



Crofting Reform etc. Act 2007

2007 asp 7

PART 1

THE CROFTERS COMMISSION

1 Discharge of functions

In section 1 of the 1993 Act (constitution and general functions of Crofters Commission), for subsection (3) there is substituted—

“(3) The Commission shall discharge their functions in accordance with such directions of a general or specific character as may from time to time be given to them in writing by the Scottish Ministers.”.

2 Equal opportunities

After section 59 of the 1993 Act, there is inserted—

“59A Equal opportunities

(1) The Commission shall discharge their functions in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunities requirements.

(2) In subsection (1) above, “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).”.

3 Obtaining Commission approval or consent

After section 3 of the 1993 Act, there is inserted—

“58A Obtaining Commission approval or consent

(1) Any requirement, under or by virtue of this Act, to obtain the approval or consent of the Commission, shall (subject to any express provision made by this Act in respect of any category of case) be complied with as follows.

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- (2) The application for approval or consent must—
- (a) be in such form; and
 - (b) be accompanied by such documents and fee,
- as the Commission shall specify; and the Commission may make different provision for different categories of case.
- (3) The person making the application shall—
- (a) forthwith give public notification of it; and
 - (b) if he is not the landlord (or, where the land to which the application relates is, or is part of, a common grazing, not the owner) give written notification of it to the landlord (or to the owner).
- (4) Within 28 days after public notification of an application made in compliance with subsection (2) above—
- (a) the landlord (or where the land to which the application relates is, or is part of, a common grazing, the owner);
 - (b) any member of the crofting community in the locality of that land (including, where that land is, or is part of, a common grazing, the grazings committee or any crofter who shares in the grazing); or
 - (c) any other person if he is identified for the purposes of this subsection by the provision which imposes the requirement mentioned in subsection (1) above,
- may submit to the Commission an objection as regards the application, being an objection of the description given in subsection (16) below.
- (5) The 28 days mentioned in subsection (4) above include the day on which the notification in question is given.
- (6) When those 28 days have elapsed the Commission—
- (a) must, in a case where they have received such objections by virtue of subsection (4) above and do not consider them to be frivolous, vexatious or unreasonable, intervene as respects the application;
 - (b) may, in any other case, decide to do so if it appears to them that any of—
 - (i) the general conditions; or
 - (ii) any conditions (if any) special to applications of the category in question,applies as respects the application.
- (7) If, as regards an objection duly submitted under subsection (4) above, the Commission decide not to have regard to it or that it does not provide them with grounds for intervention as respects the application they shall notify—
- (a) the applicant, the landlord (or owner) and, as the case may be, the grazings committee of the terms of the objection and of the reason for that decision; and
 - (b) the objector, of that reason.
- (8) If, other than by reason of any such objection, the Commission decide to intervene as respects the application, they shall notify the applicant, the landlord (or owner) and, as the case may be, the grazings committee of their decision to intervene, stating their reasons for intervention.
- (9) The general conditions are—

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- (a) that, were the proposal to be implemented, there is reason to suppose that any or all of the following would be affected adversely—
 - (i) the interests of the estate which comprises the land;
 - (ii) the interests of the crofting community mentioned in subsection (4)(b) above;
 - (iii) the interests of the public at large;
 - (iv) the sustainable development of the crofting community so mentioned; and
 - (b) that such information as is contained in the application and its accompanying documents is insufficient for them to come to a decision as respects the proposal.
- (10) If the Commission—
- (a) do not intervene, they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and notify—
 - (i) the applicant;
 - (ii) the landlord (or owner);
 - (iii) any person who objected under subsection (4) above; and
 - (iv) as the case may be, the grazings committee,that the proposal is approved and may be implemented or as the case may be that the matter is consented to and may be proceeded with accordingly;
 - (b) intervene, they shall, within 21 days after the 28 days mentioned in subsection (4) above have elapsed—
 - (i) notify the persons mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above of their decision to intervene, stating their reasons for intervention;
 - (ii) inform those persons (provided in the case of a person who objected under subsection (4) above that the objection was not considered by the Commission to be frivolous, vexatious or unreasonable) that they may, after the Commission make a determination under subsection (11) below, have the right to appeal to the Land Court as respects that determination.
- (11) Subject to any other provision of this Act as to procedure, the Commission may determine by such procedure and arrangements (including arrangements as to delegation and the powers and duties of persons delegated) as they consider appropriate whether or not to grant the approval or consent applied for; and references in this section to their intervening are to their proceeding to such a determination.
- (12) Where the Commission grant the approval or consent applied for they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and give such notification as is mentioned in subsection (10)(a) above.
- (13) The Scottish Ministers may issue guidance to the Commission for the purposes of subsection (9)(a)(iv) above; and the Commission must have regard to any guidance so issued.

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- (14) The Scottish Ministers may by order made by statutory instrument amend—
- (a) subsection (9) above;
 - (b) any provision of this Act in which are set out conditions mentioned in subsection (6)(b)(ii) above,
- so as to add to, vary or revoke the general conditions or as the case may be the conditions so mentioned.
- (15) A statutory instrument containing an order under subsection (14) above shall not be made unless a draft of the instrument has been—
- (a) laid before; and
 - (b) approved by resolution of,
the Scottish Parliament.
- (16) The description is that the objection is 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).
- (17) For the purposes of subsection (16) above (and without prejudice to the generality of that subsection), an objection is to be treated as made in writing where it is—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.”.

4 Obtaining of information by Commission

In section 40 of the 1993 Act (obtaining of information by the Commission)—

- (a) in subsection (1)—
 - (i) for the words “The Commission may by notice” there is substituted “Without prejudice to any other provision of this Act whereby information may or shall be obtained by them, the Commission may by notice under this section”; and
 - (ii) after the words “any holding” insert “, or on the executor of the person who most recently was the owner or occupier of any holding.”;
- (b) in subsection (2), for the words “owner or occupier” there is substituted “owner, occupier or executor”; and
- (c) after subsection (2) there is added—
 - “(3) Where the Commission impose a requirement under subsection (1) above, to provide information on any person making an application under this Act (the requirement being for the purposes of the application), the Commission may if they think fit decline to do anything in relation to the application until they are satisfied either that the requirement has been complied with or that it is not practicable to comply with the requirement.
 - (4) If the Commission are satisfied that it is not practicable to comply with the requirement (the “original requirement”) they may modify it; and subsection (3) above shall apply in relation to the modified requirement as that subsection applies to the original requirement.

