

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

Section 6: New crofts

18. **Section 6** inserts new sections 3A, 3B and 3C into the 1993 Act to allow the creation of new crofts and the extension of crofting tenure beyond the crofting counties. Section 3A(1) empowers the Commission to constitute land as a croft in response to an application to that effect from the owner of the land in question. Section 3A(1)(b) provides that this can only be done outwith the crofting counties in an area specified by an order. Subsection (2) provides that the Commission may also constitute a tenanted holding as a croft where the applicant is a tenant and if the conditions specified in subsection (12) are met. Subsection (4) provides that the Commission may not constitute a holding as a croft in response to an application under subsection (2) until they are satisfied that the owner of the land has had an opportunity to appeal the application and the tenant has paid the owner any compensation agreed or found to be due for the impact of the change. Subsection (3) adds an administrative stage which the tenant of a holding is required to complete before he applies to the Commission. It requires the tenant to first obtain a certificate from the Land Court confirming his existing status under the Small Landholders legislation.
19. Subsections (5) to (8) specify a process that the Commission are required to follow before deciding whether or not to agree to the application and constitute the land as a croft. Subsection (9) ensures that all or part of an agricultural holding cannot become a croft without the consent of the tenant and that tenant cannot be dispossessed of the tenancy of land as a result of all or part of the holding being designated as a croft. Subsections (10) and (11) provide detail as to the form in which comments by the public on an application (as provided for in terms of subsection (6)) may be made.
20. Subsection (12) specifies the conditions that must be satisfied before a holding outwith the crofting counties can be constituted as a croft on the basis of an application by the tenant. This restricts this possibility of conversion to ensure that only a holding which is held by a natural person under the provisions of Small Landholder legislation will qualify.
21. Subsection (13) provides that an order designating an area outwith the crofting counties as an area in which new crofts may be created must be made by affirmative resolution of the Scottish Parliament.
22. New section 3B makes provision for assessing the amount of compensation to be paid by the tenant to the landlord where an application has been made by a tenant under the provisions of section 3A(2). It specifies that the amount of compensation shall be the difference in the value of the holding under the existing tenure arrangements and its value as a croft. It further specifies that in both instances the value is to be assessed as

the market value likely to be realised where there is a willing seller and a willing buyer and the sale is in each case to the sitting tenant. It also requires that the valuer should take account of the known existence of any third party that might be prepared to pay more for the holding, the potential impact on the value of the land of any sporting lease of the land and any representations made by the owner and the applicant. The valuer must make his decision on the valuation within 6 weeks of appointment.

23. New section 3C makes provision for both the owner or the applicant to appeal an assessment of compensation, made by a valuer under section 3B, to the Lands Tribunal for Scotland and specifies the period in which such an appeal may be made.

Section 7: The statutory conditions

24. **Section 7** makes a number of significant changes to the statutory conditions referred to in section 5 and detailed in Schedule 2 to the 1993 Act including changes to the statutory conditions governing a crofter's use of his croft land and to the ability of crofters and landlords to contract to waive rights conferred on the crofter by that Act. Subsection (1) (a) of section 7 adds a new subsection (1A) to section 5 of the 1993 Act which provides that the landlord can serve notice on the croft tenant where there is a breach of a new condition of tenure (new paragraph 3A of Schedule 2 which is inserted by section 7(2) (b)).
25. **Section 7(1)(b)** inserts new subsections (2A) and (2B) in section 5 of the 1993 Act and provides that where a crofter is doing or not doing something in order to conserve the natural beauty, or the flora and fauna of the locality he is not to be treated as in breach of the statutory conditions. Further subsection (2B) provides that any subsidiary or auxiliary occupation undertaken on the croft and continued after the commencement of the Act should not constitute a breach of the statutory conditions.
26. **Section 7(1)(c)** adds new subsections (3) to (10) to section 5 of the 1993 Act. New subsections (3) to (6) supersede the existing subsection (3) and provide that any future contract or agreement between a crofter and landlord where it deprives the crofter of certain rights, other than in relation to sections 8, 12 to 19, 21 and 37 of the 1993 Act, is void unless it is approved by the Land Court. Once approved by the Land Court, the Court will intimate the matter to the Commission who will register the matter with the Register of Crofts. Any contract or agreement made under sections 8, 12 to 19, 21 and 37 may be similarly registered on intimation. Subsection (6) provides that where a copy of a contract or agreement is entered in that register it will (depending on the terms of the contract or agreement) be binding on the successors to the croft tenancy. This provision is primarily to allow the creation of binding agreements necessary to facilitate energy developments on croft land. However, it also provides the means by which a tenant of a croft can enter into a binding agreement with the landlord undertaking not to exercise his right to buy or limiting the right to assign the croft. It therefore makes it possible for a landowner to create new crofts without the risk of these crofts being subject to the right to buy or assignation to a person whom the landowner considers to be unsuitable as a croft tenant.
27. New subsections (7) to (10) of section 5 relate to the modification of paragraph 3 of Schedule 2 to the 1993 Act provided by section 7(2)(a). That modification allows for a croft to be put to a purposeful use other than agriculture. New subsection (7) specifies that a crofter must seek the consent of the landlord to do so before putting the croft to a purposeful use other than agriculture and if that consent is obtained may put the croft to the new use subject to any conditions attached to that consent. New subsection (8) allows the crofter to apply to the Commission for consent to a proposed purposeful use if the landlord's consent has been asked for and has not been obtained in terms of subsection (7) within 28 days of the application to the landlord. New subsection (9) requires the Commission to consult on the application for consent and check whether any planning or other consents are required for the proposed use and, if so, have been granted before it makes a decision.

