POLICY NOTE

THE CROFTING COMMISSION (ELECTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/xxx

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by paragraph 7(1) of schedule 1 of the Crofters (Scotland) Act 1993 ("the Act") and all other powers enabling them to do so.

Purpose of the instrument

The purpose of this instrument ("the amending Regulations") is to amend the Crofting Commission (Elections) (Scotland) Regulations 2011 ("the principal Regulations"), which set out the arrangements under which elections to the Crofting Commission ("the Commission") are conducted, in advance of the Commission's second crofting elections, which are to be held in March 2017.

Policy Objectives

The amendments to the principal Regulations relate to candidate eligibility, absent and proxy votes, the filling of vacancies, the retention of documents, and election expenses. Consequential amendments to and revocations of provisions of the principal Regulations are also made.

Candidate Eligibility

The principal Regulations set out the grounds on which a person is disqualified from being a candidate at an election. These include where the Commission has found a person to be in breach of the residency duty under the Act, without consent having been granted for absence or an undertaking in relation to the duty having been complied with. The amending Regulations add a further ground of disqualification from being a candidate. This applies to persons whom the Crofting Commission has decided under the Act are not complying with a crofter's, and owner-occupier crofter's, duty to, (1) not misuse or neglect their croft, and (2) cultivate and maintain their croft, and who have not complied with an undertaking in relation to that duty. It is considered appropriate that those who are found to be in breach of any of these three duties under the Act, not just the residency duty, should be disqualified from election to the Commission. This will place all three duties on an equal footing in terms of candidate eligibility to stand for election.

Another ground of disqualification from being a candidate is where a person is insolvent. The amending Regulations clarify the meaning of this by better reflecting Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002.

Absent and Proxy Votes

The principal Regulations allow voters to have their ballot paper sent to an address other than their registered address ("the absent electors list") and to be removed from that list. They also allow voters to have their ballot paper sent to a proxy ("the proxy list") and to be removed from that list. The amending Regulations place a deadline on when a voter can be removed from the absent voter and proxy lists which are held by the registration officer. This is to avoid the address or person to whom a ballot paper is to be sent being changed after the ballot papers have been issued in accordance with the election timetable. This deadline provides the registration officer with a week in which to amend the crofting electoral register which it must supply to the returning officer not later than 4 weeks before the day of the count. This deadline is reflected in an amendment to the election timetable.

Filling of Vacancies

As it currently stands, the only way to select a replacement Commissioner should an elected Commissioner vacate their post part way through their elected term is for Scottish Ministers to appoint a replacement. The policy intention is that a vacant post should be offered to the candidate at the election who polled the next greatest number of votes after the member who was elected in that constituency. It is apparent from paragraph 6(3) of schedule 1 of the Act that the intention of the Scottish Parliament was that Scottish Ministers should only be involved in the replacement process where the vacancy is not filled by such a candidate.

The amending Regulations make provision for the filling of vacancies that arise amongst elected members by candidates at the election who polled fewer votes than the elected member. In the event that an elected member vacancy arises, the unsuccessful candidate who polled the greatest number of votes at the election will be asked to fill the vacancy, provided that person remains qualified to be a candidate and submitted an expenses return after the last election. This process will be repeated until a person accepts the invitation or until the list of candidates is exhausted. If the list of candidates is exhausted then the Scottish Ministers would then be able to make an appointment.

The amending Regulations also allow the Scottish Ministers to leave a vacancy unfilled, in the case of a vacancy arising less than a year before the next election provided the Commission remains quorate.

The amending Regulations also introduce a requirement that the declaration of the number of votes for each candidate made after the election be recorded and retained so that the candidate to be invited to fill a vacancy can be identified in the future.

Retention of Documents

The principal Regulations require the destruction of all election documents after 1 year. The amending Regulations allow for the retention of certain documents for a period of 5 years This is a consequential requirement of the new provision of filling vacancies, which requires relevant information to be available in the event that an unsuccessful candidate at an election

is invited to fill a vacancy. Information not required for the operation of the provision for filling vacancies will still be destroyed after 1 year.

Election Expenses

The amending Regulations increase the 2011 limit on election expenses from £600 to £700, and all candidates, not just those elected, must deliver a true return and declaration of all payments made by that candidate together with all the bills and receipts. This offers both fairness and transparency across all those standing for election and again, is required as a consequence of the amendment to the process for filling vacancies.

Revocations

The amending Regulations revoke two provisions which were included in the principal Regulations in error. Regulation 11(2) of the principal Regulations is revoked to make clear that non-business days should not be discounted from the election timetable when referring to periods of weeks, making the election timetable clearer to the reader. Regulation 49 of the principal Regulations is also revoked as this referred to information relevant to the Single Transferable Vote system, whereas the Crofting Commission elections operate under the Alternative Vote system.

Consultation

In accordance with paragraph 7(6) of schedule 1 of the Act, the Scottish Ministers have consulted such persons or bodies as they think appropriate on the constituency boundaries to be used, and the persons who are eligible to vote, in elections of persons as members of the Commission. The consultation also asked for views about who should be able to stand for election; the process for filling vacancies in the Commission; the maximum amount of election expenses; how to encourage diversity among candidates; and any impact on equality groups or business. This public consultation took place from 18 March 2016 to 22 June 2016. The consultation paper, responses, and the analysis report have been published on the Scottish Government website:

http://www.gov.scot/Publications/2016/03/2099/0

https://consult.scotland.gov.uk/agriculture-and-rural-communities/2017-crofting-elections/consultation/published_select_respondent

http://www.gov.scot/Publications/2016/09/5614

Impact Assessments

An Equality Impact Assessment has been completed for these Regulations and no equality impact issues have been identified during this process.

Financial Effects

A full Business Regulatory Impact Assessment (BRIA) is not required in this instance as the amendments to the regulations will not impose additional costs or burdens on businesses,

public bodies or the third sector organisations. The Scottish Government has budgeted to meet the costs of activity connected with holding the elections.

Directorate for Agriculture Food and Rural Communities

25 October 2016