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- (5) This section applies in relation to a common grazing as it applies in relation to a holding except that for the purposes of that application references in the section to an occupier of a holding are to be construed as references to a crofter who shares in the common grazing.”.

5 Maintenance of and provision of information from the Register of Crofts

In section 41 of the 1993 Act (Register of Crofts)—

(a) in subsection (2)—

(i) for paragraph (c) there is substituted—

“(ca) the landlord’s address and, where the tenant’s address is different from the address of the croft, the tenant’s address;

(cb) where the landlord’s estate is managed on his behalf by another person, a statement that it is so managed and the name and address of that other person;

(cc) where the tenant of a croft holds a right in a common grazing—

(i) the location and boundaries of the grazing;

(ii) the owner of the grazing and his address;

(iii) any use of the grazing as woodlands by virtue of section 50, or of woodlands as part of the grazing by virtue of section 50A, of this Act; and

(iv) any other use of the grazing, except use for grazing purposes, use as woodlands or use regulated by a scheme drawn up by the Commission under section 52(9) of this Act;

(cd) any—

(i) determination by the Commission under section 3A(7)(a) of this Act or by the Land Court on any question coming before it (whether or not on appeal) under this Act;

(ii) order under section 22(1) of this Act;

(iii) direction under section 24(3) or 25(4) of this Act;

(iv) reorganisation scheme prepared under section 38(8)(a) of this Act;

(v) apportionment under section 52(3) or (4) of this Act; and

(vi) order under section 53B(2) of this Act;

(ce) any other order, determination, consent, authorisation or other proceeding of theirs which they consider it is appropriate to have recorded in the Register of Crofts;

(cf) any agreement between a landlord and a crofter concerning access between a public road and the croft by a route lying wholly over land owned by the landlord, being an agreement intimated to the Commission by the landlord or crofter (the intimation

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- being in such form as the Commission may require and there being provided to the Commission, along with the intimation, a copy of the agreement);
- (cg) any agreement for a loan sent to the Commission by virtue of section 46A(2)(e) of this Act;” and
- (ii) for the words “the accuracy of the Register” there is substituted “, so far as practicable, that the Register is consistent with such information as the Commission has obtained under or by virtue of this Act”;
- (b) for subsection (3) there is substituted—
- “(3) A person is entitled on request to receive from the Commission a copy or extract of an entry in the Register of Crofts.
- (3A) An extract of an entry in the Register of Crofts shall be certified as such by a person authorised for the purposes of this subsection by the Commission; and a document which bears to be an extract so certified shall be sufficient evidence that the Register contains the entry.”; and
- (c) after subsection (4) there is added—
- “(5) The Crofters Holdings Book shall be incorporated into the Register of Crofts and as so incorporated shall be deemed to have been compiled by the Commission in pursuance of subsection (1) above.”.

PART 2

CROFTS

6 New crofts

After section 3 of the 1993 Act, there is inserted—

“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 by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.
- (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,

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to constitute the holding as a croft by entering it as such, in accordance with section 41 of this Act, in that register; and on the holding being so constituted the tenant shall be entitled to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.

- (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.
- (4) No such entry as is mentioned in subsection (2) above shall be made under that subsection—
- (a) until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned; and
 - (b) unless the Commission are satisfied—
 - (i) 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 so constituted and that the amount has been duly paid;
 - (ii) that the applicant and owner have agreed that no amount in compensation is to be so payable; or
 - (iii) that any such amount found, by virtue of section 3B of this Act, to be so payable has been duly paid.
- (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.

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- (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—
 - (i) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)); or
 - (ii) a short limited duration tenancy or limited duration 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—
- (a) that the holding is not comprised within a larger agricultural unit, the holding and that larger unit being, or having been, worked, managed or let as a single unit;
 - (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.

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 subsection (4)(b)(i) or (ii) of that section, 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
 - (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.

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

7 The statutory conditions

- (1) In section 5 of the 1993 Act (the statutory conditions)—
 - (a) after subsection (1) there is inserted—
 - “(1A) If the landlord considers that the crofter is failing to comply with the condition set out in paragraph 3A of that Schedule he may serve notice to that effect on the crofter.”;
 - (b) after subsection (2) there is inserted—
 - “(2A) But where the crofter, for the purpose of conserving—
 - (a) the natural beauty of the locality of the croft; or
 - (b) the flora and fauna of that locality,
 engages in, or refrains from, an activity, his so engaging or refraining is not to be treated as a breach of any of the statutory conditions as respects the croft.
 - (2B) If, immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not to be treated as a breach of the statutory conditions as respects the croft.”; and
 - (c) for subsection (3) there is substituted—
 - “(3) Any contract or agreement made by a crofter by virtue of which he is deprived of any right conferred on him by—
 - (a) a provision of this Act not mentioned in paragraph (b) below, shall to that extent be void unless the contract or agreement is approved by the Land Court;
 - (b) any of sections 8, 12 to 19, 21 and 37 of this Act, may be intimated to the Commission by a party to the agreement (the intimation being in such form as the Commission may specify and there being provided to the Commission, along with the intimation, a copy of the contract or agreement).
 - (4) On giving approval under subsection (3)(a) above, the Land Court shall intimate to the Commission that it has done so and provide them with a copy of the contract or agreement.
 - (5) On receiving a copy, provided under subsection (3)(b) or (4) above, of a contract or agreement the Commission shall enter the copy in the Register of Crofts.