28. **Section 7(2)** amends Schedule 2 to the 1993 Act. Subsection (2)(a) amends paragraph 3 of Schedule 2 (the requirement to cultivate a croft). It provides that a crofter can now cultivate the croft or put it to a purposeful use or do both but must do one or the other on every part of the croft. Subsection (2)(i) inserts a definition of “purposeful use” into paragraph 13 of Schedule 2. In order that the amendment to paragraph 3 has no impact on existing arrangements there is a saving provision at section 7(3) to the effect that existing rights relating to ancillary use are unaffected.
29. Subsection (2)(b) inserts 2 new paragraphs into Schedule 2. New paragraph 3A is a new condition that requires a crofter to keep his/her croft in a fit state for cultivation. New paragraph 3B defines some of the measures that might need to be taken to ensure that a croft remains fit for cultivation if not being put to some other purposeful use.
30. Subsection (2)(c) modifies and rewords paragraph 5 to provide a new definition of what constitutes injury to a croft.
31. Subsection (2)(d) inserts in Schedule 2 a definition of what constitutes “relevant notice” by the landlord to the crofter to stop action which would prejudice cultivation or the continuation of a purposeful use.
32. Subsection (2)(f) makes a consequential change to paragraph 7 of Schedule 2 to reflect a change to section 9 of the 1993 Act, relating to the division of a croft, which is detailed at section 10 of the Act.
33. Subsection (2)(h) inserts a new paragraph 11A into Schedule 2 which qualifies the landlord’s rights set out in paragraph 11 of Schedule 2 such that the crofter does not have to tolerate unreasonable exercise of such rights.

Section 8: Complaint as respects breach of the statutory conditions

34. **Section 8** inserts new sections 5A and 5B into the 1993 Act after section 5. New section 5A provides a procedure whereby the Commission may take action in place of the landlord where there has been a breach of the statutory conditions (except for non-payment of rent) and the landlord has not taken action. This gives the Commission power to apply to the Land Court to determine sanctions against the crofter concerned, including terminating the tenancy and declaring the croft vacant. This measure provides the means for dealing with the dereliction of crofts in cases where the landlord has no incentive to act.
35. The legislation continues to allow the landlord to take action against the croft tenant for breach of statutory conditions, but provides an alternative approach whereby the landlord or any other member of the crofting community can complain to the Commission of such a breach. Section 5A(2) provides that if the landlord is not already taking action, then the Commission may apply to the Land Court in connection with the breach. However section 5A(3) requires that the Commission must give the landlord prior notice of an intended application to the Land Court and if the landlord objects in writing within 14 days they may not proceed with the application. Section 5A(4) further requires the Commission to write to the crofter who is alleged to be in breach of the statutory conditions and give that crofter a reasonable time to remedy matters before making the application to the Land Court. Section 5A(2)(b) provides that the application to the Land Court may not be made until that period has expired.
36. Section 5A(5) specifies what the Land Court may do if it is satisfied that the breach of statutory conditions complained about has occurred. The Land Court can order remedy of the breach by a specific time and payment of compensation to the landlord as it thinks fit. Section 5A(6) provides that if a crofter fails to comply with such an order by the Land Court the Commission may apply to the Land Court to have the croft tenancy terminated, the croft declared vacant, and the tenant removed from the croft.
37. New section 5B creates provision whereby, if a crofter neglects or misuses a croft he or she can be readily removed from the tenancy.

