EXECUTIVE NOTE
THE CROFTING COMMISSION (ELECTIONS) (SCOTLAND) REGULATIONS 2011
SSI 2011 No. 456

The above instrument was made in exercise of the powers conferred by paragraph 7(1) of Schedule 1 to the Crofters (Scotland) Act 1993 ("the 1993 Act"). The instrument is subject to affirmative procedure.

Policy Objectives

While the subject of this Order is quite complex, it is part of a suite of regulations supporting the implementation of the Crofting Reform (Scotland) Act 2010 ("the 2010 Act"), for which much of the background information is already published. The purpose of the instrument is to set out the arrangements under which elections to the Crofting Commission are to be conducted and include issues relating to electors, candidates, constituencies, absent and proxy votes, ballot papers and the ballot process and requirements. At all stages, we have taken care to ensure that the election process and requirements are open, fair and reasonable and that all who are entitled to vote have the opportunity to do so, such as by proxy or absent vote.

Paragraph 3 of Schedule 1 to the 1993 Act as substituted by the 2010 Act, to be commenced on 1 April 2012, states that the Commission are to consist of no fewer than five and no more than nine members (being the Commissioners responsible for governance and operation of the Crofting Commission). Of those members, no fewer than two persons are to be appointed by the Scottish Ministers and no more than six are to be elected. Paragraph 7 of Schedule 1 to the 1993 Act was commenced on 1 October 2011 and allows for Scottish Ministers to make regulations in regards to these elections.

Part I – General

These regulations, insofar as possible, reflect other election regulations, such as the Cairngorms National Park Election (Scotland) Order 2003, the Health Board Election (Scotland) Regulations 2009, and the Scottish Local Government Elections Order 2011, adapted to reflect policy and the requirements of the primary legislation, such as voting system, frequency, offences, constituencies, eligibility and disqualification of electors and candidates, vacancies and nominations.

Part II - Elections

The regulations provide for a person to be entitled to vote if they are 16 years or older and have their name entered on the Register of Crofts or the Crofting Register as either a tenant crofter or owner-occupier crofter and then has their name entered on the Crofting Electoral Roll. Where there is more than one person holding title in respect of a croft (where all persons should also have their details entered on the Register of Crofts or Crofting Register), these people must decide which person should in respect of that croft receive the ballot paper and then their name will be entered on the Crofting Electoral Roll . The persons most directly affected by crofting regulation will therefore determine the elected membership of the new Commission.

Allowing the wider community or the spouses or family members to be able to vote was suggested, however, it was considered that allowing more than one person to vote in respect of a croft would be unfair and result in disproportionate voting power between single crofters and those with larger households. Allowing the wider community to vote could result in crofters being a minority in determining who should represent the interests of crofters and crofting in the Commission.

The regulations therefore allow for one vote per croft, for the registered tenant or owner-occupier crofter. Where a tenant or owner-occupier crofter has more than one croft, they will be entitled to one vote in respect of the croft nearest to their residence. Crofts vary in size and may have been divided over the years for many different reasons and it would be unfair for a crofter who has several small crofts to have more votes than a crofter with one large croft.

Where joint owner-occupiers of a croft reside at the same address, the ballot paper will be issued to that address for those joint owners to decide who should vote. Where there are multiple owner-occupiers residing at different addresses, the registration officer will write to these owners inviting them to nominate one address for receipt of the ballot paper and it will be for these owners to agree who should vote and notify the registration officer accordingly. If no address is provided by a given date, or if more than one address is provided, no ballot paper will be issued in respect of that croft. This will ensure that crofts with more than one person holding title do not command greater voting power and have greater influence over crofts with single tenant or owner-occupier crofters. Allowing individuals to decide who should receive the ballot paper is a fairer way to determine who receives the ballot rather than having the registration officer decide.

Where a crofter has crofts in different constituencies or resides in a different constituency from the croft, the crofter must vote in the constituency in which they reside or in whichever constituency is closest to their residence.

