



# Crofting Reform etc. Act 2007

## 2007 asp 7

### PART 2

#### CROFTS

#### **8 Complaint as respects breach of the statutory conditions**

After section 5 of the 1993 Act, there is inserted—

##### **“5A Complaint as respects breach of the statutory conditions**

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, the landlord or any member of the crofting community in the locality of the croft may complain to the Commission that such a breach (other than a breach of the condition as to payment of rent) has occurred.
- (2) Provided—
  - (a) that no proceedings—
    - (i) such as are mentioned in subsection (1) above; or
    - (ii) under section 5B of this Act,have been initiated; and
  - (b) that the period allowed the crofter by virtue of subsection (4) below has elapsed,the Commission may make an application to the Land Court in relation to the breach; but this subsection is subject to subsection (3) below.
- (3) Except where the complaint was by the landlord, the Commission shall give him written notice of their intention to make the application; and if within 14 days after receipt of that notice he gives them intimation that he objects, being intimation of the description given in subsection (7) below, they shall not proceed with the application.
- (4) Before making the application, the Commission shall give written notice to the crofter of the breach complained of and give him the opportunity to remedy it within such reasonable period as they shall specify in the notice.

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- (5) Where, on an application under subsection (2) above, the Land Court is satisfied that the breach complained of has occurred, it may—
- (a) order that the breach be remedied and specify a time within which that must occur; and
  - (b) make such order regarding the payment of compensation by the crofter to the landlord as it thinks fit.
- (6) Where an order under subsection (5)(a) above is not complied with, the Commission may apply to the Land Court for an order—
- (a) terminating the tenancy;
  - (b) declaring the croft to be vacant; and
  - (c) for the removal of the tenant from the croft.
- (7) The description is that the intimation is given in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).
- (8) For the purposes of subsection (7) above (and without prejudice to the generality of that subsection), an intimation is to be treated as given in writing where it is—
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.

### **5B Termination of tenancy for misuse or neglect**

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, if the crofter—
- (a) misuses; or
  - (b) neglects,
- the croft, the landlord or, with the consent of the landlord, the Commission may apply to the Land Court for an order—
- (i) terminating the tenancy;
  - (ii) declaring the croft to be vacant; and
  - (iii) for the removal of the tenant from the croft.
- (2) Before making an application by virtue of paragraph (a) of subsection (1) above the landlord, or as the case may be the Commission, shall give written notice to the crofter of the misuse complained of and give him the opportunity to end that misuse within a period of 42 days commencing with the day on which notice is given.
- (3) Where, on an application made by virtue of paragraph (a) of subsection (1) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the misuse has been brought to an end.
- (4) If the circumstances are that an application made by virtue of paragraph (b) of subsection (1) above (in this section, the “current application”) is being made

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within 5 years after another application made by virtue of that paragraph as respects the croft, and that other application resulted in notification being given to the crofter under subsection (5) or (6) below, then before making the current application the landlord, or as the case may be the Commission, shall give written notice to the crofter of the neglect complained of and give him the opportunity to end that neglect within a period of 42 days commencing with the day on which notice is given.

- (5) Where, on an application made by virtue of paragraph (b) of subsection (1) above in circumstances other than are mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if—
- (a) the crofter agrees forthwith that there has been neglect and undertakes to end that neglect; and
  - (b) by the end of a period of one year commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (6) Where, on an application made by virtue of paragraph (b) of subsection (1) above in the circumstances mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (7) For the purposes of subsection (1) above, a crofter—
- “misuses” a croft where he wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is duly consented to by virtue of section 5(7) of this Act;
  - “neglects” a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the Schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).
- (8) But where the crofter, for the purpose of conserving—
- (a) the natural beauty of the locality of the croft; or
  - (b) the flora and fauna of that locality,
- engages in, or refrains from, an activity, his so engaging or refraining is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (9) If, immediately before the coming into force of section 8 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (10) The Scottish Ministers may by order made by statutory instrument amend the definition of “neglects” in subsection (7) so as to substitute different standards for those for the time being mentioned in that subsection.

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- (11) A statutory instrument containing an order under subsection (10) shall not be made unless a draft of the instrument has been—
- (a) laid before; and
  - (b) approved by resolution of, the Scottish Parliament.”

**Commencement Information**

**II** S. 8 in force at 25.6.2007 by S.S.I. 2007/269, art. 2, **Sch.**

**Changes to legislation:**

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