



Crofters (Scotland) Act 1993

1993 CHAPTER 44

Meaning of croft and crofter

3 Meaning of croft and crofter.

- (1) Subject to subsection (2) below [^{F1}and to section 3ZA(2)(a)] , in this Act “croft” means—
- (a) as from 1st October 1955, every holding (whether occupied by a landholder or not) situated in the crofting counties to which any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 relating to landholders applied;
 - (b) as from 1st October 1955, every holding situated as aforesaid to which section 32 of the ^{M1}Small Landholders (Scotland) Act 1911 applied (statutory small tenants);
 - (c) as from the date of registration, every holding situated as aforesaid which was constituted a croft by the registration of the tenant thereof as a crofter in the Crofters Holdings Book under section 4 of the 1955 Act;
- [^{F2}(cc) as from the date of registration, every holding situated—
- (i) as aforesaid; or
 - (ii) as is mentioned in subsection (1)(b) of section 3A of this Act, and registered by virtue of an application under that section;
- (cd) as from the date of reversion, every holding reverting under section 20(1B), or by virtue of section 21A(1), of this Act;]
- (d) as from the date of the direction, every holding situated [^{F3}in the crofting counties] which was constituted a croft by a direction of the Secretary of State under section 2(1) of the 1961 Act;
 - (e) as from the date of entry, every holding entered in the register of crofts by the Commission in accordance with their decision under section 15(4) of the 1955 Act where—
 - (i) the decision was notified to the landlord and the tenant of the holding;and

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- (ii) neither the landlord nor the tenant successfully challenged the decision on an application for a declarator as to the status of the tenant made to the Land Court within 2 months of the giving of such notification.
- [^{F4}(f) as from the relevant commencement date, every holding—
- (i) entered in the Register of Crofts on that date which has been so entered for a continuous period of at least twenty years ending with that date; and
- (ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is on that date pending before any court;
- (g) as from the date twenty years after registration, every holding—
- (i) entered in the Register of Crofts for a continuous period of twenty years ending after the relevant commencement date; and
- (ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is at the end of that period pending before any court]
- [^{F5}(1A) In paragraphs (f) and (g) of subsection (1) above, “the relevant commencement date” is the date on which section 21 of the Crofting Reform etc. Act 2007 (asp 7) comes into force.]
- (2) Subsection (1) above is without prejudice to the effect of—
- (a) section 24(1) of this Act and the corresponding provision of the 1955 Act which is repealed by this Act (that is to say section 12(4));
- (b) a direction under section 24(2) or (3) [^{F6}or 24B(1)] of this Act and the corresponding provisions of the 1955 Act which are repealed by this Act (that is to say section 16(7) or (9)).
- (3) [^{F7}Subject to section 3ZA(2)(c),] In this Act “crofter” means the tenant of a croft.
- (4) For the purposes of this Act—
- (a) any right in pasture or grazing land held or to be held by the tenant of a croft, whether alone or in common with others, and
- (b) any land comprising any part of a common grazing which has been apportioned for the exclusive use of a crofter under section 52(4) of this Act, and,
- (c) any land held runrig which has been apportioned under section 52(8) of this Act,
- shall be deemed to form part of the croft.
- (5) For the purposes of this Act, where—
- (a) a crofter has acquired his entire croft other than any such right or land as is referred to in subsection (4) above; or
- (b) any person, not being a crofter, has obtained an apportionment of any land under section 52 of this Act,
- then the person referred to in paragraph (a) or (b) above shall be deemed to hold the right or land referred to therein in tenancy until held otherwise and that right or land shall be deemed to be a croft.

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Meaning of croft and crofter. (See end of Document for details)

Textual Amendments

- F1** Words in s. 3(1) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 22(1)(a), 57(2)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2
- F2** S. 3(1)(cc)(cd) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 21(a)(i), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F3** Words in s. 3(1)(d) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 21(a)(ii), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F4** S. 3(1)(f)(g) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 21(a)(iii), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F5** S. 3(1A) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 21(b), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F6** Words in s. 3(2)(b) inserted (retrospective to 1.10.2011) by Crofting (Amendment) (Scotland) Act 2013 (asp 10), **ss. 3, 6, sch. para. 1(2)**
- F7** Words in s. 3(3) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 22(1)(b), 57(2)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2

Marginal Citations

- M1** 1911 c. 49.

