other than an elected assessor) ceases to be an assessor (whether by resignation or otherwise).
- (2) In the case of a local authority assessor, the local authority may appoint a person in accordance with paragraph 4 to fill the vacancy.
- (3) In the case of an appointed assessor, the Commission may appoint a person in accordance with paragraph 5 to fill the vacancy.



Provision of information to Commission

- 13 The committee must provide the Commission with such information in respect of the exercise, or proposed exercise, of the committee’s functions as the Commission may, from time to time, require.”.

SCHEDULE 3
(introduced by section 22(3))

RIGHTS OF CROFTERS’ CREDITORS ON CALLING-UP ETC.

“SCHEDULE 2A
(introduced by section 53C)

RIGHTS OF CROFTERS’ CREDITORS ON CALLING-UP ETC.

PART 1

GENERAL EFFECT OF CALLING-UP ETC.

Disapplication of statutory conditions

- 1 The statutory conditions set out in paragraphs 3 to 4 and 5(b) and (c) of schedule 2 do not apply.
- 2 No action may be taken—
- (a) by the Commission under section 26G, 26H or 26J;
 - (b) by the landlord under section 26(1) in relation to a breach by a crofter of the duty mentioned in section 26(1)(c);
 - (c) by the Land Court under section 26(1B) on an application in relation to a breach mentioned in section 26(1)(c) .

Access to crofts

- 3 Section 53B is to apply subject to the following modifications—
- (a) references to the crofter are to be read as references to the creditor; and
 - (b) references to the crofter’s croft are to be read as references to the croft.

Exchange of crofts

- 4 Section 4A is to apply subject to the following modifications—
- (a) the crofter of the croft over which there is a standard security may not exchange that croft (or any part of it);
 - (b) the creditor in the security may, instead, exchange the croft (or any part of it), subject to the requirements of that section; and

- (c) references to the crofter, the crofters and the crofter's croft are to be construed accordingly.

Assignment of crofts

- 5 (1) Where the creditor has exercised the power of sale by virtue of section 20(2) of and paragraph 10(2) of schedule 3 to the 1970 Act in relation to the croft, the creditor may assign the croft under section 8.
- (2) Section 8 is to apply subject to the following modifications—
 - (a) references to the crofter (other than in subsection (2)) are to be read as references to the creditor;
 - (b) references to the crofter's croft are to be read as references to the croft;
 - (c) the reference in subsection (6) to the crofter's executor or legatee is to be read as a reference to the creditor's successor in title;
 - (d) subsection (1A) and the words "or, where subsection (1A) applies, the creditor" in subsection (5) do not apply.

Division of crofts

- 6 (1) Where the creditor has entered into possession of the croft by virtue of paragraph 10(3) of schedule 3 to the 1970 Act, the creditor may divide the croft under section 9.
- (2) Section 9 is to apply subject to the following modifications—
 - (a) references to the crofter are to be read as references to the creditor;
 - (b) references to the crofter's croft are to be read as references to the croft;
 - (c) subsection (1A) does not apply.

Disapplication of residency duty etc.

- 7 (1) This paragraph applies where the creditor has—
 - (a) entered into possession of the croft by virtue of paragraph 10(3) of schedule 3 to the 1970 Act;
 - (b) registered a decree of foreclosure in relation to the croft in the Crofting Register.
- (2) Section 5AA does not apply.
- (3) The croft is not to be regarded as vacant for the purposes of sections 23 to 25 by virtue only of the matters mentioned in sub-paragraph (1).

Power to sublet

- 8 (1) This paragraph applies where the creditor has entered into possession of the croft by virtue of paragraph 10(3) of schedule 3 to the 1970 Act.
- (2) Sections 27 and 29 are to apply subject to the following modifications—



- (a) references to the crofter (other than in section 29(1) and (2)) are to be read as references to the creditor; and
- (b) references to the crofter's croft are to be read as references to the croft.

PART 2

RIGHTS TO BUY AND DECROFT

Right to buy croft land

- 9 (1) This paragraph and paragraphs 10 to 16 apply where the creditor has registered a decree of foreclosure in relation to the croft, obtained by virtue of section 28(4)(b) of the 1970 Act, in the Crofting Register.
- (2) Section 12 does not apply.
- (3) Where the creditor intends to acquire any croft land tenanted by the creditor by virtue of the decree of foreclosure, the creditor must obtain the consent of the Commission.
- (4) For the purposes of section 58A(6)(b)(ii), the special conditions which apply are—
 - (a) the creditor has not taken all reasonable steps to assign the croft;
 - (b) there is demand for a tenancy of the croft from persons who might reasonably be expected to obtain that tenancy if it were offered on the open market.
- (5) Where the Commission consent, the creditor may, failing agreement with the landlord, apply to the Land Court for an order authorising the creditor to acquire croft land.
- (6) Section 13 applies to an application under sub-paragraph (5) as it applies to an application under section 12(1) with the modification that references to the crofter are to be read as references to the creditor.
- (7) The application of section 14 to an order under section 13(1)(a) made on an application under this paragraph is subject to the following modifications—
 - (a) references to the crofter (other than in subsection (4)(a) and (b)) are to be read as references to the creditor; and
 - (b) the reference in subsection (4)(b) to the former crofter is to be read as a reference to the crofter who was the debtor in relation to the standard security by virtue of which the creditor obtained decree of foreclosure.

Right to buy croft house

- 10 (1) Where the creditor intends to acquire the site of a dwelling-house on or pertaining to the croft tenanted by the creditor by virtue of the decree of foreclosure, the creditor must obtain the consent of the Commission.
- (2) For the purposes of section 58A(6)(b)(ii), the special conditions which apply are—
 - (a) the creditor has not taken all reasonable steps to assign the site of the dwelling-house;

- (b) there is demand for a tenancy of the site of the dwelling-house from persons who might reasonably be expected to obtain that tenancy if it were offered on the open market.
- (3) Where the Commission consent, the creditor may, failing agreement with the landlord, apply to the Land Court for an order authorising the creditor to acquire the site of the dwelling-house.
- (4) Section 15 applies to an application under sub-paragraph (3) as it applies to an application under section 12(2) with the modification that references to the crofter are to be read as references to the creditor.

Provisions supplementary to paragraphs 9 and 10

- 11 (1) This paragraph applies where—
 - (a) an order under section 13(1)(a) is made on an application under paragraph 9(5);
 - (b) an order under section 15(1) is made on an application under paragraph 10(3).
- (2) Sections 16 to 18 are to apply subject to the following modifications—
 - (a) references to the crofter are to be read as references to the creditor; and
 - (b) in section 18, references to a crofter's croft are to be read as references to the croft.

Application to decroft

- 12 (1) This paragraph applies where the creditor intends to acquire any croft land or the site of a dwelling-house on or pertaining to the croft tenanted by the creditor by virtue of the decree of foreclosure.
- (2) Section 25(4) does not apply.
- (3) The creditor may apply to the Commission for a direction—
 - (a) that the croft land or, as the case may be, the site of the dwelling-house is no longer a croft; and
 - (b) that this Act is to cease to apply to the land or the site of the dwelling-house.
- (4) Where the application relates only to the site of a dwelling-house, the creditor must give the landlord written notice of the application.
- (5) The Commission must advertise an application under sub-paragraph (3) (other than one to which sub-paragraph (4) applies) in one or more newspapers circulating in the district in which the croft land or the site of the dwelling-house to which the application relates is situated.
- (6) Before disposing of the application, the Commission must, if the creditor requests they do so—
 - (a) hold a hearing; or



- (b) give the creditor and such other persons as the Commission consider appropriate the opportunity to make representations (whether orally or in writing).

