

CROFTING (AMENDMENT) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Crofting (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 9 May 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 31-PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill will allow owner-occupier crofters to apply to decroft the whole or part of their crofts and will allow the Crofting Commission (“the Commission”) to give directions (“decrofting directions”) on such applications. A decrofting direction is a direction that the croft will cease to be a croft and that the Crofters (Scotland) Act 1993 (the “1993 Act”) will no longer apply to it.

4. An “owner-occupier crofter” is a crofter who satisfies the conditions in section 19B of the 1993 Act. Section 19B was inserted into the 1993 Act by the Crofting Reform (Scotland) Act 2010 (the “2010 Act”). A person is an owner-occupier crofter if—

- the person is the owner of a croft;
- before becoming the owner, the person was the tenant crofter who exercised the right to buy the croft, the nominee of such a crofter or an individual who purchased the croft from the landlord who created the croft (or a successor in title to any of these persons); and
- the croft has not been let to any person as a tenant crofter since it was acquired from the landlord or constituted as a croft.

5. Before certain amendments of the 1993 Act made by the 2010 Act took effect, people who owned and worked their crofts were treated for the purposes of decrofting as landlords of vacant crofts and, as such, they could apply to decroft under section 24(3) of the 1993 Act (see section 23(12) of that Act). Such individuals were described as “owner-occupiers” who are, most commonly, the previous tenant crofter who has acquired the croft from their landlord. Other owner-occupiers could include, for example, those who own distinct parts of the same croft. Where the owner-occupier actively worked the croft and there was no action required to address neglect of that croft, the Commission did not take action under section 23 of the 1993 Act (Vacant crofts) to let the croft to a tenant. The 1993 Act now distinguishes between an owner-occupier (who owns and works the croft but does not meet the conditions in section 19B) and an owner-occupier crofter (who does meet those conditions).

6. From 1 October 2011 when those amendments were brought into force, however, individuals who were owner-occupier crofters could apply to decroft only if the croft was vacant.

For the purposes of the decrofting provisions in the 1993 Act, section 23(10) was amended by the 2010 Act to provide that a croft is not vacant if it is occupied by the owner-occupier crofter. Other owner-occupiers of crofts, who were not owner-occupier crofters, were unaffected and they could still, and still can, apply to decroft as if they were landlords of vacant crofts. That the 2010 Act had affected owner-occupier crofters in this way was not confirmed until the Crofting Commission received legal advice to that effect on 1 February 2013. On 25 February 2013 the Commission published a note to the effect that owner-occupier crofters could not apply to decroft, and the Commission could not give decrofting directions, unless the croft was vacant.¹

7. Up to that point, the Commission had dealt with a number of applications to decroft by owner-occupier crofters and had given decrofting directions in 159 cases. In addition, 50 applications to decroft that had been made but not decided were put on hold when this problem was identified.

8. The Bill will therefore make retrospective provision in relation to these applications and decrofting directions made following them so that they are treated as having been validly made under the new provisions which are being inserted into the 1993 Act.

COMMENTARY ON SECTIONS

Section 1 – applications to decroft by owner-occupier crofters

9. This section will insert four new sections into the 1993 Act to allow decrofting by owner-occupier crofters.

Section 24A – applications to decroft by owner-occupier crofters

10. This new section will allow owner-occupier crofters to apply to decroft the whole or part of their crofts whether the croft is vacant or not. Section 23(11) of the 1993 Act² will provide that this section and sections 24B to 24D apply to parts of crofts as they apply to whole crofts.

Section 24B – Commission's powers in relation to applications under section 24A

11. Under this new section, the Commission can decide an application by an owner-occupier crofter made under section 24A by either giving a decrofting direction or by refusing to do so and refusing the application.

12. Certain tests apply to the Commission's consideration of applications to decroft by owner-occupier crofters. Section 24B(2) and (3) contain two but others, some of which apply to applications to decroft by tenant crofters and by landlords as well as by owner-occupier crofters, are contained in section 25 of the 1993 Act.³

¹ Published on the Commission's website - <http://www.crofting.scotland.gov.uk/news.asp>

² As it will be amended by the schedule to this Bill – see paragraph 1(4)(a) of the Bill.

