

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Schedule 1 – the Crofting Commission

139. [Schedule 1](#) is introduced by section 1(3) of the Act and replaces the existing schedule 1 to the 1993 Act.
140. Paragraph 1 of new schedule 1 to the 1993 Act establishes the status of the Crofting Commission. The Commission will be a corporate body. Sub-paragraph (3) states that the Commission’s members and employees are not to be regarded as civil servants; however, paragraph 10(2) enables the Scottish Ministers to continue to supply staff to the Commission and such staff continue to be civil servants.
141. [Paragraph 2](#) outlines the general powers of the Commission. Sub-paragraph (1) enables the Commission to do anything they consider necessary or expedient to enable them to effectively carry out their functions. Sub-paragraph (2)(d) gives the Commission the power to charge in respect of their functions and the Scottish Ministers the power to determine the appropriate level of fees.
142. [Paragraph 3](#) outlines the proposed membership of the Commission. Sub-paragraph (1) indicates that there are to be a maximum of nine members, of whom no fewer than two should be persons appointed by the Scottish Ministers and no more than six should be elected members. There will therefore be two types of members: “elected members” and “appointed members”. The Scottish Ministers are also to select one of the members (appointed or elected) of the Commission to be the convener although they may delegate this function to the Commission. The majority of the Commission are to be elected members unless such a majority cannot be maintained. This could occur if an elected member resigns or is removed from office and there are no other candidates available from the Commission elections (who originally polled too few votes to become a member of the Commission) to fill this role. Sub-paragraph (4) allows the Scottish Ministers to vary the number of members, elected members and appointed members by order but any order must ensure the elected members are always in the majority.
143. [Paragraph 4](#) sets out the eligibility requirements for appointed members of the Commission. Each appointed member would need to have a knowledge of crofting and have no financial interest which could prejudice their role as a member. In addition, if none of the elected members speaks the Gaelic language or are considered by Scottish Ministers to represent the interests of landlords of crofts, then at least one appointed members must speak the Gaelic language and one must represent the interests of landlords of crofts. Sub-paragraph (4) 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.
144. [Paragraph 5](#) enables the Scottish Ministers to determine the terms and conditions of appointment of an appointed member.

145. [Paragraph 6](#) allows for members of the Commission to resign from office at any time provided they do so in writing to the Scottish Ministers. Sub-paragraph (2) allows a person who is no longer a member of the Commission to be re-appointed at a later date provided they were not removed from office by the Scottish Ministers. Sub-paragraph (3) allows the Scottish Ministers to appoint a replacement member of the Commission where an elected member resigns or otherwise ceases to be a member of the Commission (other than being removed from the Commission) and is not replaced by another candidate from the elections as outlined in sub-paragraph (4).
146. [Paragraph 7](#) enables the Scottish Ministers to make regulations governing the elections of members of the Commission. Under sub-paragraph (2), such regulations may include provision for the voting system to be used during these elections and their frequency and timings. They may make provision for the conduct of elections and the constituencies in which an election would be held. The regulations will enable the Scottish Ministers to create offences relating to such elections and will determine who will be eligible to vote during elections. They will also provide for the appointment of a returning officer to oversee the running of the elections and will determine that officer's functions; fees and expenses; and tenure and vacation of office. The regulations may also determine who may and may not stand for elections, including by reference to a person's age. The number of members returned from each constituency may be established by regulations under paragraph 7. Where there is a vacancy on the Commission, the regulations may outline the circumstances in which a person who has polled fewer votes during an election than the person vacating membership of the Commission might fill the vacancy. Sub-paragraphs (3) and (4) set the upper tariff limits for offences which can be created in the election regulations; upon conviction on indictment, an offence may be punishable with imprisonment for a term not exceeding two years; or upon summary conviction an offence may be punishable with imprisonment for a term exceeding not 12 months, or fine not exceeding level 5 on the standard scale. Sub-paragraph (5) provides that a person is entitled to stand for election as a member of the Commission provided that the person is aged sixteen or older and has been nominated by a person eligible to vote. Subparagraph (6) provides that the Scottish Ministers must consult with appropriate persons or bodies on boundaries of constituencies and the persons eligible to vote prior to making the regulations.
147. [Paragraph 8](#) requires the Scottish Ministers to determine the rate of remuneration and allowances for members and to pay such remuneration and allowances. It also allows the Scottish Ministers to make arrangements for the payment of pensions, allowances and gratuities to current and former members of the Commission.
148. [Paragraph 9](#) sets out the circumstances in which the Scottish Ministers may remove a member from office. This requires Ministers to give notice to the member in writing if they are satisfied that the member: is insolvent; has been convicted of a criminal offence which results in imprisonment for 3 months or more; is incapacitated by physical illness or mental disorder; has been absent from meetings of the Commission for 6 months or more without the convener's permission; or is otherwise deemed unable or unfit to exercise their functions as a member. Sub-paragraph (2) sets out the circumstances in which a member will be considered insolvent. Where there is a vacancy in the Commission as a result of an elected member being removed from office, Ministers may appoint a replacement member under sub-paragraph (3). Such an appointment may be made only if the vacancy cannot be filled by a person who polled fewer votes during an election than the person vacating membership of the Commission.
149. [Paragraph 10](#) sets out the arrangements for the appointment of the chief executive and staff of the Commission. Sub-paragraph (1) requires the Scottish Ministers to consult with the convener of the Commission before appointing a chief executive. As is currently the case under the 1993 Act, under sub-paragraph (2) the Scottish Ministers will continue to be able to provide staff to the Commission and such staff will remain civil servants. Sub-paragraph (3) also provides the Commission with the ability to appoint its own employees. Sub-paragraphs (4) to (6) provide the Scottish