Decrofting direction

- 13 (1) The Commission may, on an application under paragraph 12(3), direct that, on the acquisition of the land or, as the case may be, the site of the dwelling-house—
- (a) the land or the site of the dwelling-house is no longer a croft; and
 - (b) this Act is to cease to apply to the land or the site of the dwelling-house.
- (2) The Commission must make a direction under sub-paragraph (1) if they are satisfied that—
- (a) the creditor proposes that the croft land or the site of the dwelling-house be used for or in connection with some reasonable purpose (with the meaning of section 20) having relation to the good of—
 - (i) the croft;
 - (ii) the estate;
 - (iii) the public interest; or
 - (iv) the interest of the crofting community in the locality of the croft; and
 - (b) the extent of the land to which the application relates is not excessive in relation to that purpose.
- (3) The Commission must, in determining whether or not to make a direction, have regard to—
- (a) whether the creditor has taken all reasonable steps to assign the croft land or the site of the dwelling-house;
 - (b) the demand, if any, for a tenancy of the land or the site of the dwelling-house from persons who might reasonably be expected to obtain that tenancy if it were offered on the open market; and
 - (c) the general interest of the crofting community in the district in which the land or site is situated.
- (4) The Commission may not make a direction on an application to which paragraph 12(4) applies unless they are satisfied that the acquisition by the creditor of the site of the dwelling-house will not result in access to any part of the croft or to other croft land being prevented or impeded.

Effect of decrofting direction

- 14 (1) A direction under paragraph 13(1) has effect only if the land or the site of the dwelling-house to which it relates is acquired by the creditor or the creditor's nominee before the expiry of the period of 5 years beginning with the day on which the direction is made.
- (2) The making of a direction does not preclude the later inclusion of the land or the site of the dwelling-house in proposals—

- (a) to create a new croft by virtue of section 3A(1)(a);
 - (b) for the enlargement of a croft by virtue of section 4;
 - (c) for a reorganisation scheme by virtue of section 38(3)(a).
- (3) The coming into effect of a direction does not affect the Commission's powers under the proviso to section 29(3).

Notice of decisions and directions

- 15 (1) The Commission must give—
- (a) written notice to the creditor; and
 - (b) public notification,
- of the matters mentioned in sub-paragraph (2).
- (2) Those matters are—
- (a) their decision on the application under paragraph 12(3); and
 - (b) where they make a direction under paragraph 13(1), the nature of and reasons for the direction.

Decrofting appeals

- 16 (1) The creditor or the owner of the croft land or site of the dwelling-house affected by—
- (a) a decision on an application under paragraph 12(3) not to make a direction under paragraph 13(1);
 - (b) a direction made under paragraph 13(1),
- may, before the expiry of the period mentioned in sub-paragraph (2), appeal by stated case to the Land Court.
- (2) That period is the period of 42 days beginning with the day on which public notification of the decision or, as the case may be, direction is given.
- (3) The grounds of an appeal under this paragraph are that the Commission, in taking the decision or in making the direction—
- (a) erred on a point of law;
 - (b) made a finding of fact material to the making of the decision or direction without sufficient evidence;
 - (c) acted contrary to natural justice;
 - (d) took into account irrelevant or immaterial considerations;
 - (e) failed to take account of relevant or material considerations;
 - (f) exercised their discretion in an unreasonable manner.
- (4) The Land Court may—
- (a) confirm or revoke the decision or direction;
 - (b) direct the Commission to make a different decision or direction; or
 - (c) remit the case the Commission without so directing them.



- (5) The Commission must give effect to the determination of the Land Court on an appeal under this paragraph.”.

SCHEDULE 4
(introduced by section 49)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Crofters (Scotland) Act 1993

- 1 (1) The 1993 Act is amended as follows.
- (2) In section 1 (constitution and general functions of the Crofters Commission), subsections (4) and (5) are repealed.
- (3) In section 2 (particular powers and duties of the Commission)—
- (a) in subsection (1), in paragraph (a), the words from “, the improvement” to the end are repealed; and
- (b) subsections (2) and (4) are repealed.
- (4) For section 60 (regulations) substitute—

“60 Regulations and orders

- (1) Any power conferred by this Act on the Scottish Ministers to make regulations or orders is exercisable by statutory instrument.
- (2) Subject to subsection (3), a statutory instrument containing such regulations or such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) No statutory instrument containing—
- (a) an order under—
- (i) section 2A(1);
- (ii) section 2C(1);
- (iii) section 2E(1);
- (iv) section 2H(1);
- (v) section 5B(7);
- (vi) section 19C(8);
- (vii) section 60A;
- (viii) paragraph 3(3) of schedule 1;
- (ix) paragraph 2(1) of schedule 1A;
- (b) regulations under paragraph 3(1) of schedule 1A,
- may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

60A Ancillary provision

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving 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).”.
- (5) In section 61(1) (interpretation)—
 - (a) in the definition of “the Commission”, for “Crofters” substitute “Crofting”;
 - (b) after the definition of “landlord” insert—
 - ““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);
 - “local government area” is to be construed in accordance with section 1 of that Act;”; and
 - (c) after the definition of “National Trust for Scotland” insert—
 - ““owner-occupied croft” has the meaning given by section 19B(2);
 - “owner-occupier” has the meaning given by section 19B(1);”.

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

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



DRAFT CROFTING REFORM (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared in order to assist the reader of the draft Bill. They do not aim to explain the policy intention of the draft Bill, which is set out in the main body of the consultation document. They are intended to help the reader understand the purpose of each part and section of the draft Bill. The Notes should be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a section or schedule, or part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE DRAFT BILL - OVERVIEW

2. The draft Bill is in six parts. The main provisions of the draft Bill are as follows:

Part 1 – The Crofting Commission

- This part contains provisions that would reorganise the Crofters Commission through changing their constitution, functions, duties and powers. It renames the Crofters Commission as the Crofting Commission and changes its functions so that it is focused on regulating, reorganising and promoting the interests of crofting.
- Part 1 also provides for the establishment of Area Committees of the Crofting Commission each of which would comprise three types of assessor, namely, elected, Local Authority and appointed assessors. Area Committees would be able to exercise functions conferred on the Crofting Commission. Changes to the constitution of the Crofting Commission are included to allow for the representation of Area Committees on the board of the Commission.
- The Crofting Commission would have additional powers, including the ability to appoint its employees, whilst retaining the ability to use the services of staff provided by the Scottish Ministers. The Scottish Ministers would also be able to pay grants and make loans to the Commission and the Commission would be able to enter into contracts and charge fees in respect of their functions.

Part 2 – The Crofting Register

- Part 2 allows for the establishment of a Crofting Register by the Keeper of the Registers of Scotland that would gradually replace the current register held by the Crofters Commission. It provides for various interests to be registered and regulations to be made on a number of matters relating to the new register.

Part 3 – Duties of Crofters and Owner-Occupiers

- Part 3 would amend the current duties of crofters in respect of residency, misuse and neglect of crofts. It would put in place a clear duty on the Commission to take action where they consider that crofters are not meeting these requirements. This part also defines an owner-occupier and places the same requirements on owner-occupiers. The sanctions for crofters and owner-occupiers differ, reflecting the difference in interests that crofters and owner-occupiers have in a croft.

Part 4 – Standard Securities over Crofts

- Part 4 makes provision to enable crofters to grant standard securities over their croft tenancy. It also sets out the rights of crofters' creditors where a standard security has been granted over a croft tenancy and what the rights of the creditor are in the event that they call-up the security.

Part 5 – The Occupancy Requirement

- Part 5 puts in place an occupancy requirement that would require the owner of a dwelling built on decrofted land to ensure that the dwelling is used as a permanent residence. In addition to defining what is needed to satisfy the occupancy requirement it gives Local Authorities the power to suspend or remove the occupancy requirement. This part of the Bill also sets out the powers Local Authorities shall have to enforce the occupancy requirement and the penalties for breaching the occupancy requirement.

Part 6 – General and Miscellaneous

- Part 6 contains general and miscellaneous provisions, including pre-consolidation modifications of enactments relating to crofting. It sets out procedures that will apply to the making of subordinate legislation as well as amendments and the repeal of legislation that are consequential to the passing of the Bill.

PART 1 – THE CROFTING COMMISSION

The Crofting Commission

Section 1 The Crofting Commission

3. Subsection (1) of the draft Bill proposes to rename the Crofters Commission the “Crofting Commission”. Schedule 1 of the Crofters (Scotland) Act 1993 (referred to in these Explanatory Notes as “the 1993 Act”) would be replaced with a new schedule 1. Explanatory notes for new schedule 1 follow.

4. Subsection (4) states that where reference is made to the Crofters Commission in legislation, it would be assumed that this is a reference to the Crofting Commission unless there is a clear intention to the contrary.



