

Draft Regulations laid before the Scottish Parliament under section 60(3)(b) of the Crofters (Scotland) Act 1993, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

**CROFTERS, COTTARS AND
SMALL LANDHOLDERS**

**The Crofting Commission (Elections)
(Scotland) Amendment Regulations 2016**

Made - - - - 2016
Coming into force - - 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 7(1) of schedule 1 of the Crofters (Scotland) Act 1993(1) and all other powers enabling them to do so.

In accordance with paragraph 7(6) of schedule 1 of that Act, the Scottish Ministers have consulted such persons or bodies as they think appropriate on the constituency boundaries to be used, and the persons who are eligible to vote, in elections of persons as members of the Crofting Commission.

In accordance with section 60(3)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(2).

Citation and commencement

1. These Regulations may be cited as the Crofting Commission (Elections) (Scotland) Amendment Regulations 2016 and come into force on the day after the day on which they are made.

Amendment of the Crofting Commission (Elections) (Scotland) Regulations 2011

2. The Crofting Commission (Elections) (Scotland) Regulations 2011(3) are amended in accordance with regulations 3 to 12.

3. In regulation 8(4) (election of members), omit “that at which they were elected.” and insert—
“—

(1) 1993 c.44 (“the 1993 Act”), relevantly amended by the Crofting Reform etc. Act 2007 (asp 7) and the Crofting Reform (Scotland) Act 2010 (asp 14) (“the 2010 Act”). Schedule 1 of the 1993 Act was substituted by schedule 1 of the 2010 Act.
(2) Section 60(3)(b) was inserted by paragraph 3(35) of schedule 4 of the 2010 Act.
(3) S.S.I. 2011/456.

- (a) the date on which they were elected; or
- (b) where regulation 54A(8) applies, the date on which they were deemed to be an elected member.”
4. In regulation 10 (disqualification of candidates)—
- (a) in paragraph (1), after sub-paragraph (b), insert—
- “(ba) the Commission has decided under section 26C(5) of the 1993 Act(4) that any of the duties mentioned in—
- (i) section 5B(5);
- (ii) section 5C; or
- (iii) section 19C(2)(b), (c) or (d)(6),
- of the 1993 Act are not being complied with by the person, being a crofter; and that person has not complied with an undertaking in relation to that duty;”; and
- (b) in paragraph (5), for sub-paragraph (d) substitute—
- “(d) the person’s application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002(7); or”.
5. In regulation 11(1) (timetable), after row 3 in the timetable insert—
- | | | |
|-----|---|---|
| “3A | Deadline for applications for removal from the absent electors list and from the proxy list | Not later than 5 weeks before the day of the count” |
|-----|---|---|
6. In regulation 23 (closing dates for applications)—
- (a) after paragraph (1) insert—
- “(1A) An application under regulation 21(3) or 22(5) must be disregarded for the purposes of any election if it is received by the registration officer after 5.00 p.m. on the day 5 weeks before the day of the count at that election.”; and
- (b) in paragraph (2), after “paragraph (1)” insert “or (1A)”.
7. In regulation 48 (declaration of result), after paragraph (1) insert—
- “(1A) The returning officer must—
- (a) record in writing the declaration made under paragraph (1)(a); and
- (b) as soon as reasonably practicable after making that record, give a copy of it to the registration officer.
- (1B) Once public notice of the information in sub-paragraph (1)(e) has been given, the returning officer must as soon as reasonably practicable procure the destruction of any electronic data or other records retained under regulation 50(3) in a manner which ensures that their confidentiality is preserved.”.
8. In regulation 50 (sealing up of ballot papers), for each reference in paragraphs (3) and (4) to “49” substitute “48(1)(e)”.
9. For regulation 53 (retention of documents), substitute—

(4) Section 26C was inserted by section 37 of the 2010 Act.

(5) Sections 5B and 5C were substituted for section 5B by section 33(3) of the 2010 Act.