³ The application of section 25 of the 1993 Act to applications to decroft by, and decrofting directions given to, owner-occupier crofters is modified by new section 24C – see paragraphs 15 to 17.

13. Section 24B(2) is similar to provision that applies to landlords in section 24(3A) of the 1993 Act.⁴ Owner-occupier crofters have certain duties, set out in section 19C(2) of the 1993 Act, that are similar to the duties that apply to tenant crofters. Among those duties are the duty to be ordinarily resident on or within 32 kilometres of the croft and the duty not to misuse or neglect the croft. An owner-occupier crofter who has breached any of these duties may be required, under section 26J of the 1993 Act, to submit proposals to the Commission for letting the croft. Where this is the case, the Commission need not consider an application to decroft made by the owner-occupier crofter.

14. Section 24B(3) makes similar provision to that made in relation to tenant crofters by section 25(4ZA) of the 1993 Act.⁵ Where the croft is not registered in the Crofting Register (established by the 2010 Act), the owner-occupier crofter must apply to register the croft within 6 months of making the application to decroft otherwise the Commission cannot consider the application.⁶

Section 24C – application of section 25 in relation to decrofting directions

15. Section 25 of the 1993 Act makes further provision about applications for decrofting directions under the 1993 Act. That includes provision about advertising applications, the tests which must be satisfied before the Commission can make decrofting directions, notification of decisions and appeals against decisions. Section 24C provides that section 25 applies in relation to applications by owner-occupier crofters under section 24A and decisions by the Commission under section 24B but modifies how section 25 works in such cases, mainly to disapply parts of section 25 that relate only to tenant crofters.

16. Section 24C(2) makes a different change. It modifies section 25(1)(b) (which provides for decrofting of the site of the dwelling-house on or pertaining to the croft) so that it applies only where an owner-occupier crofter is applying to decroft the site of a dwelling-house on the croft and has not already obtained a decrofting direction in relation to another such site on the croft. Where such a decrofting direction has already been given, a subsequent application to decroft the site of a dwelling-house on the croft will be dealt with under section 25(1)(a).

17. Section 24C(3) also makes a different sort of change to section 25. Section 25(3) deals, among other things, with the sanction for breach of a condition attached to a decrofting direction. That sanction is that the croft is declared vacant. That is inappropriate in the case of an owner-occupied croft since section 23(10) of the 1993 Act provides that a croft is not vacant if it is occupied by the owner-occupier crofter. So section 24C(3) provides instead that the sanction is to be revocation of the decrofting direction. Revocation will have the effect that the croft is once again a croft and subject to the 1993 Act.

Section 24D – effect of decrofting direction

18. This new section deals with the effect of a decrofting direction under section 24B. As for directions given in relation to tenant crofters and landlords under section 24(3) of the 1993 Act, a

⁴ Section 24(3A) was inserted by the 2010 Act.

⁵ Section 25(4ZA) was also inserted by the 2010 Act. It comes into force on 30 November 2013.

⁶ Section 5 of the Bill modifies the application of new section 24B(3) during the period up to 30 November 2013 – see paragraph 33.

decrofting direction means that the croft is no longer regarded as a croft and is no longer subject to the 1993 Act. This does not mean that the former croft may never become a croft again. Similar to decrofting by tenant crofters and landlords, decrofting does not stop the land being included in another croft at some time in the future, for instance, under section 4 of the 1993 Act (which allows for the enlargement of existing crofts by adding non-croft land) or under section 3A (which allows the creation of new crofts).

19. Section 24D(3) provides that a decrofting direction given in relation to a registered croft must be registered in the Crofting Register. If an application to register the direction is not made within 3 months, the direction falls. Where the application to register the direction is made within the 3 month period, the direction takes effect from the date of registration in the Crofting Register.⁷

Section 2 – consequential modifications

20. Section 2 introduces the schedule to the Bill, which makes amendments and modifications to provisions in the 1993 and 2010 Acts needed in consequence of new sections 24A to 24D of the 1993 Act.

Section 3 – retrospective effect and application

21. As mentioned at paragraphs 6 and 7, before it came to light that owner-occupier crofters could decroft only if the croft was vacant, a number of applications were made and decrofting directions given.

