

# **CROFTING REFORM (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2 – the Crofting Register**

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

##### *Section 3: The Crofting Register*

9. **Section 3** provides for the establishment of a new public register of crofts, common grazings and land held runrig to be held by the Keeper of the Registers of Scotland (referred to hereafter as “the Keeper”). Subsection (2) provides for this register to be known as the “Crofting Register”. At present, section 41 of the 1993 Act confers responsibility on the Commission to compile and maintain a Register of Crofts. This register is an administrative register, does not contain maps or information on the boundaries of crofts and often relies upon crofters and owner-occupiers informing the Commission when there is a change to the extent of, or interests in the croft. The Commission will maintain the Register of Crofts until such time as it has been completely replaced by the Crofting Register. The Commission will continue to keep administrative records of regulatory decisions they have taken in relation to crofts; however, the new Crofting Register will provide a definitive and current record of the extent of, and interests in, a croft. Once the Crofting Register is complete, it will be necessary to repeal the provisions relating to the current register.

#### **Registration**

##### *Section 4: First registration*

10. **Section 4** outlines the circumstances under which a croft may or must be registered for the first time on the Crofting Register. Where details of a croft are not registered on the Crofting Register, subsection (1) requires that the croft must be registered in the following instances: upon the creation of a new croft under section 3A(1) or (2) of the 1993 Act; upon the transfer of ownership of an owner-occupied croft; and in the event of a regulatory trigger that is mentioned in subsection (4). Under subsection (2), an unregistered croft may be registered voluntarily. Subsection (3) defines the persons eligible to apply to register an unregistered croft on a voluntary basis.
11. Subsection (4) sets out the trigger events which will require the first registration of crofts and owner-occupied crofts. These trigger events relate to an application for a regulatory decision that would impact on the extent of a croft or the interests in a croft. In some cases, the trigger event relates to the giving of notice of a change to the extent of, or interests in, a croft to the Commission under the 1993 Act.
12. The person who has responsibility for the first registration of a croft will vary depending on the regulatory trigger. Table 1 of Schedule 2 lists those who are responsible for applying for registration in each case mentioned in subsection (4).

13. The Crofting Commission must not take forward a regulatory application they receive unless a registration form has been received for the croft that is the subject of the regulatory application within six months of the regulatory application being made.
14. Subsection (5) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring first registration. However, it will not be possible add the transfer of ownership of any land on which a croft is situated as an event which triggers first registration of an unregistered croft. Subsection (7) provides that where the Scottish Ministers exercise the power in subsection (5) they may by order modify Table 1 in Schedule 2 which lists the people who are responsible for making registration applications under section 4(1)(c). Subsection (8) allows the Scottish Ministers to make regulations about when ownership of an owner-occupied croft is to be treated as being transferred. Subsection (9) provides that the requirement to register an owner-occupier croft on the transfer of ownership of that croft ends if a trigger step mentioned in subsection (4) is taken in relation to that croft. Subsection (11) defines what is meant by the terms “croft” and “new croft” in Part 2 of the Act.

### ***Section 5: Registration of events affecting registered crofts***

15. In order to ensure that any changes to the extent of, or interests in, a croft are captured in the Crofting Register, this section outlines the circumstances in which the Crofting Register must be amended.
16. Subsection (1)(a) states that where ownership of a registered owner-occupied croft is transferred, the Register must be amended. Subsection (1)(b) requires that, in the case of a registered tenanted croft, the transfer of the ownership of any land on which the croft is situated or a change in the landlord must be registered. Subsection (1)(c) requires the Register to be amended on the occurrence of a trigger event listed in subsection (3) in relation to a registered croft.
17. Subsection (2) provides that, where first registration of a croft was triggered by certain regulatory applications, there is no need for a separate application to amend the Register as a result of the outcome of the regulatory application. Instead the applicant should notify the Commission of any resulting change to the croft. The Commission will notify the Keeper who will amend the Register under section 9.
18. Subsection (4) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring amendment of the Crofting Register. As mentioned in paragraph 12 in relation to first registrations, depending on the associated regulatory application, the person responsible for applying to amend the Register will vary. Table 2 in Schedule 2 lists those who are responsible for making applications under section 5(3).
19. Subsection (5) provides that where the Scottish Ministers exercise the power in subsection (4), they may by order modify Table 2 in Schedule 2, containing the list of persons responsible for making applications for subsequent registration.
20. Subsection (6) allows the Scottish Ministers to make regulations about when ownership of an owner-occupied croft or the land on which a croft is situated is to be treated as being transferred.

