# POLICY NOTE

# THE CROFTING REFORM (SCOTLAND) ACT 2010 (COMMENCEMENT No.3, TRANSITORY, TRANSITIONAL AND SAVINGS PROVISIONS) ORDER 2012

## SSI 2012/DRAFT

If approved, this Order will be made in exercise of the powers conferred by sections 53(2) and 57(2) and (3) of the Crofting Reform (Scotland) Act 2010 ("the 2010 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 subordinate legislation implementing the 2010 Act, for which much of the background information is already published. The purpose of the instrument is to commence all remaining provisions in the 2010 Act which are not already commenced through the first two commencement orders for this Act. Details of provisions commenced in the first two commencement orders are attached to this commencement order.

It was intended by the Scottish Government that the Commencement Order for the Crofting Register provisions of the Crofting Reform (Scotland) Bill would be subject to the normal position of being laid in Parliament but not subject to any further Parliamentary procedure. However, at Stage 3 of the Bill an opposition amendment was lodged to apply affirmative procedure (that is, requiring the Commencement Order to be laid in draft for approval by Parliament). The amendment was passed as the Deputy Presiding Officer did not hear the then Minister for Environment's opposition to the amendment.

Parliament was then suspended for a discussion to take place. It was not possible for the matter to be rectified in the passage of the Bill but it is understood that Business Managers at the time agreed that the Register provisions should be commenced routinely, that is without full debate and any reintroduction of previous arguments on the merits of the provisions of the Bill.

While the Crofters Commission has a legislative duty to compile and maintain a Register of Crofts, the Committee of Inquiry on Crofting (CoIoC) heard that the Crofters Commission had neither the resources nor the powers to compel people to provide the information needed to bring the register up to date. To remedy this, the CoIoC recommended a separation of functions of the Commission, with responsibility for maintenance of the register being transferred to the Keeper of the Registers of Scotland, who is responsible for maintaining other property registers in Scotland. Rather than transferring the existing Register of Crofts, it was considered that a new register was required that would provide legal certainty on the extent of, and interests in, croft land. Provisions to that effect were therefore included in the Crofting Reform Bill and, ultimately, Part 2 of the 2010 Act was enacted.

This order therefore commences the necessary legislation to provide a mechanism for delivering the Crofting Register and the processes and requirements placed on parties involved in the registration process, as detailed in the 2010 Act. The Registers of Scotland and the Crofting Commission will provide guidance on the registration process and on mapping and other information requirements to be met in submitting an acceptable application for registration of croft land.

The new register will be map-based and will clearly define the extent of, and interests in, a croft and other land held in crofting tenure, such as common grazings. As well as providing crofters with greater security over their croft, an accurate and current legal register will be important in the effective regulation of crofting.

Article 3(1)(a) and Part 1 of Schedule 1 appoint 30 October 2012 for provisions which are needed in preparation for the commencement of the new registration process. These include establishing the new Crofting Register itself and the powers to make subordinate legislation about the Register (such as its rules and fees).

Subject to the approval of this Order, it is intended to exercise these powers, so far as necessary, on 30 October 2012 so that the relevant subordinate legislation is in force when registration in the new Crofting Register becomes possible, as noted below, on 30 November 2012.

Article 3(1)(a) and Part 1 of Schedule 1 also appoint 30 October 2012 for the commencement of section 52 of the Act, covering pre-consolidation modifications of enactments relating to crofting. Section 52 provides a limited power for the Scottish Ministers to modify enactments relating to crofting which they consider facilitate, or are desirable for consolidating crofting law, providing a consolidating bill has been introduced to the Scottish Parliament. Commencing section 52 does not, in itself, provide for consolidation nor should it be seen as an indication that consolidation is planned. Commencing section 52 in this commencement order will allow for modification of crofting law in advance of consolidation by this or any future Government at any time. It is this Government's intention to consider if and when consolidation of crofting law can be taken forward after implementation of the 2010 Act is complete. Postponing the commencement of section 52 would simply create more work for both the Scottish Government and for the Scottish Parliament by requiring an additional commencement order in the future for this one remaining section of the Act to be commenced.

Article 3(1)(b) and Part 2 of Schedule 1 set 30 November 2012 for the provisions which allow for voluntary registration of crofts, common grazings and lands held runrig. The provisions which require the registration of subsequent events in connection with a registered croft etc. are also brought into force on this day. This is to ensure that the new Register remains up-to-date, providing legal certainty of croft land entered on the Register. The Scottish Government is providing £100,000 in total towards reducing the cost of registration and incentivising early voluntary registration. This will be taken forward in the fees order, in which it is currently intended to provide for a discount for first registration where 10 or more applications for registration in the same township are submitted at the same time. Group registration should encourage crofters to work together and agree croft boundaries before submitting their application to register their croft land, thereby minimising the

potential for appeal to the Scottish Land Court against registration within the 9-months appeal period.

Voluntary registration also provides an opportunity for the Crofting Commission to prepare, consult on and submit applications to register common grazings from the date the new register becomes available. The Government has provided an additional £100,000 towards the registration of common grazings and work has already begun at the Commission on this project. Registration of common grazings should assist with the Commission's effective regulation of croft land by providing clarity on the boundaries of common grazing land and those with an interest in that land.

Article 3(1)(c) sets 30 November 2013 for the coming into force of the remaining provisions relating to the Crofting Register. These are the provisions which contain requirements to register unregistered croft land ("triggers" for registration).

As indicated during the Bill's Parliamentary stages, this delivers the Government's policy of allowing voluntary registration for one year after the Register becomes available and thereafter mandatory registration when changes occur, for example, a regulatory change or the creation of a new croft.

Article 4 and Schedule 2 make transitory, transitional and savings provisions in connection with the provisions which are being commenced. Of particular note is paragraph (1) of Schedule 2, which provides for how the provisions brought into force on 30 November 2012 are to be read before the requirement to register is introduced on 30 November 2013. This provision is necessary because it is not always possible to achieve a neat separation of the provisions which concern voluntary registration and those which concern mandatory registration.

When the mandatory registration provisions come into force on 30 November 2013, certain regulatory processes, such as croft division, will not be able to be undertaken in relation to unregistered crofts without registering them. The remainder of Schedule 2 therefore makes transitional and savings provisions to cover regulatory applications which are already underway when this requirement to register is introduced. Any such applications which have commenced before 30 November 2013 would be completed under the law at the time the application was received by the Commission and so they would not be affected by the registration requirement.

**Consultation**

The proposals for introducing a new Crofting Register to be held by the Registers of Scotland 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 and Parliament then accepted the principles of the Crofting Register in approving the legislation on 1 July 2010.

There is no legislative requirement to consult on this Commencement Order. However, in preparing the order, the Scottish Government has consulted the Keeper of the Registers of Scotland, who will establish and maintain the Crofting Register,

and the Crofting Commission, who will be responsible for receiving, checking and submitting applications to the Keeper of the Registers of Scotland to register croft land on the Crofting Register, on the content of the order.

**Impact Assessments**

An equality impact assessment has not been completed for this Commencement Order as there are no equality impact issues to address in commencing the provisions in the 2010 Act. An EQIA was completed for the Bill's introduction to Parliament

**Financial Effects**

Stewart Stevenson, Minister for Environment and Climate Change confirmed that no Business and Regulatory Impact Assessment (BRIA) is necessary as simply commencing these provisions has no financial effect and no impact on the private, voluntary or public sector is foreseen. A BRIA accompanied the Crofting Reform Bill on introduction to Parliament.

Scottish Government
Agriculture, Food and Rural Communities Directorate