These measures will collectively ensure that those who are most directly affected by crofting regulation are entitled to vote and, irrespective of being a tenant or owner-occupier of single or multiple crofts have equal voting rights.

However, not all crofters will be entitled to vote. Regulation 5 provides that if, on the day the election notice is published, the Commission has determined under section 22(1)(a) (as repealed by schedule 4 of the 2010 Act) that a crofter was not ordinarily resident on or within the then defined 16 kilometres of the croft or, under section 26C(5)(a) of the 1993 Act, that the residency duty is not being complied with and the Commission has not granted consent for that person to be absent, or the crofter has not complied with a residency undertaking, they will be disqualified from voting. This ensures that crofters not meeting their legal responsibilities will be unable to influence who is elected. Only those meeting the requirements of the legislation will be entitled to vote.

The regulations require candidates to be 16 years or older and either a registered crofter entered in the Register of Crofts or Crofting Register or someone who has been nominated by an elector. Responses to the consultation supported the

participation of younger crofters in these elections, which should attract more younger people into crofting. Allowing any individual to stand for election will provide for those involved in crofting but not a registered crofter to also be elected. These may include individuals with specific knowledge and experience who are not registered crofters but may be beneficial to crofting as a Commissioner. The regulations also set out the details for the constituency in which a candidate may stand.

The disqualification criteria have been developed using the Cairngorms National Park Election (Scotland) Order 2003 and is set out at regulation 10 and the same residency disqualification requirements in respect of voting also apply to candidacy.

The regulations provide for 6 constituencies each to return one elected member using the Alternative Vote (AV) system. The Rural Affairs Committee's Stage 1 report**1**, on the Crofting Reform (Scotland) Bill 2009 stated that a majority of the Committee would favour this system as it offered greater choice to the electorate and was more likely to lead to the election of a candidate with a wide base of support within the constituency.

The Regulations cover absent voters, where an eligible voter is away from the croft for a short time over the election period, perhaps working away from home, visiting relatives etc. If the registration officer is satisfied that the applicant is eligible to vote, they must send the ballot paper to the different address provided by the applicant and keep a list of all absent voters. This provision should not be confused with absentee crofters who are disqualified from voting as a consequence of not being ordinarily resident on or within 32 kilometres of their croft.

The Regulations allow eligible voters to apply for a proxy to vote on their behalf if the registration officer is satisfied with the reason given, such as disability. The registration officer must keep a list of all proxy votes granted and send the ballot paper to the proxy The regulations also set out the criteria for being a proxy voter, which include being 16 years or over, residing in the United Kingdom and not voting for more the 2 persons.

Part II of the regulations also covers other election issues, such as duration of election period and appointment, the returning officer's payment of expenses, handling of candidate nominations, key election dates, notice of election and a requirement for the election to be only by postal or proxy voting, etc.

Part III - Issue and Receipt of Ballot Papers

Part III of the regulations set out arrangements for the issue and delivery of ballot papers. The regulations also set out the procedures for dealing with spoilt papers, the late receipt of papers and lost ballot papers. It also provides for counting agents sets out the requirements for ballot boxes and how ballot papers must be completed using the AV system.

1 http://www.scottish.parliament.uk/s3/committees/rae/reports-10/rur10-04-00.htm#15

Part IV – Counting of votes and declaration of results

Part IV of the regulations cover the counting of votes, and that votes will be counted in stages, declaration of results and the sealing up and retention of ballot papers.

The Regulations provide that the ballot count can be conducted through an electronic system, or if it proves impossible the returning officer may make arrangements for the count by other means. The regulations set out the procedures that returning officers must follow before, during and after the count, including opening the ballot box and return envelopes, the appointment of counting agents and their attendance at the count. The regulations are the same whether through electronic or other counting means.

