

EXPLANATORY NOTES

Crofting and Scottish Land Court Act 2026 (asp 17)

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CROFTING AND SCOTTISH LAND COURT ACT 2026

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INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Crofting and Scottish Land Court Act 2026 (referred to in these Notes as "the Act"). They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act deals with two distinct subjects, namely: it makes a number of reforms to the law of crofting, and it provides for the amalgamation of the Scottish Land Court and the Lands Tribunal for Scotland and updates the legislation and jurisdiction of the Scottish Land Court in the process.

Interpretation

4. The Act's freestanding text (that is, its sections and schedules) falls to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA"). In the main, that relates to Parts 2 and 3 of the Act and schedule 1.

5. Text that the Act inserts into another enactment falls to be interpreted in accordance with the interpretation legislation that applies to that enactment.

6. The interpretation legislation applicable to Acts of the Scottish Parliament the Bills for which received Royal Assent on or after 4 June 2010 (such as the Crofting Reform (Scotland) Act 2010, which received Royal Assent on 1st July 2010) is ILRA.

7. The interpretation legislation applicable to Acts of the UK Parliament, such as the Crofters (Scotland) Act 1993 and the Scottish Land Court Act 1993, is the Interpretation Act 1978.

8. The interpretation legislation applicable to Acts of the Scottish Parliament, the Bills for which received Royal Assent before 4 June 2010, is the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999.

Crown application

9. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, the free-standing provision of this Act (i.e. Parts 2 and 3 and schedule 1) apply to the Crown in the same way as it applies to everyone else.

10. However, where the Act amends an existing enactment, it makes no change to the application of the enactment to the Crown. As Part 1 of the Act makes extensive modifications to the 1993 Act, the manner in which those provisions apply to the Crown will be governed by section 62 of that Act.

PART 1 – CROFTING

11. Key terminology used in this Part:

- **1993 Act** is the Crofters (Scotland) Act 1993
- **2010 Act** is the Crofting Reform (Scotland) Act 2010
- **the convener** refers to the convener of the Commission (who is renamed the Chair by the Act)
- **the Commission** is the Crofting Commission.

12. The main legislation on crofting is the 1993 Act. Most of the changes made in Part 1 of the Act are in the form of amendments to the 1993 Act. References to "new" provisions of the 1993 Act are therefore describing the provisions added by the Act. In several places, provisions of the 1993 Act are described as they stand at the date the Act was passed in order to provide context for the changes made by the Act.

13. The 2010 Act introduced the Crofting Register, and this Act also makes some adjustments to the 2010 Act.

Chapter 1 – Crofters and crofters

Duties

Section 1 – general functions of the Commission

14. Section 1 of the 1993 Act sets out the Commission's general functions. This section of the Act amends that section of the 1993 Act to provide that enforcing compliance with statutory duties is one of those core functions.

Section 2 – enabling environmental uses of crofts

15. Section 2 of the Act modifies sections 5B, 5C and 19C of the 1993 Act, primarily to enable crofters and owner-occupier crofters to put their crofts to an "environmental use". It does this by modifying provision in section 5B, 5C and 19C.

16. A definition of "environmental use" is provided for by new section 5C(8A)[1] to the 1993 Act. It provides that an environmental use means any planned and actively managed use that is intended to provide an environmental benefit and does not adversely affect the croft or the use of adjacent land. The definition contains a non-exhaustive list of examples including the person engaging in a use for the purpose of peatland restoration, habitat creation and restoration and water management.

17. Further, there is also an example about "preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment". This last example is intended to replace the existing duties in sections 5B(4) and 19C(6) that allow crofters and owner-occupier crofters to act in a way which would otherwise constitute misuse or neglect. Sections 5B(4) and 19C(6) are therefore repealed by this section, given those uses are now covered as a subset of environmental purpose[2]. The statutory definitions of "neglect" contained in sections 5B(3) and 19C(4) are also substituted[3] to refer to extant regulations: regulation (3)(2) of, and in part 2 of the schedule to, the Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014 (SSI 2014/325). Those provisions also make clear that if the croft is being put to any environmental use or another purposeful use and such use is incompatible with the croft being kept in accordance with such standards, this does not constitute neglect.

18. The definition of environmental use also makes clear that it may not include the person engaging in a use for the purpose of the generation, transmission or storage of energy (which would instead continue to be covered under provision about other "purposeful use").

19. Section 5C(8B)[4] allows the Scottish Ministers to modify section 5C(8A) by regulations to add, amend, remove or exclude an example. The power is subject to the affirmative procedure.

20. The critical differences between the framing of "another purposeful use" and "environmental use" is that, as it relates to crofters, a crofter will not need the consent of the Commission or Landlord to put their croft to an environmental use. Further, for crofters, there is no condition that the environmental use is not to adversely affect the interests of the landlord or (if different) the owner.

21. The definition of "purposeful use" in section 5C(8) of the 1993 Act is also modified by this section so that any such use must also be planned and *actively* managed.

22. New sections 5C(2) and 19C(2)[5] also make it clear that crofters may fulfil their duty to cultivate or put to an environmental or another purposeful use by undertaking work themselves, or with their family, with or without hired labour.

Section 3 – removal of timescales for deciding applications

23. This section makes some minor changes to section 5C (crofters: duty to cultivate and maintain) and section 21B (Commission consent for absence from croft) of the 1993 Act.

[1] Inserted by section 2(3)(e) of the Act
[2] See section 2(2)(b) and (4)(d) of the Act
[3] See section 2(2)(a) and (4)(b) of the Act
[4] Inserted by section 2(3)(e) of the Act
[5] See section 2(2)(a) and (4)(b) of the Act

24. Section 5C(7) of the 1993 Act provided that the Commission had 28 days to decide whether to give its consent to an application by a crofter to put their croft to another purposeful use, in cases where this has not already been approved by the landlord. Section 21B(5) of the 1993 Act provided the Commission had 28 days to decide whether to give its consent to an application by a crofter to be absent from their croft for a period of time. Section 3 removes the time limits for deciding those applications.

25. Section 3 also imposes a standalone duty on the Commission to publish a policy setting out standard working practices relating to the performance of its functions and duties, including reasonable timescales for the making of decisions on applications received under sections 5C and 21B of the 1993 Act. The duty must be fulfilled within 2 years of Royal Assent.

Section 4 – reporting on breaches of duties

26. Section 4 modifies sections 26A and 49A of the 1993 Act in relation to reporting of breaches of duties by grazings committees and investigation of those reports. The modifications to section 26A also add two new categories of person to the list of those who can report breaches of duty to the Commission.

27. Under section 26A(1)(a), the Commission is required to investigate when a report made by a grazings committee under section 49A covers information mentioned in section 26A(2). The information referred to in section 26A(2) is that certain duties are not being complied with. These duties are:

- being ordinarily resident on, or within 32 kilometres of their croft (section 5AA for crofters and section 19C(2)(a) for owner-occupier crofters),
- to not misuse or neglect the croft (section 5B for crofters and section 19C(2)(b) for owner-occupier crofters),
- to cultivate and maintain the croft (section 5C for crofters and section 19C(2)(c) for owner-occupier crofters).

28. Section 26A(1) also requires, under paragraph (b), the Commission to investigate when it receives information in writing about a breach of one of those duties from a person mentioned in subsection (3). These people are a grazings committee, a grazings constable, an assessor appointed under paragraph 16 of schedule 1, and a member of the crofting community within which the croft to which the matter mentioned in subsection (2) relates is situated.

29. Section 4(2) of the Act makes a number of changes to this duty. First, section 4(2)(a) replaces section 26A(1) to remove the reference to a report from a grazings committee under section 49A(1). The section therefore applies only where the Commission receives information in writing from a person mentioned in subsection (3) relating to breach of duty. However, information about a breach of a duty from a grazings committee is still captured as a grazings committee is included in the list of persons in subsection (3). Second, section 4(2)(b)(i) and (c) update references to the removed section 26A(1)(b) to simply refer to section 26A(1). Third, section 4(2)(b)(ii) and (iii) amend the list of relevant people in section 26A(3) to add two new categories of person to the list: subtenants or short leaseholders of a croft within the township in which the croft is located and landlords or other owners of any part of the croft. Finally, extant section 26A(5) enables the Commission to not investigate a suspected duty where they consider the information given to them to be frivolous or vexatious. This section inserts a new subsection (6) into that section to make clear that the Commission may take into account

whether it has previously determined under subsection (5) that the individual has provided information that was frivolous or vexatious, in relation to any new information received from that individual.

30. Under section 49A, grazings committees are required to report to the Commission on the condition of the common grazings, the condition of a croft with a share in the grazing, and the condition of an owner-occupied croft with a share in the grazing, and any other matter the Commission may require. Section 4(3) amends section 49A(1) to limit what a grazings committee report must include. It does so by repealing paragraphs (b) and (c), which relate to the condition of every croft of a crofter sharing in the grazing and the condition of every owner-occupied croft of an owner-occupier crofter sharing in the grazing respectively.

Section 5 – enforcement of duties

31. Sections 26A to 26H, 26J and 26K of the 1993 Act set out the arrangements for the enforcement of duties placed on tenant and owner-occupier crofters.

32. Section 26C required the Commission to give written notice to those they consider are not fulfilling their duties. Subsection (2) required the written notice to explain why the Commission considers duties are not being complied with and to give notification that a person subject to the notice may make representations to the Commission within a "representation period" of 28 days of issue of the written notice. Section 26D set out the steps that the Commission had to take if it decided, under section 26C(5), that a duty was not being complied with, prior to proceeding with the tenancy termination and letting procedures introduced by sections 26H and 26J. The Commission had to give written notice to the person in breach providing an opportunity for them to give an undertaking to remedy the breach and comply with the duty that has been breached within a period considered by the Commission to be reasonable.

33. Section 5 of the Act substitutes three new sections for sections 26C and 26D of the 1993 Act (26C, 26D and 26DA) to streamline the process for the giving of notices and undertakings.

34. New section 26C provides that a notice must still inform the person the Commission consider that the duty is not being complied with, but it must also now give the person the opportunity, within 28 days of the notice being given, to make representations to the Commission or give an undertaking. In other words, the person is now able to give an undertaking directly in response to a notice given under section 26C, removing the 2-stage process in extant sections 26C and 26D. The notice must explain the matters mentioned in subsections (2)(a) to (d) and, in the case of a crofter, be copied to the Land Court and the landlord of the croft.

35. Section 26C also provides that where a notice is given to a person under new section 26C(1), the Commission may decline to do anything in relation to an application made under this Act in which the relevant person has an interest until the Commission are satisfied the duty is being complied with or any of the circumstances mentioned in section 26E(ca)(i), (d)(i), (e)(i) or (f)(i) apply. Section 26K is amended so that a relevant person may appeal to the Land Court against a decision of the Commission under section 26C to decline to do anything in relation to an application. Subsection (4) of new section 26C explains the effect of subsection (3) on any separate provisions which would require the Commission to do something, within a specified time period, in relation to any application it has paused. Subsection (5) requires the Commission to notify the applicant of their decision to decline to do anything with an application (and reasons for it) as soon as reasonably practicable.

36. Section 5(7) of the Act also modifies section 52 of the 1993 Act (common grazings, lands held runrig, etc.), to make equivalent provision enabling the Commission to decline to do anything in relation to certain applications, where a requirement is imposed on a person under subsection (1C) or (1D)(a)(ii) of that section (including, for example, to conform with any common grazings regulations).

37. New section 26D sets out the procedure required if the period set out in the notice period has expired and the person has not given an undertaking to comply with the duty. In deciding whether the duty is complied with, the Commission is to consider all representations made within the specified period for making representations ("representations period"), although they may also consider representations made later. The Commission may, if the person fails to make representations (i.e. does not engage with the process), infer that that failure constitutes acceptance by the person that the duty is not being complied with. If the Commission received representations within the representations period and then decides that the duty is not being complied with, they must, before taking any action under section 26H or 26J, give the relevant person a further notice giving the person an opportunity to give an undertaking to comply with the duty before the expiry of such period as the Commission consider reasonable. The Commission also has discretion to issue such further notice in cases where it did not receive representations (on time or at all). Any notice must explain the matters mentioned in subsection (4)(a) and, in the case of a crofter, be copied to the landlord of the croft.

38. New section 26DA sets out the procedure needed if an undertaking is given to the Commission following a notice under section 26C or 26D. The Commission may accept the undertaking (with or without imposing conditions) or reject the undertaking. Where an undertaking is accepted by the Commission, but things change, they may accept a modified undertaking (with or without conditions).

39. This section also makes some minor and consequential changes to sections 26B, 26E, 26J and 26K in response to the three new sections 26C, 26D and 26DA.

Section 6 – enforcement action against subtenants and tenants of short leases

40. Crofters are able to grant a sublease in accordance with section 27(2) of the 1993 Act. Similarly, owner-occupier crofters may let their croft under section 29A(4). Commission consent is required for any such proposed sublease or lease and, in doing so, it may impose conditions.

