

2011 No. 334 (C. 29)

CROFTERS, COTTARS AND SMALL LANDHOLDERS

**The Crofting Reform (Scotland) Act 2010 (Commencement
No. 2, Transitory, Transitional and Saving Provisions)
Order 2011**

| | | |
|--|---------|----------------------------|
| <i>Made</i> | - - - - | <i>14th September 2011</i> |
| <i>Laid before the Scottish Parliament</i> | | <i>16th September 2011</i> |
| <i>Coming into force</i> | - - | <i>30th September 2011</i> |

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 53(2) and 57(2) and (3) of the Crofting Reform (Scotland) Act 2010(a).

Citation, commencement and interpretation

1. This Order may be cited as the Crofting Reform (Scotland) Act 2010 (Commencement No. 2, Transitory, Transitional and Saving Provisions) Order 2011 and comes into force on 30th September 2011.

2. In this Order—

“the Act” means the Crofting Reform (Scotland) Act 2010; and

“the 1993 Act” means the Crofters (Scotland) Act 1993(b).

Days appointed

3.—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the Act specified in—

(a) column 1 of Part 1 of the Schedule to this Order (the subject matter of which is specified in column 2 of that Part) is 1st October 2011; and

(b) column 1 of Part 2 of the Schedule to this Order (the subject matter of which is specified in column 2 of that Part) is 1st April 2012.

(2) Where a purpose is specified in column 3 of the Schedule, a provision specified in column 1 of Part 1 or 2 comes into force in accordance with paragraph (1) for that purpose only.

Transitory provision

4.—(1) Any reference to “the Commission” or the “Crofting Commission” in any provision of the Act commenced by this Order is to be read as a reference to the Crofters Commission.

(2) This article has effect until 1st April 2012.

(a) 2010 asp 14.

(b) 1993 c.44, amended by the Crofting Reform etc. Act 2007 (asp 7) and the Crofting Reform (Scotland) Act 2010 (asp 14).

Transitional provisions

5.—(1) Despite the commencement of section 1(3) of, and schedule 1 to, the Act paragraph 10 of Schedule 1 to the 1993 Act applies only to the appointment of a chief executive on the coming to an end of an appointment of any person who, at 1st October 2011, is chief executive.

(2) The commencement of section 34 of the Act for the purpose of inserting section 19D(2) into the 1993 Act has no effect as regards a transfer of a part of an owner-occupied croft for which missives are concluded prior to 1st October 2011.

(3) In relation to the commencement of sections 34, 37, 39, 46, 47 and 49 of the Act, from 1st October 2011 the following events have effect from the date when the Commission enters the relevant information in the Register of Crofts in accordance with section 41 of the 1993 Act:—

- (a) the division of a croft consented to by the Commission under section 19D(2) of the 1993 Act or carried out by the Commission under section 26G(1) of the 1993 Act;
- (b) the letting of a croft consented to by the Commission under section 29A(1) of the 1993 Act;
- (c) the enlargement of a croft by a direction of the Commission under section 4(4) of the 1993 Act or the enlargement of common grazings by a direction of the Commission under section 51(3) of the 1993 Act; or
- (d) a legatee coming into the place of a deceased crofter following receipt by the Commission of a copy of a notice of a bequest under section 10(2) of the 1993 Act.

(4) In paragraph (3), “relevant information” means any information to be entered in the Register of Crofts as regards—

- (a) a direction to enlarge a croft under section 4(4) of the 1993 Act;
- (b) receipt of a notice of bequest under section 10(2) of the 1993 Act;
- (c) consent to the division of an owner-occupier’s croft under section 19D(2) of the 1993 Act;
- (d) a division of a croft under section 26G(1) of the 1993 Act;
- (e) consent to the letting of an owner-occupier’s croft under section 29A(1) of the 1993 Act; and
- (f) a direction to enlarge common grazings under section 51(3) of the 1993 Act.

Saving provisions

6. Despite the commencement of section 55 of, and paragraph 3(13) of schedule 4 to, the Act, that section and that paragraph have no effect as regards any investigations commenced, determinations made and orders made under section 22 of the 1993 Act (absentee crofters) prior to 1st October 2011.

7. Despite the commencement of section 1(3) of, and paragraph 3(3)(b) of schedule 4 to, the Act, that section and that paragraph have no effect as regards the appointment of assessors under section 2(2) of the 1993 Act (particular powers and duties of the Commission) prior to 1st October 2011.

8. Despite the repeal and replacement of Schedule 1 to the 1993 Act by the commencement of section 1(3) of the Act, Schedule 1 to the 1993 Act remains in effect until 1st April 2012 with the following modifications:—

- (a) omit paragraphs 1, 7, 8, 9, 12 and 13; and

(b) paragraphs 2, 10, 14 and 15 are renumbered 2A, 10A, 14A and 15A respectively.