### ***Section 6: Persons responsible for applications for registration***

21. Section 6 makes provision about who is responsible for making applications for registration in relation to crofts. In the case of the transfer of the ownership of an owner-occupied croft or the land on which a croft is situated, the new owner is required to make the application for registration. In the case of a change of landlord of a registered croft, the new landlord is required to apply for registration. On first registration, the person mentioned in the entry in column 2 of Table 1 in Schedule 2 is responsible for the

application in relation to a trigger event in section 4(4). On subsequent registration, the person who is mentioned in the entry in column 2 of Table 2 in Schedule 2 is responsible for the application in relation to a trigger event in section 5(3).

### ***Section 7: Applications for registration***

22. **Section 7** outlines the process for registering a croft or, where a croft has already been registered, the process for amending this registration. Subsection (1) states that an application to register a croft must be submitted to the Crofting Commission along with registration payment unless the application is being made by the Commission.
23. Subsection (2) provides that an application for first registration of a new croft must be submitted at the same time as the application to constitute the land as a croft.
24. Subsection (3) requires the Commission, as soon as reasonably practicable after receiving the registration application, to check the information contained in the registration application against the Register of Crofts if the application is for first registration (except where the application relates to a new croft or is a result of a reorganisation scheme) and, to forward the application with any comments and the registration payment to the Keeper. Subsection (4) enables the Commission, before forwarding the registration to the Keeper, to request further information in relation to the application.
25. Subsection (5) outlines the circumstances in which the Commission can refuse to forward an application. These are: the applicant has not provided the Commission with further information as requested under subsection (4); the application is frivolous or vexatious; the applicant has not submitted payment for registration; there is a material inaccuracy in the application; or the Commission consider that the Keeper would otherwise not accept the application under section 8(2). Where the Commission refuses to forward an application, the applicant may appeal against that decision to the Land Court. Subsection (7) disapplies section 7 to applications for registration by the Commission. Subsection (8) defines “material inaccuracy” as an inaccuracy relating to any matter mentioned in section 11(2), which are the matters to be included in the registration schedule of a croft.

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

26. **Section 8** outlines the circumstances in which a registration application should be accepted by the Keeper. Whilst subsection (1) requires the Keeper to accept a registration application provided it is accompanied by any documents and other evidence that the Keeper requires, subsection (2) outlines the circumstances by which the Keeper must reject an application. The grounds for rejecting an application are that: the boundary of the croft is not sufficiently described by an Ordnance Survey map or such other map required by the Keeper; the information in or accompanying the application would not enable the Keeper to make up or amend the registration schedule of the croft; where the application is to amend the registration of a registered croft, the application does not refer to the registration schedule of that croft; or no registration fee has been tendered.
27. Subsection (3) allows the Keeper to accept an application for registration which includes land which is already registered as part of another croft, or a common grazing or land held runrig. Where the Keeper does accept such an application, section 11(3) provides that she must not include the land that is already registered elsewhere in the registration schedule for the croft.
28. Subsection (4) requires the Keeper to note the date of receipt of the application for registration. Subsection (5) states that this date will be deemed the date of registration where the application has been accepted by the Keeper and, in the case of first registration, there has been no challenge to the registration under section 14(1) or, where such a challenge was made, the application has been abandoned or the Court has decided

to either make no order or make an order under section 14(4)(b) (requiring the Register to be modified). In the latter case, the Keeper will be informed of any amendment required to the registration.