[^{F8}3ZA Registered crofts

- (1) This section applies where a holding situated—
- in the crofting counties; or
 - as is mentioned in section 3A(1)(b),
- is registered in the Crofting Register.
- (2) For the purposes of this Act—
- the holding is, from the date of registration, a croft;
 - the land which comprises the croft (including any right or land mentioned in section 3(4)) is determined by the description of that land in the registration schedule of the croft; and
 - from the date of registration, any person for the time being entered in the registration schedule of the croft as the tenant of the croft is a crofter.
- (3) Section 3 (other than subsection (2)) does not apply.
- (4) Section 3(2) applies to subsection (2)(a) of this section as it applies to subsection (1) of section 3.
- (5) Nothing in this section affects whether, before the date of registration, the holding was a croft or any person was the tenant of it.]

Textual Amendments

- F8** S. 3ZA inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 22(2), 57(2)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Meaning of croft and crofter. (See end of Document for details)

[^{F9}3A New crofts

- (1) The Commission shall have power, on the application of the owner of any land situated—
- (a) in the crofting counties; or
 - (b) in an area outwith the crofting counties which is, by order made by statutory instrument, designated for the purposes of this paragraph by the Scottish Ministers,
- to constitute the land as a croft ^{F10}....
- (2) The Commission shall have power—
- (a) on the application of the tenant of any holding situated as is mentioned in subsection (1)(b) above; and
 - (b) provided that subsection (3) below is complied with and that the conditions set out in subsection (12) below are met,
- to constitute the holding as a croft ^{F11}....
- (3) Any application under subsection (2) above must be accompanied by a certificate of the Land Court to the effect that the Court is satisfied that, as at the date of the certificate—
- (a) the tenancy of the holding is one to which—
 - (i) section 32 of the Small Landholders (Scotland) Act 1911 (c. 49) applies; or
 - (ii) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies; and
 - (b) no part of the holding is leased other than as a tenancy mentioned in paragraph (a) above.
- ^{F12}(4)
- (5) The Commission shall, on receipt of an application under subsection (1) or (2) above, give public notification of it.
- (6) Notification under subsection (5) above shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.
- (7) After the period mentioned in subsection (6) above has elapsed the Commission shall—
- (a) determine whether to exercise their power under subsection (1) or as the case may be (2) above; and
 - (b) give public notification of that determination.
- (8) In so determining, the Commission shall have regard to—
- (a) such comments, if any, as are duly made by virtue of subsection (6) above;
 - (b) the public interest and as the case may be the interests of the crofting community in the locality of the land; and
 - (c) whether social or economic benefits might be expected as a consequence of so constituting it.
- (9) No application is to be made under subsection (1) above in respect of an agricultural holding occupied by a tenant where—
- (a) the tenancy is—

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- (i) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)); or
 - (ii) a short limited duration tenancy^{F13}, limited duration tenancy, modern limited duration tenancy or repairing tenancy] (within the meaning of that Act); or
- (b) it is competent for the tenant to make an application under subsection (2) above,
- if the written agreement of the tenant has not been obtained; and on such a holding being constituted as a croft under subsection (1) above the tenant shall be entitled (unless not a natural person) to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.
- (10) The description is that the comments are made 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).
- (11) For the purposes of subsection (10) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.
- (12) The conditions are—
- ^{F14}(a)
 - (b) that the tenant is a natural person; and
 - (c) that such fixed equipment on the holding as is necessary to enable the tenant to cultivate the croft is not provided by the landlord.
- (13) An order under subsection (1)(b) above is not made unless a draft of the statutory instrument containing the order has been—
- (a) laid before; and
 - (b) approved by a resolution of,
the Scottish Parliament.

Textual Amendments

- F9** Ss. 3A-3C inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 6, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F10** Words in s. 3A(1) repealed (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), ss. 23(2), 57(2) (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 2)
- F11** Words in s. 3A(2) repealed (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), ss. 23(2), 57(2) (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 2)
- F12** S. 3A(4) repealed (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), ss. 23(3), 57(2) (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 2)
- F13** Words in s. 3A(9)(a)(ii) substituted (30.11.2017) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), sch. 2 para. 4(2) (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 9)
- F14** S. 3A(12)(a) repealed (22.12.2010) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), sch. 4 para. 3(4) (with s. 57(4)); S.S.I. 2010/437, art. 3, sch. (with art. 4)

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3AA **Registration of new crofts**

