



Land Reform (Scotland) Act 2003

2003 asp 2

PART 3 **S**

THE CROFTING COMMUNITY RIGHT TO BUY

CHAPTER 3 **S**

VALUATION OF CROFT LAND

88 Assessment of value of croft land etc. **S**

- (1) Where Ministers consent to an application under section 73 above, they shall, subject to subsection (2) below, within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land or [^{F1} interests of a kind which is similar to the land, tenant's interest] or sporting interests being bought, to assess the value of the land [^{F2}, tenant's interest] or sporting interests to which the application relates.
- (2) Where Ministers refer a question to the Land Court under section 83(2) above they shall delay appointing the valuer until a day which is within 7 days of the day on which the Land Court makes its determination in respect of that reference.
- (3) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1) above.
- (4) In assessing the value of land [^{F3}, the interest of a tenant over land] or interests in pursuance of an appointment under subsection (1) above, a valuer—
 - (a) does not act on behalf of the owner of the land [^{F4}, of the tenant, of the person entitled to the sporting interests or of the crofting community body which is exercising its right to buy the land, tenant's interest or sporting] interests under this Part of this Act; and
 - (b) shall act as an expert and not as an arbiter.
- (5) The value to be assessed is the market value of the land [^{F5}, tenant's interest or sporting] interests as at the date when Ministers consented to the application under section 73 relating to the land [^{F6}, interest] or interests.

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- (6) The “market value” of land or interests is the aggregate of—
- (a) the value it [^{F7}, a tenant's interest or sporting] they would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing;
 - (b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land [^{F8}, a tenant's interest or sporting interests, including (in the case of land or sporting interests)] depreciation caused by division of the land or interests by the transfer of land or interests to the crofting community body; and
 - (c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land [^{F9}, tenant's interest or sporting] interests to the crofting community body.
- (7) In arriving, for the purposes of this section, at the value which land [^{F10}, a tenant's interest or sporting] interests would have on the open market in the circumstances mentioned in subsection (6)(a) above—
- (a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (6) above would do so, of any factor attributable to the known existence of a person who (not being the crofting community body which is exercising its right to buy the land or interests) would be willing to buy the land [^{F11}, a tenant's interest or sporting] interests at a price higher than others would because of a characteristic of the land [^{F12}, a tenant's interest or sporting] interests which relates peculiarly to that person's interest in buying it;
 - (b) no account shall be taken of—
 - (i) any depreciation of the type mentioned in subsection (6)(b) above;
 - (ii) any disturbance of the type mentioned in subsection (6)(c) above;
 - (iii) the absence of the period of time during which the land [^{F13}, a tenant's interest or sporting] interests would, on the open market, be likely to be advertised and exposed for sale.
- (8) The expense of a valuation under this section shall be met by Ministers.
- (9) In carrying out a valuation under this section, the valuer shall invite the owner of the land or [^{F14}as the case may be the tenant, or the person entitled to the sporting] interests and the crofting community body which is exercising its right to buy the land [^{F15}, tenant's interest or sporting] interests to make representations in writing about the value of the land [^{F16}, interest] or interests and shall consider any representations made accordingly.
- [^{F17}(9A) Where written representations under subsection (9) are received—
- (a) from the owner of the land, the tenant or the person entitled to the sporting interests, the valuer must invite the crofting community body which is exercising its right to buy the land, tenant's interest or sporting interests to send its views on the representations in writing,
 - (b) from the crofting community body which is exercising its right to buy the land, tenant's interest or sporting interests, the valuer must invite the owner of the land, the tenant or the person entitled to the sporting interests to send the views of the owner, tenant or (as the case may be) person on the representations in writing.
- (9B) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9A).]

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- (10) Where the crofting community body and the owner of the land or ^{F18}as the case may be the tenant, or the person entitled to the sporting] interests have agreed the valuation of the land ^{F19}the tenant's interest or the sporting] interests they shall notify the valuer in writing of that valuation.
- (11) Where sporting interests in land which the body are seeking to buy are to be leased back to the owner of the land, the valuer shall, in assessing the value of those interests, take account of the terms and conditions of the lease which has been agreed between the owner and the body or, as the case may be, determined by the Land Court under section 83 above.
- ^{F20}(12) The valuer shall, within the period set out in subsection (13) below, notify Ministers, the crofting community body and as the case may be the owner of the land, the tenant or the person entitled to the sporting interests, of the assessed value of the land, tenant's interest or sporting interests; and if there is a determination under section 88A(1) below shall within that period notify the crofting community body and the tenant of the determination.]
- (13) The period referred to in subsection (12) above is the period of ^{F21}8] weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.
- (14) The validity of anything done under this Part of this Act is not affected by any failure by a valuer to comply with the time limit specified in subsection (13) above.