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- (6) Where a copy is so entered then, subject to the terms of the contract or agreement, the deprivation in question is binding on the successors to the crofter's interest.
 - (7) Before the croft is put to any such use as is mentioned in paragraph 3(b) of the statutory conditions, the crofter must apply for the landlord's written consent and either—
 - (a) obtain it unconditionally or subject to conditions which the crofter accepts; or
 - (b) obtain the consent of the Commission.
 - (8) Any application for consent under paragraph (b) of subsection (7) above is to be made under this subsection but may be made only where consent under paragraph (a) of that subsection (whether unconditional or subject to such conditions as are mentioned in paragraph (a)) has not been obtained within 28 days after application under paragraph (a).
 - (9) The Commission shall, on receipt of an application under subsection (8) above—
 - (a) consult, as regards the proposed purposeful use, the landlord and the members of the crofting community in the locality of the land; and
 - (b) if the proposed purposeful use—
 - (i) constitutes a change for which planning permission is required; or
 - (ii) by virtue of any enactment (other than this Act) requires any other permission or approval,require it to be shown that the permission or approval has been given.
 - (10) The Commission shall decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.”.
- (2) In Schedule 2 to that Act (which sets out conditions to which every tenancy of a croft is subject)—
- (a) in paragraph 3, for the words from “cultivate” to the end there is substituted “either or both—
 - (a) cultivate his croft;
 - (b) put it to some other use, being a purposeful use,so that every part of the croft either is cultivated or is put to such use.”;
 - (b) after paragraph 3 there is inserted—
 - “3A The croft shall be kept in a fit state for cultivation except in so far as a use to which it is put by virtue of paragraph 3(b) above is incompatible with its being so kept.
 - 3B Without prejudice to the generality of paragraph 3A above, in determining whether that paragraph is complied with regard shall be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite

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- and practicable, to control or eradicate vermin, bracken, whins, broom, rushes, iris and harmful weeds.”;
- (c) in paragraph 5, for the words from “persistently” to the end there is substituted “injure the croft—
- (a) by allowing the dilapidation of buildings;
 - (b) where the croft is cultivated, by allowing, after relevant notice, the deterioration of the soil; or
 - (c) where the croft is put to some other purposeful use, by acting prejudicial to that use being acting carried out after relevant notice.”;
- (d) after paragraph 5 there is inserted—
- “5A In sub-paragraphs (b) and (c) of paragraph 5 above, “relevant notice” means notice given by the landlord to the crofter not to do, or not to allow, a particular thing or not to engage in a particular course of conduct (being a thing or course of conduct specified in the notice and relevant to the deterioration or prejudice in question).”;
- (e) after paragraph 6 there is inserted—
- “6A The crofter shall be responsible for ensuring, where the croft is sublet, that the subtenant adheres to the statutory conditions.”;
- (f) in paragraph 7, for the word “subdivide” there is substituted “divide”;
- (g) in paragraph 9, the word “persistently” is repealed;
- (h) after paragraph 11 there is inserted—
- “11A Nothing in paragraph 11 above shall be held to allow, or require the crofter to allow, the landlord, or any person authorised by the landlord, to exercise unreasonably a right enjoyed by virtue of that paragraph.”; and
- (i) in paragraph 13, at the end there is added—
- ““purposeful use” is any planned and managed use, being a use which subject to the exception in paragraph 3A above, does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.”.
- (3) The amendment made by subsection (2)(a) above does not affect the right conferred by paragraph 3 of Schedule 2 to that Act, as originally enacted, in relation to a use for subsidiary or auxiliary occupations provided that such use subsists (having subsisted from before the coming into force of that subsection).

8 Complaint as respects breach of the statutory conditions

After section 5 of the 1993 Act, there is inserted—

“5A Complaint as respects breach of the statutory conditions

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, the landlord or any member of the crofting community in the locality of the croft may complain to the Commission that such a breach (other than a breach of the condition as to payment of rent) has occurred.

- (2) Provided—
- (a) that no proceedings—
 - (i) such as are mentioned in subsection (1) above; or
 - (ii) under section 5B of this Act,have been initiated; and
 - (b) that the period allowed the crofter by virtue of subsection (4) below has elapsed,
- the Commission may make an application to the Land Court in relation to the breach; but this subsection is subject to subsection (3) below.
- (3) Except where the complaint was by the landlord, the Commission shall give him written notice of their intention to make the application; and if within 14 days after receipt of that notice he gives them intimation that he objects, being intimation of the description given in subsection (7) below, they shall not proceed with the application.
- (4) Before making the application, the Commission shall give written notice to the crofter of the breach complained of and give him the opportunity to remedy it within such reasonable period as they shall specify in the notice.
- (5) Where, on an application under subsection (2) above, the Land Court is satisfied that the breach complained of has occurred, it may—
- (a) order that the breach be remedied and specify a time within which that must occur; and
 - (b) make such order regarding the payment of compensation by the crofter to the landlord as it thinks fit.
- (6) Where an order under subsection (5)(a) above is not complied with, the Commission may apply to the Land Court for an order—
- (a) terminating the tenancy;
 - (b) declaring the croft to be vacant; and
 - (c) for the removal of the tenant from the croft.
- (7) The description is that the intimation is given 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).
- (8) For the purposes of subsection (7) above (and without prejudice to the generality of that subsection), an intimation is to be treated as given in writing where it is—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.

5B Termination of tenancy for misuse or neglect

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, if the crofter—
- (a) misuses; or
 - (b) neglects,

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the croft, the landlord or, with the consent of the landlord, the Commission may apply to the Land Court for an order—

- (i) terminating the tenancy;
- (ii) declaring the croft to be vacant; and
- (iii) for the removal of the tenant from the croft.

- (2) Before making an application by virtue of paragraph (a) of subsection (1) above the landlord, or as the case may be the Commission, shall give written notice to the crofter of the misuse complained of and give him the opportunity to end that misuse within a period of 42 days commencing with the day on which notice is given.
- (3) Where, on an application made by virtue of paragraph (a) of subsection (1) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the misuse has been brought to an end.
- (4) If the circumstances are that an application made by virtue of paragraph (b) of subsection (1) above (in this section, the “current application”) is being made within 5 years after another application made by virtue of that paragraph as respects the croft, and that other application resulted in notification being given to the crofter under subsection (5) or (6) below, then before making the current application the landlord, or as the case may be the Commission, shall give written notice to the crofter of the neglect complained of and give him the opportunity to end that neglect within a period of 42 days commencing with the day on which notice is given.
- (5) Where, on an application made by virtue of paragraph (b) of subsection (1) above in circumstances other than are mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if—
 - (a) the crofter agrees forthwith that there has been neglect and undertakes to end that neglect; and
 - (b) by the end of a period of one year commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (6) Where, on an application made by virtue of paragraph (b) of subsection (1) above in the circumstances mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (7) For the purposes of subsection (1) above, a crofter—

“misuses” a croft where he wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is duly consented to by virtue of section 5(7) of this Act;

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“neglects” a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the Schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).

