

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 2 – the Crofting Register

Rectification and indemnity

Section 18: Indemnity in respect of loss

44. *Section 18* sets out the circumstances in which the Keeper or the Commission will be required to indemnify a person suffering a loss relating to the Crofting Register.

Subsection (2) sets out the matters which result in indemnifiable loss in respect of which the Keeper may be liable. These are: a mistake in the Register made by the Keeper in making up or amending a registration schedule or making consequential amendments, the correction of which would require rectification of the Register; a rectification of the Register under section 16(1) to correct such a mistake; the refusal of the Keeper to make such a rectification; the loss or destruction of any document lodged with the Keeper; and a mistake, in any certificate of registration or information given by the Keeper in writing or in a manner prescribed under section 19(1), which reflects a mistake made in the Register by the Keeper, the correction of which would require rectification under section 16(1).

45. Subsection (3)(a) provides that the Keeper is not liable to indemnify a person under subsection (1) if the existence of the mistake was, or ought to have been known to the person seeking indemnity for loss; or any person acting as solicitor or other legal adviser of that person, at the time of registration. Subsection (3)(b) excludes indemnity where the mistake relates to an inaccuracy in the delineation of any boundaries shown in a registration schedule, being an inaccuracy which could not have been rectified by reference to the ordnance map or to such other map as the Keeper, for the purposes of section 11(2)(a) considered appropriate. Indemnity is also excluded where the loss was caused by the fraudulent or careless act or omission of the person seeking indemnity for loss.

46. Subsection (4) states that no indemnity will be payable in relation to an error by the Keeper until a decision has been taken about whether to rectify the Register and any loss suffered is reviewed in light of any rectification. Subsections (5) to (8) provide that the Commission is liable to indemnify a person for loss suffered where that person is required to submit a fresh application for registration or apply for rectification of the Register as a result of a mistake made by the Commission when forwarding an application for registration to the Keeper or when submitting an application on their own behalf. Subsection (9) defines “mistake” as having the meaning given by section 16(7).