



# Crofters (Scotland) Act 1955

## 1955 CHAPTER 21

### *Administration of Crofts*

#### **17 Absentee crofters**

- (1) If the Commission determine in relation to a croft—
- (a) that the crofter is not ordinarily resident on, or within two miles of, the croft; and
  - (b) that it is in the general interest of the crofting community in the district in which the croft is situate that the tenancy of the crofter should be terminated and the croft let to some other person or persons;

then, subject to the provisions of this section, they shall have power to make an order terminating the tenancy of the crofter and requiring him to give up his occupation of the croft at a term of Whitsunday or Martinmas not earlier than three months after the making of such order.

- (2) Before making an order under the foregoing subsection the Commission shall take into consideration all the circumstances of the case, including the extent, if any, to which the croft is being worked and, where the croft is being worked by a member of the crofter's family, the nature of the arrangements under which it is being so worked, and shall give to the crofter and to the landlord, not less than six months before the term at which the proposed order will take effect, notice that they propose to make such an order and shall afford to the crofter and the landlord an opportunity of making representations to them against the making of the proposed order.

Where the Commission make such an order, they shall, not less than three months before the term at which the order takes effect, give notice to the crofter and to the landlord of the making of the order.

- (3) Where an order has been made under subsection (1) of this section and the crofter has failed to give up his occupation of the croft on or before the day on which the order takes effect, the sheriff on the application of the Commission shall, except on cause shown to the contrary, grant warrant for ejection of the crofter. The Commission may recover from the crofter the expenses incurred by them in any application under this subsection and in the execution of any warrant granted thereon.

- (4) Where an order has been made under subsection (1) of this section in respect of a croft and the Commission are satisfied—
- (a) that the crofter or any of his predecessors in the tenancy has provided or paid for the whole or the greater part of the dwelling-house thereon and that the crofter is entitled on the termination of his tenancy to compensation therefor as for an improvement; and
  - (b) that the dwelling-house will not be required after the termination of the tenancy in connection with any future occupation of the croft,

the Commission shall give notice to that effect to the crofter and to the landlord; and thereupon the crofter shall be entitled, if, not later than one month before the term at which the order takes effect, he gives notice in that behalf to the Commission and to the landlord, to obtain a conveyance in feu (under reservation of minerals) of the dwelling-house together with such suitable garden ground and such rights of access as the Commission may determine to be reasonable and on such terms as to feuduty and otherwise as may be agreed by the crofter and the landlord, or, failing agreement, as may be determined by the Commission to be reasonable.

- (5) If the landlord does not within such period as the Commission may consider reasonable execute and deliver to the Commission at his own expense a conveyance for the purposes of the last foregoing subsection, or if he requests the Commission to prepare such a conveyance, the Commission shall themselves prepare the conveyance and shall submit it to the landlord for execution; and if the landlord for any reason fails within one month after the conveyance is so submitted to him to execute it and to return it to the Commission, the Commission may themselves in place of the landlord execute the conveyance. Any conveyance executed under this subsection shall be recorded by the Commission on behalf of the crofter in the appropriate Register of Sasines, and a conveyance executed as aforesaid by the Commission shall, on being so recorded, have the like force and effect in all respects as if it had been executed by the landlord.

A landlord shall have power to execute a valid conveyance under this subsection notwithstanding that he may be under any such disability as is mentioned in section seven of the Lands Clauses Consolidation (Scotland) Act, 1845.

- (6) For the purposes of the last foregoing subsection the Commission may require the landlord or any other person having them in his possession to deliver to the Commission such documents as they may consider necessary for the preparation of the conveyance; and, if the landlord or such other person fails to deliver such documents, the sheriff may on the application of the Commission make an order for the delivery of such documents to the Commission.

Where a person other than the landlord is infert in the subjects to be conveyed, references in the last foregoing subsection and in this subsection to the landlord shall be construed as references to the landlord and such other person for their respective interests.

- (7) Where a conveyance is executed and recorded under this section, any heritable security which immediately before the execution of such conveyance burdened the subjects conveyed shall, as from the date of recording, cease to burden the *dominium utile* of the subjects conveyed and shall burden only the superiority thereof; and, unless the creditors in right of any such security otherwise agree, the landlord shall pay to them according to their respective rights and preferences any sum paid to him in addition to feuduty as consideration under the next following subsection.

In this subsection the expression " heritable security " has the like meaning as in the Conveyancing (Scotland) Act, 1924, except that it includes a security constituted by ex facie absolute disposition.

- (8) The consideration payable by the crofter in respect of the conveyance to him under this section of the dwelling-house and other pertinents shall be, in addition to any feuduty thereby exigible, such sum as may be agreed by the crofter and the landlord or, failing agreement, as may be determined by the Land Court to be the value to an incoming tenant as at the termination of the crofter's tenancy of any assistance or consideration given by the landlord or any of his predecessors in title in respect of the dwelling-house ; and, where the dwelling-house and other pertinents are so conveyed to him, the crofter shall not be entitled to receive from the landlord on the termination of his tenancy any compensation for the dwelling-house as for an improvement.
- (9) Subject to the provisions of the last foregoing subsection, a crofter shall, on the termination of his tenancy by an order made under subsection (1) of this section, be entitled to the like rights to, and subject to the like liabilities in respect of, compensation as if he had renounced his tenancy at the term at which the order takes effect.
- (10) Where a crofter who has become entitled under subsection (4) of this section to obtain a conveyance of his dwelling-house is at the termination of his tenancy under any liability to the Secretary of State in respect of any loan, the amount outstanding in respect of such liability shall, if the Secretary of State on the application of the crofter so determines, be deemed as from the recording of the conveyance to be a loan by the Secretary of State to him, and the provisions of the Third Schedule to this Act shall apply in relation to any such loan.