38. Subsection (1) makes provisions for the landlord (or the Commission with the consent of the landlord) in cases of misuse or neglect to apply to the Land Court for an order terminating the tenancy, declaring the croft vacant and remove the tenant from the croft. Subsection (2) provides in relation to misuse that prior to making an application to the Court for an order the landlord, or the Commission, must give notice in writing to the crofter of the misuse and offer the crofter an opportunity to end the misuse within 42 days.
39. Subsection (3) provides that if the Land Court is minded to issue an order the crofter will be notified that the order will be issued within 42 days unless the crofter can satisfy the Court before the end of that period that the misuse has been brought to an end. Subsection (4) ensures that any breach, which constitutes neglect of a croft cannot be readily repeated. It provides that if notice has been previously given in accordance with the requirements of subsection (5) and (6) and remedial action taken but the same neglect is repeated within 5 years from the date of the initial application then on further notice being given the crofter will be allowed 42 days to end the neglect and if he fails to do so the landlord or the Commission may apply for an order to terminate the tenancy. If they do so and the Land Court is minded to grant the order then subsection (6) applies.
40. Subsection (5) deals with an application to the Land Court by a landlord, or with the landlord's consent the Commission, where it is alleged that there has been neglect of the croft. It provides that if the Land Court is minded to issue an order the Court will notify the crofter that it is their intention to do so. That notice will indicate that the order will not be issued if (a) the crofter agrees that there has been neglect and (b) by the end of a period of one year the crofter is able to satisfy the Court that the croft is being properly managed. Subsection (6) provides that if the Land Court are minded to issue an order in relation to a repeat application in connection with neglect within 5 years the Court will notify the crofter that it is their intention to do so unless the crofter is able to satisfy the Court within 42 days that the croft is being managed to the standard specified. Subsection (7) defines "misuse" and "neglect". Subsection (8) provides that action taken for conservation purposes may not be construed as neglect. Subsection (9) is a saving provision which provides that if a croft was being used for a purpose which was legitimate before these new provisions come into effect continuation of that use cannot be construed as misuse or neglect.

Section 9: Exchange of crofts or parts of crofts

41. **Section 9** closes a loophole in the current legislation, whereby crofters, with the agreement of their landlord, were able to exchange croft land without the approval of the Commission. While on the face of it this existing practice allows ease of arrangements and is deregulatory, there was concern expressed about the longer term effects of such changes. The new section 4A inserted into the 1993 Act by section 9 requires that an exchange of a croft or parts of a croft requires the consent of the landlord and the Commission. It also requires that the crofters exchanging must also have the same landlord who must also be the owner of any common grazing land affected by the exchange. It provides that the Commission cannot consent to the exchange unless the landlord has consented. The provisions in new section 58A of the 1993 Act (inserted by section 3 of the Act) apply as regards the consent of the Commission with the additional criterion for intervention by the Commission in new section 4A(3) of the 1993 Act being that the proposed exchange would be unfair to either (or as the case may be any) of the crofters involved. Subsection 4A(4) confirms that a new croft is not be created by such an exchange.

Section 10: Division of croft

42. Section 10 of the Act provides a complete replacement for the existing section 9 of the 1993 Act. The principal change is that the landlord's consent to division of the croft is no longer required. In addition the new procedure for obtaining the Commission's consent in new section 58A of the 1993 Act (inserted by section 3 of the Act) applies so that

the Commission is required to make a decision only where there is an objection to the application or the Commission's criteria for intervention apply. The landlord has a right to object to the division of the croft by virtue of the provisions of new section 58A(4). New section 9(3) specifies that the division of a croft has no legal effect until details of the division are recorded in the Register of Crofts. The landlord's financial interests are secured by new section 9(4) which provides that the rent for a new croft created by division of an existing croft is to be agreed between the crofter and the landlord. In the event that they cannot reach agreement section 9(5) provides that either party can apply to the Land Court to have the rents determined by the Land Court with the fees payable in connection with the application being paid by the crofter. It should be noted that the term "subdivision" is replaced by the term "division", because the latter term more accurately describes the situation.