41. This section inserts a new section 29C into the 1993 Act which applies to subleases or leases granted in accordance with section 27(2) or 29A(4). If the Commission is satisfied that a condition imposed by it is breached, a condition of let (other than any relating to rent) is breached, or the subtenant or tenant is acting in a way which doesn't accord with the crofter's duties in sections 5AA, 5B, 5C or (as the case may be) owner-occupier crofter's duties in section 19C, the Commission may make an order. The order may vary or revoke any condition imposed by the Commission, impose a new condition or withdraw the Commission's consent to the sublease or lease and terminate it. In that case, section 52A of the 1993 Act (appeal to the Land Court) applies as if that decision to make an order were a decision of the Commission on an application to it under that Act.

Section 7 – power to decline to act until information provided

42. This section relates to information required from a person by the Commission for the execution of its functions, including information for the Register of Crofts and the Crofting Census. It also deals with the consequences of failing to provide that information.

43. Section 40(1) of the 1993 Act allows the Commission to issue a notice requiring an owner or occupier of a croft to provide information about the extent, the rent and the tenure of the holding and other matters relating to the ownership or the occupation of the holding. Section 7(2) of the Act replaces section 40(3) of the 1993 Act to allow the Commission to decline to do anything in relation to an application the person has made or has an interest in until the Commission is satisfied either that the requirement has been complied with or that it is not practicable to comply with the requirement. It also inserts new subsection (4A) which applies in circumstances where the Commission has declined to do anything in relation to an application by virtue of subsection (3). In that case, section 52A applies as if that decision to decline to do anything with the application were a decision of the Commission on an application to it under the 1993 Act.

Section 8 – monetary penalties for non-compliance with crofting duties

44. This section inserts a new section 59B into the 1993 Act, giving the Scottish Ministers a regulation-making power to confer upon the Commission the power to impose and collect monetary penalties on persons for non-compliance with specified duties under the 1993 Act. The power also enables the Scottish Ministers to repeal or adjust existing criminal offences relating to those duties and to make such further provision as they consider appropriate in connection with the imposition and collection of such penalties. Subsection (2) sets out what the regulations must make provision about, including to provide for the imposition of a monetary penalty to be by way of written notice (a "penalty notice"). Subsection (3) sets out the information a penalty notice must include. Subsection (4) sets out the maximum monetary penalty that may be provided for in regulations is to be no more than the maximum penalty that could be imposed in respect of an offence under level 1 on the standard scale (see section 225(1) of the Criminal Procedure (Scotland) Act 1995). Subsection (5) sets out a non-exhaustive list of examples that regulations under this section may make provision about. Subsection (6) provides that regulations may modify any enactment (including the 1993 Act). Before making regulations under new section 59B, the Scottish Ministers must consult the Commission, persons they consider to be representative of the interests of crofters and any other person they consider appropriate. Regulations under section 59B are subject to the affirmative procedure.

Section 9 – statutory conditions: entitlement to fixed equipment

45. Section 9 amends the statutory conditions set out in schedule 2 of the 1993 Act to make it clear that the landlord is not under an obligation to provide any fixed equipment. In doing so, however, it confirms that the tenant is not restricted to providing fixed equipment for any particular purpose (i.e. it can be more than just cultivation). It also repeals paragraph 7 of the statutory conditions, as this duplicates provisions elsewhere in the 1993 Act.

Assignations

Section 10 – assignations to family members

46. Section 10 amends section 8 of the 1993 Act to provide a simplified process for obtaining the Commission's consent to an assignation of a croft if certain conditions (described below, but primarily that the assignation is to a family member) are met. This is subject to the croft being registered and sections 23(6A) and 26J(13) of the 1993 Act, which provides that the Commission must not consent to the assignation if the subject croft has, within the last ten years, been let by the Commission under section 23(5C) or section 26J(8) (provisions which provide for a compulsory letting procedure for vacant crofts or owner-occupier crofts) unless there are exceptional circumstances which merit it. If the conditions are met, section 8(1C) of the 1993 Act does not apply and the Commission is required to consent to the application and notify the applicant within 21 days of coming to that decision (see new subsection (2A)).

47. A crofter seeking an assignation still has to apply for consent and pay any relevant fee (as per section 58A(2) of the 1993 Act). And the existing additional requirements for content of the application in section 8(1A) of the 1993 Act also still apply. Similarly, the requirements of section 8 that relate to registration are still relevant and must be satisfied for consent to be granted. But the obligations around giving public notice, considering objections and the possibility of granting consent subject to conditions are all disapplied (see new subsection (2A)(c)).

48. The new subsection (2B) contains the conditions that need to be satisfied. They are:

- the proposed assignee must be a member of the crofter's family. Section 61(2) of the 1993 Act sets out who are considered family members for the purpose of the Act.
- the proposed assignee must be ordinarily resident on or within 32 kilometres of the croft (or will be at the point of assignation).
- the proposed assignee must not be the tenant or owner-occupier of three or more crofts (whether alone or with others).
- the applicant must, when submitting the application for consent to the Commission, have given the landlord a copy of the application of the proposed assignation together with a notice informing the landlord that the proposed assignee is a member of the crofter's family and indicating that the landlord may, before the expiry of 28 days beginning with the day notice is given, make representations to the Commission.
- the landlord of the croft has, during the period given in the notice, either consented to or not objected to the assignation. A failure to respond is considered as not objecting to the application.

49. The onus is on the crofter making the application to provide sufficient material for the Commission to be satisfied on the conditions. The form of that evidence will be up to the crofter, but the Commission can provide guidance as to what it needs. The power of the Commission to ask for more information also remains (see section 8(1A)(b)).

50. Finally, the Act does not change section 8(5) of the 1993 Act. An assignation without consent, even to a family member, will be null and void and may lead to the croft being declared vacant.

Owner-occupier crofters

Section 11 – new crofts: power to determine applicant will become the owner-occupier crofter.

51. Section 3A of the 1993 Act provides for the Commission, on an application by an owner of qualifying land, to constitute a holding as a new croft – the owner thereby becoming its constituting landlord. This section of the Act inserts a new section 3AZA into the 1993 Act which applies in relation to an application made under section 3A which is made by an individual, relates to untenanted land and is accompanied by a statement of intent from the owner-applicant stating that they wish to become the owner-occupier crofter of the new croft. In effect, it creates a direct route for an owner of land to become the owner-occupier crofter of any new croft so constituted. The procedure in section 3A continues to apply in relation to the application but with some modifications. Subsections (5) and (6) of section 3A are to be read as including reference to the statement of intent. This requires the Commission to give public notification of the statement of intent, in addition to the application. Critically, the modifications also provide that the Commission may either accept the application in its entirety (i.e. constituting the land as a croft and at the same time determining the applicant is to become the owner-occupier crofter of the croft so constituted) or reject the application. This means that an owner cannot become the landlord of a vacant croft (following a determination under section 3A by the Commission) if the owner's stated intent was to become its owner-occupier crofter. In making its determination, the Commission must have regard to the matters listed in subsection (8) of section 3A but also, additionally, the matters mentioned in subsection (2)(d)(ii) of new section 3AZA.

Section 12 – meaning of "owner-occupier crofter" etc.

52. Section 12 makes a number of changes in relation to the definition of "owner-occupier crofter".

53. Subsection (2)(a) substitutes the first condition in section 19B(2) of the 1993 Act. The new subsection continues to provide that the first condition is that the person is the owner of a croft but also requires, if the person became the owner of the croft after the relevant date, the person is an individual (i.e. a natural person, rather than a company or other entity). The relevant date is defined by new subsection (5A) as the date on which section 12(2) of the Act comes into force.

54. Subsection (2)(a)(ii), which introduces a new section 19BA into the 1993 Act, and subsection (3) create a new means by which a person may become an owner-occupier crofter. This involves an individual who is the owner of a registered croft that is vacant, applying to the Commission for a determination that the person is an owner occupier-crofter. The application follows the same process as other applications to the Commission for approval under section 58A of the 1993 Act.

55. Subsection (2)(a)(ii) also provides that a person may be an owner-occupier crofter where the Commission determined the person to be an owner-occupier crofter at the time the land was constituted as a croft under section 3A (see section 3AZA of the 1993 Act, as inserted by section 11 of the Act). Subsection (2)(c)(ii) modifies section 19B(3), which contains the second condition for a person to become an owner-occupier crofter, to cover such persons' successors in title.

56. Subsection (2)(c)(iii) also modifies section 19B(3). It provides that if an individual purchases a croft from a non-natural person which meets the other conditions for owner-occupier status the new purchaser will satisfy the second condition. This means, for example, that if Company A buys the croft from Mr Brown (who is an owner-occupier crofter), and then Company A sells the croft to Mr Smith, Mr Smith would satisfy the second condition insofar as acquiring owner-occupier status (as would any successors of Mr Smith). However, during any intervening period, Company A would not be the owner-occupier crofter of the croft as they are not a natural person.

57. Subsection (2)(d) modifies section 19B(4) of the 1993 Act, which contains the third condition for a person to become an owner-occupier crofter. It provides that the croft must not have been let to any person as a crofter since it was acquired by the non-natural person. It also modifies subsection (4) of section 19B to provide the same condition regarding not letting the croft in respect of a person who was determined by the Commission to be the owner-occupier crofter of the croft under section 19BA.

58. Subsection (2)(e) amends section 19B to add a new subsection (5A) to clarify that, for the purposes of section 19B, "owner" includes a person who has not completed title by registering ownership of the land upon which the croft sits in the Land Register (an 'uninfeft proprietor'). This mostly arises in the context of a person inheriting a croft where no formal steps are taken to transfer the title into the heir's name. It also adds a definition of "relevant date" for the purposes of the first and second conditions set out in subsections (2) and (3) of section 19B, relating to the timing of a person acquiring ownership and the strands of the conditions around acquiring owner-occupier status which requires them to be natural persons.

59. Subsection (2)(f) adds a new power for the Scottish Ministers to make regulations about when the first condition of the test to be an owner-occupier crofter (in section 19B(2)) is satisfied. This allows for certain situations to be specified as meeting the condition.

Section 13 – power to make provision about the sale of owner-occupied crofts

60. This section inserts a new section 29D into the 1993 Act, giving the Scottish Ministers a regulation-making power to make provision for or in connection with the transfer of owner-occupied crofts. Subsection (2) sets out a non-exhaustive list of examples that regulations under this section may make provision about. Subsection (3) provides that regulations may modify any enactment (including the 1993 Act). Before making regulations under new section 29D, the Scottish Ministers must consult the Commission, persons they consider to be representative of the interests of owner-occupier crofters and crofters, and any other person they consider appropriate. Regulations under new section 29D are subject to the affirmative procedure.

Restrictions on assignation and acquisition after Commission let

Section 14 – ten-year restriction on assignation and purchase following Commission let

61. Where crofters or owner-occupier crofters are in breach of their duties under the 1993 Act, the Commission has powers under sections 26A-26K of that Act to take enforcement action. In most cases, this leads to a voluntary resolution by the crofter in breach, such as the crofter making arrangements to fulfil the duties, the assignation of the tenancy or sublet of the croft. However, in a small number of cases each year, the enforcement action leads to (i) the termination of a tenancy under section 26H(1) or (ii) the Commission selecting a tenant for a previously-owner-occupied croft under section 26J(7) and (8). In the former case, the termination of the previous tenancy will commonly be followed by letting it to a new crofter

under section 23, either by the landlord, or by the Commission selecting the new tenant under section 23(5B) and (5C). The Commission also sometimes secures the right to let a vacant croft under section 23(5C) in other circumstances, for example where there has been a failed succession.

62. When the Commission selects a new tenant crofter under section 26J(8) or section 23(5C), its customary policy is to select the applicant it considers able to make the greatest contribution to the crofting community. The Commission does not levy a charge, and the new crofter is awarded the tenancy without paying a price for it.

63. Section 14 of the Act amends sections 23 and 26J of the 1993 Act to provide that where the Commission has let a croft to a crofter under section 23(5C) then, during the period of 10 years starting from the date of the let, the Commission cannot consent to the assignation of the tenancy of the croft unless they are satisfied that there are exceptional circumstances which merit it; and the Land Court cannot make an order authorising the acquisition of the croft land by the crofter. An application to either the Commission for assignation, or the Land Court for authorisation, may be made during that period, but (except in exceptional circumstances relating to the assignation) it cannot take effect until after the 10-year period has elapsed.

64. The amendments to section 26J impose the same restrictions in respect of formerly owner-occupied crofts which have been let by the Commission.

Section 15 – authorisation by Land Court of acquisition of croft land: breach of duty

65. This section of the Act modifies section 13 of the 1993 Act (authorisation of the Land Court of acquisition of croft land) to make provision in respect of a crofter's right to buy. New subsection (2A) of section 13 provides that the Land Court may, where it has received a copy of a notice given to a crofter under section 26C(1), sist proceedings in respect of an application made under section 12(1) of the 1993 Act (application by crofter to the Land Court for an order authorising crofter to make acquisition of croft land tenanted by crofter) until the Commission confirm it is satisfied that the duty is being complied with or any of the circumstances mentioned in section 26E(c), (d)(i), (e)(i) or (f)(i) apply. New subsection (2A) also provides that the Land Court must not make an order authorising the acquisition in accordance with section 13(1)(a) where it is satisfied by the Commission that the crofter is not complying with any of the crofter's duties under the 1993 Act.

