



# Crofters (Scotland) Act 1993

## 1993 CHAPTER 44

### *Reorganisation schemes*

#### **38 Reorganisation schemes.**

(1) Where in relation to any township the Commission—

- (a) either of their own accord or on representations made to them by a crofter who is the tenant of a croft situated in the said township or by the landlord of such a croft or by a grazings committee appointed under section 47 of this Act in respect of common grazings shared in by any such crofter, and
- (b) after such consultation as is reasonably practicable with the tenants and the landlords of crofts situated in the township and with any grazings committee appointed as aforesaid, and
- (c) after making such inquiries as they think fit,

are satisfied that the township ought to be reorganised in order to secure the preservation or the better development thereof, they may prepare a [<sup>F1</sup>provisional] draft of a scheme (in this Act referred to as a “reorganisation scheme”) for the reorganisation of the township.

[<sup>F2</sup>(1A) Before proceeding to prepare a provisional draft reorganisation scheme the Commission must give intimation in writing to each of the persons mentioned in subsection (10) below that the Commission are satisfied as is mentioned in subsection (1) above and that they intend so to proceed.]

(2) A reorganisation scheme shall provide for the re-allocation of the land in the township in such manner as is, in the opinion of the Commission, most conducive to the proper and efficient use of that land and to the general benefit of the township, so, however, that under the scheme every crofter who is the tenant of a croft situated in the township and who so wishes shall be granted the tenancy of a croft and that such croft shall—

- (a) if the crofter so wishes, include any dwelling-house which formed part of the croft of which he was tenant immediately before the date on which the scheme was put into effect, and
- (b) if he so wishes, be of a value not less than that of the croft of which he was tenant as aforesaid.

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- [<sup>F3</sup>(3) A reorganisation scheme may, if the Commission—
- (a) obtain the prior written consent of the Scottish Ministers, make provision with respect to the inclusion of any land in the vicinity of the township, being land to which this Act does not apply, which in the opinion of the Commission ought to be used for the enlargement of crofts in the township or of a common grazing used exclusively, or shared in, by the township;
  - (b) think fit, make provision with respect to all or any of the following matters—
    - (i) the admission into the township of new crofters and the allocation to them of shares in the common grazing;
    - (ii) the apportionment for the exclusive use of the township of a part of any common grazing in which it shares;
    - (iii) the inclusion in any croft formed under the scheme of a part of the common grazing or of any land held in runrig;
    - (iv) any other matter incidental to or consequential on the provisions of the scheme.]
- (4) For the purposes of a reorganisation scheme [<sup>F4</sup>, or provisional draft or draft of such a scheme,] the Commission shall prepare such maps and plans as may be necessary to indicate the general effect of the scheme [<sup>F5</sup>or, as the case may be, of the provisional draft or draft,] and its effects on each of the crofts in the township.
- [<sup>F6</sup>(5) Where, in relation to any township, the Commission prepare a provisional draft reorganisation scheme under subsection (1) above, they shall serve on each of the persons mentioned in subsection (10) below a copy of the provisional draft together with a notice—
- (a) naming a place within the locality in which the township is situated where a copy of the maps and plans prepared by the Commission under subsection (4) above in relation to the provisional draft scheme may be inspected at all reasonable hours;
  - (b) inviting the person on whom the provisional draft and notice are served, within two months of the date of such service, to make in writing to the Commission such comments as they may wish to make on the provisional draft, maps or plans.
- Where any crofter on whom such a notice as aforesaid has been served fails to comply with the request contained in such notice, he shall for the purposes of this section be deemed to have intimated to the Commission in compliance with the said request that he is in favour of the scheme.
- (6) Where, having taken into account comments (if any) made to them by virtue of subsection (5) above, the Commission are still satisfied as mentioned in subsection (1) above, they shall—
- (a) prepare a draft reorganisation scheme in relation to the township taking into account such comments;
  - (b) serve on each of the persons mentioned in subsection (10) below a copy of the draft scheme together with a notice—
    - (i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under subsection (4) above in relation to the draft scheme may be inspected at all reasonable hours; and

