



Crofters (Scotland) Act 1993

1993 CHAPTER 44

[^{F1}Consent for absence from croft]

25 Provisions supplementary to s.24(3).

(1) The Commission shall give a direction under section 24(3) of this Act that a croft shall cease to be a croft if—

- (a) subject to subsection (2) below, they are satisfied that the applicant has applied for the direction in order that the croft may be used for or in connection with some reasonable purpose (within the meaning of section 20 of this Act) having relation to the good of the croft or of the estate or to the public interest [^{F1}or to the interests of the crofting community in the locality of the croft] and that the extent of the land to which the application relates is not excessive in relation to that purpose; or
- (b) the application is made in respect of a part of a croft, which consists only of the site of the dwelling-house on or pertaining to the croft and in respect of which a crofter is entitled at the time of the application, or has been entitled, to a conveyance by virtue of section 12(2) of this Act, and they are satisfied that the extent of garden ground included in that part is appropriate for the reasonable enjoyment of the dwelling-house as a residence [^{F2}or
- (c) the application is made in respect of a croft the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act]

[^{F3}(1A) In determining whether they are satisfied as mentioned in subsection (1)(a) above (and, in particular, whether the reasonable purpose mentioned there relates to the public interest), the Commission—

- (a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1B) below; and
- (b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

and must give the direction, or refuse to grant the application for it, accordingly.

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- (1B) The matters mentioned in subsection (1A)(a) above are—
- (a) the sustainability of—
 - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Commission to be relevant;
 - (ii) the crofting community in that locality or the communities in such an area;
 - (iii) the landscape of that locality or such an area;
 - (iv) the environment of that locality or such an area;
 - (b) the social and cultural benefits associated with crofting.
- (1C) In subsection (1A) above—
- “development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8);
- “planning permission” is to be construed in accordance with Part 3 of that Act;
- “effect” includes both a positive and negative effect.]
- (2) Without prejudice to subsection [F⁴(1)(b) or (c)] above, the Commission, in determining whether or not to give such a direction, shall have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for a tenancy of the croft from persons who might reasonably be expected to obtain that tenancy if the croft were offered for letting on the open market on the date when they are considering the application.
- (3) Where the Commission give such a direction on being satisfied as mentioned in subsection (1)(a) above, they may in the direction impose such conditions [F⁵(which may include provision as to timescales)] as appear to them requisite for securing that the land to which the direction relates is used for the proposed use; and if at any time they are satisfied that there has been a breach of any such condition, they may make a further direction that the land in respect of which there has been such a breach shall be a vacant croft.
- [F⁶(3A) Conditions imposed by virtue of subsection (3) above may include a condition that the use be initiated by a time specified in the condition.
- (3B) The Commission may from time to time modify any conditions so imposed.
- (3C) No such further direction as is mentioned in subsection (3) above shall be made if—
- (a) more than 20 years have elapsed since the direction under section 24(3) of this Act;
 - (b) the land, or any part of it, has, since the direction under that section, been conveyed to a person other than the former crofter or a member of the former crofter's family; or
 - (c) a debt is for the time being secured by way of a standard security over, or over any real right in, the land or any part of it.]

(4) [F⁷Subject to subsections (4ZB) and (4ZD),] The Commission may, on the application of a crofter who is proposing to acquire croft land or the site of the dwelling-house on or pertaining to his croft, give a direction under the said section 24(3) as if the land were a vacant croft and the application were made by the landlord, that in the event of such acquisition of the land it shall cease to be a croft, or refuse the application; but such a direction shall not have effect until the land to which it relates has been

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acquired by the crofter or his nominee and unless the acquisition is made within 5 years of the date of the giving of the direction.

[^{F8}(4ZA) Where a direction is applied for under subsection (4) in relation to an unregistered croft—

- (a) the Commission may not make such a direction unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made;
- (b) the Commission need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.

(4ZB) Where a direction under section 24(3) is made by virtue of an application under subsection (4) in relation to a first registered croft—

- (a) the crofter who applied for the direction must, within 3 months of acquiring land or a site as mentioned in that subsection, notify the Commission of the acquisition;
- (b) the direction—
 - (i) does not have effect unless the conditions in subsection (4) are satisfied;
 - (ii) takes effect on the giving of notification of the direction under section 10(8)(c) of the 2010 Act.