Requirement for proposed crofter to be aware of duties

Section 16 – requirement for proposed crofter to be aware of duties

66. This section modifies section 8 (assignation of croft) and section 23 (vacant crofts) to provide that the Commission may not grant consent or approval to an assignation or (as the case may be) letting unless the Commission is satisfied that the proposed assignee is aware of the duties the assignee would have as a crofter, following any such assignation or letting, under section 5AA, 5B and 5C of the 1993 Act.

67. This section also inserts a new section 19BB (regulations about making proposed owner demonstrate awareness of owner-occupier duties) into the 1993 Act. This gives the Scottish Ministers the power to make provision by regulations about how a person is to satisfy the Commission that the person is aware of the duties of an owner-occupier crofter under section 19C before the person may acquire title to a croft as a nominee of a crofter, or purchase a croft from a constituting landlord. Subsection (2) of section 19BB provides that such regulations may (amongst other things) make provision about the steps which must or may be

taken by a person to satisfy the Commission of the person's awareness of the duties and the effect of a failure to take such steps. Subsection (3) provides that regulations under this section may modify any enactment. Regulations under section 19BB are subject to the affirmative procedure.

Absences from crofts

Section 17 – guidance relating to absences from crofts

68. This section inserts a new section 21D into the 1993 Act which imposes a duty on the Commission to publish guidance in relation to how it exercises its functions under sections 21B to 21D of the 1993 Act (absences from crofts). Subsection (2) sets out what guidance under this section is to include information about. Subsection (3) makes it clear that guidance under this section may include such other information as the Commission consider appropriate.

Decrofting

Section 18 – decrofting direction: rationalisation of routes and requirements

69. Case law has interpreted subsections 25(1)(a) and 25(2) of the 1993 Act as providing two separate routes to decrofting, with section 25(1)(a) covering those applications which are made for some reasonable purpose, and section 25(2) allowing for applications where no purpose is stated.

70. This section changes that by repealing section 25(2) (and removing the reference in subsection (1)(a) of that section) so that there is no longer a possibility of a decrofting direction under section 25(2).

71. There has also been judicial comment that the empowering provisions of section 24(3) are not expressly tied to section 25. Section 25 makes detailed provision as to when decrofting should be allowed and what matters have to be taken into account, but it has been considered unclear whether this is intended as an exhaustive set of circumstances or not. In other words, section 25(1) could be read as the circumstances in which the Commission *must* give a direction, whereas section 24(3) could be read as providing the Commission with a discretionary power, independently of section 25(1), where they *may* also give a direction.

72. This section modifies sections 24(3) and 25(1) of the 1993 Act, connecting those provisions together, in order to clarify that the only route to decrofting is under section 24(3) if a condition in section 25(1) is met. It follows that there is no separate general discretionary power of the Commission that is independent to the ancillary aspects in section 25(1).

Section 19 – Commission decision-making on decrofting applications

73. Subsections (2) and (3) of this section amend sections 24C and 25 of the 1993 Act to effect a number of changes. These sections deal with decrofting and the amendments will allow the Commission to consider additional factors when determining applications to decroft by both crofters and owner-occupier crofters.

74. Section 24A of the 1993 Act enables owner-occupier crofters to apply to the Commission for a decrofting direction. Section 25 of the 1993 Act makes further provision about applications for decrofting directions under the 1993 Act. Section 24C provides that section 25 applies in relation to applications by owner-occupier crofters under section 24A and decisions by the Commission under section 24B, but modifies how section 25 works in such cases.

75. Section 24C(2) modifies section 25(1)(b) (which provides for decrofting of the site of the dwelling-house on or pertaining to the croft) so that it applies only where an owner-occupier crofter is applying to decroft the site of a dwelling-house on the croft and has not already obtained a decrofting direction in relation to another such site on the owner-occupied croft. Where such a decrofting direction has already been given, a subsequent application to decroft the site of a dwelling-house on the croft will be dealt with under section 25(1)(a).

76. Subsection (2) of section 19 of the Act amends section 24C(2). The changes mean that the Commission may only give a direction under section 24A(1) where they have not previously given a direction under section 24(3) to the applicant in relation to such a site on or pertaining to that croft, which could refer to a house site decrofting on the same croft but before it was an owner-occupier croft. Where such a decrofting direction has already been given, a subsequent application to decroft the site of a dwelling-house on the croft will be dealt with under section 25(1)(a).

77. Section 25(1A) details the matters which the Commission may take into account in determining a decrofting application under section 24(3) and, in particular, in relation to satisfying itself, under section 25(1)(a) of the 1993 Act, that the proposed reasonable purpose for decrofting relates to some local, community or public interest. Subsection (1A)(a) allows the Commission to take into account the effect the proposed purpose for decrofting will have on the issues detailed in subsection (1B). This section adds any plan of the Commission approved and published under section 2C of the 1993 Act to the list of matters set out in subsection (1B).

78. Subsection (3) also inserts a new section 25(1D) providing that the Commission may take into account whether a direction under section 24(3) has already been given in relation to land which previously formed part of the croft (or was deemed to form part of the croft by virtue of section 3(4) or (5)), in determining whether they are satisfied in respect of any matter mentioned in subsections (1)(a) and (b) of section 25.

79. The new subsections (6A) to (6C) of section 25 (inserted by section 19(3)(c) of the Act) introduce a right to object to a decrofting application by those who already have a right to appeal (i.e. members of the crofting community in relation to applications under section 24(3) and the owner of the land in relation to applications under section 25(4)). Objections must be made within 28 days and have to meet the same requirements as objections under the approval and consent process contained in section 58A of the 1993 Act. The Commission must have regard to objections when considering its decision.

Boundaries: adjustment and remapping

Section 20 – Commission's powers to adjust boundaries

80. This section of the Act inserts 2 new sections into the 1993 Act: section 39A (Commission's power to adjust boundaries) and section 39B (Commission's power to remap boundaries).

81. Section 39A applies where 2 or more crofters or owner-occupier crofters of registered crofts come together to agree that the boundaries of their respective croft should be adjusted.

82. The crofters or owner-occupier crofters may apply jointly to the Commission for a direction that the boundaries be adjusted (a "boundaries adjustment"). An application must include a plan based on the ordnance map (or such other map as the Commission considers appropriate) identifying the requested boundaries. A map or description of the existing boundaries should be available in the registration schedule of the Crofting Register.

83. The Commission may make a direction if it is satisfied that, in the case of an application involving a crofter, each crofter has obtained the consent of the landlord of the croft, that the period mentioned in section 12(5) of the 2010 Act (the period to challenge a first registration) in relation to each croft has expired with no application having been made to the Land Court under section 14(1) of that Act during that period (or, if such an application was made, the application was abandoned or the Court has disposed of the application, as appropriate), and that the boundaries adjustment does not affect any land deemed to form part of the croft by virtue of section 3(4) of the 1993 Act or deemed to be a croft by virtue of section 3(5) of that Act.

84. A direction under this section may be given subject to conditions (including, for example, that specified land be conveyed). However, it may not alter the total area of the land comprising the crofts affected by adjustment. That means Croft A may become slightly smaller, and Croft B slightly larger (or vice versa) as a result of the boundaries adjustment but the total area of Croft A and Croft B combined must remain the same.

85. The application is to follow broadly the same process as other Commission applications under section 58A of the 1993 Act, but without the same public notification or consultation requirements.

86. Where the Commission makes a direction under this section, the direction expires at the end of the period of 3 months beginning with the date on which the direction is made or, if any conditions are specified in the direction, the date on which such conditions are satisfied, unless an application for registration of the boundaries adjustment is submitted by virtue of section 5 of the 2010 Act, and the boundaries adjustment takes effect on the date of registration. The persons responsible for submitting the application to the Keeper are the crofters, or owner-occupier crofters, who applied for that direction.

87. Section 39B applies when an owner, crofter or owner-occupier crofter of a registered croft considers that the description of the croft in the registration schedule does not correspond with the occupied extent of the croft, or the boundary is otherwise inaccurate or undesirable in some respect and land needs to be added to or removed (or both added and removed) from the extent of the croft. The owner, crofter or owner-occupier crofter may apply to the Commission for a direction that the boundary be remapped ("a boundary remapping"). An owner, crofter or owner-occupier crofter may apply jointly with one or more other crofters or owner-occupiers. An application must include a plan based on the ordnance map (or such other map as the Commission considers appropriate) identifying the requested boundary. The existing boundary will be available in the registration schedule of the Crofting Register.

88. The Commission may make a direction if it is satisfied that the description of the croft in the registration schedule does not correspond with the occupied extent of the croft or the boundary is otherwise inaccurate or undesirable in some respect; that the period mentioned in section 12(5) of the 2010 Act (the period to challenge a first registration) in relation to each croft has expired with no application having been made to the Land Court under section 14(1)

of that Act during that period (or, if such an application was made, the application was abandoned or the Court has disposed of the application, as appropriate); that the applicant has obtained the consent of any person the Commission considers has a relevant interest in the application and any other person as may be specified in regulations (see subsection (9)); and that the boundaries remapping does not affect any land deemed to form part of the croft by virtue of section 3(4) of the 1993 Act or deemed to be a croft by virtue of section 3(5) of that Act.

89. A direction under this section may be given subject to conditions (including, for example, that specified land be conveyed).

90. The application is to follow broadly the same process as other Commission applications under section 58A of the 1993 Act, including the public notification or consultation requirements (because under this section, land can be taken into or out of crofting tenure).

91. Where the Commission makes a direction under this section, the direction expires at the period of 3 months beginning with the date on which the direction is made or, if any conditions are specified in the direction, the date on which such conditions are satisfied, unless an application for registration of the boundary remapping is submitted by virtue of section 5 of the 2010 Act, and the boundary remapping takes effect on the date of registration. The person(s) responsible for submitting the application to the Keeper are the person(s) who applied for that direction.

92. The Scottish Ministers may by regulations make further provision for the purposes of section 39B, including by specifying any persons, or descriptions of persons, whose consent must be obtained for the purposes of subsection (5), by specifying any persons, or descriptions of persons who are entitled to make an application to the Commission for a direction under this section. Such regulations would be subject to the negative procedure.

Common grazings

Sections 21 and 22 – common grazings: unattached shares etc.

93. A tenanted croft often comes with a right to use (or share in) the common grazings. This right is typically characterised as a pertinent of the tenancy. Issues can arise however, where the croft is acquired by the tenant (becoming an owner-occupied croft). At that point, the grazing right may be acquired with the croft as a form of heritable right[6] or, if not so acquired, it is deemed, by virtue of section 3(5) of the 1993 Act to be a croft in its own right, with the tenant of that deemed croft being the person who acquired the croft (i.e. the owner-occupier crofter). This deeming provision operates to keep the grazing rights with the croft at the point of acquisition, but it can create issues in cases where the rights are subsequently dealt with separately from the owner-occupied croft (for example, by being assigned to someone else or not being assigned alongside a transfer of the owner-occupied croft). Issues can also arise where the grazing right is not being used.

[6] Unless the grazing rights have been permanently apportioned to the croft, it is not possible for the crofter to buy the rights as part of the croft land (see section 12(3)(b) of the 1993 Act). However, in many acquisitions of crofts, the grazing rights have been included in the conveyance in the form of a heritable right such as a pertinent of or accessory to the croft (this is sometimes described as the "Shetland model").

94. Sections 21 and 22 amend the 1993 Act to make a number of changes to how grazing rights are to be treated when a croft is acquired or an owner-occupied croft is transferred, with a view to keeping the grazing right and the croft together in most circumstances. While explained in detail below, the sections principally do so by:

- adjusting section 3 of the 1993 Act to confirm that a right which has been included in the acquisition as some form of heritable right (such as a pertinent) forms part of the owner-occupier croft (and will be registered accordingly)
- amending the rules on registration of crofts to make it simpler to identify which grazing rights or deemed crofts of grazings shares pertain or relate to an owner-occupied croft and so effectively provide for linkage of croft and grazing rights going forward
- providing that existing deemed crofts will automatically be assigned as part of any transfer of the owner-occupier croft unless the Commission agree to the separation of the grazing rights *and* the documentation making the transfer expressly provides otherwise
- providing a power to the Commission to relet vacant grazing rights

95. Turning to the detail of the provisions.

96. The new section 3(4A) of the 1993 Act, inserted by section 21(2) of the Act, clarifies that where a person acquires (or has acquired) the entire croft (including any grazing rights that formed part of the croft by virtue of section 3(4)), then, *for the purpose of crofting tenure and the application of the 1993 Act*, those rights are to be deemed part of the croft and should be included in any subsequent transfer of the owner-occupied croft. If there is a desire to separate those rights from the owner-occupied croft, an application to divide the croft must be made to the Commission under section 19D of the 1993 Act and any attempt to separate and transfer the grazing rights without such consent is null and void.