St Andrew's House,
Edinburgh
14th September 2011

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 3

PART 1

Provisions of the Act for which the day appointed for the coming into force is
1st October 2011

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (purpose)</i> |
|---|--------------------------------------|---|
| Section 1(3) | Schedule 1 – The Crofting Commission | Only for the purposes of— (a) repealing Schedule 1 of the 1993 Act; and (b) replacing it with the paragraphs 1, 2, 7, 10, 12 to 17 and 20 of the substituted Schedule 1 |
| Section 2(1) | General functions | |
| Section 2(2) | General functions | Only for the purpose of inserting section 2A into the 1993 Act |
| Section 33 | Crofters' duties | |
| Section 34 | Owner-occupiers' duties | Only for the purpose of inserting sections 19B (for all remaining purposes), 19C and 19D(1), (2), (6), (7) and (8) into the 1993 Act |
| Section 35 | Consent for absence from croft | |
| Section 37 | Enforcement | Only for the purpose of inserting sections 26A to 26F, 26G(1), (2), (5), (6) and (7), 26H, 26J(1) to (4), (7), (8), (11) and (12) and 26K(1) to (8) into the 1993 Act |
| Section 39 | Letting of owner-occupier crofts | Only for the purpose of inserting sections 29A(1), (4) to (6), (9) and (10) and 29B into the 1993 Act |
| Section 42 | Resumption applications | |
| Section 43 | Decrofting directions | |
| Section 44 | Re-letting crofts | |
| Section 45 | Application to decroft | |
| Section 46 | Enlargement of crofts | Only for the purposes of— (a) repealing section 4 of the 1993 Act; and (b) replacing that section with section 4(1), (2), (4) and (7). |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (purpose)</i> |
|---|--|--|
| Section 47 | Enlargement of common grazings | Only for the purposes of— (a) repealing section 51 of the 1993 Act; and (b) replacing that section with section 51(1), (2), and (3) |
| Section 48(1) to (6) | Commission approval or consent | |
| Section 48(7) | Commission approval or consent | Only for the purposes of— (a) repealing subsections (7) to (10) of section 58A of the 1993 Act; and (b) replacing those subsections with subsection (7)(a) to (f) and (h). |
| Section 48(8) to (12) | Commission approval or consent | |
| Section 49(1), (2), (3), (5) and (6) | Bequest of crofts | |
| Section 49(4) | Bequest of crofts | Only for the purposes of— (a) repealing subsection (2B) to (4D) of section 10 of the 1993 Act; and (b) replacing those subsections with the subsections (3), (4A) and (4C)(a). |
| Section 50(2) | Appeals: procedure | |
| Section 55 | Minor and consequential amendments and repeals | Only for the purpose of bringing into force the provisions of schedule 4 specified in column 1 of this Part of the Schedule below |
| Schedule 1 | The Crofting Commission | Only for the purposes of bringing into force paragraphs 1, 2, 7, 10, 12, 13, 14, 15, 16, 17 and 20 of the substituted Schedule 1. |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (purpose)</i> |
|--|--------------------------------------|--|
| Schedule 4, paragraphs 2, 3(1), 3(3), 3(5)(b), 3(6), 3(7), 3(8)(a) and (b), 3(9)(b), 3(10)(a) and (c) to (e), 3(13), 3(14)(b), (c)(ii) to (iv), (f) to (i), 3(15)(a), 3(17), 3(18), 3(19), 3(20), 3(21), 3(22), 3(24), 3(25), 3(29), 3(30), 3(32)(b), (c) and (d), 3(34), 3(35), 3(36)(d), (h) and (j) and 3(37) | Amendments to enactments | Paragraph 3(8)(a) is commenced only for the purpose of inserting section 8(1A). Paragraph 3(36)(d) is commenced only for the purpose of inserting the definition of “cultivate”. Paragraph 3(36)(j) is commenced only for the purpose of inserting the definition of “purposeful use”. |

PART 2

Provisions for which the day appointed for the coming into force is 1st April 2012

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (purpose)</i> |
|--|--|--|
| Section 1(1), (2) and (4) | Renaming of Commission | |
| Section 1(3) | Schedule 1 – The Crofting Commission | For all remaining purposes |
| Section 2(2) | General functions | For all remaining purposes |
| Section 36 | Annual notices | |
| Section 38 | Grazings Committee Reports | |
| Section 48 | Commission approval or consent | For all remaining purposes |
| Section 55 | Minor and consequential amendments and repeals | Only for the purpose of bringing into force the provisions of schedule 4 specified in column 1 of this Part of the Schedule below. |
| Schedule 1, paragraphs 3, 4, 5, 6, 8, 9, 11, 18, 19 and 21 | Membership and appointed members, etc, remuneration and other provisions relating to the Crofting Commission | |
| Schedule 4, paragraphs 3(2), 3(36)(b) and 4 | Amendment to enactments | |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints the days for the coming into force of various provisions of the Crofting Reform (Scotland) Act 2010 (“the Act”).