Section 11: Subletting

43. **Section 11** modifies the provisions of sections 27 and 29 of the 1993 Act and repeals section 28 of that Act. The main changes to section 27 are to alter subsection (1) to provide that the maximum duration of a sublet shall be for a period not exceeding 10 years and to replace subsections (3) and (4) with a new subsection (3) which provides the special conditions which will apply when the consent of the Commission is required in terms of new section 58A of the 1993 Act (inserted by section 3 of the Act).
44. **Section 11(2)** repeals section 28 of the 1993 Act, a provision which, had it ever been commenced, would have given the Commission power to impose a sub-tenant on a crofter.
45. **Section 11(3)** amends section 29 of the 1993 Act by inserting new subsections (2A) and (3A). New subsection (2A) provides that it would be a condition of any sublease that the croft tenant must give the subtenant not less than 6 months written notice of an intention by the tenant to assign, exchange or divide the croft and thereby terminate the sublease. New subsection (3A) makes specific provision in relation to the continuation in occupation by the sub-tenant on the death of the crofter.

Section 12: Assignment

46. **Section 12** makes significant changes to the provisions of section 8 of the 1993 Act affecting both family and non-family assignment. The replacement of much of the existing wording of subsection 8(1) removes the requirement that a family assignment must have the landlord's consent. New section 58A of the 1993 Act (inserted by section 3 of the Act) applies to the process of considering an application. The effect of this is that the landlord along with the other persons specified at section 58A(4) have a right to object to an assignment proposal. The anomaly requiring a landlord's permission for a family assignment, but not a non-family assignment, to succeed without Commission approval is replaced by the right (shared with others) to object in both cases, and requires the Commission to consider and make a decision.
47. In the case of an application to assign to a member of the crofter's family (see the definition of what constitutes family membership in section 36 of the Act) the Commission's power to intervene where there is no objection by a person entitled to object is as provided in new section 58A(6) (inserted by section 3 of the Act). However, section 8(2) to 8(4) is replaced by a new subsection (2) inserted by section 12(b) of the Act. The effect is that in the case of an assignment to a person who is not a member of the crofter's family the new section 8(2) inserted by section 12(b) provides a list of additional special conditions which trigger a requirement for the Commission to consider an application.
48. **Section 12(c)** is a technical amendment to section 8(5) of the 1993 Act consequential on the amendment to section 8(1).

49. **Section 12(d)** amends section 8(6) of the 1993 Act so as to allow a transfer of a croft tenancy to take place on dates other than Martinmas or Whitsunday.