97. The effect of the section 3(4A) of the 1993 Act is reinforced by the express addition of grazing rights (whether they are a heritable right such a servitude, pertinent, accessory or res merae facultatis or by virtue of being a deemed croft) to the definition of an owner-occupied croft for the purposes of section 19D (see section 22(3) of the Act) . This provision is intended to ensure that an owner-occupier is aware of the need for consent before taking any action to separate the grazing rights from the in-bye croft.

98. Where an owner-occupied croft is let, section 29A(8A) of the 1993 Act (inserted by section 21(3) of the Act) provides that any right in the common grazing (however held) is included by default as a pertinent of the new tenancy (and so restricts inadvertent separation by letting the grazing rights separately or retaining them while letting everything else). In order to let the grazing rights separately, the owner-occupier requires Commission consent and the lease being entered into must include express provision about what is to happen to the rights.

99. Section 19CA of the 1993 Act (inserted by section 22(2) of the Act) deals with transfers of a croft which was acquired without the grazing rights being included but the rights are a deemed croft in respect of which the owner-occupier is the tenant. This section provides that any transfer of the croft will include a deemed transfer of the tenancy of the deemed croft (i.e. the grazing share) by default. In order to prevent this deemed assignation (and so retain the tenancy or assign it to someone else), the owner-occupier requires the consent of the

Commission to divide the croft under section 19D and also needs to make it clear in the transfer of the croft that the deemed croft is not being assigned. Section 19CA(3) clarifies that this deemed assignation does not apply to grazing rights which have no connection to the croft being transferred (and which may have been acquired separately). It will, however, allow for rights which may have been held by an intervening third party for some time to come back to the croft if they are acquired by the owner occupier-crofter.

100. Section 47(10) of the 1993 Act confirms that the provisions of the 1993 Act relating to common grazings (such as section 52) apply to persons who are not crofters in the same way as they apply to crofters. The amendment to section 48(8) of the 1993 Act (in section 21(4) of the Act), complements and reinforces that by confirming that such persons are also subject to regulations made by grazing committees.

101. The amendment to section 52 of the 1993 Act (see section 22(4)) provides the Commission with an additional option when a determination is made under that section that a person's tenancy of grazing rights (i.e. the person's share) in the common grazings is terminated. The Act enables the Commission to treat the deemed tenancy as vacant and follow the procedure in the new inserted section 52ZA[7] for the reallocation and reletting of the deemed croft of the grazing rights. The section refers to this as an unattached grazing share.

102. Subsection (1) is applicatory and defines what is an unattached grazing share for the purposes of the section. This is done by reference to section 3(5) of the 1993 Act and sets out that the provision is available when the share is vacant (i.e. not currently tenanted or attached to an owner-occupier croft as part of an acquisition under section 12 of the 1993 Act).

103. Subsections (2) to (9) set out a procedure for dealing with unattached grazing shares which are vacant. It is worth noting that this procedure is an alternative to the Commission looking to let the share as a vacant croft by way of section 23 (which is an option since the unattached share is a deemed croft by virtue of section 3(5)). Subsection (10) of section 52ZA makes it clear that the new procedure does not displace that existing power.

104. The process for reallocating and reletting is similar to that which exists for section 23. The Commission must first give notice to the owner (defined in subsection (11)) requiring the owner to submit up to 3 proposals for reallocation and reletting within a 2-month period. The Commission may then approve or reject those proposals. If the owner fails to make proposals within the time period, or the proposals made are all rejected, the Commission is to invite applications by means of public notification and determine to whom the share is allocated and let (if anyone).

105. Before making a decision on approving a proposal from the landlord or a determination on allocation and reletting, the Commission must consult the grazings committee that is responsible for the relevant common grazings, if there is one.

106. Once the share has been allocated and relet, the Commission are required to ensure that the Register of Crofts and Crofting Register are appropriately updated with the appropriate details. Exactly what this will look like will depend on whether it is, for example, a new tenant or someone with an existing share in the common grazings.

[7] Added by section 22(5) of the Act.

107. Subsection (11) defines who is the "owner" for the purposes of the section. In broad terms, the owner is the person who is entitled to any rent for the share, whether or not any rent is actually paid (i.e. the landlord). But that owner may not always be the person who owns the land which form the common grazings. In some cases, the person entitled to the rent for the share is technically the person who acquired the share as part of the croft and so will constitute the owner for the purposes of this section. But if such a person cannot be found, the Commission may instead treat the owner of the land on which the common grazings are situated as the owner instead.

108. Subsection (12) confirms that the reallocation of an unattached grazing share may be to more than one person and might be to a crofter, to another person who already has a share in the common grazings, or to someone new. It might also be a combination. This gives flexibility to the Commission to consider what proposals are most suited to the particular circumstances (in consultation with the relevant grazings committee).

109. Section 22(5) and (6) of the Act amend section 11 of the 2010 Act. This provides that the registration schedule for each croft must include details of any grazings rights, including where those rights are held in the form of a deemed croft by virtue of section 3(5)(a) of the 1993 Act. Further, an entry for a deemed croft must include details of any croft to which it pertains or is held in connection with. This will effectively link grazing rights that might otherwise be considered separated with the main croft.

110. This registration requirement is intended to be forward-looking only and the information will be added as and when owner-occupier crofts or deemed crofts are transferred or assigned following the coming into force of the amendments. Regulations commencing the provision are expected to make that clear.

Section 23 – grazings committees meetings

111. Section 47(1) of the 1993 Act provides that crofters who share in a common grazings may from time to time, at a public meeting of which public notification has been given, appoint a grazings committee. Subsection (4) of that section sets out that the term of office of the members of the grazings committee appointed under section 47 is 3 years and at the expiry of that period a new committee is to be appointed.

112. This section changes that by amending section 47(1) so that crofters must also notify the Commission of any public meeting. Further, new section 47(4A) provides that a public meeting to appoint a new grazings committee may not be held more than 3 months before the expiry of the period of term of office of the members of the grazings committee.

113. In addition to the meetings mentioned above to appoint a grazings committee under section 47, sections 48(7) and 50B include provision about common grazings meetings. Section 49(1) and (2)(g) also requires a grazings committee to make and submit to the Commission common grazings regulations which include provision about the summoning of meetings of the grazings committee and the procedure and conduct of business at such meetings.

114. This section inserts a new section 50C into the 1993 Act to make it clear that such meetings may be held by electronic means without requiring physical attendance at a particular place by participants (e.g. by conference call). It also sets out that common grazings regulations under section 49(2)(g) may make provision accordingly.

Section 24 – appointment, etc., of grazings committee or grazings constable: appeal to Land Court

115. Section 47(8) of the 1993 Act allows the Commission to remove from office any or all of the members of a grazings committee, or the grazings clerk of a committee if, following an inquiry, it is satisfied that such persons are not properly carrying out their duties. Currently, the only recourse open to anyone affected by the decision is to proceed with an appeal to the Court of Session.

116. Section 24 of the Act inserts a new section 47A into the 1993 Act which would allow a relevant person (meaning a member or clerk, or certain former members or clerks, of the committee) to make an appeal to the Land Court. Subsection (1) sets out the decisions which may be appealed. These are: the decision to remove either (or both) any or all members of the committee or the clerk, or to appoint another person in their place. Subsection (2) provides that an appeal must be made within 42 days of the decision. Subsection (3) defines the grounds on which an appeal may be made. Subsection (4) sets out the actions the Land Court may take in respect of an appeal and subsection (5) requires the Commission to give effect to the decision of the Land Court on an appeal under this section.

Section 25 – use of common grazings for forestry or environmental purposes

117. This section introduces a number of changes in relation common grazings provisions in the 1993 Act to enable common grazings to also be used for environmental purposes, in addition to use as grazings. It substitutes, for extant section 50 of the 1993 Act which refers only to forestry/woodlands, new sections 50 and 50ZA. It essentially creates a 2-stage process for obtaining the consent of (1) the owner of the grazings and (2) the Commission, to use the grazings as woodlands or for an environmental purpose.

118. The new section 50 applies where a grazings committee or any crofter who holds a right in the common grazing, proposes that the committee should, in exercise of their power under section 48(4) of the 1993 Act plant trees on, and use as woodlands, any part of the common grazing or use any part of the common grazing for an environmental purpose.[8] Subsection (2) provides that the grazings committee must apply to the owner of the common grazing requesting consent to the proposed use of the part of the common grazing concerned. Subsection (3) sets out that the owner may grant consent with or without conditions, or refuse consent. However, the owner may only refuse consent on a ground mentioned in subsection (3)(b). Subsection (4) provides that a decision under subsection (3) must specify the part of the grazings to which it relates, the conditions (if any) imposed and the reasons for imposing them and, where the decision is to refuse consent, the reasons for the refusal. The decision must be given to the grazings committee and the Commission. Subsection (5) provides that if the owner does not make a decision under subsection (3) in accordance with subsection (4) within 8 weeks of the application being made the owner is deemed to have decided to grant consent (without conditions). Subsection (6) provides that a reference to using any part of the common grazing as woodlands is to having the right to exclusive economic and recreational use, including the things set out in paragraphs (a) to (d) of that subsection (but that list is not exhaustive). Subsection (7) sets out the meaning of any reference in sections 50 and 50ZA to using any part of the common grazing for an environmental purpose and also sets out a list of non-exhaustive examples, which includes peatland restoration, habitat creation and

[8] Section 47(10) of the 1993 Act provides that a reference to a crofter includes any person who, not being a crofter, is entitled to a share in the grazings along with the crofters.

restoration and water management. There is also an example about preserving, protecting, restoring, enhancing or otherwise improving the natural heritage or environment. The provision also makes clear that it may not include using the land for the generation, transmission or storage of energy (which would instead continue to be covered under provision about other uses under section 50B of the 1993 Act). Subsection (8) provides that subsections (6) and (7) are without prejudice to any person's access rights (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003). Subsection (9) provides that consent granted or deemed to be granted under this section is of no effect unless confirmed by the Commission under new section 50ZA(7). Subsection (10) enables the Scottish Ministers to modify section 50(7) by regulations to add, amend, remove or exclude an example of a use which has an environmental purpose (subject to the affirmative procedure).

119. New section 50ZA applies in respect of any decision, or deemed decision, by the owner under section 50. Subsection (2) provides that the grazings committee must apply to the Commission for a determination that the decision under section 50(3), or deemed decision under subsection (5) of that section, is reasonable. Subsection (3) provides that the Commission may determine the decision or deemed decision is reasonable or unreasonable. Subsections (4) to (6) set out what the Commission may do in respect of any decision of an owner which the Commission considers to be unreasonable. Subsection (7) provides that if a determination confirms the decision of the owner to grant consent or (as the case may be) determines consent is to be deemed given, the determination must specify the part of the grazings to which it relates and the conditions (if any) of such consent. The determination must be given to the grazings committee and the owner (in all cases). Subsection (8) provides that a determination which confirms the decision, or deemed decision, of the owner to grant consent or (as the case may be) determines consent is to be deemed given takes effect on being entered in the Register of Crofts. On being entered in the register it is binding on the successors to the owner's interest. But subsection (9) provides that any such determination ceases to have effect if the use of the part of the common grazing to which the determination relates has not commenced within 5 years. Subsection (10) makes provision about liability for expenditure where the determination specifies a condition that land be fenced or otherwise enclosed. Subsection (11) applies section 58A of the 1993 Act to the Commission making a determination under subsection (3) as it applies to the Commission making a decision in respect of an application for approval or consent (subject to the modifications set out in subsection (12)).

120. This section also inserts new section 50AA which provides scope for joint environmental ventures between the owner of the common grazing and crofters. It provides for the crofters and owner to make agreements which are binding on their successors, and which can be amended at a later date only by agreement. It also provides (new section 50AA(3)) for a copy of such an agreement to be held by the Commission and in terms of section 50AA(4) for such agreement to be amended by written agreement also lodged with the Commission.

121. This subsection (6A) of section 50B provides that an approval given in respect of an application takes effect on being entered in the Register of Crofts and on being entered in the register it is binding on the successors to the owner's interest. But new subsection (6B) provides that any such approval ceases to have effect if the use of the part of the common grazing to which the determination relates has not commenced within 5 years.

122. This section also amends the empowering provision of the grazings committee in section 48(4) to cover environmental uses (including the application of subsection (6) of that section). It also makes other minor or consequential changes to section 50B of the 1993 Act.

123. This section also repeals section 53(1)(e) of the 1993 Act. This provision is not needed as the proposed use will be permitted only if the Commission grants approval, and a decision in that respect can be appealed under section 52A.

Section 26 – consultation on common grazings

124. This section of the Act provides that the Scottish Ministers must, within 5 years of Royal Assent, undertake a consultation on measures to improve the regulation of common grazings. Subsection (2) sets out measures and action which the consultation must, in particular, consider (but the consultation may also include others).