(4ZC) Subsection (4ZD) applies to a direction under section 24(3) which is made—

- (a) by virtue of an application under subsection (4); and
- (b) in relation to a registered croft (other than a first registered croft).

(4ZD) The direction—

- (a) does not have effect unless—
 - (i) the conditions mentioned in subsection (4) are satisfied; and
 - (ii) an application for registration of the making of the direction is made by virtue of section 5 of the 2010 Act before the expiry of the period of 5 years mentioned in that subsection;
- (b) takes effect, if those conditions and the condition mentioned in paragraph (a) (ii) are satisfied on or before the date of registration, on the date of registration.]

[^{F9}(4A) Written notice of an application under subsection (4) above made in respect of a part of a croft consisting only of the site of the dwelling-house on or pertaining to the croft shall be given to the landlord by the applicant; and the Commission—

- (a) shall not give a direction by virtue of that subsection on an application so made unless they are satisfied (in addition to what is required by subsection (1)(b) above) that; and
- (b) may include in any such direction conditions for the purpose of ensuring that, implementation of the proposal would not prevent or impede access to another part of the croft or to other croft land.]

(5) A direction under the said section 24(3) may be given taking account of such modification of the application in relation to which the direction is given as the Commission consider appropriate.

(6) The Commission shall advertise all applications under the said section 24(3) or subsection (4) above (except an application made in respect of a part of a croft

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consisting only of the site of the dwelling-house on or pertaining to the croft [^{F10}or only of land the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act]) in one or more newspapers circulating in the district in which the croft to which the application relates is situated, and before disposing of such an application shall, if requested by the applicant, afford a hearing to the applicant and to such other person as they think fit.

[^{F11}(7) The Commission shall give both—

- (a) notice in writing to the applicant; and
- (b) public notification,

of their direction on an application made to them under the said section 24(3) or subsection (4) above, specifying the nature of and the reasons for the direction and, as the case may be, for any conditions imposed in the direction.

(8) As regards—

- (a) a direction (including a condition in a direction) by the Commission on an application—
 - (i) under section 24(3) of this Act, the applicant or any member of the crofting community in the locality of the land;
 - (ii) under subsection (4) above, the applicant or the owner of the land, may within 42 days after the giving of public notification of the making of the direction;
- (b) a modification under subsection (3B) above, of a condition which relates to land, the owner, or any tenant of the land or any member of the crofting community in the locality of the land, may within 42 days after the giving of public notification of the modification; or
- (c) a further direction under subsection (3) above, the owner, or any tenant, of the land, may within 42 days after the making of that direction,

appeal ^{F12}..., on one or more of the grounds mentioned in section 52A(3) of this Act, to the Land Court.

(8A) For the purposes of this section, the references in section 52A(3) to a “direction” are to be construed as including references to a modification.

(8B) In an appeal under subsection (8) above the Court may—

- (a) confirm or revoke the direction or modification;
- (b) direct the Commission to make a different direction or modification; or
- (c) remit the case to the Commission without so directing them.]

(9) The Commission shall give effect to the determination of the Land Court on an appeal under subsection (8) above.

Textual Amendments

- F1** Words in s. 25(1)(a) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 23(b)(i), 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F2** S. 25(1)(c) and word added (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 23(b)(ii), 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F3** S. 25(1A)-(1C) inserted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), ss. 43, 57(2) (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F4** Words in s. 25(2) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 23(b)(iii), 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.

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- F5** Words in s. 25(3) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 23(b)(iv)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F6** S. 25(3A)-(3C) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 23(b)(v)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F7** Words in s. 25(4) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(16)(a)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(u))
- F8** S. 25(4ZA)-(4ZD) inserted (30.11.2012 for specified purposes, 30.11.2013 in force in so far as not already in force) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(16)(b)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2; S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 17)
- F9** S. 25(4A) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 23(b)(vi)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F10** Words in s. 25(6) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(7)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F11** S. 25(7)-(8B) substituted for s. 25(7) (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 23(b)(vii)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F12** Words in s. 25(8) repealed (1.2.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 50(1)(a)**, 57(2) (with s. 57(4)); S.S.I. 2010/437, art. 3, sch. (with arts. 4, 5(3))

Modifications etc. (not altering text)

- C1** S. 25(8) applied (with modifications) (31.7.2013) by Crofting (Amendment) (Scotland) Act 2013 (asp 10), **s. 4(3)(4)**, 6

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