### ***Section 9: Completion of registration***

29. Subsection (1) requires the Keeper to complete registration for a newly registered croft by making up a registration schedule for it, or, where the croft is already registered, by amending the registration schedule and in both cases by making consequential changes to the Register as necessary. Under subsection (2), an applicant for first registration of a croft receives a certificate which confirms the registration of that croft, advises that the registration is open to challenge (other than in the case of a new croft or a croft which is registered as a result of the preparation of a reorganisation scheme); and contains such other information as the Keeper considers appropriate. Subsection (3) requires the Commission to send a copy of the certificate of registration to the crofter or owner-occupier crofter where it is the Commission that applied for the first registration. Subsection (4) requires the Keeper to send a copy of the certificate to the Commission at the same time as to the applicant, except in the case of a new croft, or where the Commission are the applicant as they will have received the certificate under section 9(2). Under subsection (5), a registration certificate is sufficient evidence of the registration of the croft.

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

30. Section 10 applies to the first registration of a croft that is not a new croft or a croft which is first registered as a result of the preparation of a reorganisation scheme (because in those cases it is not possible to challenge the first registration of the croft under section 14). It applies where there has been no challenge to the first registration under section 14, or any challenge has been unsuccessful or led to the entry in the Register for the croft being modified but not removed.
31. Subsection (2) states that the Keeper is required to amend the registration schedule if necessary and make any necessary consequential adjustments to the Register.
32. Under subsection (3) the Keeper is required to amend the Register in the event that a regulatory application that triggered a requirement to register the croft is granted. For example, where a regulatory application to enlarge a croft has been agreed, then the Register will be amended accordingly. Applicants applying for a regulatory application relating to enlargement, exchange, assignation, resumption, consent to letting or apportionment of a common grazing, must notify the Commission within three months of the application being granted that the change to the croft has taken effect. If the Commission is not notified within the necessary timescale, the regulatory activity will be deemed not to have taken effect. Once the Commission are notified they must notify the Keeper to enable the Keeper to update the registration details for that croft. When the regulatory application is for division or decrofting, the Commission will notify the Keeper that the application has been granted and the Keeper will amend the Register. Where the application is to decroft and the crofter intends to acquire the land, the crofter must notify the Commission when the land has been acquired. The Commission will then notify the Keeper that the land has been acquired, and the Keeper will amend the Register, without the need for a separate application for registration in each case.

## **The registration schedule**

### ***Section 11: The registration schedule***

33. Subsection (1) requires the Keeper to make up and maintain a registration schedule of every croft registered in the Crofting Register. Subsection (2) outlines the information that must be contained on the registration schedule. This includes a map-based

description of the registered croft (which will provide certainty over the full extent of the land) and the name and designation of persons with an interest in the croft i.e. any crofter, owner-occupier crofter, landlord or owner. The registration schedule must also contain any other information that the Keeper considers appropriate. Subsection (3) provides that where an application for registration of a croft includes land which is registered as part of another croft, or a common grazing or land held runrig, the Keeper may not enter that land in the registration schedule of the croft but may register the croft omitting that land.

34. Subsection (5) requires the Keeper to issue a copy of the registration schedule or part of the registration schedule upon request. Subsection (6) provides that this is to be known as an office copy and will act as sufficient evidence of the information pertaining to an interest in a croft held on the Register. Subsection (7) allows the Scottish Ministers, by order, to modify section 11(2) to add to the matters mentioned there any other matters they consider should be included in the registration schedule.