22. Section 3 provides that sections 24A to 24D are to be treated for all purposes as having had effect during the period from 1 October 2011 (when the changes made by the 2010 Act came into force) until the coming into force of the Bill.⁸ In addition, the section goes on to provide that applications made during that period are to be treated as if they were made under section 24A. This includes applications made but not yet decided. Following from that, decisions of the Commission on such applications as were decided before the Bill comes into force – both to give decrofting directions and to refuse to do so – are to be treated as having been made under section 24B. Finally, any decrofting directions that have been given are to be treated as having been given under section 24B.

23. The effect of this section is to cure the defects that there may be, in particular, in decrofting directions that have already been given to owner-occupier crofters as a result of there having been no power to make the application at the time it was made or to give the decrofting direction at the time of the decision to give it.

24. The backdating of sections 24A to 24D by this section is subject to a small number of modifications (as provided for by section 3(3)). The 2010 Act made registration in the Crofting Register compulsory on the occurrence of certain events in relation to a croft, including decrofting. But transitional arrangements provide for registration to be on a voluntary basis until

⁷ Section 5 of the Bill also modifies the application of new section 24D(3) during the period up to 30 November 2013 – see paragraph 33.

⁸ Subject to certain modifications – see paragraphs 24 to 26.

30 November 2013.⁹ So provision in the new sections that relates to compulsory first registration (section 24B(3)) is not applied from 1 October 2011 as the equivalent provisions for landlords and tenant crofters do not apply until 30 November 2013.

25. In relation to section 24C(4)(d) – which modifies section 25 – the reference to section 25(4ZA) to (4ZD) needs to be modified as subsections (4ZA) and (4ZB), which also relate to registration, do not come into force until 30 November 2013.

26. Finally, section 24D(3), if applied retrospectively, would have required owner-occupier crofters of registered crofts to apply to register their decrofting directions. For obvious reasons, no decrofting directions given to owner-occupier crofters were registered since there was no requirement to do so at the time. To backdate that requirement now would create difficulties. So section 24D(3) is not applied retrospectively.

Section 4 – appeals against certain decisions

27. As mentioned at paragraph 6, on 25 February 2013 the Commission published a note to the effect that owner-occupier crofters could not apply to decroft, and the Commission could not give decrofting directions, unless the croft was vacant. From 14 January 2013 to 25 February 2013 the Commission issued 21 decrofting directions and refused 1 application to decroft. Those 22 cases were potentially still appealable at the time the Commission published its note on 25 February because the 42 day period under the 1993 Act for making appeals had not yet expired in relation to those cases.

28. Subsection (1) enables an appeal to be made against a decision by the Commission within 42 days of the Bill coming into force.

29. Subsection (2) restricts the reference in subsection (1) to a decision by the Commission made during the period 14 January until 25 February 2013 on an owner-occupier crofter's application to decroft.

30. Subsection (3) enables an appeal to be made against the granting of a decrofting direction by the Commission within 42 days of the Bill coming into force.

31. Subsection (4) restricts the reference in subsection (3) to the granting by the Commission during the period 14 January until 25 February 2013 of a decrofting direction following an application by an owner-occupier crofter.

32. The effect of this section is to allow someone who had not exercised their right of appeal in reliance on the Commission's public statement that owner-occupiers could not apply to decroft, the opportunity to do so. This effectively secures the procedural guarantee that the granting of a direction or the making of a decision on an application by the Commission can be appealed to the Scottish Land Court.

⁹ See the Crofting Reform (Scotland) Act 2010 (Commencement No. 3, Transitory, Transitional and Savings Provisions) Order 2012 (SSI 2012/288), article 3(1)(c) and schedule 2.

Section 5 – transitory provision

33. As mentioned at paragraph 24 in relation to section 3, not all of the provisions on the Crofting Register inserted into the 1993 Act by the 2010 Act are in force yet. Section 5 provides then that, from the date the Bill comes into force until 30 November 2013, certain provisions in the new sections are disapplied or subject to minor modifications. From 30 November 2013, new sections 24A to 24D will apply in full as they are set out in section 1.

Section 6 – commencement

34. The Bill will come into force on the day it is given Royal Assent. But section 3 also needs to be read in order to understand the retrospective effect of the Bill.

