

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 1: the Crofters Commission

Section 1: Discharge of functions

5. This section replaces section 1(3) of the 1993 Act and provides that the Scottish Ministers can give the Commission general and specific directions on the way that they carry out their functions.

Section 2: Equal opportunities

6. This section inserts new section 59A into the 1993 Act. Section 59A requires the Commission to observe equal opportunities in carrying out their functions.

Section 3: Obtaining Commission approval or consent

7. This section inserts a new section into the 1993 Act. New section 58A sets down the processes by which the majority of applications to the Commission will be determined. The Commission will no longer be required to determine every application made by crofters and landlords, but will still have a responsibility to intervene where there is an objection or where an application which raised no objections invokes separate criteria requiring the Commission to consider and decide whether the application should succeed. Excluded from these new arrangements are those applications which make substantial change to croft land: decrofting, apportionment and crofter forestry. These will continue in every case to require the Commission's written approval in order to succeed.
8. Subsection (2) of new section 58A provides that in every case in which the applicant is required to apply to the Commission for consent or approval to make the proposed changes, the form on which the application is to be made and any documentation and fee will be specified by the Commission. This will, for example, allow the Commission to include measures to reduce the risk of fraudulent applications.
9. Subsection (3) requires the applicant to give public notice of the application and where the applicant is not the landlord or the owner of the common grazing affected by the application, to notify the landlord or owner in writing. This is to ensure that those who may wish to object have adequate notice of what is proposed. Subsection (4) specifies the time allowed for making an objection and who may do so. Subsection (16) provides that the objection submitted in terms of subsection (4) be made in the form described and subsection (17) describes what constitutes an objection in writing.
10. Subsection (6)(a) provides that the Commission is not compelled to act upon an objection which it considers to be frivolous, vexatious or unreasonable but must otherwise intervene where there is an objection. In addition and in terms of

subsection 6(b) the Commission has the discretion to intervene in relation to an objection where it considers that any of the general or specific conditions apply to the application.

11. Subsection (7) specifies what the Commission must do if they decide not to intervene, or they have no grounds to intervene, to consider an application on the basis of a timely objection. Subsection (8) deals with the effects of the Commission deciding to intervene if one of conditions specified in subsection (6)(b) applies. Subsection (9) lists the general conditions that apply for the purposes of subsection (6)(b)(i). Subsection (10)(a) provides that where the Commission does not intervene it must approve the application and enter it in the Register of Crofts. Subsection (10)(b) deals with what should be done by the Commission, and in which timescales, following a decision to intervene. It requires the Commission to inform those parties with an interest that the application is to be considered by the Commission and why the Commission intervened. It also informs the parties of their right to appeal to the Land Court against the decision by the Commission on the application.
12. Subsection (11) gives the Commission the power to set up procedures and arrangements for deciding whether or not to approve or consent to an application and makes it clear that a decision to intervene in an application is a decision to determine whether or not the application is to be approved. It is important to note that this provision allows the Commission to delegate the task of making the decision to any person the Commission considers appropriate.
13. Subsection (12) provides that where the Commission following an intervention decides to approve or consent to the application the Commission will record details of the application they have consented to in the Register of Crofts and notify those who would have been notified if the Commission had previously decided not to intervene in the application.
14. Subsection (13) provides that Scottish Ministers may issue guidance to the Commission on what constitutes sustainable development of the local crofting community and requires the Commission to have regard to that guidance in considering whether a proposal would adversely affect that sustainable development of the crofting community affected by the application.
15. Subsection (14) gives Scottish Ministers power to amend the general conditions set out in subsection (9) by means of a statutory instrument. Subsection (15) requires that any such statutory instrument must be approved by means of an order made by resolution of the Parliament.

Section 4: Obtaining of information by Commission

16. **Section 4** amends section 40 of the 1993 Act. It changes section 40(1) to reflect the fact that the Commission will in future have another means of obtaining information about crofts. It changes section 40(1) and (2) so that these provisions of section 40 can also be used to obtain information as specified in the notice from the executor of a crofter. It also inserts new subsections (3), (4) and (5) into section 40. Subsection (3) provides that the Commission can refuse to process any application made to them where information required in connection with that application is not provided. Subsection (4) allows the Commission to alter a requirement to supply information where the original requirement cannot be met although the terms of subsection (3) shall still apply to such modified requirement. Subsection (5) allows the Commission to require the provision of information about a common grazing.

Section 5: Maintenance of and provision of information from the Register of Crofts

17. **Section 5** amends section 41 of the 1993 Act so that a range of information previously not held on the Register of Crofts can be held there. This includes information previously recorded in the Crofters Holding Book. It also qualifies the requirement in

*These notes relate to the Crofting Reform etc. Act 2007 (asp 7)
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that subsection for the Commission to insert, alter or omit entries by stating that the Register is to be kept consistent with the information the Commission has received under the provisions of the Act only in so far as it is practicable. Section 41(3) is replaced by two new subsections which provide for the Register of Crofts to be open to public scrutiny and requires the Commission to supply any person on request with certified extracts from the Register which extracts will be sufficient as evidence of the existence of a Register entry. New section 41(5) provides for the Crofters Holdings Book (previously the responsibility of the Scottish Land Court) to be incorporated in the Register of Crofts.