- (8) But where the crofter, for the purpose of conserving—
- (a) the natural beauty of the locality of the croft; or
 - (b) the flora and fauna of that locality,
- engages in, or refrains from, an activity, his so engaging or refraining is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (9) If, immediately before the coming into force of section 8 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (10) The Scottish Ministers may by order made by statutory instrument amend the definition of “neglects” in subsection (7) so as to substitute different standards for those for the time being mentioned in that subsection.
- (11) A statutory instrument containing an order under subsection (10) shall not be made unless a draft of the instrument has been—
- (a) laid before; and
 - (b) approved by resolution of, the Scottish Parliament.”.

9 Exchange of crofts or parts of crofts

After section 4 of the 1993 Act, there is inserted—

“Exchange of crofts

4A Exchange of crofts or parts of crofts

- (1) A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless—
- (a) he obtains the consent of—
 - (i) the landlord of his croft; and
 - (ii) the Commission;
 - (b) the exchanging crofters have the same landlord; and
 - (c) that landlord is the owner of any common grazing in which the crofters share.
- (2) The consent of the Commission shall not be given unless they are satisfied that the consent mentioned in paragraph (a)(i) of subsection (1) above has been obtained.

(3) In the case of an application made by virtue of subsection (1) above, the special condition which applies for the purposes of section 58A(6)(b)(ii) of this Act is that there are reasonable grounds for concern that the proposed exchange would be unfair to either (or as the case may be any) of the crofters who are parties to the proposed exchange.

(4) A new croft is not created by virtue only of such exchange.”.

10 Division of croft

For section 9 of the 1993 Act (sub-division of croft), there is substituted—

“9 Division of croft

(1) A crofter shall not divide his croft unless he obtains the consent of the Commission.

(2) In the case of an application to divide a croft, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

- (a) that the application is for the creation of more than two new crofts; or
- (b) that the original croft is one created as a consequence of an earlier division (or sub-division).

(3) Any division of a croft to which the Commission have given their consent under this section shall take effect when such details of that division as the Commission may require by virtue of section 41 of this Act are entered in the Register of Crofts.

(4) After division, the rent payable for the new crofts shall be that agreed between the landlord and the tenant.

(5) In the event that such agreement cannot be reached, the Land Court, on the application of the landlord or the tenant, shall have the power to determine the rent in accordance with subsections (3) and (4) of section 6 of this Act, the fees payable in connection with such an application being borne by the tenant.

(6) In this section—

“division” means the division of a croft into two or more new crofts (“divide” being construed accordingly);

“original croft” means the croft which is the subject of an application for division; and

“new crofts” mean each of the crofts created by the division of the original croft.”.

11 Subletting

(1) In section 27 of the 1993 Act (provisions as to right to sublet)—

- (a) in subsection (1), after the words “his croft” there is inserted “, for a period not exceeding 10 years,”; and
- (b) for subsections (3) and (4) there is substituted—

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- “(3) In the case of any application for such consent, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—
- (a) that there are reasonable grounds for concern as regards the use which the proposed subtenant intends to make of the croft; and
 - (b) that the proposed subtenant will not reside on, or within 16 kilometres of, the croft.”.
- (2) Section 28 of that Act (special provisions regarding subletting of crofts not adequately used) is repealed.
- (3) In section 29 of that Act (miscellaneous provisions regarding subleases of crofts)—
- (a) after subsection (2) there is inserted—

“(2A) The conditions of let must specify that the crofter shall give the subtenant not less than 6 months written notice of any intention to assign, exchange or divide the croft and that the sublease shall come to an end on such assignation, exchange or division.”; and
 - (b) after subsection (3) there is inserted—

“(3A) Where the tenancy of a croft is terminated by virtue of the death of the crofter, the Commission shall, as part of their consideration in determining whether to make an order under the proviso to subsection (3) above and if so what period of occupation to permit—

 - (a) consult the deceased crofter’s executor; and
 - (b) have regard in particular to such hardship as might, according to what they decide, be occasioned—
 - (i) the former subtenant; or
 - (ii) an assignee or transferee of the interest of tenant,”.

12 Assignment

In section 8 of the 1993 Act (assignment of croft)—

- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “unless he obtains the consent of the Commission”;
- (b) for subsections (2) to (4) there is substituted—

“(2) In the case of an application made by virtue of subsection (1) above in respect of an assignment to a person other than a member of the crofter’s family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

- (a) that the proposed assignee lives, or intends to live, more than 16 kilometres distant from the croft;
- (b) that he already owns or is tenant of a croft;
- (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
- (d) that he is the grazings clerk or a member of the grazings committee;

- (e) where the landlord is not a natural person, that the proposed assignee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;
- (f) that there are reasonable grounds for concern over the use to which the proposed assignee intends to put the croft.”;
- (c) in subsection (5), for the words from “in writing” to “above” there is substituted “of the Commission”; and
- (d) in subsection (6), for the words from “at the term” to “may be,” there is substituted “on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the crofter) unless before that date”.

13 Bequest of tenancy of croft

(1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.

(2) For subsection (1), there is substituted—

“(1) A crofter may, by will or other testamentary writing, bequeath the tenancy of his croft to any one natural person.”.

(3) In subsection (2)—

- (a) after the word “landlord”, where it first occurs, there is inserted “and send a copy of the notice to the Commission, both”;
- (b) for the word “2” there is substituted “4”;
- (c) for the words “unavoidable cause” there is substituted “cause, being a cause which the Commission accept is unavoidable,”;
- (d) after the words “give such notice” there is inserted “(and send such a copy)”;
- (e) for the word “4” there is substituted “6”;
- (f) after the word “given” there is inserted “(and copy sent)”;
- (g) after the words “the provisions of this subsection”, there is inserted “or subsection (2A) below”; and
- (h) the words from “The giving of such notice” to the end are repealed.

(4) After subsection (2) there is inserted—

“(2A) Notice under subsection (2) above of the bequest may be given by an executor of the deceased crofter authorised for that purpose by the legatee.

(2B) The giving of notice to the landlord in accordance with the provisions of subsection (2) or (2A) above shall import acceptance of the bequest; and the legatee if—

- (a) he is a member of the deceased crofter’s family; or
- (b) he is a person other than a member of the deceased crofter’s family and the landlord does not intimate objection to the legatee in accordance with subsection (3) below,

shall come into the place of the deceased crofter (as from the date of death of the deceased crofter) on the relevant date mentioned in subsection (2D) below.