- (1) This section applies where the Commission make a determination to exercise their power under section 3A(1) or, as the case may be, (2), to constitute land or, as the case may be, a holding as a croft.
- (2) The application for registration of the land or holding in the Crofting Register must not be forwarded to the Keeper under section 7(3)(b) of the Crofting Reform (Scotland) Act 2010 (asp 14)—
- (a) until the period mentioned in section 52A(2)(b) has expired without any appeal to the Land Court being made; or
 - (b) where such an appeal is made, until it is abandoned or the Court confirms the Commission's determination under section 3A(1) or, as the case may be, (2).
- (3) In the case of an application for registration of a holding in relation to which a determination under section 3A(2) is made, the Commission must not forward the application unless they are satisfied—
- (a) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being constituted as a croft and that the amount has been duly paid;
 - (b) that the applicant and the owner have agreed that no amount in compensation is to be so payable; or
 - (c) that any such amount found, by virtue of section 3B, to be so payable has been duly paid.]

Textual Amendments

- F9** Ss. 3A-3C inserted (25.6.2007) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 6**, 43(3) (with **ss. 40**, 43(2)); [S.S.I. 2007/269](#), art. 2, sch.
- F15** **S. 3AA** inserted (30.11.2013) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 23(4)**, 57(2) (with **s. 57(4)**); [S.S.I. 2012/288](#), art. 3(1)(c) (with sch. 2 para. 2)

3B Compensation for constituting holding outwith crofting counties as croft on application of tenant

- (1) Where, in relation to an application under subsection (2) of section 3A of this Act, there is no such agreement as is mentioned in [F16section 3AA(3)(a) or (b)] , the compensation payable by the applicant to the owner in compensation for the holding being constituted as a croft is to be the difference between—
- (a) the value of the holding assuming that it is not to be so constituted; and
 - (b) its value assuming that it is so constituted,
- and is to be assessed by a valuer appointed by the applicant and the owner.
- (2) But where the applicant and the owner are unable to agree as to such an appointment the valuer is to be appointed by the Land Court or by a person nominated by the Court.
- (3) The valuer is to assess the value of the holding—
- (a) as at the date of the relevant application under section 3A(2);
 - (b) having regard to the value that would be likely to be agreed between a reasonable buyer and seller of such a holding assuming—
 - (i) that the buyer and seller are, as respects the transaction, willing; and

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- (ii) that the buyer is a sitting tenant;
 - (c) taking account, in so far as a buyer and a seller of the holding would do so, of any factor attributable to the known existence of a person who (not being the applicant) would be willing to buy the holding at a price higher than other persons because of a characteristic of the holding which relates peculiarly to that person's interest in buying it; and
 - (d) taking account of the terms and conditions of any lease of sporting interests affecting the land.
- (4) The valuer is to invite the owner and the applicant to make written representations about the valuation of the holding under this section and is to have regard to any such representation.
- (5) The valuer may—
- (a) enter onto land; and
 - (b) make any reasonable request of the owner or the applicant,
- for the purpose of any assessment under this section.
- (6) The valuer must, within 6 weeks after being appointed, send to the owner and the applicant a notice in writing specifying the compensation payable and setting out how its amount was calculated.
- (7) The expenses of the valuer accrued in carrying out his functions under this section are to be met by the applicant.
- (8) In this section “valuer” includes two valuers with an oversman.

Textual Amendments

- F9** Ss. 3A-3C inserted (25.6.2007) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), ss. 6, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F16** Words in s. 3B(1) substituted (30.11.2013) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), ss. 23(5), 57(2) (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 2)

3C Appeal against assessment under section 3B

- (1) The owner or the applicant may appeal to the Lands Tribunal for Scotland against an assessment carried out under section 3B.
- (2) An appeal under this section—
- (a) shall state the grounds on which it is made; and
 - (b) shall not be lodged more than 21 days after the date of the notice under section 3B(6) of this Act.
- (3) In an appeal under this section, the tribunal may reassess any value (and any factor affecting any value).
- (4) The valuer may be a witness in the appeal proceedings.
- (5) And in those proceedings, in addition to the owner and the applicant, any creditor in a standard security over the land or any part of it is entitled to be heard.
- (6) The tribunal is to give reasons for its decision on an appeal under this section and is to issue a written statement of those reasons.

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(7) The decision of the tribunal in an appeal under this section is final.]

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Textual Amendments

F9 Ss. 3A-3C inserted (25.6.2007) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 6**, 43(3) (with **ss. 40**, 43(2)); [S.S.I. 2007/269](#), art. 2, sch.

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