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Ministers with the ability to give directions to the Commission (which must be complied with) in relation to the number of employees who may be appointed and their terms and conditions of employment. Sub-paragraph (7) provides the Commission with the power to pay, or make arrangements for the payment of, such pensions, allowances and gratuities as the Commission determines. This is subject to the approval of the Scottish Ministers.

150. [Paragraph 11](#) provides for the quorum of the Commission to be five and, provided there are three or more elected members, it must include no fewer than three elected members, thus ensuring that crofters are always in the majority when a decision is being taken by the Commission. There will always be at least three elected members unless more than three such members have been replaced due to resignation or through removal from office.
151. [Paragraph 12](#) sets out requirements for the Commission to establish committees, including an audit committee and such other committees as they consider appropriate. Sub-paragraph (3) allows the Commission to appoint members to their committees but does not require these persons to be members of the Commission. Sub-paragraph (4) qualifies this by preventing any committee from consisting solely of non-members of the Commission.
152. [Paragraph 13](#) sets out the procedure of the Commission and their committees. Sub-paragraph (1) allows for the Commission to determine their own procedure and the procedure of their committees. Sub-paragraphs (2) and (3) require the convener of the Commission to chair meetings or to appoint another member to act as chair where he or she is unavailable. Sub-paragraph (6) provides for the proceedings of the Commission, or committees of the Commission, to be valid even if a vacancy arises on the Commission or committee or if there has been a defect in the appointment of a member.
153. [Paragraph 14](#) deals with member interests, with sub-paragraph (1) requiring a member of the Commission or a person with a direct or indirect interest in any matter being considered at a meeting of the Commission to disclose their interests. Sub-paragraph (3) prevents a person who has declared an interest from taking part in any deliberation or decision on a matter in which they have an interest.
154. [Paragraph 15](#) allows the Commission to delegate their functions. Sub-paragraph (1) provides for the Commission to delegate their functions to: any of their members; any of their committees; their chief executive; any person whose services are provided to them by the Scottish Ministers; and any of their employees. The Commission will have the ability to determine the type of functions they can delegate and the extent to which these functions can be carried out on their behalf. Sub-paragraph (2) specifies that the Commission continue to have responsibility for the exercise of their functions even after a function has been delegated.
155. [Paragraph 16](#) enables the Commission to appoint a panel of local assessors to assist them in the exercise of their functions. The Commission are required, prior to appointing assessors, to publish information on the methods to be used for the appointment of assessors and the functions they exercise, and to provide information relating to this to crofting communities and to keep these matters under review. Assessors are required to be resident in the crofting counties or in the new areas to crofting, and sub-paragraph (5) enables the Commission to pay them for any expenses or loss of earnings resulting from their role.
156. [Paragraph 17](#) requires the Commission to have their main office in the crofting counties. The Commission's determination of the location of their premises must be approved by the Scottish Ministers.
157. [Paragraph 18](#) sets out proposed financial arrangements for the Commission. Sub-paragraph (1) enables the Scottish Ministers to pay grants or make loans to the

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Commission. This allows the Scottish Ministers to provide the Commission with grant-in-aid. Sub-paragraph (2) enables the Scottish Ministers to determine the terms and conditions of such loans and grants and sub-paragraph (3) allows Ministers to vary these terms and conditions.

158. [Paragraph 19](#) requires the Commission to prepare accounts. Sub-paragraph (1) requires the Commission to keep a proper set of accounting records and prepare a statement of accounts each year. This statement of accounts must be sent to the Scottish Ministers on a specified date as directed. Sub-paragraph (5) requires the Commission to make audited accounts available for public inspection.
159. [Paragraph 20](#) requires the Commission to provide the Scottish Ministers with information on the exercise or proposed exercise of their functions as required.
160. [Paragraph 21](#) enables the Scottish Ministers to transfer property, rights and liabilities to the Commission where it is considered necessary or expedient to do so.