(2C) Where notice is given in accordance with the provisions of subsection (2) or (2A) above and—

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- (a) the legatee is a member of the deceased crofter’s family, the Commission shall notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy; or
 - (b) the legatee is a person other than a member of the deceased crofter’s family and the Commission receive no intimation of objection to the legatee in accordance with subsection (3) below, they shall notify the legatee—
 - (i) to that effect; and
 - (ii) of the information referred to in paragraph (a) above.
- (2D) The Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under subsection (2C) above; and the “relevant date” referred to in subsection (2B) above is the date on which the Commission notify the legatee under this subsection.”.
- (5) For subsection (3), there is substituted—
- “(3) Where the legatee is a person other than a member of the deceased crofter’s family, the landlord may, within one month (or such longer period as may be determined by the Commission on an application made to them by the landlord) after the date of the notice given to him in accordance with subsection (2) or (2A) above, intimate to—
- (a) the legatee; and
 - (b) the Commission,
- that he objects to the legatee becoming tenant of the croft; and any such intimation shall state the grounds of objection.”.
- (6) In subsection (4), for paragraph (b) there is substituted—
- “(b) not so satisfied, they shall—
- (i) notify the landlord and the legatee to that effect; and
 - (ii) notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy.”.
- (7) After that subsection, there is inserted—
- “(4A) In a case where subsection (4)(b) above applies, the Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under sub-paragraph (ii) of that subsection; and, if no appeal is made under subsection (4B) below against the Commission’s decision under subsection (4)(b) above, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter’s death) on the date on which the Commission notify the legatee under this subsection.
- (4B) The legatee or, as the case may be, the landlord may, within 42 days after the giving of notification of the Commission’s decision under paragraph (a) or (b) of subsection (4) above in relation to the objection, appeal by way of stated case, on one or more of the grounds mentioned in section 52A(3) of this Act, to the Land Court against that decision.
- (4C) In an appeal under subsection (4B) above the Court may—

- (a) confirm the decision;
 - (b) direct the Commission to come to a different decision; or
 - (c) remit the case to the Commission without so directing them.
- (4D) Where, on an appeal under subsection (4B) above, the Land Court directs the Commission to decide that a bequest under subsection (1) above be upheld, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter’s death) on the date the Court directs under this subsection.
- (4E) A legatee who comes into the place of a deceased crofter in accordance with subsection (2B), (4A) or, as the case may be, (4D) above, in doing so—
- (a) becomes liable for such debts of the deceased crofter’s estate as are attributable to the tenancy; and
 - (b) shall, if requested to do so by the executor, pay the reasonable expenses necessarily and wholly incurred by the executor in relation to the administration and management of the tenancy during the period beginning with the date of the deceased crofter’s death and ending immediately before the date when the legatee so comes into the place of the deceased crofter; and such expenses—
 - (i) shall, in the event of a dispute as to amount, be determined by the Land Court on the application of the executor or the legatee; and
 - (ii) shall not fall to be met from the deceased crofter’s estate.
- (4F) Notwithstanding that a legatee comes into the place of the deceased crofter as mentioned in subsection (4E) above, the tenancy is an asset of the deceased crofter’s estate, available along with the other assets of the estate to meet the other expenses of administration, and debts, of the estate; and any such legatee is liable to contribute to such expenses and debts accordingly.”.

14 Prior rights, on intestacy, in relation to tenancy of croft

- (1) Section 8 of the Succession (Scotland) Act 1964 (c. 41) (prior rights, on intestacy, in dwelling house and furniture) is amended as follows.
- (2) In subsection (1)—
- (a) for the words “dwelling house to which this section applies,” there is substituted “dwelling house mentioned in subsection (4)(a) of this section,”;
 - (b) after the words “shall be entitled” there is inserted “, subject to subsection (2B) of this section,”; and
 - (c) the proviso is repealed.
- (3) After subsection (2), there is inserted—
- “(2A) Where the tenant of a croft dies intestate leaving a spouse or civil partner or, where he dies leaving no spouse or civil partner, leaving a cohabitant, and the intestate estate includes a relevant interest in a dwelling house mentioned in subsection (4)(b) of this section, the surviving spouse, civil partner or, as the case may be, cohabitant shall be entitled, subject to subsection (2B) of this section, to receive out of the intestate estate—
- (a) where the value of the relevant interest does not exceed the amount for the time being fixed by order under subsection (1)(a) of this section, the tenancy of the croft;

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- (b) in any other case, the sum for the time being fixed by order under subsection (1)(b) of this section.

(2B) If the intestate estate comprises—

- (a) a relevant interest in two or more dwelling houses mentioned in subsection (4)(a) of this section, subsection (1) of this section shall have effect only in relation to such one of them as the surviving spouse or civil partner may elect for the purposes of subsection (1) within 6 months after the date of death of the intestate;
- (b) a relevant interest in two or more dwelling houses mentioned in subsection (4)(b) of this section, subsection (2A) of this section shall have effect only in relation to such one of them as the surviving spouse, civil partner or cohabitant may elect for the purposes of subsection (2A) within 6 months after that date;
- (c) a relevant interest in both—
 - (i) one or more dwelling houses mentioned in subsection (4)(a) of this section; and
 - (ii) one or more dwelling houses mentioned in subsection (4)(b) of this section,

the surviving spouse or civil partner shall not be entitled to receive both the entitlement under subsection (1) of this section and that under subsection (2A) of this section and must elect within 6 months after that date whether to take the entitlement under the said subsection (1) or under the said subsection (2A).”.

(4) For subsection (4), there is substituted—

“(4) The dwelling house is—

- (a) in a case mentioned in subsection (1) of this section, any dwelling house in which the surviving spouse or civil partner of the intestate was ordinarily resident at the date of death of the intestate and which did not, at that date, form part of a croft of which the intestate was tenant;
- (b) in a case mentioned in subsection (2A) of this section, any dwelling house in which the surviving spouse, civil partner or cohabitant was ordinarily resident at the date of death of the intestate and which, at that date, formed part of a croft of which the intestate was tenant.”.

(5) In subsection (6), before paragraph (a) there is inserted—

- “(za) “cohabitant” means a person—
 - (i) who was living with the intestate as if married to him; or
 - (ii) who was living with the intestate as if in civil partnership with him,and had been so living for at least 2 years.”.

15 Transfer of tenancy of croft by executor: amendment of section 16 of the Succession (Scotland) Act 1964

- (1) Section 16 of the Succession (Scotland) Act 1964 (powers of executor to assign lease which prohibits assignation) is amended as follows.