Article 3(1)(a) of the Order and Part 1 of the Schedule appoints 1st October 2011 for the coming into force of the following provisions of the Act (in some cases for a limited purpose):

- Section 1(3) for the purpose of inserting into the Crofters (Scotland) Act 1993 (“1993 Act”) the relevant paragraphs of Schedule 1 to the 1993 Act;
- Section 2(1);
- Section 2(2) for the purpose of inserting into the 1993 Act section 2A;
- Sections 33, 34, 35 and 37
- Section 39 of the Act, which relates to the letting of owner-occupied crofts, but only for the purpose of enabling the Scottish Ministers to make a scheme or regulations under section 42, 46 or 46A of the 1993 Act;
- Sections 42, 43, 44, 45, 46, 47, 48, 49 and 50(2);
- Section 55 which introduces schedule 4 which makes minor and consequential amendments and repeals but only for the purpose of bringing into force the relevant paragraphs of Schedule 4;
- Schedule 1 insofar as it relates to paragraphs 1, 2, 7, 10, 12 to 17 and 20 of the substituted Schedule 1 to the 1993 Act; and
- Paragraphs 2, 3(1), 3(3), 3(5)(b), 3(6), 3(7), 3(8)(a) and (b), 3(9)(b), 3(10)(a) and (c) to (e), 3(13), 3(14)(b), (c)(ii) to (iv), (f) to (i), 3(15)(a), 3(17), 3(18), 3(19), 3(20), 3(21), 3(22), 3(24), 3(25), 3(29), 3(30), 3(32)(b), (c) and (d), 3(34), 3(35), 3(36)(d), (h) and (j) and 3(37) of schedule 4.

Article 3(1)(b) of the Order and Part 2 of the Schedule appoints 1st April 2012 for the coming into force of the following provisions of the Act (in some cases for a limited purpose):

- Section 1(1), (2) and (4);
- Section 1(3) for the purpose of bringing into force the remaining paragraphs of schedule 1;
- Section 2(2) for the purpose of bringing into force sections 2B, 2C and 2D;
- Sections 36 and 38;
- Section 48;
- Section 55 which introduces Schedule 4 which makes minor and consequential amendments and repeals but only for the purpose of bringing into force the relevant paragraphs of schedule 4;
- Schedule 1 insofar as it relates to paragraphs 3, 4, 5, 6, 8, 9, 11, 18, 19 and 21 of the substituted Schedule 1 to the 1993 Act;
- Paragraphs 3(2), 3(36)(b) and 4 of schedule 4.

Article 4 of the Order makes a transitory provision so that any references to “the Commission” or the “Crofting Commission” in the provisions of the Act commenced by this Order are to be read as references to the Crofters Commission until the Crofters Commission is renamed the Crofting Commission by virtue of the commencement of section 1(1) of the Act (by this Order on 1st April 2012).

Article 5 makes transitional provisions to ensure that the appointment of the Chief Executive as at 1st October 2011 continues to have effect, to provide that divisions of owner-occupied crofts which have missives concluded prior to 1st October 2011 do not require consent from the Crofters Commission and to set an effective date for divisions, lettings, enlargements and bequests.

Articles 6 to 8 of the Order makes saving provisions with regard to investigations into absent crofters, to ensure that the appointments of the assessors as at 1st October 2011 continue to have effect and to save and renumber certain paragraphs of Schedule 1 to the 1993 Act.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Crofting Reform (Scotland) Act 2010 have been brought into force by a Commencement Order made by the Scottish Ministers before the date of this Order.

| <i>Provision</i> | <i>Day appointed</i> | <i>S.S.I. No.</i> |
|--|----------------------|-------------------|
| Section 34 (partially) | 22nd December 2010 | 2010/437 (C.31) |
| Section 39 (partially) | 22nd December 2010 | 2010/437 (C.31) |
| Section 40 and 41 | 1st July 2011 | 2010/437 (C.31) |
| Section 50(1) | 1st February 2011 | 2010/437 (C.31) |
| Section 51 | 22nd December 2010 | 2010/437 (C.31) |
| Section 55 (partially) | 22nd December 2010 | 2010/437 (C.31) |
| Section 56 | 22nd December 2010 | 2010/437 (C.31) |
| Schedule 4, paragraphs 1, 3(4), 3(26) to (28), 3(36)(a) and (i) | 22nd December 2010 | 2010/437 (C.31) |

© Crown Copyright 2011

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

2011 No. 334 (C. 29)

CROFTERS, COTTARS AND SMALL LANDHOLDERS

The Crofting Reform (Scotland) Act 2010 (Commencement
No. 2, Transitory, Transitional and Saving Provisions)
Order 2011

£5.75

S5211 09/2011 315211T 19585

ISBN 978-0-11-101467-7



9 780111 014677