Section 13: Bequest of tenancy of croft

50. This section amends the provisions of section 10 of the 1993 Act.
51. **Section 13(2)** amends section 10(1) to make it clear that a crofter may only bequeath the tenancy of his croft to a “natural person”. The tenancy must be left to an individual and not to a company or institution.
52. **Section 13(3)** amends section 10(2). Section 13(3)(a) introduces a requirement that the legatee must send a copy of the notice of the bequest to the Commission in addition to the current requirement that notice be given to the landlord. Sections 13(3)(b) and (e) extend by 2 months the periods available to the legatee to give notice of a bequest. Section 13(3)(c) emphasises that whether a cause is accepted to be “unavoidable” is a matter for the Commission to determine. Section 13(3)(d) clarifies that a legatee, as well as giving notice to the landlord within the further 6 month period for notification must also copy the notice to the Commission. Section 13(3)(h) repeals the latter half of section 10(2) which is replaced by the new sections inserted by section 13(4).
53. **Section 13(4)** creates 4 new subsections to be inserted after section 10(2). New section 10(2A) allows the executor to give notice of the bequest of the tenancy in addition to the current provision in section 10(2) requiring the legatee to do so. New section 10(2B) provides that the legatee will (provided there is no objection from the landlord in the case of a non-family legatee) take control of the tenancy on the date on which the Commission indicate that the information that they require under the provisions of new section 10(2C) has been provided. It also provides that when the legatee takes over the tenancy it will be as if the transfer took place on the date of the death of the previous tenant.
54. New section 10(2C) provides that on receipt of notice of a bequest from a legatee or executor the Commission must notify the legatee of the information required by the Commission to update the Register of Crofts. In the case of a legatee who is not a member of the deceased crofter’s family they will only do so if there has not been an objection from the landlord and in such cases must also indicate in the notification to the legatee that there has been no objection.
55. New section 10(2D) requires the Commission to notify the legatee once they are satisfied that the information set out in the notification given under section 10(2C) has been provided.
56. **Section 13(5)** replaces section 10(3) with a new but similar provision setting out the detail of how a landlord should exercise the right to object to a bequest to a person other than a member of the deceased crofter’s family.
57. **Section 13(6)** replaces section 10(4)(b) with a new provision which retains the existing requirement to notify and adds a provision to the effect that the legatee should be notified by the Commission of the need to provide information to be entered in the Register of Crofts.
58. **Section 13(7)** inserts seven new subsections into section 10 after subsection (4). Section 10(4A) provides that, when the legatee has provided the information that new section 10(4)(b) requires the legatee to supply, the Commission must notify the legatee that this has been done. On receipt of that notice the legatee is empowered to take control of the tenancy except where there has been an appeal under the provisions of section 10(4B). New section 10(4B) sets out the arrangements for appealing a decision made by the Commission in accordance with the provision of section 10(4). It provides that appeal shall be by way of a stated case, on one or more of the grounds mentioned in new section 52A(3).

59. New section 10(4C) inserted into the 1993 Act introduces (in relation to appeals regarding bequests of croft tenancy) a power of open remit for the Land Court. After hearing an appeal the Land Court can confirm the decision, direct the Commission to come to a different decision or remit a case back to the Commission without directing the Commission as to what to do. New section 10(4D) explains what happens where the Land Court finds on appeal that a bequest should be upheld.
60. New section 10(4E) introduces a new provision to the effect that (a) a legatee accepting the bequest of a tenancy assumes responsibility for debts incurred by the deceased as former tenant of the croft and (b) the executor can recover reasonable expenses relating to the management of the tenancy from the legatee, including arrangements for the settlement of any disputes in the Land Court.
61. New section 10(4F) makes it clear that a croft tenancy is an asset of the deceased crofter's estate and so liable to be set against expenses and debts of the estate. This would require the legatee to contribute to the settlement of such expenses and debts if the legatee chooses to retain the tenancy.

Section 14: Prior rights, on intestacy, in relation to tenancy of croft

62. The whole of section 14 consists of amendments to section 8 of the 1964 Act. These amendments extend the prior rights of a spouse or civil partner of a crofter to cover the whole of the croft rather than the croft house alone and convey the same rights to a cohabitant where there is no spouse or civil partner (a civil partnership is defined in section 1 of the Civil Partnership Act 2004 as a relationship between two people of the same sex which is formed when they register as civil partners of each other in accordance with provisions of that Act). (A cohabitant is defined for this purpose in section 14(5) which inserts a definition of "cohabitant" into section 8(6) of the 1964 Act). The effect of these changes is to afford a spouse or civil partner or cohabitant of a deceased crofter the same degree of protection in retaining the croft tenancy as the 1964 Act affords the spouse or civil partner of any other individual in retaining a dwelling-house owned by that person. This essentially means that where there is a house on the croft and the value of the relevant interest in that house is below the statutory threshold (currently £130,000), the spouse or civil partner or cohabitant of the deceased crofter is entitled to the croft tenancy (including the house) up to that amount. Where the value is above that threshold the entitlement is to the sum specified by order under section 8(1) (b) of the 1964 Act.
63. The aforementioned changes are made by section 14(3) which provides new sections 8(2A) and 8(2B) in the 1964 Act. New subsection (2A) qualifies the existing provision in subsection (2) of that Act so as to provide that a croft tenancy is treated as being subject to prior rights in the same way as a house owned or leased under other forms of tenure. (Prior rights are the statutory rights of a spouse on intestacy to claim the house (with furniture and plenishings up to a certain value) and a fixed sum of money depending on whether or not the deceased is also survived by issue). New subsection (2B) sets out what happens when there is more than one property over which a spouse, civil partner or cohabitant could exercise a prior right.
64. **Section 14(4)** modifies section 8(4) of the 1964 Act to distinguish between properties to which prior rights apply which are crofts and those that are not.

