

*Changes to legislation:* There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, SCHEDULE 1. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 1

(introduced by section 1(6))

#### THE CROFTING COMMISSION

##### Textual Amendments

- F1** Sch. 1 substituted (1.10.2011 for specified purposes, 1.4.2012 in force in so far as not already in force) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 1** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with arts. 45(1)8); S.S.I. 2011/334, art. 3, sch. Pt. 2 (with arts. 45(3))

##### *Status*

- 1 (1) The Commission are a body corporate.
- (2) The Commission are not to be regarded as a servant of the Crown, nor are they to be regarded as having any status, privilege or immunity of the Crown.
- (3) The Commission's members and employees are not to be regarded as civil servants.
- (4) The Commission's property is not to be regarded as property of, or held on behalf of, the Crown.

##### *General powers*

- 2 (1) The Commission may do anything which they consider is necessary or expedient for the purpose of exercising or in connection with their functions.
- (2) In particular, the Commission may—
  - (a) co-operate with any person in the exercise of the Commission's functions;
  - (b) with the approval of the Scottish Ministers, acquire and dispose of land and other property;
  - (c) enter into contracts;
  - (d) charge, in respect of such of their functions as may be prescribed by the Scottish Ministers, such reasonable amounts as may be so prescribed.

##### *Membership*

- 3 (1) Subject to sub-paragraph (2), the Commission are to consist of no fewer than five and no more than nine members as follows—
  - (a) no fewer than two persons appointed by the Scottish Ministers (“appointed members”); and
  - (b) no more than six persons elected by virtue of paragraph 7 (“elected members”).

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- (2) The majority of members are to be elected members unless, by virtue of the appointment of a person by the Scottish Ministers under paragraph 6(3) or 9(3), such a majority cannot be maintained.
- (3) The Scottish Ministers must select a member to chair the Commission (the “convener”).
- (4) The Scottish Ministers may delegate to the Commission the duty to select a member to chair the Commission.
- (5) A delegation under sub-paragraph (4) may be varied or revoked at any time.
- (6) The Scottish Ministers may, by order, modify sub-paragraph (1) above to alter—
  - (a) the number of members;
  - (b) the number of appointed members;
  - (c) the number of elected members,
 but such an order may not contain provision to the effect that the majority of members would not be elected members.

*Appointed members: eligibility*

- 4 (1) In appointing members of the Commission, the Scottish Ministers must—
  - (a) ensure—
    - (i) that each person appointed has knowledge of crofting;
    - (ii) where sub-paragraph (2) applies, that at least one person appointed can speak the Gaelic language; and
    - (iii) where sub-paragraph (3) applies, that at least one person appointed appears to Ministers to represent the interests of landlords of crofts; and
  - (b) be satisfied that no person appointed has any financial or other interest that would be likely to affect prejudicially the exercise by that person of the functions of a member.
- (2) This sub-paragraph applies where none of the elected members can speak the Gaelic language.
- (3) This sub-paragraph applies where the Scottish Ministers consider that none of the elected members represents the interests of landlords of crofts.
- (4) The fact that a person is—
  - (a) a crofter;
  - (b) a landlord of a croft;
  - (c) an owner-occupier of a croft;
  - (d) a cottar; or
  - (e) a member of the family of any such person,
 does not of itself constitute an interest mentioned in sub-paragraph (1)(b).
- (5) No person may be appointed as a member of the Commission if that person is, or has at any time during the previous year been, a member of—
  - (a) the House of Commons;
  - (b) the Scottish Parliament;
  - (c) the European Parliament.

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*Appointed members: terms of appointment*

- 5 Subject to this schedule, an appointed member holds and vacates office on such terms and conditions as the Scottish Ministers determine.

*Resignation and cessation of membership*

- 6 (1) A person may resign office as a member of the Commission at any time by notice in writing to the Scottish Ministers.
- (2) A person who ceases to be a member of the Commission (other than by virtue of being removed under paragraph 9) is eligible to be a member of the Commission again (whether by re-appointment or otherwise)
- (3) Where—
- (a) an elected member resigns office under sub-paragraph (1) or otherwise ceases to be a member of the Commission (other than by virtue of being removed under paragraph 9); and
  - (b) is not replaced by a person such as is mentioned in sub-paragraph (4) (whether because of the person's refusal to accept office as a member or otherwise),
- the Scottish Ministers may appoint (in addition to any person appointed under paragraph 3) a person to be a member of the Commission.
- (4) The person referred to in sub-paragraph (3)(b) is a person who—
- (a) was a candidate in the election by virtue of which the elected member mentioned in sub-paragraph (3)(a) held office as a member;
  - (b) polled, in that election, fewer votes than the elected member so mentioned; and
  - (c) by virtue of regulations made under paragraph 7, may hold office as a member of the Commission.