- (2) In subsection (2), for the words from “notwithstanding” to the end, there is substituted “subject to subsection (2A) of this section, to transfer the interest.”.
- (3) After that subsection, there is inserted—
- “(2A) Transfer by an executor pursuant to subsection (2) of this section—
- (a) of an interest under an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c. 44) shall require the consent of the Crofters Commission; and
 - (b) of an interest under any other lease (including any agricultural lease which does not fall within paragraph (a) of this subsection) and which is not a transfer to one of the persons entitled to succeed to the deceased’s intestate estate or to claim legal rights or the prior rights of a surviving spouse or civil partner out of the estate, in satisfaction of that person’s entitlement or claim, shall require the consent of the landlord.”.
- (4) In subsection (9), in the definition of “agricultural lease”, for the words “Act of 1955” there is substituted “Crofters (Scotland) Act 1993 (or of any part of a croft if it is a part consisting of a right mentioned in section 3(4)(a) of that Act)”.

16 Transfer of tenancy of croft by executor: special provision relating to the 1993 Act

After section 16 of the Succession (Scotland) Act 1964, there is inserted—

“16A Leases of crofts: special provision relating to the Crofters (Scotland) Act 1993

- (1) The requirement in section 16(2A)(a) of this Act to obtain the consent of the Crofters Commission shall be treated as if it were a requirement under the Crofters (Scotland) Act 1993 (c. 44) and accordingly section 58A of that Act shall apply for the purposes of the requirement as it applies for the purposes of a requirement under that Act.
- (2) In the case of an application for the consent of the Crofter’s Commission made by virtue of section 16(2A)(a) of this Act in respect of a transfer to a person other than a member of the crofter’s family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of the Crofters (Scotland) Act 1993—
 - (a) that the proposed transferee lives, or intends to live, more than 16 kilometres distant from the croft;
 - (b) that he already owns or is tenant of a croft;
 - (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
 - (d) that he is the grazings clerk or a member of the grazings committee;
 - (e) where the landlord is not a natural person, that the proposed transferee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;
 - (f) that there are reasonable grounds for concern over the use to which the proposed transferee intends to put the croft.

- (3) Where the consent of the Crofter’s Commission to a transfer is required by section 16(2A)(a) of this Act, and the executor transfers the interest without the consent of the Commission—
 - (a) the transfer and any deed purporting so to transfer the interest shall be null and void; and
 - (b) the Commission may declare the croft to be vacant.
- (4) A transfer to which the Crofter’s Commission have given their consent under section 16(2A)(a) of this Act shall take effect on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the executor) unless before that date the executor and the transferee jointly give to the Commission notice in writing that they do not intend to proceed with the transfer.
- (5) An appeal shall lie on any question of fact or law to the Land Court against a decision of the Crofters Commission on an application made to them under section 16(2A)(a) of this Act.
- (6) The appellant may be the applicant or any person with an interest in the application.
- (7) An appeal under subsection (5) of this section must be brought within 42 days after the Commission dispose of the application.
- (8) In an appeal under subsection (5) of this section, the Land Court may confirm the decision or direct the Commission to come to a different decision.”.

17 Amendment of section 11 of the 1993 Act

- (1) Section 11 of the 1993 Act (intestacy) is amended as follows.
- (2) In subsection (2), for the word “3” there is substituted “12”.
- (3) In subsection (3)—
 - (a) paragraph (a) is repealed;
 - (b) in paragraph (b)—
 - (i) the word “otherwise” is repealed; and
 - (ii) after the word “tenancy,” there is inserted “the date (no later than 2 months after the date of death of the deceased crofter) on which the Commission receive notification of the death or, where no such notification is received,”; and
 - (c) in paragraph (d), for the words “on which the Commission notified the landlord and the legatee” there is substituted “of notification by the Commission”.
- (4) For subsections (4) to (9), there is substituted—
 - “(4) If at the expiry of the period of 12 months referred to in subsection (2) above, it appears to the Commission (whether from notification under that subsection or otherwise) that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above, they shall give notice in such manner as they think proper, whether by advertisement or otherwise—
 - (a) to the landlord;

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- (b) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
- (c) if no executor is so confirmed, to each person of whom the Commission are aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

that they propose to terminate the tenancy and declare the croft vacant and inviting the recipients of the notice to make representations as respects the proposal to the Commission before the expiry of the period of one month after the date of the notice.

- (5) If, having considered representations (if any) made to them in accordance with subsection (4) above, the Commission are satisfied that—
 - (a) the landlord or the executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964;
 - (b) the executor is proposing to transfer the tenancy; or
 - (c) a person is entitled to a transfer of the tenancy in or towards the satisfaction of his claim to prior rights or his entitlement to succeed to the deceased's intestate estate,

they are not to implement their proposal; but if not so satisfied they may implement their proposal if they consider it appropriate to do so.

- (6) If, by virtue of subsection (5) above, the Commission are not entitled to implement their proposal, but it appears to them subsequently (by means of representations made to them or otherwise) that the tenancy is not being transferred or is unable to be transferred, the Commission may give notice again as mentioned in subsection (4) above.

- (7) If, having considered representations (if any) made to them in accordance with subsection (4) above as respects a proposal contained in a notice given by virtue of subsection (6) above, the Commission are satisfied that it is appropriate to implement their proposal they may do so.

- (8) Where the Commission, in pursuance of this section, declare the croft vacant—

- (a) they shall give notice to that effect—
 - (i) to the landlord;
 - (ii) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
 - (iii) if no executor is so confirmed, to each person of whom the Commission is aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

and any such notice to the landlord shall require him to submit to them such proposals as are mentioned in section 23(5) of this Act;

- (b) any right of any person in, or in relation to, the tenancy shall be extinguished; and
- (c) the landlord shall be liable to pay to the executor of the deceased crofter the value of the permanent improvements on the croft in so far as—
 - (i) the improvement is suitable to the croft;

- (ii) the improvement was executed or paid for by the deceased crofter or by any of the predecessors of the deceased crofter in the tenancy; and
 - (iii) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.”.
- (5) In subsection (10), for the words from the beginning to “In this subsection the expression “the value of the”, there is substituted “In subsection (8)(c) above, the expression “the value of the permanent”.
- (6) In subsection (11)(a), for the words “subsection (8) above” there is substituted “this section”.