Meaning of crofting community, parish and township

Section 27 – meaning of "crofting community", "parish" and "township"

125. This section of the Act adjusts the definition of crofting community and clarifies that a reference to the parish or township of a particular croft is tied to the information held in the Register of Crofts under section 41 of the 1993 Act.

126. The change to the meaning of crofting community specifies that the crofting community means, collectively, the people who are identified in paragraphs (a) to (c) in section 61(1A)[9] of the 1993 Act who live in a particular township and that a reference to a member of the crofting community is to be construed as meaning one of the specified people.

127. Part 1 of schedule 2 makes a series of consequential amendments to the 1993 Act to reflect this change to the meaning of crofting community.

Crofts not to be private residential tenancies

Section 28 – tenancies which cannot be private residential tenancies

128. Schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 outlines the types of tenancies which cannot be private residential tenancies. This includes agricultural land tenancies. Section 28 of the Act adds crofts to the list of exemptions in schedule 1 of the 2016 Act, so that a tenancy cannot be classified as a private residential tenancy if the let property includes a croft.

Commission's directions etc.

Section 29 – power of Commission to correct inaccuracies in directions etc.

129. This section inserts a new section 58C (correct of inaccuracies in directions etc.) into the 1993 Act which would apply where the Commission become aware of an inaccuracy in a direction, determination, decision or other document made, given or issued by them following the exercise of a function mentioned in subsection (5). Subsection (2) enables the Commission to vary the direction, determination, decision or other document to correct the inaccuracy if what is needed to do so is manifest and the conditions in subsection (3) are met. The conditions in subsection (3) require the Commission to have given 14 days prior notice of their intention to vary the direction, determination, decision or other document to any person appearing by the Commission to be affected by the variation. Further, having had regard to any representations received within that 14 day period, the Commission must also be satisfied that the original direction, determination, decision or other document has not been acted upon by any affected

[9] Inserted by section 27(2)(b) of the Act.

person in a way which indicates the person has been misled by the inaccuracy. Finally, the Commission must be satisfied that the proposed variation is not disputed. Subsection (5) sets out the functions referred to in subsection (1).

Chapter 2 - Registration

130. The Crofting Register is a register maintained by the Keeper of the Registers of Scotland. It was established by the Crofting Reform (Scotland) Act 2010. It is to be distinguished from the Register of Crofts maintained by the Commission under the 1993 Act. A key difference is that the Crofting Register includes a digital map of each croft registered in it.

Register of Crofts

Section 30 – requirement to give Commission notice of change of ownership

131. This section repeals subsection (7) of section 17 of the 1993 Act which, in limited circumstances, required a person acquiring croft land to give notice to the Commission. It replaces it, by means of a new section 40B, with a requirement for any person who acquires ownership of land containing a croft, an owner-occupied croft, or common grazings, whether or not for valuable consideration, to notify the Commission of the change of ownership within one month of the transfer occurring. The Commission may by notice given to the person who acquired the land require the person to provide the Commission with information relating to the transfer or any other matter the Commission may require. Where the Commission has reasonable cause to believe that a person has not complied with the duty to notify, or are satisfied that the person has not complied with the requirement to provide information, the Commission may reject any objection submitted by the person in accordance with section 58A(4) of the 1993 Act in relation to an application, unless the failure is remedied within the 28 day period following public notification of the application. Where the Commission rejects an objection submitted by a person in accordance with section 58A(4) by virtue of subsection (4) of new section 40B, the Commission must (as soon as reasonably practicable) notify the person of its decision to reject the objection (and the reason for that decision) and section 52A applies as if the decision to reject the objection were a decision of the Commission on an application to them under this Act. The Scottish Ministers may by regulations make provision about when ownership is to be treated as transferred for the purposes of this section. Regulations under this section are subject to the negative procedure.

Section 31 – changes to the content required in the Register of Crofts

132. Section 41 of the 1993 Act requires the Commission to compile and maintain the Register of Crofts. Information contained in the Register includes the name, location and extent of the croft, along with the name, age and date of birth of the people associated with it.

133. Section 31 streamlines the information required to be included in the Register and improves consistency of information across different kinds of occupiers. The first effect of the amendments in section 31 is to remove the requirement for those included in the Register to provide their age, since dates of birth are already included. The requirement for landlords to provide a date of birth is also removed. Further, the amendments require owner-occupier crofters to provide the same personal information as a tenant.

134. Additionally, section 41(2) of the 1993 Act is amended to ensure that the Register of Crofts has a township and parish noted against every croft in support of the changes contained in section 27 of the Act relating to the meaning of crofting community.

Registration in the Crofting Register

Section 32 – first registration of crofts purchased by tenant crofter

135. Section 4 of the 2010 Act outlines the circumstances under which a croft must be registered for the first time on the Crofting Register. Where details of a croft are not already registered in the Crofting Register, subsection (1) of that section 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) of that section.

136. Section 32 of the Act changes that by amending section 4(1)(c) of the 2010 Act to add a new circumstance in which a croft must be registered, namely in the case of a crofter (or the crofter's nominee) buying their croft (and thereby becoming an owner-occupier crofter). This section also modifies section 6(1) of the 2010 Act to make it clear that the crofter or their nominee (who becomes the owner-occupier crofter on transfer) is responsible for submitting the application for registration. It also amends section 29 of the 2010 Act by inserting new subsections (5A) and (5B) to make it an offence for the owner-occupier crofter to fail to apply to register the croft within 1 year of the transfer (and a further offence for each successive year of failure). A person who commits an offence under subsections (5A) or (5B) will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 33 – payment of fees for applications for registration

137. Section 33 of the Act contains a number of amendments to the 2010 Act which relate to the manner in which application fees in respect of registration are made.

138. The Act removes the Commission's ability to refuse to forward an application for registration to the Keeper if the fee payable in respect of the registration has not been tendered. This function is instead transferred directly to the Keeper. The Keeper must reject an application if neither payment of the fee payable in respect of such registration has been paid, nor arrangements satisfactory to the Keeper for payment of the fee have been made.

Section 34 – requirement for certain applications for first registration to be copied to landlord

139. Section 34 of the Act amends section 7 of the 2010 Act to require a tenant who is submitting an application for first registration to send a copy of the draft application to the landlord of the croft at least 21 days before submitting the application to the Commission. The tenant must also confirm to the Commission that this has been done at the point of the application, otherwise it may be refused. The landlord does not have to take any action upon receipt of the application, but may choose to do so if the landlord considers that there are inaccuracies in the information being submitted.

Section 35 – notification of first registration

140. Section 35 of the Act amends sections 7, 12 and 18 of the 2010 Act to transfer the notification requirement for persons who have an interest in (and a right to challenge) the key details of the first registration of a croft, from the Commission to the Keeper.

141. The change to section 7 requires that the applicant for first registration supply the names and addresses of the persons who have an interest in the croft to the Commission. Where the applicant does not know those details, the applicant has to tell the Commission what steps have been taken to ascertain the details. The Commission may use its existing powers to request further information to require the person to try and find out the information or may supply the information itself insofar as it is available from its records.

142. Section 12 of the 2010 Act is amended to require the Keeper to issue notification of first registration to the persons with an interest as soon as reasonably practicable after the certificate of registration is issued. The 9-month period of challenge (see section 14 of the 2010 Act) only starts when the last of the persons with an interest is notified.

143. Section 18 of the 2010 Act is amended to provide that the Keeper is not liable for any information contained in a notice (or failure to notify) which results from the information provided to the Keeper by the Commission. However, if the Keeper has been given the correct information and makes a mistake (or fails to notify) then the Keeper may be liable.

Section 36 - rectification of the Crofting Register

144. This section of the Act amends the provisions in Part 2 of the 2010 Act which relate to the rectification of the Crofting Register when there is a mistake in it.

145. Section 16(1) of the 2010 Act enables the Keeper to rectify the Register in accordance with subsections (2) to (4), and requires the Keeper to rectify it on being ordered to do so by a court. 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 the Keeper or of the Keeper's own volition, where a mistake has been made by the Keeper in making up or amending the Register.

146. Section 36 of the Act retains the existing routes to rectification but modifies section 16(1) of the 2010 Act to provide for additional avenues.

147. The modifications enable the Keeper to, at any time, amend the register to correct any typographical, clerical or other administrative error. The Keeper does not require an application, nor does the Keeper require to be satisfied that the error was made by the Keeper.

148. New section 16A of the 1993 Act (rectification: direction by the Commission) provides a further way in which rectification may be effected. Where the Commission becomes aware of a material inaccuracy in the register and the conditions in subsection (2) are met, the Commission may direct the Keeper to rectify the register if what is needed to do so is manifest, and may give the Keeper any further direction it considers necessary in connection with the rectification. The conditions in subsection (2) are that the Commission has given 28 days' notice of its intention to issue a direction and had regard to any representations received within that period. Subsection (4) defines "material inaccuracy" for the purposes of this section, being an inaccuracy relating to any matter mentioned in section 11(2)(a) or (b) of the 2010 Act. It would include an error which is a typographical error.

149. The Keeper is required to give notice of any rectification (other than the correction of a typographical, administration or clerical error) to any person appearing to the Keeper to be affected by the rectification, and to the Commission.

150. Section 36(2)(d) of the Act inserts a regulation making power enabling the Scottish Ministers to modify section 16 of the 2010 Act so as to specify further persons, or descriptions of persons, who are entitled to make an application to rectify the register under that section.

151. This section also makes consequential changes to sections 17 and 18 of the 2010 Act.

152. Section 17 of the 2010 Act 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 and the registration and the challenge period begins again. Subsection (5) defines "material inaccuracy" as an inaccuracy in any of the matters which must be included in the registration schedule under section 11(2). This section modifies section 17 so as to exclude typographical, clerical or other administrative errors from this section's application. Such errors would be minor and capable of being rectified under section 16(1)(a) and do not merit the restarting of the challenge period.

153. Section 18 of the 2010 Act 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.

154. Section 36 also inserts a new subsection (7A) into section 18 which provides that the Commission is liable to indemnify a person for loss suffered as result of a mistake in the register made by the Commission in a direction given under section 16A.

155. This section also inserts a new section 20A about appeals in relation to a direction by the Commission to rectify the register. It enables a person who is affected by the direction to appeal to the Land Court against a decision of the Commission under section 16A to give a direction. Subsection (2) provides that an appeal must be made within 42 days beginning with the day on which the Keeper gives notice of the rectification under section 16(6). Subsection (3) defines the grounds on which an appeal may be made. Subsection (4) sets out the actions the Land Court may take in respect of an appeal and subsection (5) requires the Commission to give effect to the decision of the Land Court on an appeal under this section.

Section 37 – form of applications for registration

156. Section 37 inserts a new section 19A into the 2010 Act. This makes it the responsibility of the Keeper to specify the form of applications for registration and related matters. The specified forms have to be published on the Registers of Scotland website or in some other similar manner (to cover the possibility of technological change). If necessary, applicants can be required to use the forms under rules made under section 19 (though in practice, they will have to use the forms specified in order to be able to register anything).

157. Before specifying a new form, the Keeper must consult the Commission and publicise the new form in such manner as the Keeper considers appropriate. The latter requirement is particularly focused upon giving potential applicants notice of the new form to minimise the number of applications made using the wrong form.

158. If the Scottish Ministers make rules about the form of an application using their powers under section 19(1)(c) (for example to require particular information or certain accessibility requirements) the Keeper must specify a form that complies with the rules. In those circumstances, consultation with the Commission is unnecessary as it will already have occurred as part of the process of making the rules. Subsection (4) revokes the rules and forms contained in the Crofting Register (Scotland) Rules 2012, which are rendered unnecessary by this change.

Requirement for croft to be registered

159. These sections variously modify the 1993 Act and the 2010 Act to simplify the sequencing of first registration of crofts for most regulatory applications, by decoupling the first registration process from the Commission's regulatory application process. Currently, there are two separate routes for processing Commission regulatory applications, depending on whether the subject croft has been registered in the Crofting Register or not. These changes will require that certain applications can only be made in respect of crofts that have already been registered. These sections also make consequential changes to the 2010 Act, as respects provision about registration.