## **Notification of first registration**

### ***Section 12: Notification of first registration***

35. **Section 12** outlines the process by which persons with an interest must be notified of a first registration of a croft in the Crofting Register. Subsection (1) requires the Commission, upon receipt of a certificate of registration from the Keeper under section 9(2) or a copy of the certification or registration under section 9(4), to notify the persons specified in subsection (3) of the matters outlined in subsection (4). Those matters are: that the croft has been registered; the description of the croft included in the registration schedule; the names and designations of persons included in the registration schedule; the right to challenge the registration; and the period by which such a challenge must be brought. The person who registers the croft may vary according to the regulatory trigger point. Notification under subsection (1) will ensure that any person with an interest is aware of the registration. The Commission need not notify persons of a croft which is first registered as a result of the preparation of a reorganisation scheme, as there is a separate appeal available in relation to reorganisations schemes under the 1993 Act, and the first registration of such a croft cannot be challenged under section 14. Subsection (5) states that the period of challenge is 9 months beginning with the date on which the Commission issue notification under subsection (1). Subsection (6) provides that the date on which the Commission issue notification is either the date on which notification is issued to every person entitled to receive it, if all such notification is issued on the same date, or the date on which notification is issued to the last person entitled to receive it, if notification is issued on different dates. Subsection (8) requires the applicant, upon receipt of a registration certificate relating to a first registration, to give public notice of registration, except in the case of a new croft or a croft affected by a reorganisation scheme. They must do this by placing an advert in a local newspaper for two consecutive weeks and affixing a conspicuous notice to the registered croft in the form prescribed by the Scottish Ministers. Subsection (9) requires the applicant to also take all reasonable steps to ensure that the notice continues to be displayed throughout the period in subsection (5).

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

36. **Section 13** gives a person authorised by the Commission the power to enter a croft in order to affix a notice that will give notification that the croft has been registered on the Crofting Register. They will only have this power where the Commission is the person applying to register a croft onto the Crofting Register. They will also have to power to enter the croft in order to ensure that the notice remains on display and to remove it following the 9 month period that the notice has to be displayed for. Subsection (3) requires the Commission to take all reasonable care not to damage the croft or the part of the croft to which the notice is affixed and to remove the notice no later than one week after the end of the period mentioned in section 12(5).

37. This section also applies provisions relating to powers of entry under section 56 of the 1993 Act such as the requirement to produce identification if required, to give notice of intention to enter on to the croft, and a criminal sanction for persons obstructing a person's entry on to a croft.

## **Challenge to first registration**

### ***Section 14: Challenge to first registration***

38. **Section 14** sets out the circumstances in which a challenge may be brought against a croft registration. The registration of the croft is open to challenge for a nine month appeal period. It is only possible to challenge the boundaries etc. of a croft on first registration under section 14. Subsection (1) allows a person who has received notification under section 12 of the first registration of a croft, or any other person who is aggrieved by the croft registration, to apply to the Land Court within the 9 month challenge period for the registration to be removed or modified. Subsection (2) enables challenges to the first registration of an unregistered croft to be made after the end of the 9 month period if the Land Court consider there is just cause shown for the delay. The right to challenge the first registration of an unregistered croft is disapplied when the croft was registered as a result of a reorganisation scheme, as there is a separate appeal available against a reorganisation scheme.
39. Subsection (4) allows the Land Court, upon considering an appeal against the registration of a croft, to make an order for the registration to be removed from the Crofting Register, modify the entry or make no order. Subsections (5) and (6) provide that when the Land Court has to determine the boundaries of a croft and there is insufficient evidence to enable them to be clearly determined, the Land Court must declare the boundary to be that which it considers appropriate. Subsection (7) requires the Keeper to make any amendments to the registration schedule of the croft and register which are necessary in the light of the Land Court's decision. The determination of the Land Court is subject to an appeal on a point of law to the Inner House of the Court of Session.

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

### ***Section 15: Resumed and decrofted crofts***

40. **Section 15** requires the Keeper to remove resumed and decrofted crofts from the Crofting Register after 20 years. This is because a resumption can be reversed for up to 20 years.