Section 15: Transfer of tenancy of croft by executor: amendment of section 16 of the Succession (Scotland) Act 1964

65. This section modifies the provisions of section 16 of the 1964 Act relating to the transfer of tenancy by an executor to distinguish between transfer of a croft tenancy which will require the consent of the Commission and transfers of the tenancy of other leases which require the consent of the landlord. This is achieved mainly through section 15(3) which inserts new subsection (2A) into section 16 of the 1964 Act. The amendment to

section 16(9) of the 1964 Act effected by section 15(4) clarifies the definition of croft for the purposes of the 1964 Act.

Section 16: Transfer of tenancy of croft by executor: special provision relating to the 1993 Act

66. This section inserts a new section 16A into the Succession (Scotland) Act 1964. The overall effect is to empower executors to transfer croft tenancies as they think fit subject to the same requirements as apply where a crofter assigns the tenancy.
67. New section 16A(1) provides that the provisions of section 58A of the 1993 Act (inserted by section 3 of the Act) apply to a transfer covered by new section 16(2A). New section 16A(2) sets down the criteria for intervention by the Commission which will apply where there is an application to assign the tenancy of the deceased crofter to a person who is not a member of the deceased crofter's family. New section 16A(3) provides that if the executor does not seek the consent of the Commission before transferring the tenancy the transfer will be null and void and the Commission can declare the croft vacant. New section 16A(4) provides the process required to give effect to a transfer if the Commission consent to it.
68. New section 16A(5) provides for an appeal against a Commission decision to consent to or refuse consent to the transfer. It indicates the grounds on which an appeal can be made. New section 16A(6) states who may appeal against the decision of the Commission. New section 16A(7) sets a 42 day time limit for lodging an appeal. New section 16A(8) provides that the Land Court may uphold the Commission's decision or direct that it should come to a different decision.

Section 17: Amendment of section 11 of the 1993 Act

69. **Section 17** makes a number of amendments to section 11 of the 1993 Act to modify the arrangements that currently apply where the executor in an intestacy fails to find a new tenant. There are a number of changes but the most significant is that the Commission no longer have a role in identifying a tenant from amongst those who might be entitled to inherit the intestate estate of the deceased crofter. Instead, simpler arrangements are put in place, including a declaration by the Commission that the tenancy has fallen vacant. If the tenancy is declared vacant the landlord is then required to re-let in accordance with the provisions of section 23 of the 1993 Act.
70. **Section 17(2)** amends section 11(2) of the 1993 Act so as to increase the time limit available to an executor to notify the landlord of the particulars of a proposed new tenant to 12 months from the relevant date, thus giving the executor more time to find a suitable tenant.
71. **Section 17(3)** repeals section 11(3)(a) of the 1993 Act. This provision is no longer necessary because the change made to section 10 of the 1993 Act by section 13(3) of the Act means that the Commission are informed of a bequest at the same time as the landlord. The change made to the 1993 Act by section 17(3)(b)(i) of the Act is consequential upon the repeal of section 11(3)(a) of that Act. The change made to the 1993 Act by section 17(3)(b)(ii) of the Act has the effect of giving the executor up to 2 months to notify the Commission of the death of the crofter before the 12 month period allowed for the transfer of the tenancy starts. A failure to notify however means that the 12 month period will start at the date of death of the crofter. The Bill, therefore, creates a time penalty for a failure to notify the Commission.
72. **Section 17(4)** deletes subsections (4) to (9) of section 11 of the 1993 Act (measures that give the Commission power to get involved in finding a member of the deceased crofter's family who is suitable to be the new croft tenant and nominating that person as the tenant). In place of these provisions it puts in place new subsections (4) to (8) setting out a simpler process by which if a suitable tenant is not found by the executor

the Commission will eventually declare the croft vacant and thus available for re-let by the landlord.