The Regulations stipulate that only first preferences are counted in the first round. If a candidate receives more than half of the valid votes cast, they are elected. If no candidate has received half of the votes cast, the candidate with the lowest number of votes is eliminated and all of their votes are passed to the next preference on the ballot papers. This process is repeated until a candidate is elected by securing more than half of the votes cast. If there is a tie at any stage then a candidate is selected by the drawing of lots.

The Regulations set out what information the returning officer must supply at each stage of the count, the re-count procedures, handling rejected ballots and how to determine which candidate is to be eliminated after each count and which candidate has been elected. Regulation 46 provides that the retuning officer decisions on any aspect of the count are final.

The regulations also set out the procedures following the count and require the returning officer to declare the results, publish the voting information and seal the ballot papers before delivering them to the registration officer.

The Regulations set out the registration officer's responsibilities and the procedures to be followed in relation to an order made by the sheriff principal in the local government area in which the ballot took place for the inspection or production of any documents or electronic information, or for the opening of any sealed packets, relating to that ballot. The regulations require documents relating to the elections to be retained for 1 year and set out the procedure in the event of the death of a candidate.

Part V - Offences

Paragraph 7(2)(d) of schedule 1 to the 1993 Act allow for the Scottish Ministers to prescribe, by regulation, offences relating to these elections. The offences and penalties are set out in regulations 56 to 63. Paragraphs 7(3) and 7(4) of Schedule 1 to the 1993 Act provide that offences created under these regulations may not be punishable, on conviction on indictment, with imprisonment for a term exceeding 2 years or, on summary conviction, with imprisonment for a term exceeding 12 months or a fine exceeding level 5 on the standard scale. In the case of an offence that is

triable, either on indictment or summarily, the reference to a fine not exceeding level 5 on the standard scale is to be construed as a reference to the statutory maximum.

The offences in Part V of the regulations are common electoral offences as found in other electoral legislation including the Representation of the Peoples Act 1983, and have been tailored to reflect for Commission elections. While no offences are expected to be committed, they are provided as a deterrent to potential interference in free and fair elections.

Part VI – Miscellaneous and supplemental

The Regulations include miscellaneous provisions relating to candidates' expenses and election returns. The Regulations requires only the elected candidate to submit to the returning officer, within 35 days of the results of the ballot being declared, details of payments, including bills and receipts, in relation to their election campaign. It is unnecessary to apply this to each and every candidate as this requirement should act as a deterrent to all candidates on the basis that, if they are successfully elected, the requirement will need to be met.

Schedule - Constituencies

The schedule to these regulations sets out the 6 constituencies in which crofting elections shall be conducted. The 6 constituencies collectively represent the area regulated by the Commission, including the new designated areas. Each constituency will elect one member to be a Commissioner onto the Crofting Commission's board.

These constituencies have been developed to reflect similar types of crofting activity being carried out in each constituency, the number of crofts, and the infrastructure and transport links within the crofting counties.

The constituency boundaries have been developed using parish numbers, and these numbers are shown on the attached maps in Annex A. The constituencies are colour-coded to easily identify the boundaries.

Constituency	*Area*
1	Shetland
2	Orkney and Caithness
3	East Highlands (East Sutherland, Easter Ross, East Inverness and Moray)
4	Western Isles
5	West Highlands (West Sutherland, Wester Ross, Skye and Lochalsh)
6	South West Highlands (Lochaber, Argyll, Bute, Arran and Cumbrae)

Consultation

The proposals for conducting crofting elections were first set out in the Government's response to the Committee of Inquiry on Crofting on 1 October 2008. These proposals were then revised and formed part of the consultation on the draft Crofting Reform (Scotland) Bill, launched on 19 May 2009. All responses were carefully considered before introducing the draft Bill in the Scottish Parliament on 9 December

2009. Parliament then accepted the principles of these crofting elections in approving the legislation.

To comply with the requirements of paragraph 7(6) of Schedule 1 of the 1993 Act a consultation on the draft regulations and boundaries took place between 13 July and 5 October 2011. Crofting stakeholders (including Common Grazings Committees and Local Assessors), Local Authorities, the Local Government Boundary Commission for Scotland and other stakeholders with crofting, electoral or offences interest were consulted. The Scottish Government's Law Reform Division were also consulted on the offence provisions.