Textual Amendments

- F1** Words in s. 88(1) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(a)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F2** Words in s. 88(1) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(a)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F3** Words in s. 88(4) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(b)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F4** Words in s. 88(4) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(b)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F5** Words in s. 88(5) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(c)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F6** Words in s. 88(5) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(c)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F7** Words in s. 88(6) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(d)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F8** Words in s. 88(6)(b) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(d)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F9** Words in s. 88(6)(c) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(d)(iii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F10** Words in s. 88(7) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(e)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F11** Words in s. 88(7) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(e)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F12** Words in s. 88(7) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(e)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F13** Words in s. 88(7) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(e)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.

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- F14** Words in s. 88(9) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(f)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F15** Words in s. 88(9) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(f)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F16** Words in s. 88(9) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(f)(iii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F17** S. 88(9A)(9B) inserted (24.2.2021) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 69(a)**, 142(1); S.S.I. 2020/448, **art. 2** (with art. 3)
- F18** Words in s. 88(10) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(g)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F19** Words in s. 88(10) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(g)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F20** S. 88(12) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(12)(h)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F21** Word in s. 88(13) substituted (24.2.2021) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 69(b)**, 142(1); S.S.I. 2020/448, **art. 2** (with art. 3)

[^{F22}88A Acquisition of interest of tenant over land: allocation of rents etc. S

- (1) Where an application made by virtue of subsection (2) of section 69A above does not relate to the entire tenanted land (“tenanted land” being construed in accordance with subsection (1) of that section), any resultant question as to the allocation, as between the tenant and the crofting community body, of rents payable or receivable, or as to the allocation as between them of rights and obligations generally, is to be determined by the valuer when, in pursuance of an appointment under section 88(1) above, he assesses the value of the interest of the tenant.
- (2) Any determination under subsection (1) above is to be such as the valuer considers equitable in all the circumstances.]

Textual Amendments

- F22** S. 88A inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 31(3)**, 43, (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.

89 Compensation S

- (1) Any person, including an owner or former owner of land or person entitled to sporting interests [^{F23}(and in the case of an application made by virtue of section 69A(2) above a tenant)], who has incurred loss or expense—
- (a) in complying with the requirements of this Part of this Act following upon the making of an application under section 73 above by a crofting community body;
 - (b) as a result of the withdrawal by the crofting community body of its confirmation under section 85 above or its failure otherwise to complete the purchase after having so confirmed its intention under that section; or
 - (c) as a result of the failure of the crofting community body which made that application to complete the purchase,
- is entitled to recover the amount of that loss or expense from the crofting community body.

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- (2) There is no such entitlement, however, where the application under section 73 above is refused.
- (3) Where such an application has been refused, the owner of the land [^{F24}, the tenant or the person entitled to the sporting] interests who has incurred loss or expense as mentioned in subsection (1)(a) above is entitled to recover the amount of that loss or expense from Ministers.
- [^{F25}(4) Ministers may, by order, make provision for or in connection with specifying—
 - (a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),
 - (b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,
 - (c) the person who is liable to pay those amounts,
 - (d) the procedure under which claims for compensation under this section are to be made.]
- (5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4) above, any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Land Court.

Textual Amendments

- F23** Words in s. 89(1) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(13)(a)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F24** Words in s. 89(3) substituted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, **Sch. 1 para. 5(13)(b)** (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.
- F25** S. 89(4) substituted (16.12.2016 for specified purposes, 24.2.2021 in so far as not already in force) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 70, 142(1)**; S.S.I. 2016/394, **art. 2**, sch.; S.S.I. 2020/448, **art. 2** (with art. 3)

90 Grants towards crofting community bodies' liabilities to pay compensation **S**

- (1) Ministers may, in the circumstances set out in subsection (2) below, pay a grant to a crofting community body.
- (2) Those circumstances are—
 - (a) that after settlement of its other liabilities connected with the exercise of its right to buy land [^{F26}, the interest of a tenant over land] or sporting interests under this Part of this Act, the crofting community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 89 above;
 - (b) that the crofting community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money; and
 - (c) that it is in the public interest that Ministers pay the grant.
- (3) The fact that all the circumstances set out in subsection (2) above obtain in a particular case does not prevent Ministers from refusing to pay a grant in that case.

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- (4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.
- (5) Ministers may pay a grant under this section only on the application of a crofting community body.
- (6) An application for such a grant shall be made in such form and in accordance with such procedure as are prescribed.
- (7) Ministers shall issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.
- (8) Ministers' decision on an application under this section is final.

Textual Amendments

F26 Words in s. 90(2)(a) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), ss. 39, 43, Sch. 1 para. 5(14) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, Sch.

Changes to legislation:

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