Section 2 General functions of the Crofting Commission

5. Section 2 of the draft Bill proposes changes to the functions of the Commission. Subsection (1) proposes to replace section 1(2) of the 1993 Act with a new section 1(2). The Commission would continue to have responsibility for reorganising, regulating and for keeping under review matters relating to crofting. The Commission would also be responsible for promoting the interests of crofting.

6. Subsection (2) proposes to insert two new sections into the 1993 Act – sections 2A and 2B. Section 2A would enable the Scottish Ministers to confer, remove and modify the functions of the Commission by order. The Scottish Ministers can only make an order where they consider it to be appropriate to do so to enable the Commission to carry out its functions efficiently and effectively. Subsection (3) of the new section 2A would allow for functions exercisable by the Scottish Ministers under the 1993 Act to be conferred on the Commission apart from the power to make regulations and orders. It would also allow for the modification of any enactment including the proposed draft Bill in order to facilitate the efficient and effective operation of the Commission.

7. Section 2(4) of the 1993 Act requires the Commission to make an annual report to the Scottish Ministers on the exercise and performance by them of their functions under the Act. New section 2B proposes to expand this requirement so that, as well as reporting on its performance, the Commission is also required to assess the issues affecting crofting communities and the contribution crofting has made to sustainable development. In carrying out this requirement, the Commission would be required to consult with its Area Committees, each Local Authority in the area where there are crofts and Highlands and Island Enterprise. The Scottish Ministers would be required to lay a copy of the annual report before the Scottish Parliament with any comments.

Area crofting committees

Section 3 Area crofting committees

8. Section 3 of the draft Bill proposes to insert six new sections (2C-H) into the 1993 Act regarding Area Committees. Section 2C would provide the Scottish Ministers with the ability to require the Commission to establish Area Committees. Subsection (2) of section 2C specifies that where such an order is made, the Scottish Ministers must describe the area of each Area Committee by reference to the Ordnance Survey map, local government areas or by any other method considered appropriate.

9. Section 2D outlines the changes that the Scottish Ministers would be able to make to Area Committees by order.

10. Section 2E describes the functions of Area Committees. Subsection (1) of section 2E would enable the Scottish Ministers to confer functions of the Commission on Area Committees by order. Subsection (2) would enable the Scottish Ministers to prescribe the same functions to all Area Committees or vary the functions for each

Area Committee. Subsection (3) specifies that where an order is made under section 2E, any reference or provision in the Act to the Commission in relation to prescribed functions should also apply to the relevant Area Committees. Subsection (5) would require an Area Committee, in the exercise of its functions, to comply with written directions given to it by the Commission.

11. Section 2F places a duty on each Area Committee to produce a plan setting out its policies on how it proposes to exercise its functions. This plan must be submitted to the Commission within six months from the day of the first Area Committee election or the day of each subsequent election. Area Committees would be required to consult such persons and bodies as identified in subsection (3). Subsection (4) allows the Commission to approve or reject the plan and request changes to be made. Subsection (5) requires the Area Committees to send its plan to the relevant Local Authority and make the plan available for public inspection. Subsection (6) would enable an Area Committee to vary its plan or require it to do so upon the request of the Commission. Subsections (7) and (8) outline the process Area Committees would have to follow when varying their plan.

12. Section 2G clarifies the status of a plan published under section 2F. In the exercise of its functions, the Area Committee must have regard to its approved and published plan.

13. Section 2H would enable the Scottish Ministers, by order, to establish a review process of decisions made by Area Committees in exercise of their functions. This review process would be carried out by the Commission. An order under section 2H would outline the type of decisions the Commission could review. Subsection (2) outlines what might be included in such an order. Subsection (3) states that an order made under section 2H could not override the right of an aggrieved person to appeal a decision made by the Area Committee to the Land Court.

Schedule 1 The Crofting Commission

14. Schedule 1 is introduced by section 1(3) of the draft Bill and would replace the existing schedule 1 of the 1993 Act.

15. Paragraph 1 of the schedule is concerned with the status of the Crofting Commission. It proposes to retain the status of the Crofting Commission as a body corporate. Subparagraph (3) states that the Commission's members and employees are not to be regarded as civil servants. Paragraph 2 of the schedule refers to the general powers proposed for the Commission. It provides the Commission with the power to do anything which it considers to be necessary or expedient in order to carry out its functions.

16. Paragraph 3 outlines the proposed membership of the Commission. It proposes that the Commission consist of a maximum of nine members and a minimum of five. There would be two types of members; "elected members" and "appointed members". An elected member is the Chairperson of an Area Committee and by virtue of this role would automatically be a member of the Commission. An appointed member is appointed by the Scottish Ministers. It is proposed that there are



no fewer than three appointed members. Subparagraph (3) would allow the Scottish Ministers to vary the number of members and appointed members by order.

17. Paragraph 4 sets out the eligibility criteria for appointed members of the Commission. Each appointed member would need to have a knowledge of crofting and, where no chairperson of an Area Committee that is a member of the Commission speaks Gaelic, one appointed member must speak Gaelic. The Scottish Ministers must also be satisfied that none of the appointed members has any financial or other interest that might prejudice their ability to carry out their functions as an appointed member. Subparagraph (3) lists different types of interests which would not be considered interests that might prejudice the ability of an appointed member to carry out their functions.

18. Paragraph 5 enables the Scottish Ministers to determine the terms and conditions of an appointed member and paragraph 6 sets out the terms of office for members of the Commission. Paragraphs 6(1) and (2) would allow an elected member to continue to hold office after an election has been held for the area they represent, until a new chairperson for that Area Committee has been selected. When the new chairperson takes up their role as an elected member of the Commission, the previous incumbent will step down. Subparagraph (4) allows a person who is no longer a member of the Commission to be eligible for reappointment, provided they were not removed from office by the Scottish Ministers for reasons set out in paragraph 8.

19. Paragraph 7 would require the Scottish Ministers to pay members of the Commission such remuneration and allowances as Ministers determine. It also allows the Scottish Ministers to make arrangements for the payment of pensions, allowances and gratuities to current and former members of the Commission.

20. Paragraph 8 sets out circumstances in which the Scottish Ministers may remove a member from office. Paragraph 9 sets out the arrangements for the Crofting Commission's Chief Executive, staff and employees. Subparagraph (1) would require the Scottish Ministers to appoint a Chief Executive of the Commission on the terms and conditions they determine, after consultation with the convener of the Commission.

21. Schedule 1 of the 1993 Act currently allows the Scottish Ministers to provide the services of civil servants to the Commission. Subparagraph (2) would enable the Scottish Ministers to continue providing the services of staff to the Commission as it requires. Subparagraph (3) would also provide the Commission with the ability to appoint its own employees. Subparagraphs (4) to (6) would provide the Scottish Ministers with the ability to make directions to the Commission in relation to the appointment of employees. Subparagraph (7) provides the Commission with the power to pay, or make arrangements for the payment of, such remuneration, pensions, allowance and gratuities as the Commission determines. This is subject to the approval of the Scottish Ministers.

22. Paragraph 10 provides for the quorum of the Commission to be five. Where there are three or more elected members, the quorum must include three or more elected members.

23. Paragraph 11 sets out requirements of the Commission to establish committees. Subparagraph (1) would require the Commission to establish an Audit Committee. The Commission would also be required to establish Area Committees where the Scottish Ministers require them to do so by order under the proposed section 2C. Subparagraphs (4) and (5) outline who would be eligible to sit on a committee of the Commission.

24. Paragraph 12 sets out the procedure of the Commission and its committees. Subparagraph (1) would allow the Commission to regulate its own proceedings and the proceeding of its committees, other than its Area Committees (who regulate their own procedure). Subparagraphs 2 and 3 would require the Convener of the Commission to chair meetings or to appoint another member to act as chair where they are unavailable. Subparagraph 6 would enable the Commission, or committees of the Commission, to continue with their proceedings even where a membership vacancy arises or where there has been a defect in the appointment of a member.

25. Paragraph 13 deals with member interests, subparagraph (1) would require a member of the Commission or a person with a direct or indirect interest in any matter being considered at a meeting of the Commission to disclose their interests. Subparagraph (3) would prevent a person who has declared their interest, from taking part in any deliberation or decision of a matter in which they have an interest.

