

POLICY NOTE

THE CROFTING REGISTER (TRANSFER OF OWNERSHIP) (SCOTLAND) REGULATIONS 2012

SSI 2012/297

1. This Order is made in exercise of the powers conferred by sections 4(8), 5(6) and 25(4) of the Crofting Reform (Scotland) Act 2010 (“the 2010 Act”) and is subject to negative procedure. These regulations set out the circumstances in which the transfer of ownership of croft land is to be treated as a transfer requiring registration in the Crofting Register. The Keeper of the Registers of Scotland is designated the Keeper of the Crofting Register under section 3(1) of the 2010 Act.

Policy Objectives

2. These regulations form part of a suite of subordinate legislation relating to the establishment of a new Crofting Register under Part 2 and Schedules 2 and 3 of the 2010 Act. .

3. The purpose of the instrument is to set out the circumstances in which a transfer of ownership of croft land requires to be registered under section 4 (first registration) or section 5 (registration of events affecting registered crofts) of the 2010 Act.

4. Section 4(8) of the 2010 Act allows the Scottish Ministers to make regulations about when ownership of an owner-occupier croft is to be treated as being transferred for the purposes of first registration. Section 5(6) allows the Scottish Ministers to make regulations about when ownership of an owner-occupier croft or the land on which a croft is situated is to be treated as being transferred for the purposes of amending details on the Crofting Register. Subsection 25(4) allows the Scottish Ministers to make regulations about when the transfer of ownership of registered common grazings requires to be registered in the Crofting Register.

5. The purpose of these regulations is to ensure that the Crofting Register remains up-to-date following the transfer of ownership in certain circumstances. For first registration, the “triggers” requiring registration are focussed specifically on the transfer of owner-occupied crofts rather than on whole estates on which crofts are situated. In order to ensure details on the Crofting Register remain accurate, section 5 outlines the circumstances in which entries in the Register for crofts already registered must be amended. A subsequent change in ownership is a trigger for amendment under section 5.

6. These regulations require that an application for first registration or subsequent amendment to an entry of registered croft land following the transfer of ownership is submitted when the title to the land is formally transferred and noted in the Land Register. That is, at the end of the transfer process. Any issues prior to the formal transfer of ownership, such as the owner-occupier croft being the subject of

succession, sequestration, liquidation or where the owner-occupied croft transfer is subject to an appeal, do not require registration or amendment to the Register.

7. These regulations also apply to the transfer of ownership of croft land where the transfer is not for value but where the land has a monetary value, such as a gift.

Consultation

8. There is no legislative requirement to consult on these regulations. However, 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 register croft land on the Crofting Register. .

Impact Assessments

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

Financial Effects

10. No Business and Regulatory Impact Assessment (BRIA) has been prepared for this Order as no financial effect or impact on the private, voluntary or public sector is foreseen. While the applicant will be required to meet the costs of registration, requests for extracts, etc, these costs are not expected to be burdensome. A BRIA accompanied the Crofting Reform Bill on introduction to Parliament.

Scottish Government
Agriculture, Food and Rural Communities Directorate