Schedule – consequential modifications

35. This schedule amends the 1993 and 2010 Acts to make changes that are needed as a result of the insertion into the 1993 Act of new sections 24A to 24D. These amendments mostly add references to decrofting directions under section 24B to provisions that currently refer to decrofting under other provisions (mainly section 24(3)) of the 1993 Act.

36. Amendments that do something different include paragraph 1(4)(a), which amends section 23(11) of the 1993 Act so that the provision there stating that sections 23 to 25 apply to parts of crofts as they apply to whole crofts also covers sections 24A to 24D. This allows an application by an owner-occupier crofter to decroft part of a croft – say the site of the croft house.

37. Other amendments that are not just about adding references to section 24B are the amendments of section 23(12A) in paragraph 1(4)(b). Under section 23(12A) at the moment, owner-occupier crofters are treated as landlords for the purposes of section 24 and, in particular, for the purposes of section 24(3), which allows applications to decroft. The amendments remove these provisions given that section 1 will insert freestanding provision about decrofting by owner-occupier crofters.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Crofting (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 9 May 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The purpose of this document is to set out the anticipated financial implications of the Bill. It should be read in conjunction with the policy memorandum and the Bill itself. The potential costs covered in this Financial Memorandum are set out under the following key headings:

- The Scottish Administration
 - The Crofting Commission
 - The Scottish Legal Aid Board
 - The Scottish Land Court
- Local authorities
- Costs on other bodies, individuals and businesses
 - Owner-occupier crofters
 - Other landowners
 - The Registers of Scotland

BACKGROUND

3. The primary purpose of the Bill is to address an issue which has arisen in relation to the Crofting Reform (Scotland) Act 2010 (the "2010 Act"), which introduced a new category of "owner-occupier crofter" into the Crofters (Scotland) Act 1993 (the "1993 Act") as from 1 October 2011. The unintended effect of the legislation is that it does not allow an owner-occupier crofter to decroft their land, that is, to remove the land from crofting tenure, unless the croft is vacant. However, section 23(10) of the 1993 Act provides that a croft cannot be vacant if it is occupied by, amongst others, an owner-occupier crofter.

4. All crofters, both tenant and owner-occupier crofters, are required to live on, or within 32 kilometres of the croft, unless they have consent from the Crofting Commission ("the Commission") to be absent. The present position in the legislation on decrofting therefore disadvantages almost all owner-occupier crofters who occupy their croft and the Bill therefore provides for owner-occupier crofters to decroft their land in a similar way to that already afforded to tenant crofters.

5. The Commission issued 159 decrofting directions to owner-occupier crofters between 1 October 2011 and when they received legal advice on 1 February 2013 that there was no provision within the legislation for them to do so where the owner-occupier's croft was not

vacant. A further 50 decrofting applications have been received by the Commission from owner-occupier crofters and are being held in abeyance until a legislative solution is available.

COSTS AS A RESULT OF THE NEW LEGISLATION

Costs to the Scottish Administration

The Scottish Government

6. It is difficult to predict with any certainty the financial impact on the Scottish Government from the Bill as this would depend on a number of factors relating to the new owner-occupier crofter decrofting process, in particular, to the number of appeals arising from Commission decisions on owner-occupier crofter decrofting applications. However, for the reasons detailed in the paragraphs below relating to the Commission, the Scottish Legal Aid Board (SLAB) and the Scottish Land Court, it is not anticipated that there will be any significant additional cost to the Scottish Government from this Bill.

7. Tables 1 and 2 below set out the costs to the Commission for administering decrofting applications, with the unit cost for each application being either £1,257 or £1,284, depending on the type of application. As the 50 applications held in abeyance by the Commission have been carried forward from the 2012/13 financial year to this financial year, a small amount of additional funding will be required to meet the costs of processing these applications. This is expected to be a maximum of £30,000. This does not equate to a full 50 times the unit cost as some of the work relating to these applications has already been carried out by the Commission.