26. Paragraph 14 would allow the Commission to delegate its functions. Subparagraph (1) proposes a list of people to whom the Commission could delegate its functions. The Commission would have the ability to determine the type of functions it can delegate and the extent to which these functions can be carried out on its behalf. Subparagraph 2 specifies that the Commission would continue to have responsibility for the exercise of its functions even after a function has been delegated.

27. Paragraph 15 requires the Commission to have its main office in the Crofting Counties. The Commission would require the approval of the Scottish Ministers as to the location of that office and must comply with any direction given by Ministers.

28. Paragraph 16 sets out proposed financial arrangements for the Commission. Subparagraph (1) would enable the Scottish Ministers to pay grants or make loans to the Commission. This would give the Commission the financial flexibility to use its proposed powers under paragraph 2 to enter into contracts, acquire and dispose of land and enter into contracts. Subparagraph (2) would enable the Scottish Ministers to determine the terms and conditions of such loans and grants and subparagraph (3) would allow Ministers to vary these terms and conditions.

29. Paragraph 17 sets out requirements for the Commission to prepare accounts. Subparagraphs (1) to (3) would require the Commission to keep a proper set of accounting records and prepare a statement of accounts each year. This statement of accounts must be sent to the Scottish Ministers on a specified date as directed. Subparagraph (5) would require the Commission to make these audited accounts available for public inspection.



30. Paragraph 18 would require the Commission to provide the Scottish Ministers with information on its functions as required.

31. Paragraph 19 would enable the Scottish Ministers to transfer property, rights and liabilities to the Commission where it is considered expedient to do so.

Schedule 2 Area crofting committees

32. Schedule 2, as introduced by section 3(2) of the Bill, inserts a new schedule 1A into the 1993 Act, which makes provisions relating to the establishment of Area Committees.

33. Paragraph 1 sets out the membership of Area Committees. Subparagraph (1) proposes that there are a maximum of seven elected assessors, two Local Authority assessors and three appointed assessors on each Area Committee. Subparagraph (2) would enable the Commission to appoint additional assessors if fewer than seven assessors are elected. However, subparagraph (3) prevents the Commission from appointing additional assessors if this would prevent crofters and owner-occupiers constituting the majority of an Area Committee.

34. Paragraph 2 would enable the Scottish Ministers to vary the constitution of Area Committees. Subparagraph (1) would enable the Scottish Ministers to vary the minimum and maximum number of assessors on each committee. Ministers would also be able to vary the numbers of elected, appointed and Local Authority assessors on each Area Committee by order. However, subparagraph (2) prevents the Scottish Ministers doing so if crofters or owner-occupiers do not constitute a majority on the committee.

35. Paragraph 3 allows the Scottish Ministers to make regulations in relation to the election of assessors. Subparagraphs (1) and (2) outline what the Scottish Ministers may include in regulations.

36. Paragraph 4 sets out the process for appointing Local Authority assessors. Subparagraph (1) proposes that a Local Authority should only be able to appoint a Local Authority assessor for an Area Committee in the area they are responsible for. Where two or more Local Authorities are responsible for an area that the Area Committee covers, Ministers will make an order as to the number of assessors who are to come from each Local Authority.

37. Subparagraph (2) requires that Local Authority assessors must be members of the Local Authority they are representing. Subparagraph (3) would require each Local Authority assessor to have knowledge of crofting and have no financial interest or other interest which may prejudice their role as an assessor. Subparagraph (5) requires a Local Authority assessor to be ordinarily resident in the area that the Area Committee represents.

38. Paragraph 5 sets out the process for appointing appointed assessors. Subparagraph (1) would require an appointed assessor to have knowledge of crofting and have no financial or other interest that might prejudice their ability to carry out

the functions as an appointed assessor. Subparagraph (3) requires an appointed assessor to be ordinarily resident in the area that the Area Committee represents.

39. Paragraph 6 sets out the proposed terms and conditions of tenure. Subparagraph (1) proposes that Local Authority and appointed assessors hold and vacate office as the Commission determines. Subparagraph (2) would enable an appointed or Local Authority assessor to hold office from the date of their appointment to the day of the next Area Committee election. However, under subparagraph (3), if a Local Authority assessor ceased to be a member of the Local Authority, they could no longer remain an Area Committee assessor.

40. Subparagraph (4) would enable an elected assessor to hold office from the day after their election to the day of the next election.

41. Paragraph 7 provides for the quorum of an Area Committee to be five assessors of whom the majority must be crofters or owner-occupiers.

42. Paragraph 8 would allow an Area Committee to regulate its own procedures. However, subparagraphs (2) to (6) detail the procedures that must be followed.

43. Paragraph 9 outlines the requirement for assessors as members of the Area Committees to disclose their interests. Subparagraph (1) would require a member with a direct or indirect interest in any matter being considered at a meeting of the Area Committee, to disclose their interest. Subparagraph (3) would prevent a member who has declared their interest, from taking part in any deliberation or decision of a matter in which they have an interest.

44. Paragraph 10 would require the Commission to pay assessors any sums the Commission considered appropriate for loss of earnings and expenses incurred by assessors in connection with their role.

45. Paragraph 11 sets out the circumstances in which the Scottish Ministers may remove an assessor from office.

46. Paragraph 12 outlines the process which should be followed where there is a vacancy on an Area Committee. Subparagraph (2) would enable a Local Authority to appoint a replacement assessor, so long as they followed the requirements set out in the draft Bill. Subparagraph (3) would enable the Commission to appoint an appointed assessor.

47. Paragraph 13 requires Area Committees to provide the Commission with information on the exercise of its functions as required.



PART 2 – THE CROFTING REGISTER

Section 4 The Crofting Register

48. Subsection (1) would require the Keeper of the Registers of Scotland to establish and maintain a public register of interests in crofts that would be known as the Crofting Register. The Commission would still be able keep administrative records of crofts. Subsection (2) describes what would be considered an interest in a croft.

49. The Keeper would be required to establish and maintain a title sheet of an interest in a croft.

Section 5 Further provision about the Crofting Register

50. Subsection (1) would enable the Scottish Ministers, by regulations, to make further provision about the establishment and maintenance of the Crofting Register. Subsection (2) introduces the type of matters that the Scottish Ministers may make provision about in relation to the Crofting Register. These matters are outlined in subsections (3) to (15).

51. Subsection (3) would enable the Scottish Ministers to make regulations about the interests that qualify as interests in crofts. Subsection (8) would enable the Scottish Ministers to make regulations for the procedure and grounds for challenging the first registration of a croft. However, it would not be possible to challenge the registration of a standard security over a croft.

PART 3 – DUTIES OF CROFTERS AND OWNER-OCCUPIERS

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

Section 6 Crofters' duties relating to residency, misuse and neglect of crofts

52. This section of the draft Bill proposes to amend the 1993 Act by inserting a new section 5AA into the Act and a replacement section 5B.

53. Subsection (2) inserts the new section 5AA, which places a duty on a crofter to be ordinarily resident on, or within 16 kilometres of, their croft.

54. Subsection (3) proposes to replace section 5B of the current 1993 Act with a new section 5B that would place a duty on a crofter not to misuse or neglect their croft. Subsection (2) of the proposed replacement 5B defines "misuse" of a croft and subsection (3) defines "neglect" of a croft.

55. Subsection (4) of the proposed replacement section 5B allows for a crofter to engage in, or refrain from, an activity if it is for the purpose of conserving the natural beauty of the locality of a croft or for conserving the flora and fauna of that locality. Such activity or lack of activity would not constitute misuse or neglect so long as it is done so in a planned and managed manner.

56. Subsection (5) of the proposed replacement section 5B allows for the continuation of certain subsidiary or auxiliary uses of a croft permitted under previous legislation. Such use is not to be considered as misuse or neglect of the croft.

57. Subsection (6) of the proposed replacement section 5B defines “purposeful use” for the purpose of subsection (2)(a) of that section and subsection (7) of that section enables Ministers to amend the meaning of “neglect” in subsection (3).