A full list of those who responded to the draft Regulations consultation and who agreed to the release of this information is available on the Scottish Government's website at http://www.scotland.gov.uk/Publications/2011/11/02094550/0.

Respondents include:

Scottish Crofting Federation
NFU Scotland
Highland Council
Moray Council
Orkney Islands Council
Argyll and Bute Council
Comhairle nan Eilean Siar
Association of Electoral Administration (Scotland & Northern Ireland Branch)
Highland and Islands Enterprise
Local Government Boundary Commission for Scotland
Scottish Land & Estates
Scottish Agricultural College

Impact Assessments

An Equality Impact Assessment (EQIA) has been completed for these regulations and is attached. There are no equality impact issues which remain outstanding or need further consideration. In providing for the crofting elections to take place, the regulations treat all tenant and owner-occupier crofters equally by providing a vote for each registered crofter, irrespective of their disability, gender reassignment, marriage or civil partnership status, race, religion and belief, sex and sexual orientation. The regulations also permit anyone to stand for election to the Commission, again irrespective of these issues. An age-related issue is that the regulations require an individual to be aged 16 years and older to vote and stand as a candidate. This is covered in the EQIA in more detail. Also, a person is disqualified from being a candidate where they are unable to perform properly the functions of a member of the Commission by reason of physical illness or mental disorder.

A Strategic Environmental Assessment (SEA) screening report has been completed and is attached. This indicates that a full SEA is not required and a copy of this has been placed on the Scottish Government's SEA Gateway web page.

Financial Effects

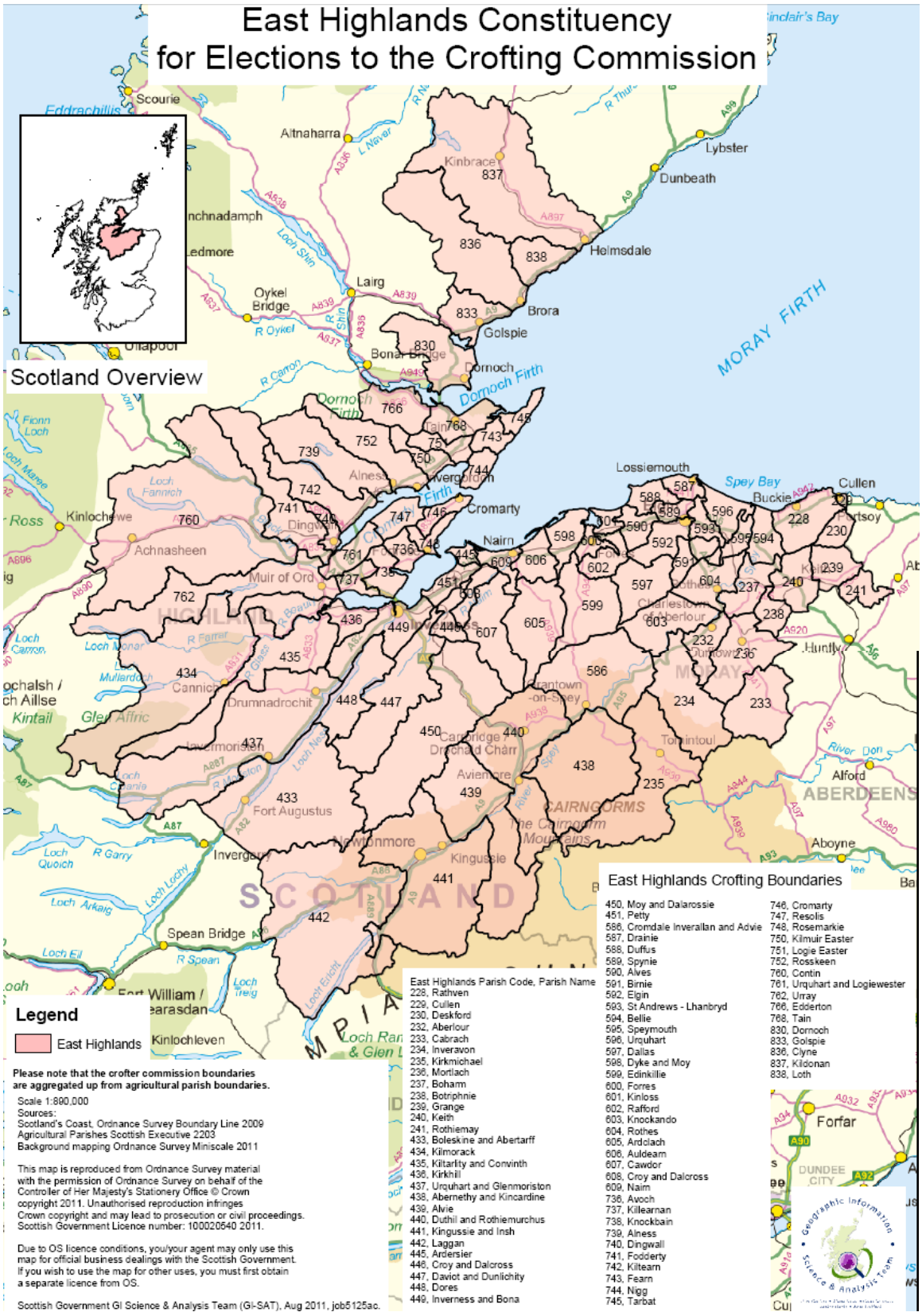
Stewart Stevenson, Minister for Environment and Climate Change, confirmed that no Business Regulatory Impact Assessment (BRIA) is necessary as the instrument will not lead to costs or savings for business, third or public sector organisations, regulations or consumers. There is no additional cost to the public sector as the Scottish Government will meet the cost of activity connected with holding the elections.