73. New section 11(4) of the 1993 Act requires the Commission to notify the landlord, the executor and, if there is no executor, such persons as the Commission know of and believe might have rights in the intestate estate that the 12 months from the relevant date has expired and the Commission propose to terminate the tenancy and declare the croft vacant. This provision does not require the Commission to take steps to try and identify every person who might be entitled to claim rights in the intestate estate. The Commission are only required to notify the individuals they were aware of at that time. That notice would invite those to whom it was sent to make representations on the proposal within a month of the date of the notice.
74. New section 11(5) of the 1993 Act allows the Commission, after considering any representations in terms of section 11(4), to proceed to terminate the tenancy, if they consider it appropriate to do so, providing that the tenancy had not been terminated already, the executor had not planned to transfer the tenancy or there was not someone entitled to exercise prior rights in relation to the tenancy.
75. New section 11(6) of the 1993 Act allows the Commission to issue a further termination notice under the provisions of new section 11(4) if they conclude that the tenancy is not or cannot be transferred. New section 11(7) allows the Commission to terminate the tenancy following that further notice if they consider it appropriate to do so.
76. New section 11(8) of the 1993 Act requires the Commission on deciding to terminate a tenancy to give notice to the same people as received notice under new section 11(4). The notice given to the landlord requires the landlord to submit re-letting proposals. Section 11(8) also provides that when that notice is given the rights any person may have in relation to the tenancy are terminated and sets out the landlord's liability to pay the executor the value of the permanent improvements on the croft.
77. [Section 17\(5\)](#) amends section 11(10) of the 1993 Act to leave only a definition of the value of improvements for the purposes of new section 11(8)(c). The effect of the amendment is to end the requirement for the landlord to repay from the value of the improvements any sums due by the deceased crofter to the Scottish Ministers.
78. [Section 17\(6\)](#) is a technical amendment necessary as a consequence of other changes to section 11.

Section 18: Determination of the Land Court as to croft boundaries

79. [Section 18](#) introduces a new section 53A into the 1993 Act. The purpose of this section is to reduce the future incidence and cost of disputes over croft boundaries. Section 53(1)(c) of the 1993 Act provides that the Land Court has power to settle any question relating to the boundaries of crofts. However, croft boundaries are not well documented and therefore it is often difficult to determine what these boundaries are. New section 53A provides that where the evidence is insufficient to allow the boundary to be clearly determined, the Land Court shall have the power to declare the boundary as it considers appropriate.

Section 19: Access to croft

80. New section 53B is inserted into the 1993 Act after new section 53A referred to above. New section 53B(1) provides that a crofter can apply to the Land Court for an order granting access from a public road to his croft, where it would be reasonable for the access to be taken by a route lying wholly over land owned by his landlord. Subsection (2)(a) to (c) provides that where the Land Court make such an order on an application under subsection (1) it may make provision regarding the access route over the land, arrangements under which the crofter may carry out works and conditions to which exercise of that access may be subject.

