

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 2 – the Crofting Register

Registration

Section 4: First registration

10. **Section 4** outlines the circumstances under which a croft may or must be registered for the first time on the Crofting Register. Where details of a croft are not registered on the Crofting Register, subsection (1) requires that the croft must be registered in the following instances: upon the creation of a new croft under section 3A(1) or (2) of the 1993 Act; upon the transfer of ownership of an owner-occupied croft; and in the event of a regulatory trigger that is mentioned in subsection (4). Under subsection (2), an unregistered croft may be registered voluntarily. Subsection (3) defines the persons eligible to apply to register an unregistered croft on a voluntary basis.
11. Subsection (4) sets out the trigger events which will require the first registration of crofts and owner-occupied crofts. These trigger events relate to an application for a regulatory decision that would impact on the extent of a croft or the interests in a croft. In some cases, the trigger event relates to the giving of notice of a change to the extent of, or interests in, a croft to the Commission under the 1993 Act.
12. The person who has responsibility for the first registration of a croft will vary depending on the regulatory trigger. Table 1 of Schedule 2 lists those who are responsible for applying for registration in each case mentioned in subsection (4).
13. The Crofting Commission must not take forward a regulatory application they receive unless a registration form has been received for the croft that is the subject of the regulatory application within six months of the regulatory application being made.
14. Subsection (5) enables the Scottish Ministers to modify the regulatory trigger events by order. This will allow them to add to the list of events, modify the events or remove an event requiring first registration. However, it will not be possible add the transfer of ownership of any land on which a croft is situated as an event which triggers first registration of an unregistered croft. Subsection (7) provides that where the Scottish Ministers exercise the power in subsection (5) they may by order modify Table 1 in Schedule 2 which lists the people who are responsible for making registration applications under section 4(1)(c). Subsection (8) allows the Scottish Ministers to make regulations about when ownership of an owner-occupied croft is to be treated as being transferred. Subsection (9) provides that the requirement to register an owner-occupier croft on the transfer of ownership of that croft ends if a trigger step mentioned in subsection (4) is taken in relation to that croft. Subsection (11) defines what is meant by the terms “croft” and “new croft” in Part 2 of the Act.

Section 5: Registration of events affecting registered crofts

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

Section 6: Persons responsible for applications for registration

21. **Section 6** makes provision about who is responsible for making applications for registration in relation to crofts. In the case of the transfer of the ownership of an owner-occupied croft or the land on which a croft is situated, the new owner is required to make the application for registration. In the case of a change of landlord of a registered croft, the new landlord is required to apply for registration. On first registration, the person mentioned in the entry in column 2 of Table 1 in Schedule 2 is responsible for the application in relation to a trigger event in section 4(4). On subsequent registration, the person who is mentioned in the entry in column 2 of Table 2 in Schedule 2 is responsible for the application in relation to a trigger event in section 5(3).

Section 7: Applications for registration

22. **Section 7** outlines the process for registering a croft or, where a croft has already been registered, the process for amending this registration. Subsection (1) states that an application to register a croft must be submitted to the Crofting Commission along with registration payment unless the application is being made by the Commission.
23. Subsection (2) provides that an application for first registration of a new croft must be submitted at the same time as the application to constitute the land as a croft.
24. Subsection (3) requires the Commission, as soon as reasonably practicable after receiving the registration application, to check the information contained in the registration application against the Register of Crofts if the application is for first registration (except where the application relates to a new croft or is a result of a reorganisation scheme) and, to forward the application with any comments and the

registration payment to the Keeper. Subsection (4) enables the Commission, before forwarding the registration to the Keeper, to request further information in relation to the application.

25. Subsection (5) outlines the circumstances in which the Commission can refuse to forward an application. These are: the applicant has not provided the Commission with further information as requested under subsection (4); the application is frivolous or vexatious; the applicant has not submitted payment for registration; there is a material inaccuracy in the application; or the Commission consider that the Keeper would otherwise not accept the application under section 8(2). Where the Commission refuses to forward an application, the applicant may appeal against that decision to the Land Court. Subsection (7) disapplies section 7 to applications for registration by the Commission. Subsection (8) defines “material inaccuracy” as an inaccuracy relating to any matter mentioned in section 11(2), which are the matters to be included in the registration schedule of a croft.

Section 8: Acceptance of applications for registration

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

Section 9: Completion of registration

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

where the Commission are the applicant as they will have received the certificate under section 9(2). Under subsection (5), a registration certificate is sufficient evidence of the registration of the croft.

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

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