Local Authorities will initially be responsible for meeting the cost of conducting these elections but any costs incurred in doing so will be reimbursed by the Scottish Government.

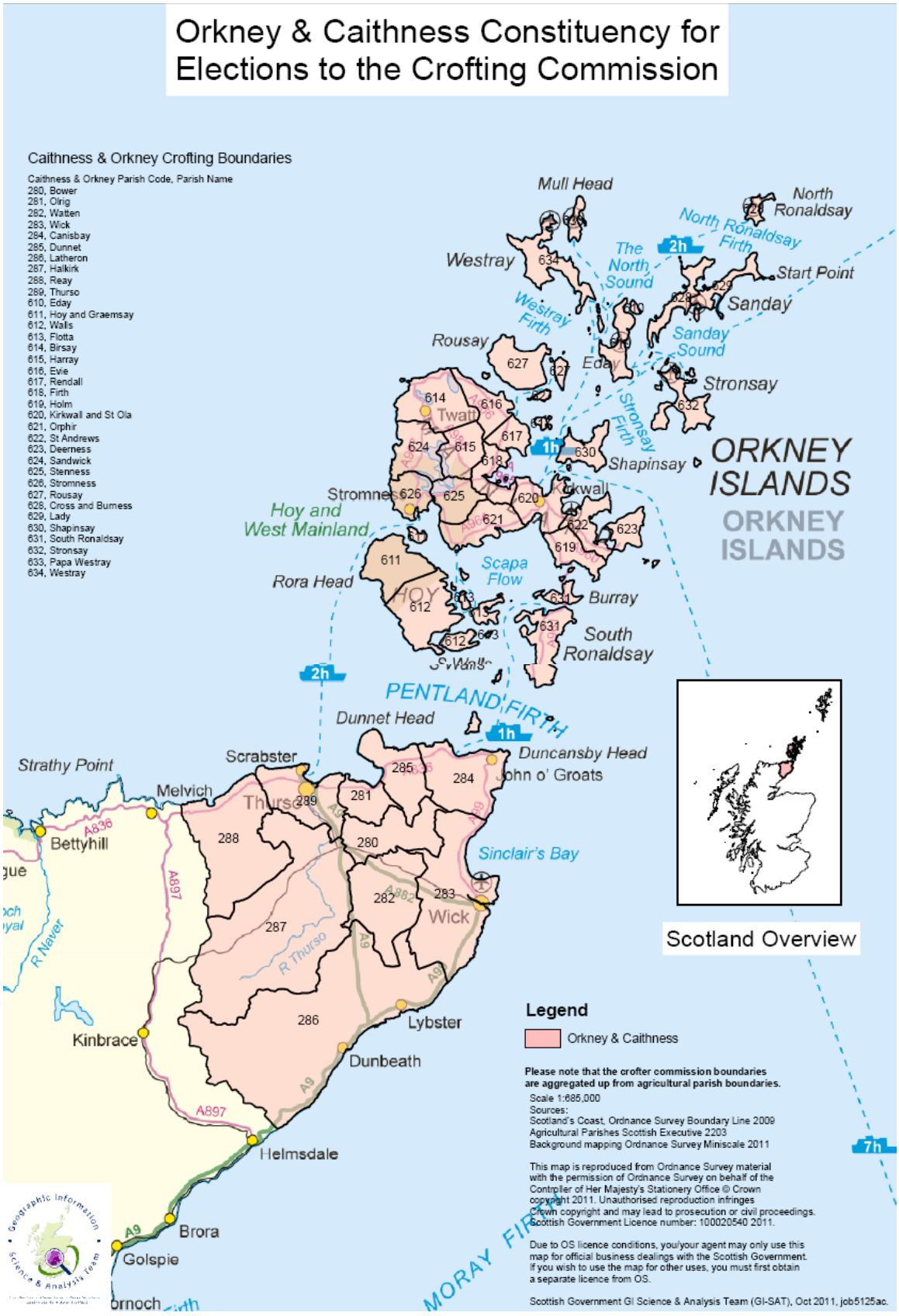
There will be no financial impact on crofting businesses.

Scottish Government
Agricultural and Rural Development Directorate
November 2011

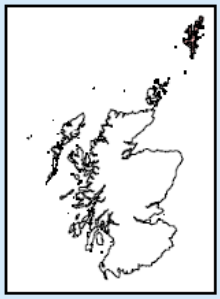
Annex A


East Highlands Constituency
for Elections to the Crofting Commission
Scotland Overview
Legend
East Highlands
Please note that the crofter commission boundaries are aggregated up from agricultural parish boundaries.
Scale 1:890,000
Sources:
Scotland's Coast, Ordnance Survey Boundary Line 2009
Agricultural Parishes Scottish Executive 2203
Background mapping Ordnance Survey Miniscale 2011
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Scottish Government GI Science & Analysis Team (GI-SAT), Aug 2011, job5125ac.
East Highlands Parish Code, Parish Name
228, Rathven
229, Cullen
230, Deskford
232, Aberlour
233, Cabrach
234, Inveravon
235, Kirkmichael
236, Mortlach
237, Boharm
238, Botriphnie
239, Grange
240, Keith
241, Rothiemay
433, Boleskine and Abertarff