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- (ii) requesting that the person on whom the draft and notice are served, within one month after the date of such service, intimates to the Commission in writing whether or not that person is in favour of the draft scheme.
- (7) Where any person on whom a notice has been served under subsection (6) above fails to comply with the request contained in the notice, that person shall for the purposes of this section be deemed to have intimated to the Commission, in compliance with the request, that the person is in favour of the draft scheme.
- (8) If, within the period of one month mentioned in subsection (6)(b)(ii) above, a majority of the crofters on whom a copy of a draft reorganisation scheme and a notice have been served under that subsection have intimated to the Commission, in compliance with the request contained in the notice, that they are in favour of the draft scheme, the Commission shall, where they remain satisfied as mentioned in subsection (1) above—
  - (a) prepare a reorganisation scheme in relation to the township; and
  - (b) serve on each of the persons mentioned in subsection (10) below a copy of the scheme together with a notice—
    - (i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under subsection (4) above in relation to the scheme may be inspected at all reasonable hours; and
    - (ii) advising of the right of appeal to the Land Court under section 38A of this Act against the Commission's decision to reorganise the township or the scheme and of the time limit within which an appeal may be made.
- (9) For the purposes of section 38A of this Act, the Commission's proceeding, under subsection (8)(a) above, to prepare a reorganisation scheme shall be taken to comprise their decision to reorganise the township.
- (10) The persons referred to in subsections (1A), (5), (6)(b) and (8)(b) above and section 38A(3)(b) of this Act are—
  - (a) each crofter who is the tenant of a croft situated in the township;
  - (b) the landlord of each such croft;
  - (c) each grazings committee appointed under section 47 of this Act in respect of any common grazing shared in by each such crofter;
  - [<sup>F7</sup>(ca) each owner-occupier crofter whose croft is situated in the township;]
  - (d) each person occupying land which is contiguous to a croft situated in the township;
  - (e) the owner of, and each person who holds shares in, a common grazing associated with the township;
  - (f) if the reorganisation scheme makes (or as the case may be is to make) provision with respect to the inclusion of such land as is mentioned in subsection (3)(a) above, the owner of, and each person occupying, that land.
- (11) The requirements of subsections (1A) and (6)(b)(ii) above that intimation be in writing and in subsection (5)(b) above that comments be made in writing are to be taken to be satisfied by—
  - (a) the giving of intimation; or
  - (b) as the case may be, the making of comments,

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in a form other than writing 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).]

#### Textual Amendments

- F1** Word in s. 38(1) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(a)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F2** S. 38(1A) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(b)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F3** S. 38(3) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(c)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F4** Words in s. 38(4) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(d)(i)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F5** Words in s. 38(4) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(d)(ii)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F6** S. 38(5)-(11) substituted for s. 38(5)-(7) (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(2)(e)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F7** S. 38(10)(ca) inserted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(21)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)

#### [<sup>F8</sup>38A Appeal to Land Court: special provision as respects reorganisation schemes

- (1) Any crofter who is the tenant of a croft situated in the township in relation to which a reorganisation scheme is made or the landlord of any such croft or [<sup>F9</sup>any owner-occupier crofter whose croft is situated in the township or] the owner of any common grazing associated with the township or the owner of any land included in the scheme by virtue of subsection (3)(a) of section 38 of this Act may, within 42 days after the Commission serve a copy of the reorganisation scheme on him under subsection (8)(b) of that section, appeal <sup>F10</sup>..., on one or more of the grounds mentioned in section 52A(3) of this Act, to the Land Court against—
  - (a) the Commission's decision to reorganise the township; or
  - (b) the scheme.
- (2) For the purposes of this section, the references in section 52A(3) to a “direction” and to “making” a direction are to be construed as including, respectively, references to a reorganisation scheme and to preparing such a scheme.
- (3) In an appeal under this section, the Court may—
  - (a) confirm the decision and the scheme;
  - (b) confirm the decision and require the Commission to—
    - (i) make, by a date specified by the Court, such modifications to the scheme as the Court directs; and
    - (ii) serve a copy of the modified scheme on each of the persons mentioned in section 38(10) of this Act; or
  - (c) revoke the Commission's decision.]