Section 38 – enlargement of croft

160. This section modifies section 4 of the 1993 Act (enlargement of crofts) to provide that the Commission may not make a direction under that section if, on the date on which the application for the direction was made, the croft was an unregistered croft. This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 39 – exchange of croft or parts of crofts

161. This section modifies section 4A of the 1993 Act (exchange of croft or parts of crofts) to provide that the Commission may not grant consent to the exchange of a croft unless it is satisfied that, on the date on which the application was made, the crofts being exchanged were registered crofts. This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 40 – assignation of croft

162. This section modifies section 8 of the 1993 Act (assignation of croft) to provide that the Commission may not grant consent to the assignation of the croft if, on the date on which the application for consent was made, the croft was an unregistered croft. This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 41 – division of crofts and owner-occupied crofts

163. This section modifies section 9 of the 1993 Act (division of crofts and owner-occupier crofts) to provide that the Commission may not grant consent to the division of a croft if, on the date on which the application for consent was made, the croft was an unregistered croft. This section also makes equivalent changes to section 19D of the 1993 Act (division of owner-occupied crofts). This section also makes various consequential changes to those sections of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 42 – resumption of croft or part of croft by landlord

164. This section modifies section 20 of the 1993 Act (resumption of croft or part of croft by landlord) to provide that the Land Court may not authorise the resumption of the croft if, on the date on which the application for authorisation was made, the croft was an unregistered croft. This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 43 – reversion of resumed land

165. This section modifies section 21A of the 1993 Act (reversion of resumed land) to remove provision about the reversion of resumed land relating to unregistered crofts, operating on the assumption that for an application for reversion of resumption the croft will have already been registered (before being resumed under section 20 of the 1993 Act). This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 44 – decrofting in case of resumption or vacancy of croft

166. This section modifies section 24 of the 1993 Act (decrofting in case of resumption or vacancy of croft) to provide that the Commission may not make a direction under subsection (2) of that section if, on the date on which the application for authorisation was made, the croft was an unregistered croft.

167. It also modifies section 24B of the 1993 Act (Commission's powers in relation to applications under section 24A (applications to decroft by owner-occupier crofters)) to provide that the Commission may not give a decrofting direction under subsection (1) of section 24B if, on the date on which the owner-occupier made the application to the Commission under section 24A(1), the owner-occupied croft was unregistered.

168. It also modifies section 25 (provision supplementary to s.24(3)) to provide that in subsections (1)(a) and (b), one of the material aspects of the circumstances set out in those paragraphs which enable a decrofting direction to be given is that the application is made in respect of a croft which is a registered croft.

169. This section also makes various consequential changes to those sections and sections 24C (application of section 25 in relation to decrofting directions) and 24D (effect of decrofting direction) of the 1993 Act; and to provision concerning registration in section 4 and schedule 2 of the 2010 Act.

Section 45 – provisions as to right to sublet

170. This section modifies section 27 of the 1993 Act (provisions as to right to sublet) to provide that a crofter may not sublet their croft unless the croft is a registered croft. This section also makes various consequential changes to that section of the 1993 Act.

Section 46 – letting of owner-occupied crofts

171. This section modifies section 29A of the 1993 Act (letting of owner-occupied crofts) to provide that the Commission may not grant consent to the letting of an owner-occupied croft if, on the date on which the application for consent under subsection (1) was made, the owner-occupied croft was unregistered. This section also makes various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act.

Section 47 – requirement for croft to be registered (miscellaneous provisions

172. This section modifies section 52 of the 1993 Act (miscellaneous provisions as to common grazings etc.) to make various consequential changes to that section of the 1993 Act and to provision concerning registration in sections 4 and 10 and schedule 2 of the 2010 Act, in consequence of substituted subsection (4) of that section (see changes made by paragraph 1(22) of schedule 2). New section 52(4) (see paragraph 1(22)) will enable the Commission to decide to apportion a part of the common grazing on the application of a crofter of a registered croft who holds a right in a common grazing.

Chapter 3 – Miscellaneous

Service of notices and public notification

Section 48 – service of notices

173. This section of the Act substitutes a new section 55 of the 1993 Act to make new provision about the service of any notice or other document required by or under that Act. The main change is to expand the current modes of competent service to include service by electronic communications (such as email), but it also updates the existing provisions covering service by post.

174. Subsection (1) sets out the 3 main ways in which a document can be served: personal delivery, post (registered or recorded) and by electronic communications.

175. Subsection (2) also specifies (restating the provision in the existing legislation) that where any notice or other document is to be given to or served on a person as being the person having any interest in land and it is not practicable after reasonable inquiry to ascertain their name or address it may be given or served by addressing the notice to "The person with an interest in the land" (describing the land), and either delivering the notice personally to some responsible person on the land, or affixing it (or a copy of it) to some conspicuous object on the land.

176. Subsection (3) sets out what is meant by the proper address of the person for the purpose of service by post.

177. Subsection (4) provides further detail in relation to documents served by electronic means. Electronic transmission of a document must be effected in a manner that the recipient has indicated to the sender that they are willing to receive the document electronically. Subsection (4)(b) makes provision as to the circumstances in which willingness to receive a document electronically may be given or inferred. Subsection (4)(c) provides that uploading a document to an electronic storage system from where it may be downloaded by the recipient may constitute electronic transmission.

178. Subsection (5) provides that where a document is served by post, on an address within the United Kingdom, it is taken to have been received 48 hours after it is sent. Subsection (6) provides that when a document is served using electronic communications, it is also taken to have been received 48 hours after it is sent. These are rebuttable presumptions given the potential difficulties with postal service and problems which may arise with delivery by service providers/internet for email.

Section 49 - public notification

179. Extant section 55A of the 1993 Act describes what constitutes public notification for the purposes of that Act, where such notification is required by the Act. It specifies that public notification is given by publication of an appropriate notice in one or more local newspapers. The contents of the notice will generally be specified by the Commission (section 55A(2)). Section 55A(2) provides that the notice must always specify the purpose of the application to which it relates, include a description of the land to which it relates and specify the period during which objections to the proposals in the notice may be made and the manner in which they should be made. Section 55A(3) provides that in any case where notification is to be given to a specified person that notification should be in the same form as the public notification.

180. This section substitutes section 55A for new sections 55A and 55B. New section 55A enables the Scottish Ministers to make provision by regulations about the giving of public notification under the 1993 Act and section 12(8) of the 2010 Act (subject to the negative procedure). Subsection (2) of new section 55A sets out a non-exhaustive list of the things that the Scottish Ministers may make provision about. Subsection (3) of new section 55A requires the Scottish Ministers to consult the Commission before making regulations under subsection (1). Subsection (4) provides that regulations may make different provision for different purposes and include incidental, supplementary, consequential, transitional, transitory or saving provision.

181. New section 55B broadly replicates extant section 55A(2)(b) and (3). It requires the Commission to specify the form and content of notices and publish the notices specified on its website or in such other similar manner as it considers appropriate. However, if a form of notice is prescribed under section 55A(1), the Commission must specify that form (see subsection (2)). New section 55B(3) also provides that in any case where notification is to be given to a specified person that notification should be in the same form as the public notification.

182. This section also modifies section 25 of the 1993 Act and section 12(8) of the 2010 Act to remove the requirement to publish a notice in a newspaper. It also makes a consequential change to section 61 of the 1993 Act, which contains definitional material.

Section 50 – crofting census notices

183. Section 40A of the 1993 Act states that the Commission must give notice to each crofter and owner-occupier crofter to make an annual declaration to the Commission with the information stated in subsection (2) and (3) of that section. Notices are to be given annually. Subsection (2)(a) changes that by requiring notices to be given at least once in every 3-year period. Subsection (2)(b) enables notices to be sent by regular post (instead of by only registered or recorded delivery).

The Crofting Commission

Section 51 – appointment of chair

184. This section amends paragraph 3 of schedule 1 of the 1993 Act in order to effect a variety of changes relating to the membership of the Commission and the appointment of its chair.

185. Paragraph 3 of schedule 1 of the 1993 Act sets out the requirements for the membership of the Crofting 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 are therefore 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 chair although they may delegate this function to the Commission. Paragraph 3(2) provides that 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.

186. New sub-paragraph (3) enables the Scottish Ministers to appoint a person to chair the Commission. New sub-paragraph (3A) provides that the person appointed could be an existing member of the Commission or someone external. New sub-paragraph (3A) also sets out the membership 'type' of that that person on becoming chair. New sub-paragraph (4A) also provides that, while the Scottish Ministers may appoint someone external, if the function is delegated to the Commission, it may only appoint a chair from its existing pool of members. New sub-paragraph (5A) also creates a new rule which applies where the Commission consists of the maximum number of members specified in sub-paragraph (1) and the chair resigns office, but does not otherwise cease to be a member of the Commission, and is not replaced as the chair by a person who is already a member of the Commission (for example if there are no suitable members of the Commission interested in being chair). In such circumstances the Scottish Ministers may appoint an external person, despite the fact that this would mean the Commission has more than the maximum number of specified members. This section also provides that where a person is appointed by virtue of sub-paragraph (5A), the rule about the majority of members being elected members need not be maintained. New sub-paragraph (5B) also provides that where a person is appointed as the chair of the Commission who was not already a member of the Commission at the time of the person's appointment, the person's membership of the Commission ends when the person ceases to be chair. That rule applies irrespective of whether the chair was appointed by virtue of sub-paragraph (5A) or in 'normal' circumstances under sub-paragraph (3).

Section 52 – appointed members: special considerations

187. Section 52 of the Act amends paragraph 4 of schedule 1 to the 1993 Act.

188. The Commission consists of a mix of elected and appointed members. It must have between 5 and 9 members, up to 6 of whom may be elected.

189. At present, where there are no members elected to the Commission that appear to Ministers to represent the interests of landlords of crofts, the Scottish Ministers are, when appointing members to the Commission, required to appoint at least one such a person. This appointment will typically happen after an election once the composition of the Commission is known.

190. The changes made by the Act remove the requirement to appoint a person who, in the opinion of the Scottish Ministers, represents the interests of landlords of crofts and replace it with an obligation to have regard to the desirability of such a person being appointed. Before making appointments when there are no representatives of landlords, the Scottish Ministers also have to consult with the Commission.

Section 53 – chairing of Commission meetings and committees

191. Section 5 3 amends paragraphs 12 and 13 of schedule 1 to the 1993 Act.

192. The change to paragraph 12 requires the Commission to appoint a chair for any committee it establishes (including those it is required to establish).

193. The changes to paragraph 13(2) enable the chair of the Commission to delegate the chairing of all or any part of a meeting of the Commission to another member. For example, if the chair is unable to attend or is having technical difficulties during a remote meeting, then the chair can ask another member to act as chair. Paragraph 13(3) is similarly adjusted to allow committee chairs to do the same.

194. The adjustment of paragraph 13(4) clarifies that the casting vote does not change with the delegation of part of a meeting. If the chair only delegates part of a meeting of the Commission, the chair retains the casting vote throughout. The same applies to committee meetings.

Section 54 – review of crofting legislation

195. This section of the Act provides that the Scottish Ministers must begin a review of crofting legislation within 3 years of Royal Assent and, as soon as reasonably practicable after completing the review, prepare a report on that review. Subsection (2) provides that the Scottish Ministers may delegate their functions under subsection (1) to such person as they consider appropriate. Subsection (3) sets out that the report under subsection (1) must, in particular, include an assessment of the impact and effectiveness of the 1993 and 2010 Crofting Acts, and this Act, and assess whether further legislation, or consolidation of the legislation, is required. Subsection (4) requires that the Scottish Ministers (or the person to whom the function is delegated) must consult such persons as they consider appropriate. Subsection (5) provides that the Scottish Ministers must, as soon as reasonably practicable after the report is prepared, publish the report and lay it before the Scottish Parliament.

Interpretation of Part 1

Section 55 – interpretation of Part 1

196. This section defines the 1993 Act and 2010 Act for the purposes of Part 1 of the Act and Part 1 of schedule 2.

PART 2 – MERGER OF THE SCOTTISH LAND COURT AND THE LANDS TRIBUNAL FOR SCOTLAND

Overview and background

Overview

197. Part 2 of the Act relates to the merger of the Scottish Land Court ("the Court") and the Lands Tribunal for Scotland ("the Tribunal"). The Act effects the merger by transferring the jurisdiction and functions of the Tribunal to the Court and setting out an updated legislative framework for the Court (which takes account of the merger as well as making a number of changes to the operation of the Court). The majority of the provisions relating to the operation and jurisdiction of the Court following the transfer are contained in schedule 1 to the Act.

The Scottish Land Court

198. The Court was created by the Small Landholders (Scotland) Act 1911 and, at the time the Act was passed, its statutory basis was the Scottish Land Court Act 1993 ("SLC 1993"). It began operations on 1 April 1912.

199. The Court's current jurisdiction is primarily within the context of Scottish farming. It has authority to resolve a range of disputes, including disputes between landlords and tenants, in agriculture and crofting. It does not, however, have universal jurisdiction to deal with all matters relating to land. In particular, it does not have any jurisdiction to deal with the question of ownership and heritable title to land (which are dealt with by the ordinary courts, i.e. the sheriff court and the Court of Session), nor does the Court have any jurisdiction in relation to urban subjects.

200. The SLC 1993 requires the Court to have a Chairman, who has the status of a judge of the Court of Session. It also provides for the appointment of a Deputy Chairman. To be the Chairman or Deputy Chairman, a person must have held the office of sheriff or sheriff principal or have been an advocate or solicitor advocate. The Chairman and Deputy Chairman deal with the most difficult cases and disputes involving questions of law. Although SLC 1993 does not make a formal distinction, in practice the other members of the Court are either legal members or lay members with relevant expertise.

201. The SLC 1993 provides that the Chairman may delegate a case to be heard by any one or two members of the Court, with or without the assistance of one or more land valuers, assessors or other skilled persons. There is a procedure available for a decision made in a delegated case to be internal reviewed. There is also a further right to appeal to the Inner House on a question of law arising under an enactment[10] (although there are exceptions to this provision).