434, Kilmorack
435, Kiltarlity and Convinth
436, Kirkhill
437, Urquhart and Glenmoriston
438, Abernethy and Kincardine
439, Alvie
440, Duthil and Rothiemurchus
441, Kingussie and Insh
442, Laggan
445, Ardersier
446, Croy and Dalcross
447, Daviot and Dunlichity
448, Dores
449, Inverness and Bona
East Highlands Crofting Boundaries
450, Moy and Dalarossie
451, Petty
586, Cromdale Inverallan and Advie
587, Drainie
588, Duffus
589, Spynie
590, Alves
591, Birnie
592, Elgin
593, St Andrews - Lhanbryd
594, Bellie
595, Speymouth
596, Urquhart
597, Dallas
598, Dyke and Moy
599, Edinkillie
600, Forres
601, Kinloss
602, Rafford
603, Knockando
604, Rothes
605, Ardclach
606, Auldearn
607, Cawdor
608, Croy and Dalcross
609, Nairn
736, Avoch
737, Killearnan
738, Knockbain
739, Alness
740, Dingwall
741, Fodderty
742, Kiltearn
743, Fearn
744, Nigg
745, Tarbat
746, Cromarty
747, Resolis
748, Rosemarkie
750, Kilmuir Easter
751, Logie Easter
752, Rosskeen
760, Contin
761, Urquhart and Logiewester
762, Urray
766, Edderton
768, Tain
830, Dornoch
833, Golspie
836, Clyne
837, Kildonan
838, Loth
MORAY FIRTH
SCOTLAND
HIGHLANDS
CAIRNGORMS
ABERDEENS
Geographic Information Science & Analysis Team