58. It is proposed that the current power of the Crofters Commission to make an order terminating a crofter’s tenancy of a croft for failing meet the residency requirement under section 22 of the 1993 Act is repealed by section 6(4) of the draft Bill. This is replaced by a new enforcement procedure in new sections 26A to 26K (see section 9 of the draft Bill). Subsections (5) to (9) are changes to the 1993 Act that would be consequential to the provisions in the rest of section 6.

Owner-occupied crofts: owner-occupiers’ duties

Section 7 Owner-occupied crofts: owner-occupiers’ duties

59. Section 7 of the draft Bill proposes to introduce two new sections to the 1993 Act – sections 19B and 19C.

60. Subsection (1) of 19B defines an “owner-occupier” and subsection (2) defines an “owner-occupied croft”.

61. The proposed section 19C sets out the duties of an owner-occupier in respect of their croft. It is similar to the duties of a crofter in respect of their crofts. Subsection (2) lists the duties and requires an owner-occupier to be ordinarily resident on, or within 16 kilometres of, the croft; not to misuse or neglect the croft; to cultivate the croft or put it to purposeful use and to keep the croft in a fit state for cultivation.

62. Subsection (3) defines “misuse” and subsection (4) defines “neglect” for owner-occupied crofts in the same terms as those for tenant crofters.

63. Subsections (5), (6), (7) and (8) are the equivalent subsections for owner-occupiers as the proposed section 5B(4), (5), (6), and (7) are for tenant crofters.

64. Section 7(2) of the draft Bill proposes to amend section 23 of the 1993 Act, which deals with vacant crofts and disapplies this section for owner-occupied crofts.

Commission consent to absence from crofts

Section 8 Consent to absence from crofts

65. This section of the draft Bill proposes new sections 21B, 21C and 21D for the 1993 Act. The proposed 21B sets out a new procedure for tenant crofters and owner-occupiers to apply to the Commission for consent to be absent from a croft. Subsection (2) of the proposed section 21B requires tenant crofters to send a copy of an application to be absent from the croft to the landlord of the croft.



66. Subsection (3) states that the Commission may grant consent where they consider there to be a good reason for the person not being ordinarily resident on, or within 16km of, the croft. Subsection (4) allows the Commission to attach conditions to any consent they grant for a crofter or owner-occupier to be absent from their croft.

67. Subsection (5) requires the Commission to make a decision on any application to be absent within 28 days of receiving that application. Subsection (6) requires the Commission to notify the applicant and, where the applicant is a tenant crofter, the landlord of their decision and the reason for making it.

68. Section 21C provides for the scenario where a person wishes to extend their consent to be absent from the croft and section 21D allows for a person who has conditions attached to their consent to apply to have these conditions changed.

Enforcement of duties of crofters and owner-occupiers

Section 9 Enforcement of duties of crofters and owner-occupiers

69. This section of the draft Bill proposes to introduce 10 new sections to the 1993 Act (sections 26A to 26K). These sections set out the arrangements for the enforcement of the duties placed on crofters and owner-occupiers. The proposed section 26A applies the enforcement provisions where the Commission consider that a crofter or owner-occupier is not fulfilling their duties introduced by sections 6 and 7 of the draft Bill. Section 26B requires the Commission to send a notice of a suspected breach of duty to the relevant person unless they consider there to be a good reason not to. Where there is a standard security over the croft, a copy must also be sent to the creditor. The notice must explain the reasons why the Commission consider that the duty is not being complied with and indicate that the person may make representations to the Commission about the notice within 28 days of receiving the notice. Once the representation period has elapsed, the Commission must decide within 14 days whether the duty is being complied with.

70. The proposed section 26C sets out the next steps in the event that the Commission decide that a duty is not being complied with. The Commission must write a notice to the person in breach of the requirement and give them the opportunity to give an undertaking to carry out one of the actions sets out in section 26D. Where there is a standard security over the croft, a copy of the notice must be sent to the creditor in the security. Subsection (2) of section 26C sets out what the notice must contain. Subsections (3) and (4) sets out the options available to the Commission in relation to the undertaking.

71. The proposed section 26D sets out the different types of undertaking that a crofter or owner-occupier might give. Subsection (2) describes the residency undertaking, which is an undertaking to comply with the residency duty within a period as the Commission consider to be reasonable. Subsection (3) describes the misuse or neglect undertaking, which is an undertaking to comply with the duty not to misuse or neglect the croft within a period that the Commission consider to be reasonable. Subsection (4) describes the general undertaking, which is a commitment to comply with any of the other duties within a period that the Commission consider to be reasonable.

72. The proposed section 26E sets out the circumstances under which the Commission may not proceed with enforcement action. They may not proceed where the period for giving an undertaking has not expired or where an undertaking has been given but the period for complying with that undertaking has not expired. Where an undertaking has been complied with, the Commission may not take further enforcement action. Where a crofter or an owner-occupier has applied for consent to sublet the croft (but that application has not been determined), or the crofter has been granted consent to sublet the croft, the Commission may not take further enforcement action. Where there has been a failure to comply with the residency duty, the Commission may not take further enforcement action where the Commission has consented to the absence or an application has been made for consent to be absent.

73. The proposed section 26F places a duty on the Commission to take action where they decide that a duty is not being complied with and none of the circumstances set out in 26E apply unless they consider there to be a good reason not to. Subsection (2) sets out the actions the Commission must take. In the case of a tenant crofter, the Commission must proceed to terminate the crofter's tenancy as provided for under section 26H. In the case of an owner-occupier, the Commission must proceed with the letting procedure set out under section 26J.

74. The proposed section 26G provides a power for the Commission to divide a croft before taking action. Before dividing a croft, the Commission must have regard to the use and occupation of the croft, the interests of the estate in which the croft is located, the sustainable development of the crofting community and other matters that the Commission consider to be appropriate. They must also be satisfied that it is fair to divide the croft. Where a croft has been divided, subsection (3) allows for the Commission to take enforcement action in respect of the whole croft or part of the croft.

75. The proposed section 26H sets out the process for terminating a crofting tenancy. The Commission must, unless they consider there is a good reason not to, make an order to terminate a crofting tenancy where a duty is not being complied with. That order must be notified to the crofter and the landlord of the croft. The order must specify the date on which it takes effect and may not take effect before 28 days of notification to the crofter. Subsections (5) and (6) provide for the ejection of the crofter from the croft if the crofter fails to give up occupation of the croft. Subsection (7) allows the Commission to recover expenses associated with the termination of a tenancy from the crofter and subsection (8) confirms that a crofter whose tenancy is terminated has the same rights and liabilities relating to compensation as if the crofter had renounced the tenancy. This is intended to be similar to the existing procedures for terminating a tenancy.

76. The proposed section 26J sets out the process for letting an owner-occupied croft. The Commission must, unless they consider there is a good reason not to do so, direct the owner-occupier to submit a proposal for letting the croft where a duty is not being complied with. Where an owner-occupier has not made a proposal for letting the croft or has not had a proposal approved within 28 days of the direction being given, the Commission may invite applications for letting the owner-occupied croft. Once the period has elapsed for applications to lease the croft, the Commission must



decide who to let the croft to and, after consulting the owner-occupier, the conditions under which the croft is let. An owner-occupier must apply to the Land Court for a variation of the conditions within 28 days of the beginning of the letting. This is intended to be similar to the existing procedures for requiring letting proposals under the vacant crofts provisions.

77. The proposed section 26K sets out the right to appeal to the Land Court. A person may appeal to the Land Court against a decision of the Commission not to accept an undertaking or against conditions imposed on such an undertaking. A person may also appeal to the Land Court against a decision of the Commission to make an order terminating the tenancy of a crofter or a decision to make a direction requiring an owner-occupier to submit letting proposals. Subsection (3) sets out how and when an appeal must be made and subsection (4) sets out the grounds for appeal. Subsection (5) sets out the actions the Land Court may take in respect of an appeal and subsection (6) requires the Commission to give effect to the decision of the Land Court.

Letting of owner-occupied crofts

Section 10 Letting of owner-occupied crofts

78. This section of the draft Bill proposes to amend the 1993 Act by inserting a new section 29A and 29B into the Act to allow owner occupiers to let their crofts for up to ten years without the tenant being treated as a crofter or tenant under a tenancy under the Agricultural Holdings (Scotland) Act 2003.