#### Textual Amendments

- F8** S. 38A inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(3)**, 43(3) (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.

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- F9** Words in s. 38A(1) inserted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(22)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F10** Words in s. 38A(1) repealed (1.2.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 50(1)(b), 57(2)** (with s. 57(4)); S.S.I. 2010/437, art. 3, sch. (with arts. 4, 5(3))

### 39 Putting into effect of reorganisation schemes.

- [<sup>F11</sup>(1) The Commission shall not take any steps in discharge of their duties or powers under this section in relation to a reorganisation scheme until (whichever first occurs)—
- (a) the period of 42 days mentioned in section 38A(1) of this Act has elapsed without any appeal to the Land Court under that section being made; or
  - (b) every such appeal timeously made is—
    - (i) decided and, where by virtue of subsection (3)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, those modifications have been made and the Commission have complied with subsection (3)(b)(ii) of that section; or
    - (ii) abandoned.
- (1A) [<sup>F12</sup>Subject to subsection (2A),] The Commission—
- (a) shall put into effect a reorganisation scheme—
    - (i) prepared by them under section 38(8)(a); or
    - (ii) where by virtue of subsection (3)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, of which they have served a copy by virtue of subsection (3)(b)(ii) of that section; and
  - (b) may do all such things as are required for that purpose.]
- (2) [<sup>F13</sup>Subject to subsection (2B),] A reorganisation scheme shall be put into effect on such date as may be appointed by the Commission, and the Commission may appoint different dates in respect of different provisions of the scheme, and any reference in this Act to the date on which a reorganisation scheme is put into effect shall, in relation to any land, be construed as a reference to the date on which the provisions of that scheme which apply to such land are put into effect.
- [<sup>F14</sup>(2A) Before putting into effect a reorganisation scheme which contains provision—
- (a) forming a croft;
  - (b) making any change to, or in relation to, a croft,
- the Commission must submit, in accordance with Part 2 of the 2010 Act, an application for registration of the croft so formed, the croft affected by the change or, as the case may be, the change to the croft.
- (2B) The date appointed under subsection (2) for the putting into effect of any provision of a reorganisation scheme in respect of which an application for registration under subsection (2A) is made is to be the date of registration.]
- (3) The Commission [<sup>F15</sup>may] remit the scheme to the Land Court to fix the sums which will become payable on the scheme being put into effect—
- (a) to each person who immediately before the said date was the tenant of a croft in the township, by way of compensation in respect of permanent improvements by reason of the termination of his tenancy by virtue of subsection (6) below;

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- (b) by each person (whether or not he was immediately before the said date the tenant of a croft in the township) who under the scheme becomes the tenant of a croft, in respect of the permanent improvements on that croft; and
- (c) by way of rent in respect of each of the crofts formed under the scheme.

<sup>F16</sup>(4) .....

- (5) The rent fixed by the Land Court in pursuance of subsection (3)(c) above in respect of any croft shall not be altered, except by agreement between the landlord and the crofter, for a period of 7 years from the term at which it first became payable.

[<sup>F17</sup>(5A) Subsection (3A) of section 6 of this Act applies in relation to subsection (5) above as it applies in relation to the proviso to subsection (3) of that section.]

- (6) For the purpose of putting into effect the provisions of a reorganisation scheme, the Commission shall serve on the tenant and on the landlord of every croft to which those provisions apply and on any person (other than such a tenant) who under the scheme is to become the tenant of a croft a notice specifying the date on which the scheme is to be put into effect, and where such notices have been served—

- (a) every such tenant shall be deemed to have given notice renouncing the tenancy of his croft immediately before the said date; and
- (b) each person (whether or not such a tenant) who under the scheme is to become the tenant of a croft shall on that date become the tenant of that croft.

