



FACULTY OF ADVOCATES

Response from the Faculty of Advocates

To the Consultation on Removal of Crofting Commission from list of tribunals in Tribunals (Scotland) Act 2014

The Faculty of Advocates notes that Section 27(4) of the Tribunals (Scotland) Act 2014 contains a definition of a “tribunal” for the purposes of that Act. The definition describes a tribunal as a body, office holder or individual having a decision-making function that is exercisable (a) as, or in the manner of a tribunal, and (b) with respect to the determination or resolution of legal, administrative or other disputes between parties of any kind. Within the UK generally a tribunal is now recognised as a distinct form of judicial body whose work is to adjudicate in disputes between two other parties, with the tribunal acting as an independent decision maker, separate from the machinery of administration which has an interest in the subject matter of the decision¹. The Tribunal is applying the rules laid out by the legislature or the executive. Although historically there have been a number of tribunals which have not been exclusively judicial because they have had administrative or other functions, over time a number of these bodies have had their roles amended or have been replaced by bodies which do exercise an exclusively judicial role and are entirely independent of any administrative functions².

The Crofting Commission is an example of an historic body which operates in a manner which has some similarities to what is commonly recognised as a tribunal, but which has a

¹ *The Report of the Committee on Administrative Tribunals and Enquiries*, Cmnd 218 (1957), paras 40 and 42.

² An example of one such body are local authority Housing Benefit Review Boards.

multiplicity of functions where the judicial role is secondary. It is mandated by the Crofters (Scotland) Act 1993 to achieve particular policy goals, and in the course of doing that has its own policy-making function, in addition to an administrative function and a regulatory function. In order to improve accountability for its policy and regulatory functions the Commission contains a number of elected members. The Commission therefore can have some of the characteristics of a legislature or an executive body as well as a judicial body. Unlike a typical tribunal, the Commission may be a party to the issue in dispute, seeking to defend its own actions.

The Faculty therefore agrees with the reasons given in the Consultation for removing the Crofting Commission from the list of tribunals in Schedule 1 of the 2014 Act.