79. Section 29A would require owner-occupiers to obtain the consent of the Commission prior to letting their croft. Owner-occupiers would be able to let their croft for a maximum of ten years. Subsection (3) enables the Commission to impose conditions in giving their consent to a proposed lease. Subsection (4) makes any lease granted without the Commission's consent, or where conditions of the consent have been breached, void. As with subleases by tenant crofters, the Commission may intervene where there are reasonable grounds for concern as regards the use which the proposed tenant intends to make of the croft or if the proposed tenant will not be ordinarily resident on, or within 16 kilometres of, the croft. Subsection (6) allows the Commission to terminate a lease where a condition attached to the consent is breached or the tenant fails to comply with a condition of the let (other than one about rent). Subsection (7) clarifies that these conditions do not apply to the letting of a croft house or other building forming part of the croft to holiday visitors.

80. Section 29B clarifies the status of a tenant of an owner-occupier. As with sub-tenants of tenant crofters, a tenant of an owner-occupier under these new provisions is not to be treated as a crofter or a tenant under a tenancy under the Agricultural Holdings (Scotland) Act 2003.

PART 4 - STANDARD SECURITIES OVER CROFTS

Grant of standard securities by crofters

Section 11 Grant of standard securities by crofters

81. Section 11 would provide for amendment of the Conveyancing and Feudal Reform (Scotland) Act 1970 (referred to in these Explanatory Notes as “the 1970 Act”) to allow crofters to grant a standard security over their croft.

82. Subsection (2) would amend section 9 of the 1970 Act. Section 9(2) of the 1970 Act currently makes provision for granting standard securities over land or real rights in land (defined in section 9(8) of the 1970 Act). This Bill would insert a new section 9(2ZA) into the 1970 Act. It would provide, separately to the rights conferred by section 9(2) of the 1970 Act, that it is also competent to grant a standard security over a registered croft. Such securities would be recorded in the new Crofting Register under Part 2 of this Bill. However, new section 9(2ZA) would require that before such a standard security could be granted, the croft would have to be registered in the new Crofting Register.

83. Subsection (3)(b) would result in paragraph 8 of new schedule 2A applying in place of section 20(3) and (4) of the 1970 Act where the debtor in a standard security is a crofter. This would result in the subletting provisions in sections 27 and 29 of the 1993 Act applying instead.

84. Subsection (4) makes amendments to section 28 of the 1970 Act so that decrees of foreclosure in relation to standard securities over croft tenancies should contain warrants for recording the extract of the decree in the new Crofting Register (rather than the Register of Sasines or the Land Register). Subsection (5) inserts interpretation provisions into section 30 of the 1970 Act to cover standard securities over croft tenancies.

Section 12 Right of crofter’s creditor to be overriding interest on landlord’s title

85. Section 12 would provide for amendment of section 28(1) of the Land Registration (Scotland) Act 1979. Subsection (2) would define the “Crofting Register” and “registered croft”. Subsection (2)(b) would update the meaning of “overriding interest” in relation to crofters and cottars. It would also add to the list of overriding interests the rights or interests of creditors in a standard security over crofts registered in the Crofting Register.



Creditors' rights under 1993 Act where securities granted over crofts

Section 13 Enlargement of croft: consent of creditor

86. Section 13 would provide a simplified section 4 of the 1993 Act for application to enlarge a croft. All applications for enlargement of a croft would require the approval of the Commission. In addition, subsection (3) would provide for the creditor's consent to be obtained in writing prior to applying to the Commission to enlarge the croft where a security has been granted.

Section 14 Statutory conditions: rights of creditor

87. Section 14 would amend section 5 of the 1993 Act. Subsection (2) would require the landlord to serve a copy of the notice in subsection (1A) of the 1993 Act on any creditor in a standard security over the croft.

88. Subsection (3) would replace subsection (7) with new subsections (7) to (7B). New subsection (7A) would allow the crofter to apply to the Commission for consent to the use of the croft where the landlord either does not consent or applies unacceptable conditions. New subsection (7B) would require the crofter to obtain written consent from any creditor in a standard security over the croft before applying to the Commission under subsection (7A).

Section 15 Breach of statutory conditions: notice to creditor

89. Section 15 would amend section 5A of the 1993 Act to require the Commission to give written notice of a breach of the statutory conditions to any creditor in a standard security over the croft as well as the crofter.

Section 16 Renunciation of tenancy: consent of creditor

90. Section 16 would amend section 7 of the 1993 Act to require a crofter to obtain the consent in writing of any creditor in a standard security over the croft before giving notice of renunciation of tenancy.

Section 17 Assignment of croft: consent of creditor

91. Section 17 would amend section 8 of the 1993 Act to require a crofter to obtain the consent of any creditor to an assignment of a croft. Subsection (3) is consequential to this amendment.

Section 18 Division of crofts: consent of creditor

92. Section 18 would amend section 9 of the 1993 Act to require a crofter to obtain the consent of any creditor before applying to divide a croft.

Section 19 Removal of crofter: notice to creditor

93. Section 19 would provide a replacement subsection (1) of section 26 of the 1993 Act to ensure any creditor in a standard security, as well as the crofter, is given written notice of an application to the Land Court to remove the crofter.

Section 20 Reorganisation schemes: notice to creditor

94. Section 20 would amend section 38 of the 1993 Act to include any creditor in a standard security over a croft involved in a reorganisation scheme to be included in the list in subsection (10) of the Act of those to be notified at various stages of a reorganisation scheme.

Section 21 Duty of creditors to provide information to Commission

95. Section 21 would amend section 40 of the 1993 Act to allow the Commission to obtain information from a creditor in a standard security. The offence provisions in section 40(2) would also apply to such a creditor.

Rights of crofters' creditors on calling-up etc.

Section 22 Rights of crofters' creditors on calling-up or default

96. Section 22 would insert a new section 53C into the 1993 Act, giving rights to a creditor where a calling-up notice is served and the conditions have not been complied with within the specified period or where there is another default by the crofter.

97. Subsections (2) to (4) of section 53C set out the circumstances before action can be taken on a croft subject to a standard security. Subsection (2) is that the creditor is to have served a calling-up notice and the specified period has expired without compliance of the conditions in the notice. The court is to have upheld the notice (with or without amendment) and the default not to have been remedied, and the creditor to have obtained a warrant from the court to remedy the situation.

98. Section 22(3) and schedule 3 would insert a new schedule 2A in the 1993 Act. Details of Schedule 3 are below.

Schedule 3 Rights of crofters' creditors on calling-up etc.

99. Schedule 3 is to be introduced by section 22(3) of the draft Bill and would insert a new schedule 2A. Schedule 2A is in two parts, the first of which deals with the general effect of calling-up and the second of which sets out the creditors right to buy and decroft.

100. Paragraph 1 proposes the disapplication of certain statutory conditions and paragraph 2 would prevent certain actions being taken by the Crofting Commission, the landlord and the Land Court under section 26 of the 1993 Act following the issue of a calling-up notice by a creditor.



101. Paragraphs 3 to 5 would give the creditor, following the issue of a calling-up notice, the crofter's rights to access, exchange, assign and divide the croft, subject to the approval of the Crofting Commission.

102. Where a creditor has entered into possession of the croft or registered a decree of foreclosure in the new Crofting Register, paragraph 7(2) would disapply new section 5AA in section 6 of the draft Bill and the creditor would not be required to be ordinarily resident on, or within 16 kilometres of, the croft. Paragraph 7(3) would prevent the croft from being regarded as vacant only by virtue of the creditor's action being taken and not meeting the residency requirement.

103. Paragraph 8 would provide a creditor who has entered into possession of a croft with the power to sublet the croft in the same way as a crofter.

104. Paragraphs 9 to 16 of this schedule apply where a creditor has registered a decree of foreclosure in the new Crofting Register.

105. Paragraph 9(2) disapplies the general provisions in section 12 of the 1993 Act. Subparagraph (3) would require the creditor to obtain the consent of the Commission to buy croft land and subparagraph (4) would set out the special conditions for the Commission to consider in determining the application, i.e. that the creditor has already taken reasonable steps to assign the croft and there is no demand for the tenancy of the croft. Subparagraph (5) would allow the creditor, failing agreement with the landlord, to apply to the Land Court for an order to acquire croft land. Subparagraph (6) applies section 13 of the 1993 Act to creditors similarly to section 12(1) of that Act, with the modification that crofter should be read as creditor. Subparagraph (7) applies section 14 of the 1993 Act with appropriate modifications.