- (7) Where any buildings situated on land to which a reorganisation scheme applies will on the putting into effect of the scheme cease to be required in connection with the occupation of that land, the Commission shall<sup>F18</sup>... give notice to that effect to the landlord of the land, and thereupon subsections (7) and (8) of section 23 of this Act shall apply in relation to the buildings first mentioned as if the said notice had been a notice given under the said subsection (7) to the landlord by the Commission immediately before the date of the putting into effect of the scheme.

A notice given under this subsection to a landlord by the Commission shall inform the landlord of the effect of this subsection in relation to the buildings in respect of which the notice is given.

- (8) Where a reorganisation scheme provides, in pursuance of section 38(3)(a) of this Act, for the inclusion in the scheme of land in the vicinity of the township, the [<sup>F19</sup>Commission shall] serve—

- (a) on the occupier of any such land who is not the owner thereof, a copy of the scheme together with a notice terminating his interest in the land on the expiry of 3 months from the date of the service of the notice; and
- (b) on the owner of any such land a copy of the scheme together with a notice requiring him to enter into an undertaking that he will, on the date on which the scheme is put into effect, let the land in accordance with the provisions of the scheme [<sup>F20</sup>, and shall send a copy of each notice served by them under this subsection to the Scottish Ministers] .

- (9) Where the interest in any land of the occupier of that land is terminated in pursuance of subsection (8)(a) above, the Secretary of State shall be deemed to be authorised to purchase the said interest compulsorily and to have served notice to treat in respect thereof on the date on which the interest is terminated as aforesaid.

- (10) Where—

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- (a) the owner of any land fails within 2 months from the date on which a notice is served on him under paragraph (b) of subsection (8) above to enter into such an undertaking as is mentioned in that paragraph or, having entered into such an undertaking, fails to let the land in accordance with the provisions of the scheme on the date on which the scheme is put into effect; or
- (b) the owner of any land to which any provision contained in a reorganisation scheme applies gives to the Secretary of State, within 2 months from the date on which notice <sup>F21</sup>is served on him under subsection (6) above] , notice requiring the Secretary of State to purchase the land;

the Secretary of State shall be deemed to be authorised to purchase the said land compulsorily and to have served notice to treat in respect thereof immediately before the date on which the scheme is put into effect.

Any purchase of land under this subsection shall be deemed to be completed immediately before the date on which the scheme is put into effect, and the Secretary of State shall, as the landlord of such land, be liable to pay or, as the case may be, entitled to receive any such sum as is mentioned in subsection (3)(a) or (b) above which becomes payable on the said date and any sum payable on that date under section 34(1) of this Act by way of compensation for deterioration of, or damage to, fixed equipment on the land.

- (11) This section and section 38 of this Act shall, unless the context otherwise requires, apply in relation to a group of neighbouring townships as they apply in relation to a township.

#### Textual Amendments

- F11** S. 39(1)(1A) substituted for s. 39(1) (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(a), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F12** Words in s. 39(1A) inserted (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(23)(a)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c)
- F13** Words in s. 39(2) inserted (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(23)(b)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c)
- F14** S. 39(2A)(2B) inserted (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(23)(c)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 18)
- F15** Word in s. 39(3) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(b), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F16** S. 39(4) repealed (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 2** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F17** S. 39(5A) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(c), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F18** Words in s. 39(7) repealed (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(d), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F19** Words in s. 39(8) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(e)(i), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F20** Words in s. 39(8) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(e)(ii), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.
- F21** Words in s. 39(10)(b) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 20(4)(f), 43(3)** (with **ss. 40, 43(2)**); S.S.I. 2007/269, art. 2, sch.

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