*Elected members: regulations*

- 7 (1) The Scottish Ministers may, by regulations, make provision for or in connection with the election of persons as members of the Commission.
- (2) Without prejudice to the generality of sub-paragraph (1), the regulations may, in particular, make provision relating to—
- (a) the voting system to be used for such elections;
  - (b) the frequency and timing of such elections;
  - (c) the conduct of such elections;
  - (d) offences relating to such elections;
  - (e) the constituencies (including boundaries) in which such elections may be held
  - (f) persons who are eligible to vote in such elections (including by reference to the person's age);
  - (g) the appointment of an individual to act as the returning officer for each constituency;
  - (h) such an individual's—
    - (i) functions;
    - (ii) fees and expenses;

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- (iii) tenure and vacation of office;
  - (i) subject to sub-paragraph (5), persons who may, and may not, be candidates in elections such as are mentioned in sub-paragraph (1) (including by reference to the person's age);
  - (j) the number of members of the Commission who may be returned from each constituency;
  - (k) vacancies amongst elected members, including the circumstances in which a person who polled fewer votes in such an election than the person who polled most votes may hold office as a member of the Commission.
- (3) Regulations under sub-paragraph (1) may not make provision creating an offence such as is mentioned in sub-paragraph (2)(d) that is punishable—
  - (a) on conviction on indictment, with imprisonment for a term exceeding 2 years;
  - (b) on summary conviction, with—
    - (i) imprisonment for a term exceeding 12 months; or
    - (ii) a fine exceeding level 5 on the standard scale.
- (4) In the case of an offence which is triable either on indictment or summarily, the reference in sub-paragraph (3)(b)(ii) to a fine exceeding level 5 on the standard scale is to be construed as a reference to the statutory maximum.
- (5) In making provision such as is mentioned in sub-paragraph (2)(i), the regulations must provide that the persons who may be candidates in elections such as are mentioned in sub-paragraph (1) may include persons who
  - (a) are aged 16 or over; and
  - (b) have been nominated by a person eligible to vote in such elections.
- (6) Before making regulations under sub-paragraph (1), the Scottish Ministers must consult such persons or bodies as they think appropriate on—
  - (a) the constituency boundaries to be used; and
  - (b) the persons who are eligible to vote,
 in elections such as are mentioned in sub-paragraph (1).

*Remuneration, allowances and pensions*

- 8 (1) The Scottish Ministers must pay to the members of the Commission such remuneration and allowances as Ministers may determine.
- (2) The Scottish Ministers may—
  - (a) pay (or make arrangements for the payment of);
  - (b) make payments towards the provision of; or
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,
 such pensions, allowances and gratuities to or in respect of such members and former members of the Commission as Ministers may determine.
- (3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

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### *Removal of members*

- 9 (1) The Scottish Ministers may remove a member of the Commission from office, by giving notice in writing to the member, if satisfied that the member—
- (a) is insolvent;
  - (b) has been convicted of a criminal offence in relation to which the member has been sentenced to imprisonment for a period of 3 months or more;
  - (c) is incapacitated by physical illness or mental disorder;
  - (d) has been absent from meetings of the Commission for a period exceeding 6 months without the permission of the convener;
  - (e) is otherwise unable or unfit to exercise the functions of a member or is unsuitable to continue as a member.
- (2) In sub-paragraph (1)(a), a member is insolvent when—
- (a) the member's estate is sequestrated;
  - (b) the member is adjudged bankrupt;
  - (c) a voluntary arrangement proposed by the member is approved;
  - (d) the member enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
  - (e) the member grants a trust deed for creditors.
- (3) Where—
- (a) an elected member is removed from office under sub-paragraph (1); and
  - (b) is not replaced by a person such as is mentioned in sub-paragraph (4) (whether because of the person's refusal to accept office as a member or otherwise),
- the Scottish Ministers may appoint (in addition to any person appointed under paragraph 3) a person to be a member of the Commission.
- (4) The person referred to in sub-paragraph (3)(b) is a person who—
- (a) was a candidate in the election by virtue of which the removed member held office as a member;
  - (b) polled, in that election, fewer votes than the removed member; and
  - (c) by virtue of regulations made under paragraph 7, may hold office as a member of the Commission.

### *Chief executive, staff and employees*

- 10 (1) The Scottish Ministers must, after consultation with the convener of the Commission, appoint a chief executive of the Commission on such terms and conditions as Ministers may determine.
- (2) The Scottish Ministers may provide the services of such staff to the Commission as the Commission consider appropriate.
- (3) The Commission may appoint such employees as the Commission consider appropriate.
- (4) The Scottish Ministers may give directions to the Commission as to the appointment of employees under sub-paragraph (3).
- (5) Such directions may in particular relate to

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- (a) the number of appointments;
  - (b) the terms and conditions of employment.
- (6) The Commission must comply with any directions given under sub-paragraph (4).
- (7) The Commission may, with the approval of the Scottish Ministers—
  - (a) pay (or make arrangements for the payment of);
  - (b) make payments towards the provision of; or
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,
 such pensions, allowances and gratuities to or in respect of such of their employees, or former employees, as the Commission may determine.
- (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

#### *Quorum*

- 11 (1) The quorum of the Commission is five members.
- (2) Where there are three or more elected members, the quorum must include no fewer than three such members.