The Lands Tribunal for Scotland

202. The power to establish the Lands Tribunal for Scotland, and the operation of Tribunal (and the Lands Tribunal for the remainder of the UK) was provided for in the Lands Tribunal Act 1949 Act (although it was not actually utilised until 1971).

203. The Tribunal has statutory power to deal with various types of disputes involving land or property. However, while its jurisdiction relates to land issues, most disputes about rights to land (for example, disputes over ownership or succession) are heard in either the sheriff court or the Court of Session. As noted above, the Scottish Land Court also has jurisdiction to deal with some land cases. At the request of parties, the Tribunal can also act as an arbiter to deal with any type of dispute.

204. Parties to a dispute before the Tribunal are usually entitled to have the evidence and submissions tested by a hearing in open court. However, if parties agree that a hearing is not needed a case can be dealt with by way of written submissions, which will generally be quicker and less costly than a hearing.

205. There is a right of appeal against the decision of the Tribunal to the Court of Session, but on a point of law only.

[10] Enactment is defined in the Interpretation Act 1978 and includes an Act of Parliament or a statutory instrument

Commentary on sections

Section 56 – the Scottish Land Court

206. Section 56 confirms that the Court is to continue in being without interruption. It also gives effect to schedule 1 which sets out afresh the constitution of the Court, its jurisdiction, powers and related matters.

Section 57 – merger of the Scottish Land Court and the Lands Tribunal for Scotland

207. This section provides for the transfer of the main aspects of the Tribunal to the Court, including its jurisdiction, ongoing proceedings, staff, property etc. This is to happen on a day (or days) appointed by Ministers using the commencement regulations. The provision offers flexibility as it is expected that it may take some time for full implementation to occur.

208. The members of the Tribunal are not being transferred by the Act. Instead, they are authorised to sit in the Court and hear and determine matters within the jurisdiction of the Court. The transfer of the Tribunal members will occur at a later date by different legislative means. In the meantime, the pay and conditions of those members remain the same.

Section 58 - savings etc.

209. This section ensures that the transfer of jurisdiction from the Tribunal to the Court does not have an effect on the manner in which any proceedings which are ongoing are handled by the Court.

Section 59 - power to make further provision in connection with the merger etc.

210. Section 59 enables the Scottish Ministers to make regulations about the various things being transferred. This reflects that there are often detailed matters that come to light and which need to be picked up in the course of implementation (such as the terms and conditions of staff).

Section 60 – transitory provision: eligibility of suitable members of the Lands Tribunal for Scotland to sit in Upper Tribunal

211. This section provides a way for suitably qualified members of the Tribunal to be determined eligible to sit in the Upper Tribunal during the period that it takes for the merger to be fully implemented.

Section 61 - giving or updating guidance on access rights

212. This section requires that the Scottish Ministers give or update any guidance given under section 27 of the Land Reform (Scotland) Act 2003 to take account of the Court taking on competence and jurisdiction in respect of disputes relating to access rights. Updated guidance must be given before the competence and jurisdiction for such disputes are transferred.

213. Given that any update to the guidance required under this section is for the limited purpose of ensuring it reflects the transfer of competence, the full procedure which would otherwise apply under section 27 of the Land Reform (Scotland) Act 2003 is disapplied. However, if the guidance were updated as part of a wider update, then the full process for giving guidance under that section would have to be followed.

Section 62 – reviews of the operation and jurisdiction of the Court

214. This section provides for reviews of the operation and jurisdiction of the provisions in Part 2 following the transfer of the competence and jurisdiction of topics listed in subsection (3) (which are primarily topics which are either being transferred as part of the merger, or which are otherwise new). It also requires the Scottish Ministers to assess whether any areas of environmental law are suitable for adding to the jurisdiction of the Court.

215. The reviews concerning the operation of the provisions in Part 2 are intended to provide an opportunity to ensure that the legislation underpinning the Court's constitution and operation is working as intended and enabling the Court to operate effectively. A review will not look at anything which might be considered to interfere with judicial independence or decision making and to ensure that the focus of each such review is correct, the Lord President of the Court of Session is to be consulted prior to the carrying out of the review. These reviews are required to occur as soon as practicable 3 years after the provision conferring the relevant jurisdiction comes into force. Where several provisions come into force at the same time, a single review may cover all of them.

216. Subsection (4) requires reviews of the provisions in Part 2 to consider whether any adjustments should be made to the legislation by using the secondary legislation conferred on Ministers in section 59 and paragraph 15(2) of schedule 1. It also requires the Scottish Ministers to look at the eligibility requirements for members of the Court in light of the expanded jurisdiction and specialist areas.

217. The Scottish Ministers must conduct the assessment under subsection (1)(b) as soon as reasonably practicable after 3 years have elapsed from section 62 coming into force.

218. As part of every review or assessment carried out under the section, the Scottish Ministers must consult the persons and bodies listed in subsection (5). This includes those persons and bodies who have responsibility for civil justice and the operation of courts and tribunals in Scotland as well as persons who are thought to represent users of the Court. The Scottish Ministers are also to require any other persons that they consider appropriate.

219. Following a review or assessment, the Scottish Ministers must prepare and publish a report and lay a copy of the report before the Scottish Parliament. In the case of a report following a review, the report must include information about the type and number of cases the Court has considered within the period of the report and a statement about whether the Scottish Ministers intend to bring forward proposals to modify Part 2 or schedule 1 or, if not, explaining why they are not doing so.

PART 3 – GENERAL

Section 63 – minor and consequential provision

220. This section introduces schedule 2 which contains a number of minor and consequential amendments made in respect of both Part 1 and Part 2 of the Act.

Section 64 – regulations

221. This section makes further provision about the regulation-making powers that the Act confers on the Scottish Ministers (other than those relating to commencement). In particular, it makes clear that the powers can also be used to make different provision for different purposes and areas and includes power to make incidental, supplemental, consequential, transitional, transitory or saving provision.

Section 65 - ancillary provision

222. This section confers a power on the Scottish Ministers to make ancillary provision by regulations.

223. Subsection (2) provides that the power to make ancillary provision can be used to modify enactments. The word enactment is defined for this purpose by schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, it includes Acts of the Scottish Parliament and Acts of the UK Parliament. There is a general presumption that a regulation-making power cannot be used to modify Acts. Subsection (2) overcomes that presumption.

224. Subsection (3) provides for ancillary regulations to be subject to the affirmative procedure if they textually amend an Act of the Scottish Parliament or the UK Parliament, but otherwise they are subject to the negative procedure.

Section 66 – commencement

225. This section deals with how the Act may be brought into force. Except in the case of the listed sections of Part 3 of the Act, the other provisions will be brought into force by regulations made by the Scottish Ministers.

226. Regulations bringing sections into force may include different provision for different purposes or areas and may include transitional, transitory or saving provision. Commencement regulations are not subject to any parliamentary procedure.

Section 67 - short title

227. This section names the Act, which is the Crofting and Scottish Land Court Act 2026. The short title is how the Act may be referred to or cited in legal proceedings.

SCHEDULE 1 – THE SCOTTISH LAND COURT

228. Schedule 1 restates the constitution and jurisdiction of the Scottish Land Court. This was previously contained in the Scottish Land Court Act 1993 (the "SLC 1993").

Part 1 – Administration and organisation

Incorporation

229. Paragraph 1 restates that the Court is a body corporate with a common seal that is to be judicially noticed.[11]

[11] This means that any documents bearing the seal of the court will be recognised in court proceedings etc. without the need for any evidence to be led to establish that fact.

Appointment of members and Chair of the Court

230. Paragraph 2 sets out the membership of the court and how members are to be appointed. It should be read with paragraph 7 of schedule 2 (which contains an amendment to the Judiciary and Courts (Scotland) Act 2008).

231. Members are to be appointed by His Majesty following the recommendation of the First Minister. The process for selecting members for the First Minister to recommend is governed by the Judiciary and Courts (Scotland) Act 2008.

232. Before recommending a person for appointment as the Chair of the Court, the First Minister must consult the Lord President of the Court of Session. Upon appointment, the Chair has the same rank and tenure as a judge of the Court of Session.

233. The eligibility requirements for the Chair are set out in paragraph 2(5). For a person to be eligible to be appointed Chair, the person must have been (for a period of 10 years or more)—

- a sheriff principal or sheriff,
- a member of the Faculty of Advocates,
- a solicitor advocate (that is, a solicitor who has obtained rights of audience in the Court of Session), or
- a combination of two or more of the above positions.

234. A period of relevant training (such as devilling to become an advocate) is not to interrupt the 10-year period in such a manner as to cause it to start again. This means that a person who became an advocate after being a solicitor advocate for 9 years (and so ceased being a solicitor advocate during the period of devilling), does not need to serve another 10 years as an advocate or sheriff before becoming eligible.

235. The membership of the Court must include a person who is able to speak the Gaelic language.

236. The eligibility of other persons to be members of the Court is to be set out in regulations made by the Scottish Ministers. Given the range of different types of case that the Court may consider, there may be different eligibility for different members in order to ensure that the Court has the necessary range of skills. This is especially the case if the jurisdiction of the Court is added to further using the powers under paragraph 15(2).

Designation and functions of Deputy Chair

237. The Scottish Ministers may designate a member to act as Deputy Chair in the event that the Chair is unavailable. Where the Chair directs the Deputy Chair to act on the Chair's behalf, the Chair needs to have the consent of the Scottish Ministers. This is likely to be in an agreed set of circumstances. The Deputy Chair is also to act as Chair when requested to do so by the Scottish Ministers in the case of vacancy in the office of Chair or where the Chair is otherwise unable to act.

238. When not acting as Chair, the Deputy Chair can hear and determine cases in the same manner as other members of the Court.

239. A person can only be appointed as Deputy Chair if the person meets the eligibility criteria to be Chair.

240. Where no member of the Court is eligible to be designated as Deputy Chair, the Scottish Ministers may temporarily appoint as Deputy Chair a person who is eligible to hold the office of Chair under paragraph 2(5)(a) (i.e. a sheriff or sheriff principal with at least 10 years' experience). Before doing so, the Scottish Ministers must consult the Lord President of the Court of Session.

Principal Clerk

241. The SCTS must appoint a suitable person to act as principal clerk. The SCTS will also ensure that there are sufficient staff for the court.

Remuneration

242. The salary and allowances of the Chair of the Court is unchanged from SLC 1993. Both are determined by the Treasury and paid by the SCTS. For the other members, the salary and allowances are to be determined by the Scottish Ministers and paid by the SCTS. All such sums are charged on the Scottish Consolidated Fund.

243. Special provision is made for the Deputy Chair to be paid such remuneration as appears to be reasonable by the Scottish Ministers in respect of the Deputy Chair exercising additional functions (i.e. when the Chair is unable to act, or a direction is in place). Former members of the Court who are nominated under paragraph 12[12] to sit in respect of particular pieces of work are paid in a similar manner (essentially, a day rate).

244. Expenses may be paid to the members of the Court (including the Chair), the Deputy Chair and former members as appropriate. The SCTS may determine different circumstances for when these are appropriate. These expenses are not charged on the Scottish Consolidated Fund. The routine expenditure of the Court is also to be paid by the SCTS.

Quorum and delegation

245. Paragraphs 9 to 12 set out the quorum of the Court. This provides that the Court is quorate if the Chair is sitting with one other member or there are three members (other than the Chair) sitting. The Court can also sit with fewer members by delegating its power to one or two members. A decision of the Court which is made without the Chair, a Deputy Chair, a suitably qualified legal member or a legal member of the Tribunal, is subject to review by two or more members of the Court (or nominated former members of the Court), and the Chair, a Deputy Chair or such legal members, sitting together. This power of review is subject to any regulations made under paragraph 15(2)(a) which disapply the review process in respect of a particular matter (for example, matters which were previously dealt with in the Tribunal may be excluded as they were not previously subject to such a review).

246. The Chair always has a casting vote.

[12] Due to a cross-referencing error, the Act erroneously refers to paragraph 13. This will be addressed in due course.

Eligibility to act as members of the Upper Tribunal for Scotland

247. Members of the Court and the Tribunal are often specialists in areas of law that are relevant for the work of the Upper Tribunal.

248. Paragraph 13 (together with consequential amendments to the Tribunals (Scotland) Act 2014 in Part 2 of schedule 2), creates a process where the Chair can determine that a person is suitably qualified to sit in the Upper Tribunal. If that determination is made, the member can be authorised under the 2014 Act to sit in the Upper Tribunal. As noted earlier, a transitory provision has been included so that members of the Lands Tribunal can also sit in the Upper Tribunal while the merger takes place.

249. Paragraph 14 of schedule 1 applies the fitness to practice provisions that exist for sheriff principals, sheriffs and summary sheriffs to members of the Court (other than the Chair). Those provisions are contained in sections 21 to 25 of the Courts Reform (Scotland) Act 2014[13] (with a slight adaptation to make them work for members of the Court).