(6) Section 19C was inserted by section 34 of the 2010 Act.

(7) 2002 asp 17.

“Retention of documents

53.—(1) The registration officer must retain—

- (a) for five years all—
 - (i) electronic copies mentioned in regulation 50(1)(b), forwarded to the registration officer under regulation 51;
 - (ii) copies of the record given to the registration officer under regulation 48(1A)(b); and
 - (iii) election expenses returns forwarded to the registration officer under regulation 64(2); and
- (b) for one year all other documents relating to an election forwarded to the registration officer in pursuance of these Regulations by a returning officer.

(2) At the expiry of the period in paragraph (1)(a) or (b), the registration officer must, unless otherwise directed by an order of a sheriff principal, cause the items retained under that sub-paragraph to be destroyed.”.

10. After regulation 54 (death of candidate), insert—

“Vacancies among elected members

54A.—(1) In this regulation—

- (a) “the relevant day” is the day after the expiry of the period of 21 days beginning with the day on which the invitation in paragraph (5) is given;
- (b) “vacating member” means an elected member who—
 - (i) resigns office under paragraph 6(1) of schedule 1 of the 1993 Act;
 - (ii) is removed from office under paragraph 9(1) of schedule 1 of the 1993 Act;
 - or
 - (iii) otherwise ceases to be a member of the Commission,before the day of the count at the election subsequent to that at which the member was elected or deemed to be elected; and
- (c) “vacancy” is to be construed in accordance with sub-paragraph (b).

(2) Subject to paragraph (7), the person who may hold office as a member of the Commission in place of the vacating member is determined by paragraphs (3) to (6).

(3) As soon as reasonably practicable after the vacancy arises the registration officer must give an invitation in writing to the person mentioned in paragraph (4), or as the case may be (6), to fill the vacancy.

(4) The person is the candidate credited in the declaration made under regulation 48(1)(a) as the person who polled most votes among the candidates who were not elected in the election at which the vacating member was elected and who at the time of giving the invitation—

- (a) would be qualified to be a candidate at an election under regulation 9;
- (b) would not be disqualified from being a candidate at an election under regulation 10; and
- (c) had complied with regulation 64(1).

(5) If the registration officer does not receive in writing the acceptance of the person invited to fill the vacancy before the relevant day, the registration officer must—

- (a) as soon as reasonably practicable give an invitation to fill the vacancy to the candidate credited in the declaration made under regulation 48(1)(a) as the person who polled the next most votes among the candidates who were not elected in the election at which the vacating member was elected and who at the time of giving the invitation meets the criteria mentioned in paragraph (4)(a) to (c); and
- (b) repeat the process mentioned in sub-paragraph (a)—
 - (i) until a person accepts the invitation to fill the vacancy; or
 - (ii) if no person accepts the invitation, until the list of candidates is exhausted.
- (6) If two or more candidates—
 - (a) were credited with the same number of votes, being the most or next most votes among the candidates who were not elected in the election at which the vacating member was elected as specified in paragraph (4) or (5); and
 - (b) meet the criteria in paragraph (4)(a) to (c),

the registration officer must determine by lot which of those persons is to be invited to fill the vacancy.

(7) The Scottish Ministers may determine that a vacancy is to be left unfilled until the outcome of the election mentioned in paragraph (1) where –

- (a) the vacancy arises less than one year before the day of the count at that election; and
- (b) the quorum of the Commission under paragraph 11 of schedule 1 of the 1993 Act is met.

(8) A person who accepts an invitation to fill a vacancy under this regulation is, from the date of receipt of that acceptance by the registration officer, deemed to be an elected member of the Commission for the constituency in which the vacancy arose.