## **Rectification and indemnity**

### ***Section 16: Rectification of the Register***

41. This section makes provision for the rectification of the Crofting Register when there is a mistake in it. Subsection (1) enables the Keeper to rectify the Register in accordance with subsections (2) to (4), and requires her to rectify it on being ordered to do so by a court.
42. Subsection (2) allows the Keeper to rectify the Register, where there is a mistake arising as result of a mistake in an application for registration, on the application of the person who made that application for registration. Subsection (3) allows the Keeper to rectify the Register, where there is a mistake arising as result of a mistake made by the Commission in submitting their own application for registration or forwarding an application submitted by someone else, either on the application of the Commission or on the application of the person who made the application for registration. Subsection (4) allows the Keeper to rectify the Register either on application being made to her or

of her own volition, where a mistake has been made by her in making up or amending the Register. Subsection (7) defines what is meant by “court”, “mistake” and “rectify”.

### ***Section 17: Rectification following first registration***

43. This section provides that where the Register is rectified to correct a material inaccuracy in relation to a first registration during the 9 month challenge period, it is necessary to re-notify the registration and the challenge period begins again. Subsections (3) and (4) provide that the Keeper or the Commission must pay for any expenses incurred in re-notifying the registration, where the rectification is as a result of an error by the Keeper or by the Commission in handling the registration application or when submitting an application on their own behalf. Subsection (5) defines “material inaccuracy” and “mistake”. A “material inaccuracy” is an inaccuracy in any of the matters which must be included in the registration schedule under section 10(2), such as the boundaries of the croft.

### ***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).

## **Rules and fees**

### ***Section 19: Rules and fees***

47. **Section 19** outlines the matters in respect of which the Scottish Ministers, after consultation with the Keeper and the Commission, may make rules. Subsection (1) states that rules may regulate the making up and keeping of the Register, including the form and manner in which the Register is made available to the public. They may

also prescribe the form of any search, report or other document to be issued or used in connection with the Register and regulate the issuing of any such document. Rules may also prescribe the form of application for registration and may include provision regulating the procedure for registration application or the form of deeds relating to registered crofts. Finally, rules may be made in relation to such matters as the Scottish Ministers deem be necessary or proper in order to give full effect to the purposes of Part 2. Subsection (2) enables the Scottish Ministers to prescribe by order the fees payable in respect of registration and in respect of any searches, reports, certificates or other documents or copies of documents provided by the Keeper. Subsection (3) enables the order to include circumstances in which a person is entitled to a reduction in fees for applications for registration, including the amount of or method of calculating that reduction, and the manner in which that reduction is to be achieved.

## **Appeals**

### ***Section 20: Appeals***

48. **Section 20** outlines the circumstances in which an appeal against an act or omission of the Keeper may be made. Subsection (1) allows for a person aggrieved by an act (or omission) of the Keeper to appeal any issue of fact or law arising from the act or omission to appeal to the Land Court. Subsection (2) allows the Land Court to direct the Keeper to take remedial action which may include rectification of the Register. Notification of change to registration schedule

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

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

49. **Section 21** requires the Keeper to give written notification of an amendment to the registration schedule of a croft or owner-occupied croft as a result of an event mentioned in section 5(1), to the person who applies to register that event and to the Commission (where the Commission is not the applicant). Subsection (2) requires the Commission to send a copy of the notification of change to the crofter or owner-occupier crofter when the Commission is the applicant.
50. Subsection (3) requires the Keeper to provide written notification of the amendment to the registration schedule of a croft when the Register is amended in accordance with section 10(3) to reflect the outcome of a regulatory application which triggered the first registration of the croft. Notification must be given to the Commission and to the person who applied to register the croft. Where that person is no longer the crofter or owner-occupier crofter as a result of that trigger event (e.g., because the tenancy of the croft has been assigned to someone else), the Keeper must notify the new crofter or owner-occupier crofter of the amendment to the registration schedule.
51. Subsections (4) and (5) provide that where an amendment is made to either the registration schedule of the croft or the Register, as a result of an order made under section 14(2) or 20(2) of the Act, or section 26K(9), 52A(4A) or 53(3) of the 1993 Act, the Keeper is required to provide written notification to any person appearing to be affected by the amendment and to the Commission.