Part 2 – Jurisdiction of the Court

250. The competence and jurisdiction of the Court is entirely contained in statute. It does not have common law powers. Paragraph 15 confirms that the Court has competence and jurisdiction over the matters and appeals listed or described in Part 2 of schedule 1 as well as in respect of anything conferred upon it by another piece of legislation. In some cases, such as agriculture and crofting, the conferral is contained in other legislation but is also referred to in Part 2 in order to assist users.

251. Paragraph 15(2) provides that the Scottish Ministers may make regulations (a) specifying or describing matters which are not subject to review under paragraph 10, (b) adjusting the jurisdiction of the Court, and (c) modifying paragraph 30 in respect of the method by which matters are to be stated or appealed to the Court of Session. Regulations in respect of the jurisdiction of the Court may modify Part 2 of schedule 1 and are always subject to the affirmative procedure. Before making regulations, the Scottish Ministers must consult the Lord President of the Court of Session and the Chair. This power reflects that it may be desirable to harmonise (or preserve) processes as the merger of the Court and the Tribunal bed in and thereafter to make provision in connection with any additional jurisdiction that the Court may acquire.

252. The jurisdiction set out in Part 2 lists the matters that were contained in the SLC 1993 and the Lands Tribunal Act 1949. In addition, the Court's jurisdiction has been increased to include:

- access rights under the Land Reform (Scotland) Act 2003
- appeals relating to community rights to buy and crofting community rights to buy under the Land Reform (Scotland) Acts 2003 and 2016
- the March Dykes Acts and Runrig Lands Act 1695 and the Division of Commonties Act 1695
- applications relating to the succession to certain leases.

[13] For an explanation of those provisions see paragraphs 45 to 50 of Courts Reform (Scotland) Act 2014 - Explanatory Notes (https://www.legislation.gov.uk/asp/2014/18/notes/division/3/1/2/9)

Part 3 – Rules, procedure, expenses and powers

Rules of Court

253. Paragraph 27 provides that the procedural rules of the Court are now to be made by the Court of Session by means of an act of sederunt following consultation with the Chair and the Scottish Civil Justice Council (SCJC). This brings the Court into line with the manner in which other civil court rules are made. Consequential amendments to the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 are made in schedule 2 to facilitate this.

Procedure

254. Paragraph 28 enables the Chair of the Court to select members of the Court to hear particular types of case and also to allocate members to a pool which reflects the subject matter of cases (and therefore the particular qualifications and expertise) that members allocated to that pool may hear and determine.

255. Paragraph 29 replicates the special provision from section 1(6A) of the Lands Tribunal Act 1949 relating to the selection of members for dealing with cases under section 57 or 97 of the Land Clauses Consolidation (Scotland) Act 1845.

Powers

256. Paragraph 30 restates the powers of the Court contained in the SLC 1993.

Finality of decisions and special cases

257. Paragraph 31 largely restates what was contained in SLC 1993 (see section 1(7) and (7A)).

258. In sub-paragraph (2), there is no mention of the specific Acts of the Scottish Parliament that were contained in section 1(7) of SLC 1993 as that is rendered unnecessary by the meaning of enactment being capable to include those Acts now that the provision is in an Act of the Scottish Parliament and subject to ILRA. (Under the Interpretation Act 1978, an Act of the Scottish Parliament is not considered an enactment.)

259. The appeal processes in respect of matters which fell within the Tribunal's jurisdiction as at the date of the merger, alongside those relating to agricultural holdings legislation and section 116 of the Land Reform (Scotland) Act 2016, are not to be appealed by way of stated case. Each of these matters may be appealed to the Court of Session in the normal way.

Expenses, Enforcement and Accounts

260. Paragraphs 32 to 34 restate the existing provisions of the SLC 1993.

Interpretation

261. Paragraph 35 sets out (primarily for ease of reference) the definition of words and expressions used in schedule 1.

SCHEDULE 2 – MINOR AND CONSEQUENTIAL AMENDMENTS

Part 1 – Crofting reform

262. Paragraph 1 of schedule 2 makes a number of minor and consequential changes to the Crofters (Scotland) Act 1993.

263. Sub-paragraph (2) repeals subsection (3) of section 2 of the 1993 Act which required the Commission to send to the principal clerk of the Land Court every order, consent, authorisation etc. that the Commission thought ought to be recorded in the Crofters Holdings Book.

264. Sub-paragraph (3) amends section 2C of the 1993 Act to change the requirement on the Commission to produce a plan setting its policy on how it intends to exercise its functions from 6 months after an election of members to 12 months after an election.

265. Sub-paragraphs (4), (5), (6), (9), (10), (11), (12), (13), (21)(a), (23) and (24)(c) make amendments to a variety of sections of the 1993 Act in consequence of the new definition of crofting community which is made by section 27 of the Act (amending section 61 of the 1993 Act).

266. Sub-paragraph (7) is intended to clarify the correct interpretation of section 10 of the 1993 Act.

267. Sub-paragraphs (8) and (17) add civil partners in sections 17(6) (provision supplementary to sections 13 and 15) and section 36(1)(b) and (5) (compensation to cottar for improvements) of the 1993 Act.

268. Sub-paragraph (14) amends section 27 of the 1993 Act to confirm that the maximum duration of a sublease of a croft is 10 years. This addresses a potential misinterpretation of the existing provision where some thought that a longer period was possible with the permission of the crofter's landlord. Following the adjustment, the Commission clearly cannot consent to a sublease for a period longer than 10 years and any sublease without the consent of the Commission is null and void. The Commission can consider an application for a new sublease at the end of the period, however.

269. Sub-paragraph (15) removes spent references to section 28 of the 1993 Act, which was repealed by section 11(2) the Crofting Reform etc. Act 2007.

270. Sub-paragraphs (16), (19) and (20) are minor, consequential and technical amendments. Section 50B(7) to (15) of the 1993 Act were introduced by the Crofting Reform etc. Act 2007 and specified the means by which the Commission were to take a decision on an application under s50B. However, when these subsections were repealed by schedule 4, paragraph 3(30)(b) of the Crofting Reform Act 2010 some references to the repealed sections were not dealt with, and these sub-paragraphs address that.

271. Sub-paragraph (18) amends section 41 of the 1993 Act to include references to owner-occupier crofters. It also makes consequential changes in response to provision enabling common grazings to be used for an environmental purpose.

272. Sub-paragraph (21)(b) removes the restriction that prevented land contiguous to a croft being constituted as a new common grazings; and sub-paragraph (21)(c) is consequential to section 25 which introduces new processes for agreeing to use common grazings land for an environmental purpose.

273. Sub-paragraph (22) amends section 52 of the 1993 Act (miscellaneous provision relating to common grazings) to remove a perceived ambiguity relating to the date when an apportionment takes effect and when the decision to apportion expires. It does this by making clear that the date of the Commission decision on the apportionment is separate from when it takes effect and marks the point at which certain time periods start to run. Further, it also makes modifications to that section to provide that applications can only be made on the application of a crofter of a *registered* croft who holds a right in a common grazing. Finally, it makes modifications to enable apportionments to be ended in whole or in part.

274. Sub-paragraph (24)(a) and (b) change, in relation to the Commission, "convener" to "chair" (which is the title more commonly used in practice for the person holding such office).

275. Paragraph 2 of schedule 2 makes a number of minor and consequential changes to the Crofting Reform (Scotland) Act 2010.

Part 2 – The Scottish Land Court

276. Part 2 of schedule 2 contains minor and consequential amendments relating to the merger of the Court and the Tribunal.

277. Paragraph 3 makes consequential amendments to the Lands Tribunal Act 1949 to reflect the transfer of jurisdiction to the Court. It does not, however, dissolve the Tribunal or transfer the members.

278. Paragraphs 4, 6 and 10 make consequential amendments to adjust the transfer of jurisdiction to the Court in respect of the access rights, crofting community right to buy, the community right to buy and succession to certain leases.

279. Paragraph 5 repeals the SLC 1993 as it will no longer be required.

280. Paragraph 7 amends the Judiciary and Courts (Scotland) Act 2008 to bring the Chair and members of the Court within the judicial appointment process operated by the Judicial Appointment Board for Scotland ("JABS"). When appointing a member of the Court, after consulting the Chairing Member of JABS, the Chair of the Court is to select a member of the Court (which may be the Chair) to take part in the appointment proceedings.

281. Paragraph 8 amends the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 to enable the SCJC to be involved in the preparation of procedural rules for the Court.

282. Paragraph 9 amends the Tribunals (Scotland) Act 2014 to authorise members of the Court to sit in the Upper Tribunal. The process for doing so is very similar to that for the authorisation of sheriffs. The Chair of the Court can already sit in the Upper Tribunal.

PARLIAMENTARY HISTORY

283. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	Reference
Bill as introduced	SP Bill 71 Crofting and Scottish Land Court Bill [as introduced] Session 6 (2025)
Explanatory Notes	SP Bill 71 Crofting and Scottish Land Court Bill [explanatory notes] Session 6 (2025)
Policy Memorandum	SP Bill 71 Crofting and Scottish Land Court Bill [policy memorandum] Session 6 (2025)
Financial Memorandum	SP Bill 71 Crofting and Scottish Land Court Bill [financial memorandum] Session 6 (2025)
Delegated Powers Memorandum	SP Bill 71 Crofting and Scottish Land Court Bill [delegated powers memorandum] Session 6 (2025)
Stage 1	
Rural Affairs and Islands Committee, 11 June 2025	SP OR Rural Affairs and Islands Committee 11 June 2025
Delegated Powers and Law Reform Committee, 23 September 2025	SP OR Delegated Powers and Law Reform Committee 23 September 2025
Rural Affairs and Islands Committee, 24 September 2025	SP OR Rural Affairs and Islands Committee 24 September 2025
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 69th report, 2025, Delegated Powers in the Crofting and Scottish Land Court Bill at Stage 1 (SPP 881)
Rural Affairs and Islands Committee, 8 October 2025	SP OR Rural Affairs and Islands Committee 8 October 2025
Rural Affairs and Islands Committee, 29 October 2025	SP OR Rural Affairs and Islands Committee 29 October 2025
Rural Affairs and Islands Committee, 5 November 2025	SP OR Rural Affairs and Islands Committee 5 November 2025
Rural Affairs and Islands Committee, 12 November 2025	SP OR Rural Affairs and Islands Committee 12 November 2025
Rural Affairs and Islands Committee, 17 December 2025	SP OR Rural Affairs and Islands Committee 17 December 2025
Rural Affairs and Islands Committee report	Rural Affairs and Islands Committee 12th report, 2025, Stage 1 report on the Crofting and Scottish Land Court Bill (SPP 940)
Chamber, 13 January 2026	SP OR 13 January 2026

Proceedings and reports	Reference
Stage 2	
Marshalled List of Amendments for Stage 2	SP Bill 71 Crofting and Scottish Land Court Bill [marshalled list of amendments for stage 2] Session 6 (2026)
Groupings of Amendments for Stage 2	SP Bill 71 Crofting and Scottish Land Court Bill [groupings of amendments for stage 2] Session 6 (2026)
Rural Affairs and Islands Committee, 4 February 2026	SP OR Rural Affairs and Islands Committee 4 February 2026
Second Marshalled List of Amendments for Stage 2	SP Bill 71 Crofting and Scottish Land Court Bill [second marshalled list of amendments for stage 2] Session 6 (2026)
Second Groupings of Amendments for Stage 2	SP Bill 71 Crofting and Scottish Land Court Bill [second groupings of amendments for stage 2] Session 6 (2026)
Rural Affairs and Islands Committee, 11 February 2026	SP OR Rural Affairs and Islands Committee 11 February 2026
Bill as amended at Stage 2	SP Bill 71A Crofting and Scottish Land Court Bill [as amended at Stage 2] Session 6 (2026)
Supplementary Delegated Powers Memorandum	SP Bill 71A Crofting and Scottish Land Court Bill [supplementary delegated powers memorandum] Session 6 (2026)
Supplementary Financial Memorandum	SP Bill 71A Crofting and Scottish Land Court Bill [supplementary financial memorandum] Session 6 (2026)
Revised Explanatory Notes	SP Bill 71A Crofting and Scottish Land Court Bill [revised explanatory notes] Session 6 (2026)
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 24th report, 2026, Delegated powers in the Crofting and Scottish Land Court Bill (as amended at Stage 2) (SPP 1040)
Stage 3	
Marshalled List of Amendments for Stage 3	SP Bill 71A Crofting and Scottish Land Court Bill [marshalled list of amendments for stage 3] Session 6 (2026)
Timed Groupings of Amendments for Stage 3	SP Bill 71A Crofting and Scottish Land Court Bill [timed groupings of amendments for stage 3] Session 6 (2026)
Chamber, 19 March 2026	SP OR 19 March 2026
Chamber, 24 March 2026	SP OR 24 March 2026
Bill as passed	SP Bill 71B Crofting and Scottish Land Court Bill [as passed] Session 6 (2026)
Post passage	
Royal Assent, 18 May 2026	2026 asp 17

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