(9) As soon as reasonably practicable after a person accepts the invitation to fill the vacancy or, as the case may be, the list of candidates is exhausted, the registration officer must give public notice of—

- (a) the fact that a vacancy among elected members has or, as the case may be, has not been filled under this regulation; and
- (b) where a vacancy among elected members has been filled under this regulation—
 - (i) the name of the person who has filled the vacancy; and
 - (ii) the date on which the person who has filled the vacancy was deemed to be an elected member under paragraph (8).

(10) The registration officer may authorise any person to perform any of the registration officer’s functions under this regulation.

(11) An authorisation under paragraph (10) does not affect the registration officer’s responsibility for the exercise of the registration officer’s functions.”.

11. In regulation 63 (election expenses), for “£600” substitute “£700”.

12. In regulation 64 (election expenses returns)—

- (a) in paragraph (1), for “elected candidate” substitute “candidate whose name and address is contained in the ballot papers for that election”; and
- (b) omit paragraph (3).

Revocation

13. The following provisions of the Crofting Commission (Elections) (Scotland) Regulations 2011 are revoked—

- (a) in regulation 11 (timetable), paragraph (2); and
- (b) regulation 49 (publication of voting information).

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Crofting Commission (Elections) (Scotland) Regulations 2011 (“the principal Regulations”), which set out the arrangements under which elections to the Crofting Commission (“the Commission”) are conducted.

Regulation 4 amends regulation 10(1) of the principal Regulations to add a new ground of disqualification from being a candidate. This applies to persons whom the Commission has decided under section 26C(5) of the Crofters (Scotland) Act 1993 (c.44) are not complying with the duties set out in section 5B, 5C or 19C(2)(b), (c) or (d) of that Act and who have not complied with an undertaking in relation to that duty. Regulation 4 also amends regulation 10(5)(d) of the principal Regulations to better reflect Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

Regulation 5 makes an amendment to the timetable in regulation 11(1) of the principal Regulations consequential on the amendment introduced by regulation 6.

Regulation 6 amends regulation 23 of the principal Regulations to provide that applications from voters to be removed from the absent electors list under regulation 21 or from the proxy list under regulation 22 must be disregarded if they are made later than 5.00 p.m. on the day 5 weeks before the election count. It also provides for the applicant to be notified that the application has been disregarded, where practicable.

Regulation 9 replaces regulation 53 of the principal Regulations. This amends the provisions about retention of documents to provide that certain documents are to be retained for five years and others for one year before being destroyed. This is consequential on the new provision introduced by regulation 10 which requires certain information to be available during the 5 year period that an unsuccessful candidate at an election may be deemed to be an elected member.

Regulation 10 inserts into the principal Regulations a new regulation 54A. This makes provision for the filling of vacancies that arise among elected members by candidates at the election who polled fewer votes than the elected member. It allows for unsuccessful candidates who stood for election to be deemed elected members where an elected member vacancy arises, if they polled the next most votes at that election. Regulation 3 makes a consequential amendment in light of regulation 10.

Regulation 11 amends regulation 63 of the principal Regulations to increase the limit on election expenses from £600 to £700.

Regulation 12 amends regulation 64 of the principal Regulations to provide that all candidates must submit election expenses returns. This is consequential on the new provision introduced by regulation 10.

Regulation 13 revokes two provisions of the principal Regulations which were included in error. It revokes regulation 11(2) of the principal Regulations which provided for the discounting of non-business days from the periods set out in the timetable in regulation 11(1). It also revokes regulation 49 of the principal Regulations, which referred to information relevant to the Single Transferable Vote system. The Crofting Commission elections operate under the Alternative Vote system. The information equivalent to that required under regulation 49(2) is required to be made public under regulation 48(1)(e) of the principal Regulations. Regulations 7 and 8 make consequential amendments in light of this revocation. Regulation 7 also provides for recording by the returning officer of the declaration made under regulation 48(1)(a) of the principal Regulations. This is consequential on the new provisions introduced by regulation 10.

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Crofting Commission (Elections) (Scotland) Amendment Regulations 2016 No. 424*

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, public bodies or the third sector is foreseen.