18 Determination of the Land Court as to croft boundaries

After section 53 of the 1993 Act, there is inserted—

“53A Extent of boundaries

Where an application is made to the Land Court to determine a question under section 53(1)(c) of this Act and the evidence available to the Court is insufficient to enable any boundary to be clearly determined, the Court shall declare the boundary to be that which in all the circumstances it considers appropriate.”.

19 Access to croft

After section 53A of the 1993 Act (inserted into that Act by section 18 of this Act), there is inserted—

“53B Access to croft

- (1) Where a crofter considers that—
- (a) he requires access from a public road to his croft; and
 - (b) it would be reasonable for such access to be taken by a route lying wholly over land owned by his landlord,
- the crofter may make application to the Land Court for an order under subsection (2) below.
- (2) On an application under subsection (1) above, the Land Court shall make such order as it considers appropriate in all the circumstances, and the order may in particular make provision—
- (a) specifying an access route from the public road to the croft lying wholly over land owned by the landlord;
 - (b) as to the arrangements under which the crofter may carry out works to construct or improve a road over the access route;

- (c) as to the conditions subject to which access may be exercised, including conditions as to what types of vehicle may be taken along the access route;
 - (d) requiring the crofter to indemnify the landlord in respect of any claim for compensation made against the landlord under paragraph 11 of Schedule 2 to this Act in consequence of works such as are described in paragraph (b) above;
 - (e) requiring the crofter to make a payment to the landlord in respect of expenses incurred by the landlord in connection with matters which are the subject of the application.
- (3) Any order under subsection (2) above shall have effect as if the matters for which the order makes provision had been the subject of an agreement between the crofter and the landlord.
- (4) The right of a crofter to make application to the Land Court under subsection (1) above shall be without prejudice to any other right which that crofter may have in connection with access to his croft.”

20 Reorganisation schemes

- (1) The 1993 Act is amended as follows.
- (2) In section 38 (reorganisation schemes)—
- (a) in subsection (1), after the words “prepare a” there is inserted “provisional”;
 - (b) after subsection (1) there is inserted—

“(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.”;
 - (c) for subsection (3) there is substituted—

“(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;

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- (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.”;
- (d) in subsection (4)—
 - (i) after the words “reorganisation scheme”, there is inserted “, or provisional draft or draft of such a scheme,”; and
 - (ii) after the words “the scheme” there is inserted “ or, as the case may be, of the provisional draft or draft,”; and
- (e) for subsections (5) to (7), there is substituted—
 - “(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.
 - (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
 - (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

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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;
 - (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, 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)."

(3) After that section, there is inserted—

“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 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 by way of stated case, 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.”.
- (4) In section 39 (putting schemes into effect)—
 - (a) for subsection (1), there is substituted—

“(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) 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

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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.”;
- (b) in subsection (3), for the words “shall, on a reorganisation scheme being confirmed by the Secretary of State,” there is substituted “may”;
- (c) after subsection (5) there is inserted—
 - “(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.”;
- (d) in subsection (7), the words “, on the scheme being confirmed by the Secretary of State,” are repealed;
- (e) in subsection (8)—
 - (i) for the words “Secretary of State shall, on confirming the scheme,” there is substituted “Commission shall”; and
 - (ii) at the end of paragraph (b), there is inserted “,
 - and shall send a copy of each notice served by them under this subsection to the Scottish Ministers” ;
- (f) in subsection (10)(b), for the words “of the confirmation of the scheme is served on him under paragraph 7 of Schedule 4 to this Act” there is substituted “is served on him under subsection (6) above”.

(5) Schedule 4 (confirmation of schemes by Scottish Ministers etc.) is repealed.

21 Meaning of croft

In section 3 of the 1993 Act (meaning of “croft” and “crofter”)—

- (a) in subsection (1)—
 - (i) after paragraph (c) there is inserted—
 - “(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;”;
- (ii) in paragraph (d), for the words “as aforesaid” there is substituted “in the crofting counties”; and
- (iii) after paragraph (e) there is inserted—
 - “(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

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- (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”; and
- (b) after subsection (1) there is inserted—

“(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.”.

PART 3

TERMINATION OF TENANCY, DECROFTING, ETC.

22 Resumption and reversion

- (1) In section 20 of the 1993 Act (resumption of croft or part of croft by landlord)—
- (a) in subsection (1), after the word “interest” there is inserted “or the interests of the crofting community in the locality of the croft”;
 - (b) after that subsection there is inserted—
- “(1A) A landlord making application under subsection (1) above must give notice of it to the Commission; and the Commission may, if they think fit, oppose or support the application.
- (1B) Without prejudice to the generality of subsection (1) above, resumption may be authorised under that subsection for a specified period of time (such resumption being in this Act referred to as “temporary resumption” and resumption other than for a specified period of time as “ordinary resumption”) and the land shall revert to being a croft (or to being part of a croft)—
- (a) on the date on which the period (or as the case may be the period as extended under subsection (1D) below) elapses; or
 - (b) on such earlier date as the Land Court may specify in an order under section 21A(1) of this Act.
- (1C) Subject to subsection (1D) below, the Land Court may, on the application of the landlord, extend the period specified under subsection (1B) above.
- (1D) Where a planning permission granted for a limited period subsists for a change of the use of the land, being a change for which resumption was authorised, the Land Court must, on such application, extend the

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period so specified; but not to a date later than the end of the period specified in the condition under subsection (1)(b) of section 41 of the Town and Country Planning (Scotland) Act 1997 (c. 8) to which the permission is subject.

- (1E) In subsection (1D) above, “planning permission granted for a limited period” shall be construed in accordance with subsection (3) of that section.
- (1F) The Land Court may, on the application of the landlord made before the expiry of the specified period of time referred to in subsection (1B) above, determine that a resumption authorised as a temporary resumption is to be taken to be an ordinary resumption; and where such a determination is made—
- (a) subsections (1B) to (1D) above and the exception to subsection (2)(b) of section 21A of this Act shall cease to be applicable as respects the resumption; and
 - (b) the Land Court may determine (either or both)—
 - (i) that the landlord shall make further compensation under subsection (1) above;
 - (ii) that the crofter shall, under section 21(1) of this Act, be entitled to a further share in the value of the land.”.
 - (c) in subsection (3)(a), after sub-paragraph (viii) (but before the word “or” which immediately follows that sub-paragraph), there is inserted—

“(viiiia) the generation of energy;”.
- (2) In section 21 of the 1993 Act (crofter’s right to share in value of land resumed by landlord)—
- (a) after subsection (1) there is inserted—

“(1A) If it thinks fit the Land Court may, having regard to how the purpose for which resumption is authorised is to be carried out, determine that a sum awarded under this section shall be payable in instalments of such amounts and on such dates as it shall specify in the determination.