## **Consequential amendments of the 1993 Act**

### ***Section 22: Meaning of “croft” etc.***

52. **Section 22** amends the meanings of “croft” and “crofter” in section 3 of the 1993 Act. Subsection (2) inserts new section 3ZA into the 1993 Act. This new section applies to any holding, situated in the crofting counties or new areas to crofting, which is registered in the Crofting Register. Section 3ZA(2) states that the holding is a croft from the date of registration; that the land which comprises the croft is determined by



its description in the registration schedule; and that, from the date of a registration, any person entered in the registration schedule as the tenant of the croft is the crofter. Subsection (5) confirms that nothing in this section affects whether, before registration, a holding was a croft or any person was a tenant of it. The effect of registration, therefore, is to provide legal certainty that the holding is a croft, and to remove any dubiety over who has the rights and responsibilities conferred by the 1993 Act.

### ***Section 23: Registration of new crofts***

53. **Section 23** makes amendments to the provisions on the creation of new crofts in the 1993 Act. Subsection (4) inserts new section 3AA dealing with registration of new crofts. New section 3AA will apply where the Commission has made a determination under section 3A(1) or (2) of the 1993 Act to constitute land, or as the case may be, a holding as a croft. Section 3AA(2) prevents the Commission from forwarding an application to register a new croft in the Crofting Register to the Keeper until the period of appeal outlined in section 52A(2)(b) of the 1993 Act has expired or, where such an appeal is made to the Land Court, it is abandoned or the Court upholds the Commission's decision under 3A(1) or (2) of the 1993 Act. There is an opportunity to challenge an application for the establishment of a new croft under section 52A of the 1993 Act. There is therefore no right to challenge the registration of a new croft under section 14 of the Act.
54. In relation to a decision to establish a new croft under section 3A(2) of the 1993 Act, where the application to create the new croft has been submitted by the tenant of a holding, the Commission must not forward an application to register the croft unless satisfied: that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for constituting the holding as a croft; that the applicant and owner have agreed that no amount in compensation is to be payable; or that any amount payable by virtue of section 3B (which sets out how the amount of compensation is to be determined in the absence of agreement) has been duly paid. Subsection (4) makes consequential amendments to section 3B of the 1993 Act.

### **Registration of common grazings**

#### ***Section 24: First registration of common grazings***

55. **Section 24** provides for the first registration of an unregistered common grazing by the Crofting Commission. It also requires first registration of a new common grazing once the Crofting Commission has made a determination to constitute land as a common grazing and the associated appeal period of 42 days has ended. Subsection (2) provides that the land is a common grazing from the date of registration and that the land comprising the common grazing is determined by the description of that land in the registration schedule.

#### ***Section 25: Registration of events affecting registered common grazings***

56. **Section 25** provides the regulatory triggers that require an application for subsequent registration to amend the entry in the Register for a registered common grazing. This includes a requirement in subsection (1) for the transfer of ownership of land on which a registered common grazing is situated to be registered. Subsection (2) lists various regulatory events which must be registered. Subsection (3) provides that no separate application is needed for events mentioned in subsection (2)(g)(iii) and (2)(i) (which relate to apportionments of common grazings) if one is also needed in relation to a croft under section 5. Subsection (4) allows the Scottish Ministers to make regulations about when ownership of land is to be treated as being transferred for the purposes of subsection (1). Subsection (5) enables the Scottish Ministers, by order to modify the regulatory triggers.