Section 20: Reorganisation schemes

81. **Section 20** amends sections 38 and 39 of the 1993 Act, inserts a new section 38A and repeals Schedule 4 to the 1993 Act. These measures together change the approach to reorganisation of crofting townships by reducing timescales and allowing for more extensive consultation. The control exerted by Scottish Ministers under the current legislation is largely replaced by detailed provisions aimed at ensuring that interested parties are made aware of the scheme proposals and final version, coupled with a right of appeal to the Land Court. Scottish Ministers have only a limited role in the process and that is where it might involve acquisition of land which is not in crofting tenure.
82. **Section 20(2)(a)** amends section 38(1) so that it is clear that the initial scheme prepared by the Commission is a provisional proposal. **Section 20(2)(b)** inserts new section 38(1A) which requires the Commission to notify the persons identified in new section 38(10) of the intention to prepare a provisional draft reorganisation scheme.
83. **Section 20(2)(c)** replaces section 38(3) of the 1993 Act with new provisions for reorganisation schemes. The main change is the addition of section 38(3)(a) which is a new provision to allow the Commission to include land which is not croft land in the scheme but only if Scottish Ministers have consented to the inclusion of that land.
84. **Section 20(2)(e)** replaces sections 38(5) to (7) of the 1993 Act with new sections 38(5) to (11). This changes the process for preparing reorganisation schemes and removes the previous requirement that the scheme must be confirmed by Scottish Ministers. The main change introduced by new section 38(5) of the 1993 Act is to require the Commission to send a copy of the scheme to and serve notice on the range of people identified in new section 38(10). The notice allows those to whom such documents are sent two months in which to comment (previously four months). The recipients of such notices are not asked at this stage to indicate specifically whether or not they were in favour of the scheme. The notice must also indicate a local venue where, and times when, maps and plans of the reorganisation can be seen.
85. Where the Commission have received comments on the provisional draft and are still satisfied that there ought to be a reorganisation new section 38(6) of the 1993 Act requires them to prepare a draft scheme which takes account of the comments. The Commission, on completion of that draft, are required to issue copies and give notice as provided in new section 38(5) of the 1993 Act. The period for responding is one month and on this occasion the persons to whom the notice is sent are asked to indicate whether or not they are in favour of the draft scheme.
86. New section 38(7) of the 1993 Act provides that a failure to respond to the notice given under new section 38(6) is deemed to be an intimation that the person who failed to respond is in favour of the scheme.
87. New section 38(8) of the 1993 Act provides for the Commission to finalise a reorganisation scheme provided the majority of the crofters previously given notice of the draft scheme have intimated that they are in favour of the scheme. It also provides that the finalised scheme must be copied to all the persons previously given notice of the draft scheme and they are again given notice of where and when maps and plans can be inspected. In addition the notice advises of the new right to appeal the decision to reorganise the township which section 20(3) of the Act provides (see below).
88. New section 38(9) provides that if the Commission proceed with the preparation of a reorganisation scheme in accordance with new section 38(8)(a) that means that the Commission have decided to reorganise the township and therefore a decision which can be appealed has been made.
89. **Section 20(3)** inserts a new section 38A into the 1993 Act. New section 38A(1) specifies that any tenant of a croft in the township, the landlord of any such croft, the owner of any associated common grazing or the owner of any land which is not croft land but is included in the scheme is able to appeal a Commission decision to reorganise a township

or the reorganisation scheme or the preparation of a scheme. It further specifies that the appeal by way of a stated case, on one or more of the grounds mentioned in new section 52A(3), is to the Land Court and must be lodged within 42 days of the date a copy of the reorganisation scheme was issued to the appellant under the provisions of new section 38(8).

90. New section 38A(3) of the 1993 Act sets out what the Land Court may determine in an appeal. It also provides that if the Court requires the Commission to modify the scheme the Commission must send a copy of the modified scheme to all those who previously had an opportunity to comment on the scheme.
91. [Section 20\(4\)](#) amends section 39 of the 1993 Act. Section 24(4)(a) replaces section 39(1) with a new version, the effect of which is that instead of the Commission, as at present, having a duty to proceed with a reorganisation when the scheme is approved by Scottish Ministers the Commission will instead be constrained not to start to implement the scheme until the period allowed for lodging an appeal has ended, every appeal has been decided and any modification required as a consequence of a successful appeal effected. Section 20(4)(a) also inserts a new section 39(1A) into the 1993 Act. This requires the Commission to give effect to the reorganisation in accordance with the scheme previously prepared (or modified where required to do so by the Land Court on appeal).
92. [Sections 20\(4\)\(b\)](#) and (d) make amendments to sections 39(3) and (7) of the 1993 Act and section 20(4)(c) adds new subsection (5A) to take account of the fact that the Commission will no longer require to have the scheme confirmed by the Scottish Ministers.
93. [Section 20\(4\)\(e\)](#) amends section 39(8) of the 1993 Act so that the role of Scottish Ministers in serving notice on occupiers and owners is taken on by the Commission. It also provides for copies of these notices to be sent to Scottish Ministers.

Section 21: Meaning of croft

94. Section 3(1) of the 1993 Act is amended by the insertion of new provisions. New subsection (cc) recognises the existence of crofts created under the provisions of new section 3A. New subsection (1)(cd) recognises land reverting back to croft land under new section 20(1B) and 21A(1) of the 1993 Act as croft land. New subsections (1)(f) and (1)(g) extend the definition of croft to include any holding which at the date of commencement of this section of the Act or on any subsequent date has been entered on the Register of Crofts for more than 20 years. These provisions however exclude a holding that is the subject of an ongoing dispute in any court as to its status as a croft at the 20th anniversary of the registration of that holding in the Register of Crofts.