8. As the Commission, SLAB and the Scottish Land Court are funded directly by the Scottish Government, it follows that additional costs to these bodies arising from these provisions will require additional Scottish Government support. The appeals provisions in section 4 of the Bill ensure that owner-occupier crofters who could potentially have been dissuaded from appealing a decrofting decision following the Commission's intimation on 25 February 2013, on the understanding that their appeal would be incompetent if the application and decision were not competent, will have a further 42 days in which to appeal the decision from the date these provisions are commenced. This affects a maximum of 22 owner-occupier crofters and, at a historic rate of less than 1% of decrofting decisions appealed, this may result in one further appeal. This appeal is taken into account in the paragraphs below covering these bodies. The additional costs created by this Bill relate only to the potential appeals made by owner-occupier crofters.

The Crofting Commission

9. The Commission already process decrofting applications as part of its regulatory function and, until it ceased to process owner-occupier decrofting applications in February 2013, was meeting the full administrative costs of all decrofting applications, including those from owner-occupier crofters. There is not, therefore, expected to be any additional staffing costs for the Commission associated with training in relation to the new provisions and administration thereof, as this issue was already addressed in consideration of the 2010 Act. The tables below outline the current costs to the Commission for the administration of these applications.

Decrofting applications processed between 01/10/2011 and 30/09/2012

Table 1

	No. of decrofting directions issued	Refusals	Total	Unit cost	Total cost
All applications					
Croft house site and garden ground and feus	158	0	158	£1,257	£198,606
Part croft	299	8	307	£1,284	£394,188
Whole croft	10	3	13	£1,284	£16,692
	467	11	478		£609,486

Table 2

<u>Owner-occupier crofters</u>	No. of decrofting directions issued	<u>Refusals</u>	<u>Total</u>	<u>Unit cost</u>	<u>Total cost</u>
Croft house site and garden ground and feus	23	0	23	£1,257	£28,911
Part croft	91	1	92	£1,284	£118,128
Whole croft	6	3	9	£1,284	£11,556
	120	4	124		£158,595

Note: Unit costs based on 2011/12 figures published in the Crofters Commission Annual Report 2011/2012.

10. Table 1 above shows administration costs to the Commission for all decrofting applications processed in the twelve month period from 1 October 2011 to 30 September 2012. Table 2 shows comparable figures for owner-occupier crofter decrofting applications only. The 12 month period is taken from 1 October 2011 when the definition of owner-occupier crofter became effective. The Commission estimate that the cost of administering owner-occupier decrofting applications is £158,595 per year and it is expected, on average, to remain around that level per year. However, it is estimated that the cost of administering applications for the first year after the Bill is commenced will increase to £185,028 to accommodate the additional £26,433 for processing applications held in abeyance by the Commission in anticipation of the legislation being enacted. As indicated above, additional Scottish Government funding will be required if the Commission are not to meet the additional cost in this financial year from its existing budget by diverting funds from other administrative tasks.

11. Furthermore, an increase in the number of decrofting applications as a result of owner-occupier crofters applying to decroft could result in an increase in the number of appeals against Commission decisions, which could lead to additional costs for the Commission defending itself in the Scottish Land Court. It is not possible to predict accurately expected appeal costs which will arise from the additional owner-occupier decrofting applications as this will depend on a number of factors, including: the number of appeals in which the Commission are involved; whether or not the Commission actively participate in the appeal process; and whether the appeal is disposed of by written submission or following a hearing before the Court. However, this is not expected to be a significant increase as only one appeal has been lodged with the Land Court since the definition of owner-occupier crofter was introduced on 1 October 2011. Also, the increase in appeals may not necessarily result in an increase in costs to the Commission, as the Commission are now producing more comprehensive and detailed notes explaining decisions on contentious applications in order to avoid unnecessary court action.

12. In addition to providing the Commission with grant-in-aid, the 2010 Act provided the Commission with the power to fix and recover charges for the service of processing regulatory applications. Currently, the entire costs for the administration of regulatory applications are met by the taxpayer. No decision has yet been taken as to the type of regulatory applications the Commission might charge for, nor has a decision been taken as to what proportion of costs the applicant might be expected to meet. Any fee charged for regulatory activities would be used to cover costs incurred by the Commission from processing regulatory applications. Any such costs to individuals will reduce the net administrative costs to the Commission.