Orkney & Caithness Constituency for Elections to the Crofting Commission



Shetland Constituency for Elections to the Crofting Commission



Scotland Overview

Shetland Crofting Boundaries

Shetland Parish Code, Parish Name
869, Bressay
870, Delting
871, Dunrossness
872, Cunningsburgh
873, Sandwich
874, Fetlar
875, Lerwick
876, Burra Isles
877, Nesting
878, Lunnasting
879, Whalsay
880, Northmavine
881, Sandsting
882, Aithsting
883, Tingwall
884, Whiteness
885, Weisdale
886, Unst
887, Walls
888, Sandness
889, Papa Stour
890, Walls Foula
891, Yell

Legend

Shetland Islands

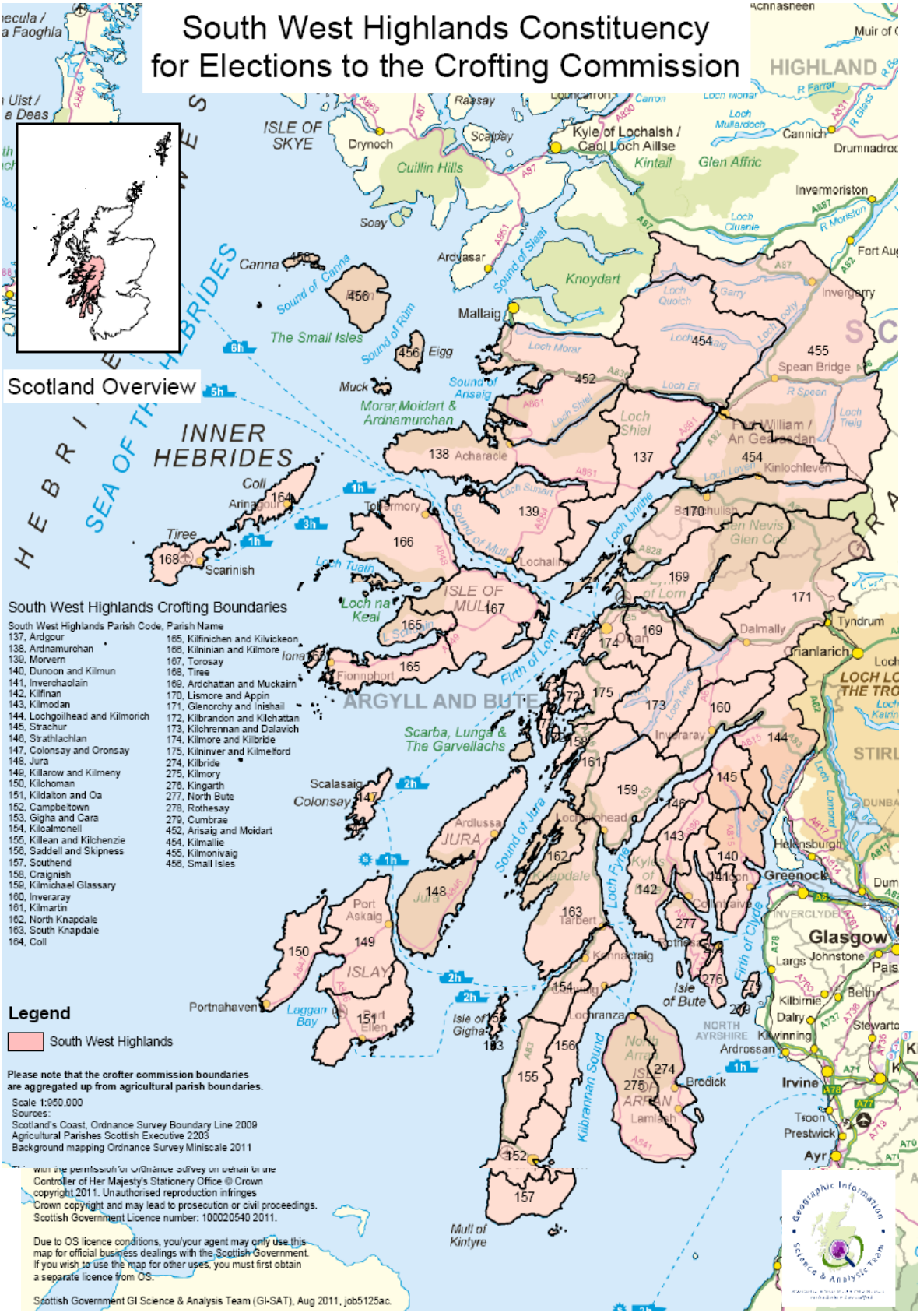
Please note that the crofter commission boundaries are aggregated up from agricultural parish boundaries.