***Section 26: Applications for registration: common grazings***

57. **Section 26** sets out the process for the submission of an application for the first registration of a new common grazing or to register a regulatory trigger event which affects the registration details of a registered common grazing. Subsection (4) requires the Commission to forward the application and associated fee to the Keeper as soon as reasonably practicable after receiving the application. Subsection (5) allows the Commission to ask the applicant for further information. Subsection (6) sets out the circumstances in which the Commission may refuse to forward an application for registration, including in the case of a material inaccuracy in the application. Subsection (7) provides that a refusal to forward an application may be appealed to the Land Court. Subsections (8), (9), (10) and (11) set out the registration and notification process for the first registration of a common grazing by the Commission. Subsection (12) defines “material inaccuracy”. Subsection (13) defines “first registration” as meaning the registration of an unregistered common grazing.

***Section 27: Registration of new common grazings***

58. **Section 27** amends section 51A of the 1993 Act, so a new common grazing is no longer constituted by being entered in the Register of Crofts. A new section 51B is inserted into the 1993 Act to provide that a new common grazing must be registered in the Crofting Register. Subsection (2) provides that an application for registration must not be forwarded to the Keeper until the appeal period set out in 52A(2)(b) has expired, or any appeal has been abandoned or determined by the Land Court.

***Section 28: Application of Act to common grazings***

59. **Section 28** introduces Schedule 3 which applies sections of the Act relating to the registration of crofts to the registration of common grazings.

**Offences**

***Section 29: Transfer of land containing crofts: offences***

60. **Section 29** provides that it is an offence for a new owner of an owner-occupied croft to fail to register the croft, if unregistered, or the transfer of ownership if the croft is registered, within one year of ownership being transferred. It is also an offence for a new landowner of land on which a registered croft is situated to fail to register the change of ownership of that land within one year of ownership being transferred. In each case, there is a further offence of failing by the end of each subsequent year to apply to register the owner-occupied croft or the change of ownership of the owner-occupied croft or land. There is a separate offence for each croft concerned. The fine is up to level 3 on the standard scale.

***Section 30: Change of landlord: offences***

61. **Section 30** provides that it is an offence for a new landlord of a registered croft to fail to register the change of landlord. There is a further offence of failing by the end of each subsequent year to register that change. This offence is subject to a fine of up to level 3 on the standard scale.

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

62. **Section 31** provides that it is an offence for a new landowner of land on which a registered common grazing is situated to fail to register the change of ownership of that land within one year of ownership being transferred. There is a further offence of failing at the end of each subsequent year to apply to register the transfer. The fine is up to level 3 on the standard scale.

## **Lands held runrig**

### ***Section 32: Lands held runrig***

63. **Section 32** provides for the Crofting Commission to apply to the Keeper for the first registration of unregistered land held runrig. Subsection (3) requires the Commission to consult the owner of the land and notify all holders of the land before submitting an application for first registration. Subsection (4) allows any person notified to make representations to the Commission. Subsection (5) provides that the regulatory trigger events of apportionment or an extension of an apportionment of registered land held runrig must be registered. Subsection (6) requires an application for subsequent registration to be submitted to the Commission, and subsection (7) requires the Commission to forward the application and associated fee to the Keeper. Subsection (8) allows the Commission to ask the applicant for further information. Subsection (9) sets out the circumstances in which the Commission may refuse to forward an application for registration, including in the case of a material inaccuracy in the application. Subsection (10) enables an appeal to the Land Court to be made where the Commission refuse to forward an application for registration.
64. Subsection (11) excludes section 7 of this Act from applying to applications for the registration of land held runrig. Subsections (12) and (13) apply sections 8 to 21 with such modifications as are necessary, in relation to lands held runrig as they apply in relation to common grazings ( as noted, those sections are modified by virtue of Schedule 3 in their application to common grazings). Subsection (14) defines “material inaccuracy” in subsection (9)(d) as meaning an inaccuracy in any matter mentioned in section 11(2) which is to be included in the registration schedule for registered land held runrig. Subsection (15) provides the Scottish Ministers with an order-making power to modify subsection (5) to add, modify or remove a regulatory event which triggers subsequent registration. Subsection (16) defines “first registration” in subsection (2) as meaning the registration of unregistered land held land runrig.