The Scottish Legal Aid Board

13. Legal assistance may be available to owner-occupier crofters in the event of an appeal against a decision on a decrofting application. Initial advice and assistance may be provided by the solicitor subject to a test of financial eligibility carried out by a solicitor. Civil legal aid for representation before a court may also be available to individuals provided they meet three statutory tests contained in the Legal Aid (Scotland) Act 1986: financial eligibility, reasonableness and probable cause. SLAB assesses each application on its own merits and, if it is satisfied that an application meets the statutory tests, then civil legal aid will be granted. Further costs could therefore be incurred by SLAB if a higher number of owner-occupier crofters access legal aid to help pay for the cost of appealing against a Commission decision not to grant a decrofting direction.

14. The average legal costs to both parties in any appeal will vary depending on a number of issues, including duration of appeal, legal representation and other related factors. SLAB has confirmed that legal aid for the last five appeals processed through the Scottish Land Court (between 2005 and 2010) varied between £277 and £13,842, with an average cost of £7,683. With such a small number of cases and a wide range in costs, it is difficult to estimate the potential costs to legal aid as a small number of higher cost cases would artificially inflate and skew the results. During the period 1 October 2011 to 30 September 2012 the Commission processed 478 applications to decroft, of which four have been appealed (an appeal rate of less than 1%). The Commission have advised that, in the previous year for which figures are available, no decrofting decisions by the Commission were appealed to the Scottish Land Court. Based on these figures, the Scottish Government would expect the impact on legal aid not to be significant. If the assisted person was liable to pay a contribution towards the cost of their case

or was awarded expenses, then the net cost to the Fund would be lower. In addition, to allow full control of costly cases, SLAB has set standard cost limits for Land Court cases of £4,000, although in unusual non-family cases, if they receive requests to extend the expenditure available it is likely that the request will be granted. On this basis, the potential costs per year to the Scottish Legal Aid Board could be around £16,000, with £20,000 in the first year as a result of the additional potential appeal as a result of renewing the appeal period for the 22 applicants who may have been dissuaded from appealing.

15. While historically low, the number of potential appeals and their respective costs are difficult to quantify and the Government recommends that owner-occupier crofters consult the Commission and those with an interest in the decrofting prior to submitting their application in order to reduce the likelihood of appeals.

The Scottish Land Court

16. The Scottish Land Court could incur some additional costs as a result of the Bill as persons with an interest can appeal against a decision by the Commission on a decrofting application. The Scottish Land Court hears on average 140 cases per annum, with a total annual budget of £400,000 (excluding judicial salaries and running costs), the average cost to the Court would be in the region of £3,000 per appeal. In order to reduce the potential for appeals against decrofting decisions in the Scottish Land Court, it is advised that owner-occupier crofters discuss their decrofting application with persons with an interest in the decrofting before submitting a decrofting application to the Commission. As indicated above, less than 1% of all decrofting decisions have been appealed. This is consistent with the figures relating solely to owner-occupier crofters with only one appeal being made by an owner-occupier crofter in the period 1 October 2011 to 30 September 2012 during which the Commission made 124 decisions on decrofting applications made by owner-occupier crofters (an appeal rate of less than 1%), therefore we would expect the impact to be inconsequential. However, costs per annum will clearly depend on the number of appeals lodged. On this basis of each appeal costing £3,000, the potential costs per year to the Scottish Land Court could be around £12,000, with £15,000 in the first year as a result of the additional potential appeal as a result of renewing the appeal period for the 22 applicants who may have been dissuaded from appealing.

Costs to local authorities

17. It is not anticipated that there will be any cost to local authorities.

Costs to other bodies, individuals and businesses

Owner-occupier crofters

18. While owner-occupier crofters, like others responsible for registering croft land on the Crofting Register, will incur a registration cost of £90. This will initially be on a voluntary basis until the requirement to register alongside a regulatory change comes into force on 30 November 2013 (see The Crofting Register (Fees) (Scotland) Amendment Order 2012 – SSI No. 328). However, the Scottish Government has provided £100,000 to reduce the costs of group registration and owner-occupier crofters will, like others registering croft land, be able to benefit from a £20 reduction for group registration. This applies where more than 10 croft registration applications from the same township are submitted as a group or, where the township consists of

less than 10 crofts, all of the crofts from that township are submitted for registration at the same time. On the basis of 124 decrofting applications being submitted per year by owner-occupier crofters, taking into account the potential £20 reduction in registration fee and all crofts being registered, registration costs for owner-occupier crofters per financial year could, in total, be between £8,680 and £11,160.