#### *Committees*

- 12 (1) The Commission must establish—
- (a) an audit committee; and
  - (b) such other committees as they consider appropriate.
- (2) The audit committee and any other committee of the Commission must comply with any directions given to it by the Commission.
- (3) The Commission may appoint as members of any of their committees persons who are not members of the Commission.
- (4) But no committee established under sub-paragraph (1) may consist entirely of such persons.
- (5) The Commission must pay to a person appointed under sub-paragraph (3) such remuneration and allowances as the Scottish Ministers may determine.

#### *Procedure*

- 13 (1) The Commission may regulate—
- (a) their own procedure; and
  - (b) the procedure of any of their committees (including any quorum).
- (2) The convener must, if present, chair meetings of the Commission and any of their committees.
- (3) If the convener is not available to chair a meeting of the Commission or a committee, the convener is to appoint another member of the Commission to chair the meeting.
- (4) The person chairing a meeting of the Commission or any committee has a casting vote.

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- (5) The Commission must keep a record of their and their committees' meetings and decisions.
- (6) The validity of any proceedings of the Commission or of any of their committees is not affected by any vacancy in membership nor by any defect in the appointment of a member.

#### *Members' interests*

- 14 (1) A member of the Commission or any other person who is in any way directly or indirectly interested in any matter brought up for consideration at a meeting of the Commission or of any committee of the Commission must disclose the nature of that interest to the meeting.
- (2) Such a disclosure must be recorded in the minutes of the meeting.
- (3) A member or other person making such a disclosure must not take part in any deliberation or decision of the Commission or of any committee of the Commission with respect to the matter to which the disclosure relates.

#### *Delegation of powers*

- 15 (1) The Commission may authorise—
  - (a) any of their members;
  - (b) any of their committees;
  - (c) their chief executive;
  - (d) any person whose services are provided to them by the Scottish Ministers;
  - (e) any of their employees,to exercise such of the Commission's functions (and to such extent) as they may determine.
- (2) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of their functions.

#### *Local assessors*

- 16 (1) The Commission may appoint a panel of suitable persons (“assessors”) to act, when required to do so by the Commission, as assessors for the purpose of assisting the Commission in the local execution of their functions under this Act.
- (2) The Commission must, before exercising their power under sub-paragraph (1), publish details of—
  - (a) the methods to be used for the appointment of assessors; and
  - (b) the functions to be exercised by assessors.
- (3) In exercising their power under sub-paragraph (1), the Commission must—
  - (a) provide information to crofting communities about—
    - (i) the appointment of assessors; and
    - (ii) the functions that assessors exercise; and
  - (b) keep under review—
    - (i) the methods to be used for the appointment of assessors; and
    - (ii) the functions to be exercised by assessors.

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- (4) Assessors must be ordinarily resident in the crofting counties or in an area designated under section 3A(1)(b) of this Act.
- (5) The Commission may make payments to assessors in respect of any—
  - (a) loss of earnings;
  - (b) expenses (including travelling and subsistence expenses),
 necessarily suffered or incurred by them for the purpose of enabling them to exercise their functions as such assessors.

#### *Location of office*

- 17      The Commission—
  - (a) must have their principal office premises in the crofting counties;
  - (b) must not determine where those premises are to be located without that location being approved by the Scottish Ministers; and
  - (c) must comply with any direction as to the location of those premises given by Ministers.

#### *Finance*

- 18      (1) The Scottish Ministers may—
  - (a) pay grants;
  - (b) make loans,
 to the Commission of such amounts as Ministers may determine.
- (2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may, from time to time after any grant is paid or loan is made, vary the terms and conditions on which it was paid or, as the case may be, made.

#### *Accounts*

- 19      (1) The Commission must—
  - (a) keep proper accounts and accounting records;
  - (b) prepare in respect of each financial year a statement of accounts.
- (2) The Commission must send the statement of accounts to the Scottish Ministers by such date as Ministers may direct.
- (3) The Commission must comply with any other directions which the Scottish Ministers may give them in relation to the matters mentioned in sub-paragraph (1).
- (4) The Scottish Ministers must, as soon as reasonably practicable after receiving a statement of accounts from the Commission—
  - (a) send them to the Auditor General for Scotland for auditing; and
  - (b) lay the audited statement before the Scottish Parliament.
- (5) The Commission must make their audited statement of accounts available so that they may be inspected by any person.



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*Provision of information to Scottish Ministers*

- 20      The Commission must provide the Scottish Ministers with such information in respect of the exercise, or proposed exercise, of the Commission's functions as the Scottish Ministers may, from time to time, require.

*Transfer of property, rights and liabilities*

- 21      (1) Where the Scottish Ministers consider it necessary or expedient to do so to facilitate the exercise of functions by the Commission, they may transfer to the Commission any property, rights and liabilities to which Ministers are entitled or subject.
- (2) Property, rights and liabilities may be so transferred to the Commission whether or not they are otherwise capable of being transferred by the Scottish Ministers.]

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