

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 2 – the Crofting Register

Rectification and indemnity

Section 16: Rectification of the Register

41. This section makes provision for the rectification of the Crofting Register when there is a mistake in it. Subsection (1) enables the Keeper to rectify the Register in accordance with subsections (2) to (4), and requires her to rectify it on being ordered to do so by a court.
42. 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 her or of her own volition, where a mistake has been made by her in making up or amending the Register. Subsection (7) defines what is meant by “court”, “mistake” and “rectify”.

Section 17: Rectification following first registration

43. This section 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 the registration and the challenge period begins again. Subsections (3) and (4) provide that the Keeper or the Commission must pay for any expenses incurred in re-notifying the registration, where the rectification is as a result of an error by the Keeper or by the Commission in handling the registration application or when submitting an application on their own behalf. Subsection (5) defines “material inaccuracy” and “mistake”. A “material inaccuracy” is an inaccuracy in any of the matters which must be included in the registration schedule under section 10(2), such as the boundaries of the croft.

Section 18: Indemnity in respect of loss

44. **Section 18** 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.

Subsection (2) sets out the matters which result in indemnifiable loss in respect of which the Keeper may be liable. These are: a mistake in the Register made by the Keeper in making up or amending a registration schedule or making consequential amendments, the correction of which would require rectification of the Register; a rectification of the Register under section 16(1) to correct such a mistake; the refusal of the Keeper to make

*These notes relate to the Crofting Reform (Scotland) Act
2010 (asp 14) which received Royal Assent on 6 August 2010*

such a rectification; the loss or destruction of any document lodged with the Keeper; and a mistake, in any certificate of registration or information given by the Keeper in writing or in a manner prescribed under section 19(1), which reflects a mistake made in the Register by the Keeper, the correction of which would require rectification under section 16(1).

45. Subsection (3)(a) provides that the Keeper is not liable to indemnify a person under subsection (1) if the existence of the mistake was, or ought to have been known to the person seeking indemnity for loss; or any person acting as solicitor or other legal adviser of that person, at the time of registration. Subsection (3)(b) excludes indemnity where the mistake relates to an inaccuracy in the delineation of any boundaries shown in a registration schedule, being an inaccuracy which could not have been rectified by reference to the ordnance map or to such other map as the Keeper, for the purposes of section 11(2)(a) considered appropriate. Indemnity is also excluded where the loss was caused by the fraudulent or careless act or omission of the person seeking indemnity for loss.
46. Subsection (4) states that no indemnity will be payable in relation to an error by the Keeper until a decision has been taken about whether to rectify the Register and any loss suffered is reviewed in light of any rectification. Subsections (5) to (8) provide that the Commission is liable to indemnify a person for loss suffered where that person is required to submit a fresh application for registration or apply for rectification of the Register as a result of a mistake made by the Commission when forwarding an application for registration to the Keeper or when submitting an application on their own behalf. Subsection (9) defines “mistake” as having the meaning given by section 16(7).