106. Paragraph 10(1) would require the creditor to obtain the consent of the Commission to acquire the site of a dwelling-house and subparagraph (2) would set out the special conditions for the Commission to consider in determining the application, i.e. that the creditor has already taken reasonable steps to assign the croft and there is no demand for the tenancy of the croft. Subparagraph (3) would allow the creditor, failing agreement with the landlord, to apply to the Land Court for an order to acquire the site of the dwelling-house and subparagraph (4) applies section 15 of the 1993 Act with appropriate modifications.

107. Paragraph 11 provides for the application of sections 16 to 18 with appropriate modifications.

108. Paragraph 12(1) would apply to a creditor acquiring croft land or the site of a dwelling-house tenanted by the creditor where a decree of foreclosure is in place. Subparagraph (2) disapplies section 25(4) so that a creditor's application to decroft would be dealt with under paragraphs 12 to 16 rather than under sections 24 and 25 of the 1993 Act. Subparagraph (3) would set out the circumstances where a creditor may apply to the Commission to decroft croft land or the site of a dwelling-house and subparagraph (5) sets out the requirements for the Commission advertising the application. Subparagraph (6) would, if the creditor so wished, require the Commission to hold a hearing, and allow the creditor and any others the Commission considers appropriate to make representations.

109. Paragraph 13(1) proposes that the Commission may direct that croft land or the site of a dwelling-house is no longer croft land on acquisition of the land. Subparagraph (2) would require the Commission to make a direction if they are satisfied that the criteria in this paragraph are met and subparagraph (3) sets out the issues which the Commission must take into account in determining the creditor's decrofting application. Subparagraph (4) would allow the Commission to make a decrofting direction only if they are satisfied that acquisition by the creditor would not impede or prevent access to any other croft land.

110. Paragraph 14(1) would provide that a decrofting direction would cease to have effect after a period of 5 years unless the creditor acquires the croft land or site of the dwelling-house. Subparagraph (2) would allow decrofted land to be included in the future as a new croft, to enlarge a croft or in a reorganisation scheme, thereby returning the land to crofting tenure.

111. Paragraph 15 details the requirements on the Commission for giving notice of decisions and directions.

112. Paragraph 16 would set out who may appeal to the Land Court on a decrofting decision by the Commission, the period in which any appeal must be lodged, the grounds on which an appeal may be made and action which the Land Court may take in determining such an appeal. Subparagraph (5) will provide for the Land Court's decision in the appeal to be binding on the Commission.

PART 5 – THE OCCUPANCY REQUIREMENT

The occupancy requirement

Section 23 The occupancy requirement

113. Subsection (1) proposes that the owner of a dwelling built on decrofted land is responsible for ensuring that the occupancy requirement is met. Decrofted land is defined in section 25 of the Bill.

114. Subsections (2) and (3) require a decrofted dwelling subject to an occupancy requirement to be a permanent residence complying with the requirements of subsections (4) and (5). Subsection (5) requires the person occupying the decrofted dwelling to reside in the premises for at least 183 days in any one residence year, being a calendar year. Subsection (6) defines "owner" for the purposes of this Part of the Bill.

Section 24 Decrofted dwellings

115. Section 24 proposes a definition of a decrofted dwelling as a dwelling on land at the point of decrofting that land, subsequently built on decrofted land or any building on decrofted land which is converted to a dwelling when the land is decrofted or at any point thereafter. Subsection (5) defines a "dwelling" for the purposes of this Part of the Bill.



Section 25 Relevant decrofted land

116. Subsection (1) would define relevant decrofted land as land decrofted on or after 13 May 2008 and to which subsection (2) or (3) apply. The legislation makes retrospective provision on land taken out of crofting tenure after 12 May 2008 in accordance with the Government's statement to Parliament on that date in response to Parliamentary Question S3W-12829.

117. Subsection (2) provides that land is decrofted land when the Crofters Commission makes a direction in relation to resumption or a vacant croft under sections 24 or 25 of the 1993 Act. Subsection (3) provides that land is decrofted land where the Land Court makes an order removing land from crofting tenure. Subsection (4) proposes that land decrofted, or in relation to which an application to decroft has been made, on or before 12 May 2008 cannot be subject to an occupancy requirement.

Section 26 Residence year

118. This section defines a residence year as being a calendar year. Subsections (2) and (3) propose circumstances where the occupancy requirement does not apply to a decrofted dwelling. Where they apply, the occupancy requirement will not apply to any existing dwelling, any dwelling subsequently built on decrofted land, any property converted to a dwelling or any new owner of such a dwelling, until the 1 January of the following year.

Section 27 Periods of non-occupation that are to be disregarded

119. Subsection (1) proposes certain periods of time where a dwelling subject to an occupancy requirement should be considered as being occupied. Subsection (2) defines various references used in subsection (1). Subsection (3) allows Ministers to amend, by order subject to affirmative resolution of the Scottish Parliament, the provisions in subsections (1) and (2).

Section 28 Power to suspend or remove occupancy requirement

120. Section 28 provides Local Authorities with powers to suspend or remove an occupancy requirement. Subsection (1) provides for the owner to apply for suspension or removal of the occupancy requirement from a decrofted dwelling. Subsection (2) defines "appropriate local authority" and subsection (3) requires the application to be in writing.

121. Subsection (4) would allow the Local Authority to suspend the requirement for a period of time or indefinitely to reflect the individual circumstances of each application. Subsection (5) provides that any application not requesting a specific period of time for suspension shall be treated as an application for indefinite suspension.

122. Subsection (6) specifies issues that a Local Authority must take into account in determining an application to suspend or remove an occupancy requirement. Subsection (7) allows a Local Authority to determine the duration of a suspended

occupancy requirement, rather than having to reject an application for suspension simply because the Local Authority disagrees with the requested duration. A Local Authority can therefore apply its own timescale where it accepts, in principle, the reason(s) for suspending an occupancy requirement.

123. Subsections (8) to (11) set out the timescales and procedure for a Local Authority decision. The Local Authority is given two months to intimate its decision in writing to the owner or to specify why it has failed to intimate its decision within that timescale and when a decision is expected. However, subsection (11) provides that failure to comply with this process does not invalidate the decision.

Section 29 Guidance on suspension or removal of occupancy requirement

124. Subsection (1) requires Local Authorities to take into account any guidance issued by the Scottish Ministers in determining applications to suspend or remove occupancy requirements. Subsection (2) requires the Scottish Ministers to consult on the guidance before issuing it. Subsection (3) details those to be consulted. Subsection (4) allows the Scottish Ministers to amend or revoke such guidance and subsection (5) requires them to publish it.

Section 30 Reinstatement of suspended occupancy requirement

125. Section 30 sets out the requirements for a Local Authority reinstating a suspended occupancy requirement. Subsection (1) allows a Local Authority to reinstate the requirement before the end of the suspended period. Subsections (2) to (5) provide the process to be carried out by Local Authorities before reinstating the requirement, including considering any representations made within or after the timescale provided. Subsection (6) provides that failure to comply with this process does not invalidate the decision.

Section 31 Appeal to sheriff in relation to decisions of local authority

126. This section allows an owner of a decrofted dwelling to appeal by summary application to the sheriff against the decision of a Local Authority in certain circumstances.

127. Subsection (1) details the Local Authority decisions which may be appealed and subsection (3) sets out the grounds on which an appeal may be made. Subsection (4) sets a time limit of 21 days for lodging appeals. Subsection (5) provides which sheriff has jurisdiction to hear appeals, subsection (6) sets out the options available to a sheriff in deciding an appeal and subsection (7) allows the sheriff to specify a time limit for a Local Authority to issue a new decision where a decision has been remitted under subsection (6)(b).

Enforcement of occupancy requirement

Section 32 Enforcement of occupancy requirement: general

128. Subsection (1) proposes a definition of an “authorised officer” for the purposes of the occupancy requirement functions and subsection (2) provides the



authority for such officers to exercise the powers detailed in sections 33 to 35 of the Bill where these are necessary for detecting a breach of an occupancy requirement.