Scale 1:580,000
Sources:
Scotland's Coast, Ordnance Survey Boundary Line 2009
Agricultural Parishes Scottish Executive 2203
Background mapping Ordnance Survey Miniscale 2011

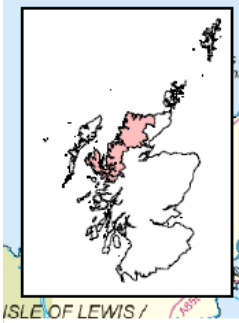
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South West Highlands Constituency for Elections to the Crofting Commission



West Highlands Constituency for Elections to the Crofting Commission



Scotland Overview

Legend

West Highlands

Please note that the crofter commission boundaries are aggregated up from agricultural parish boundaries.

Scale 1:1,000,000
Sources:
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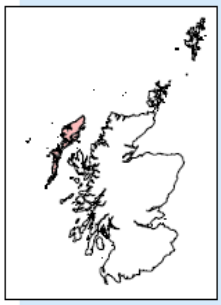
Scottish Government GI Science & Analysis Team (GI-SAT), Aug 2011, job5125ac.

West Highlands Crofting Boundaries

West Highlands Parish Code, Parish Name

453, Glenelg
458, Bracadale
459, Duirinish
460, Kilmuir
461, Portree
462, Sleat
463, Snizort
464, Strath
749, Gairloch
757, Lochbroom
758, Applecross
759, Lochcarron
763, Glenshiel
764, Kintail
765, Lochalsh
767, Kincardine
828, Assynt
829, Creich
831, Durness
832, Eddrachilles
834, Lairg
835, Rogart
839, Farr
840, Tongue

Western Isles Constituency for Elections to the Crofting Commission



Scotland Overview

Western Isles Crofting Boundaries

Western Isles Parish Code, Parish Name
443, Barra
444, Harris
457, North Uist
465, South Uist
753, Barvas
754, Lochs
755, Stornoway
756, Uig

Legend

Western Isles

Please note that the crofter commission boundaries are aggregated up from agricultural parish boundaries.

Scale 1:900,000
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