19. Some owner-occupier crofters may wish to appeal a decision of the Crofting Commission not to grant a decrofting direction to the Scottish Land Court: some may not. If an appeal is made, individual costs would be incurred as set out below in relation to SLAB and the Scottish Land Court. However, the Scottish Government recommends that applicants consult the Commission and others with a potential interest in the proposed decrofting in advance of submitting an application and to discuss the reasons for a decrofting direction not being granted with the Commission before considering legal action. These steps should reduce the potential for appeal and avoid unnecessary costs for all parties involved in the case. If successful in their appeal, owner-occupier crofters could recover appeal costs but, if unsuccessful, costs may be awarded to the Commission by the Land Court.

20. If the Commission were to charge a fee for the administration of regulatory applications, then owner-occupier crofters would incur associated additional expenses in submitting a decrofting application.

Other landowners

21. There are currently two main types of landowners in crofting. Where a tenant crofter purchases their croft they become an owner-occupier crofter and any successor in title to that croft will be an owner-occupier crofter. Financial issues relating to owner-occupier crofters are covered separately above.

22. The second type of landowner is the more conventional type of landowner, who is landlord to a number of tenant crofters. Occupation of the croft distinguishes these two types of landowners. Landlords can already apply to the Commission to decroft land where the croft is vacant and it is not anticipated that the new provisions for owner-occupier crofters will create any additional costs for landlords.

23. Separately, there is a category of landowner known as owner-occupiers, who own their crofts but do not meet the conditions to be an owner-occupier crofter. This category is treated as being landlords of vacant crofts and it is not anticipated that the Bill will create any additional costs for them.

Registers of Scotland

24. Registers of Scotland (RoS) is a Non-Ministerial Department of the Scottish Administration, headed by the statutory office-holder, the Keeper of the Registers of Scotland. Since 1 April 1996, it has operated as a Trading Fund and is currently regulated by the Public Finance and Accountability (Scotland) Act 2000. As a Trading Fund, RoS derives funding solely from the fees it charges for the registration and information services it provides. RoS is expected to ensure that income is sufficient to meet its expenditure and that capital reserves are sufficient to meet its liabilities (including latent liabilities). As a consequence of RoS' Trading Fund status,

the costs of the Bill falling on RoS will not impose any burden on the Scottish Consolidated Fund. Neither will the passage and commencement of the Bill mean that fees will require to be increased.

25. It is difficult to predict how many owner-occupier crofters will voluntarily register their croft in the Crofting Register in connection with their decrofting application; therefore, it is equally difficult to anticipate the additional workload for the RoS in registering croft land. However, as indicated above, owner-occupier crofters will be required to register their croft after 30 November 2013 where a decrofting application is submitted. However, any additional costs to RoS as a result of decrofting applications from owner-occupier crofters will be met by the applicant's registration fee.

Summary of costs

26. The following table provides a summary of known or expected additional costs per financial year associated with each part of the Bill.

Proposed change	2013-14	2013-14	2013-14
Additional costs to the Scottish Administration (paragraphs 44-46)	£30,000	-	-
Additional applications to the Crofting Commission (paragraph 47-50)	£158, 595	£158, 595	£158, 595
Cost per owner-occupier crofter for Crofting Register (paragraph 56)	£70-90	£70-90	£70-90
Costs to the Scottish Legal Aid Board for potential increase in legal advice (paragraphs 51-53)	£20,000	£16,000	£16,-000
Costs to the Scottish Land Court for increased appeals (paragraph 54)	£15,000	£12,000	£12,000

Note: Costs to the Scottish Legal Aid Board and to the Scottish Land Court, while included in the above table, are for illustrative purposes only as it is not possible to predict with any certainty the likely costs.

These documents relate to the Crofting (Amendment) (Scotland) Bill (SP Bill 31) as introduced in the Scottish Parliament on 9 May 2013

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 9 May 2013, the Cabinet Secretary for Rural Affairs and Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Crofting (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 9 May 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Crofting (Amendment) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Crofting (Amendment) (Scotland) Bill (SP Bill 31) as introduced in the Scottish Parliament on 9 May 2013

CROFTING (AMENDMENT) (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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