129. Subsection (3) would require an authorised officer to produce evidence of authorisation to carry out their functions relating to an occupancy requirement, if requested.

130. Subsection (4) proposes that an authorised officer cannot require information that would be classed as confidential in proceedings in the Court of Session.

Section 33 Power of entry

131. Subsections (1) and (2) would allow an authorised officer to enter any premises at reasonable times. Subsection (3) allows an authorised officer to be accompanied into premises. Subsection (4) would require an authorised officer to ensure any unoccupied premises entered are as secure against unauthorised entry on departure as they were on arrival. Subsection (5) proposes an authorised officer gives at least 24 hours notice before entering a property unless this will be counter-productive to the purpose of the visit.

Section 34 Warrants

132. This section would allow a sheriff to authorise, by warrant, a Local Authority officer to enter premises only if the sheriff is satisfied that there are reasonable grounds for entry to the premises. Subsection (2) sets out the issues on which the sheriff must be satisfied before issuing a warrant and subsection (3) details the powers given to the authorised officer under the warrant. Subsection (4) would require an authorised officer to ensure any unoccupied premises entered are as secure against unauthorised entry on departure as they were on arrival.

Section 35 Powers to obtain information

133. Subsection (1) requires any person in the premises visited by an authorised officer to produce any documents requested by the officer and subsections (2) allows the officer to take copies of any such document. Subsections (3) allows the authorised officer to ask any person in the premises any questions they consider appropriate.

Section 36 Enforcement of occupancy requirement: offences

134. Subsection (1) proposes that failing to produce a document or information requested by the authorised officer or obstructing an officer or an accompanying person while exercising their enforcement functions, without reasonable excuse, is an offence. Subsection (2) provides for a person committing such an offence to be fined a maximum of level 3 on the standard scale of fines, presently £1,000.

Section 37 Guidance on exercise of enforcement powers

135. This section allows the Scottish Ministers to provide guidance to Local Authorities on enforcement of an occupancy requirement and subsection (1) requires

Local Authorities to have regard to such guidance. Subsection (2) requires the Scottish Ministers to consult before giving such guidance and subsection (3) details those to be consulted. Subsection (4) allows the Scottish Ministers to amend or revoke guidance and subsection (5) requires them to publish such guidance where provided.

Penalties for breach of occupancy requirement

Section 38 Breach of occupancy requirement: penalties

136. Section 38 deals with penalties for breach of the occupancy requirement. Subsection (1) requires a Local Authority to impose a penalty if it is satisfied that an owner has breached the occupancy requirement without good reason and subsection (2) proposes a maximum level of penalty of £5,000. As this is a maximum level, Local Authorities may determine the level of penalty to be imposed in each case.

137. Subsection (3), limits the penalty in respect of a single property to one penalty in a single residence year and subsection (4) proposes that, where the property is owned by more than one owner, each is jointly and severally responsible for payment of the fine. Subsection (5) places a time limit of six months for a Local Authority to impose a penalty from the time it detects a breach of an occupancy requirement.

138. Subsection (6) allows Local Authorities to recover a penalty in the same way as any other debt, and established procedures for such debt recovery shall apply. Subsection (7) allows Ministers to amend, by order, the maximum level of penalty from £5,000 to an amount they consider appropriate.

Section 39 Breach of occupancy requirement: procedure

139. Section 39 sets out the requirements on a Local Authority before it imposes any penalty for breach of an occupancy requirement and subsection (1) requires the Local Authority to comply with this section.

140. Subsection (2) would require the Local Authority to send a notice to the owner indicating that it believes the owner has breached the occupancy requirement and subsection (3) sets out the requirements for the notice.

141. Subsections (4) and (5) cover representations received. Local Authorities are required to take into account any representation made within the 14 day period and may take into account any representations received thereafter. Subsection (6) requires Local Authorities to decide, within 14 days of the end of the representation period, whether an occupancy requirement has been breached and, if so, whether a penalty should be imposed. Subsection (7) sets out what details must be contained in the Local Authority's decision notice to the owner.

Section 40 Guidance in relation to the imposition of penalties

142. This section would require Local Authorities to take into account any guidance issued imposing penalties issued by the Scottish Ministers, and Ministers will be required to consult those in subsection (3) on the guidance before issue.



Subsection (4) allows Ministers to amend or revoke the guidance and confirms that substantially amended guidance and should also be consulted on.

Section 41 Appeal to sheriff against finding of breach or imposition of penalty

143. Subsections (1) and (2) would allow an owner of a decrofted dwelling to appeal by summary application to the sheriff against the decision of a Local Authority to impose a penalty or that an occupancy requirement has been breached. Subsection (3) details the grounds on which an appeal may be made and subsection (4) sets a time limit of 21 days for lodging an appeal. Subsection (5) provides which sheriff has jurisdiction to hear appeals and subsection (6) sets out the options available to a sheriff in deciding an appeal.

144. Subsection (7) allows the sheriff to specify a time limit for a Local Authority to issue a new decision where a decision has been remitted under subsection (6)(e).

General

Section 42 Keeping of records

145. This section requires Local Authorities with croft land in their area to keep appropriate records to enable them to exercise their occupancy requirement functions. It is for each Local Authority to determine which records it considers appropriate.

Section 43 Duty to provide information to appropriate local authority

146. Section 43 would require the Commission and the Land Court to notify the appropriate Local Authority of the making of a direction by the Commission or an order of the Court under the noted sections of the 1993 Act, as specified by the Scottish Ministers in an order.

Section 44 Duty to co-operate

147. Section 44 would require Local Authorities with croft land in their area and the Commission to co-operate with each other, in particular, in relation to the transfer or exchange of information on occupancy requirements.

Section 45 Methods for giving notice to owner

148. Section 45 details the requirements for giving notice to the owner and the effective date of the notice.

PART 6 – GENERAL AND MISCELLANEOUS

Pre-consolidation modifications

Section 46 Pre-consolidation modifications of enactment relating to crofting

149. This section of the draft Bill would allow the Scottish Ministers to make an order modifying enactments relating to crofting, which they consider to be necessary and desirable in order to consolidate the law on crofting.

150. Subsection (2) forbids the Scottish Ministers from making such an order unless a consolidation Bill has been introduced to the Scottish Parliament.

151. Subsection (3) would result in the order modifying enactments coming into force immediately before the commencement of a consolidation Act.

General and miscellaneous

Section 47 Regulations and orders

152. This section of the draft Bill sets out the procedures by which the Scottish Ministers would be able to exercise powers that the Act would give them to make subordinate legislation. All regulations and orders would be made by statutory instrument.

153. Most statutory instruments in the draft Bill would be subject to the Scottish Parliament's negative resolution procedure. The exceptions, which would be subject to the Scottish Parliament's affirmative procedure, are set out in subsection (3). Subordinate legislation made under section 5(1) (power to make further provision regarding the Crofting Register), section 27(3) (power to modify the periods of non-occupation that are to be disregarded for the purpose of the occupancy requirement), section 38(7) (power to modify the maximum penalty for breaching the occupancy requirement), section 46(1) (power to modify enactments relating to crofting that would facilitate consolidation) and section 48(1) (power to make incidental, supplementary, consequential, transitory or saving provisions) would be subject to the Scottish Parliament's affirmative procedure.

Section 48 Ancillary provision

154. This section of the draft Bill proposes to enable the Scottish Ministers to make orders for incidental, supplementary, consequential, transitory, transitional or saving provisions that they consider to be appropriate for the purpose of giving effect to any provision of the Act. Subsection (2) allows for such an order to modify any enactment, including the proposed Bill if it becomes an Act.

Section 49 Minor and consequential amendments and repeals

155. This section would give effect to schedule 4 of the draft Bill if it becomes an Act. Schedule 4 contains minor and consequential amendments to other legislation.

Schedule 4 Minor and consequential modifications

156. Schedule 4 is introduced by section 49 of the draft Bill and proposes minor and consequential modifications to the Crofters (Scotland) Act 1993 and the Ethical Standards in Public Life etc. (Scotland) Act 2000.



Section 50 Interpretation

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

Section 51 Short title and commencement

158. This section would provide for the Act to come into effect on a day or days appointed by order by the Scottish Ministers.