(1B) On making a determination under subsection (1A), the Land Court shall intimate to the Commission that it has done so and provide them with a copy of the determination; and the Commission shall enter that copy in the Register of Crofts.

(1C) When so entered the determination shall bind any successor to the landlord as it binds the landlord.”; and
 - (b) in subsection (6), after the word “payable” there is inserted “, or in the case of payment by instalments as from the date when the unpaid balance of such sum is payable,”.
- (3) After section 21 of the 1993 Act, there is inserted—

“21A Reversion of resumed land

- (1) The Land Court may, on the application of any relevant person and on being satisfied that the conditions specified in subsection (2) below are met, make

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an order that land resumed by virtue of section 20(1) of this Act shall revert to being a croft (or to being part of a croft).

- (2) The conditions are—
- (a) no 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;
 - (b) except in the case of a temporary resumption, not less than 5 nor more than 20 years have elapsed since the resumption of the croft was authorised;
 - (c) the purpose for which the landlord desired to resume the croft has not been carried out;
 - (d) no planning permission relating to a change of the use of the land subsists;
 - (e) the land remains suitable for use by crofters for cultivation; and
 - (f) the land is owned by the person who was authorised to resume the croft.
- (3) For the purposes of subsection (2)(e) above, “cultivate” has the same meaning as in Schedule 2 to this Act.
- (4) Where land reverts by virtue of subsection (1) above, the Land Court may make such order (if any) as it thinks fit as to the repayment, in whole or in part, of any sum awarded as compensation under section 20(1), or any share in value paid by virtue of section 21(1), of this Act.
- (5) Where land which reverts by virtue of subsection (1) above or under section 20(1B) of this Act comprises a common grazing, the Land Court may make such order as it thinks fit as to shares in the common grazing.
- (6) “Relevant person” in subsection (1) above means the Commission, the landlord, the person who surrendered the land or, where the land comprises a common grazing, the owner or the grazings committee.”

23 Decrofting

In the 1993 Act—

- (a) in section 24 (decrofting in case of resumption or vacancy of croft)—
- (i) in subsection (2), after the words “do so” there are inserted the following paragraphs—
 - “(a) forthwith or on the refusal of an application made under paragraph (b) below; or
 - (b) at the end of such further period as the Land Court, on the application of the Commission, may allow;”;
 - (ii) after that subsection there is inserted—
 - “(2A) Where a further period is allowed by virtue of subsection (2) (b) above, the Commission shall be liable to the landlord for an amount equal to the rent which would have been payable for the croft in respect of that period.”;
- (b) in section 25 (provisions supplementary to section 24(3))—
- (i) in subsection (1)(a), after the word “interest” there is inserted “or to the interests of the crofting community in the locality of the croft”;

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- (ii) in subsection (1), after paragraph (b) there is added “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”;
- (iii) in subsection (2), for the words “(1)(b)” there is substituted “(1)(b) or (c)”;
- (iv) in subsection (3), after the word “conditions” there is inserted “(which may include provision as to timescales)”;
- (v) after subsection (3) there is inserted—

“(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.”;

- (vi) after subsection (4) there is inserted—

“(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.”; and

- (vii) for subsections (7) and (8) there is substituted—

“(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.

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- (7A) The Commission shall—
- (a) give written notification to the owner of land—
 - (i) to which a further direction under subsection (3) above relates of the making of that direction; and
 - (ii) of the modification, under subsection (3B) above, of a condition which relates to that land; and
 - (b) give public notification of those matters.
- (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 by way of stated case, 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.”.

24 Re-letting

In section 23 of the 1993 Act (vacant crofts)—

- (a) for subsection (3) there is substituted—

“(3) The landlord of a croft shall not, without the approval of the Commission, let the croft or any part of it to any person; and any letting of the croft otherwise than with such approval shall be null and void.

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- (3A) In the case of an application made by virtue of subsection (3) above, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—
- (a) that the proposed tenant lives, or intends to live, more than 16 kilometres distant from the croft;
 - (b) that he already owns or is tenant of a croft;
 - (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
 - (d) that he is the grazings clerk, a member of the grazings committee, the owner of the common grazing or a member of the landlord's family;
 - (e) where the landlord is not a natural person, that the proposed tenant is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord; and
 - (f) that there are reasonable grounds for concern over the use to which the proposed tenant intends to put the croft.”;
- (b) in subsection (5)—
- (i) at the beginning there is inserted “Subject to subsection (5A) below,”; and
 - (ii) for the words from “the Commission refuse” to the end of the proviso there is substituted “the Commission's approval of them is not obtained, the Commission must proceed in accordance with subsections (5B) and (5C) below.
- (5A) Where the croft is declared vacant in pursuance of section 11(8) of this Act, if, within a period of four months from the giving of notice under that section, the proposals required by that notice to be submitted are not submitted or the Commission's approval of them is not obtained, the Commission must proceed in accordance with subsections (5B) and (5C) below.
- (5B) The Commission shall, by public notification, invite applications for tenancy of the croft within such period as shall be specified in the notification.
- (5C) When that period has elapsed, the Commission shall determine—
- (a) to which of the applicants (if any) to let the croft; and
 - (b) in consultation with the landlord, on what terms and conditions.”.

25 **Compensation for improvements for purposes other than cultivation or grazing etc.**

In section 30 of the 1993 Act (compensation to crofter for improvements), after subsection (6) there is inserted—

“(6A) Subject to subsection (6B) below, in this Act “improvement” does not include anything erected or carried out wholly for—

- (a) putting a croft to such other purposeful use as is mentioned in paragraph 3(b) of Schedule 2 to this Act; or
- (b) using part of a common grazing for a purpose other than is mentioned in paragraph (a) or (b) of section 50B(1) of this Act.

(6B) Subsection (6A) above does not apply if—

- (a) in any written consent given under section 5(7)(a) of this Act as respects the use in question, the landlord agrees that the subsection should not apply; or
- (b) before the Commission approve under section 50B(11) of this Act implementation of the proposal for the use in question, the owner gives written intimation to the proposer that, as respects that use, he so agrees.”.

PART 4

COMMON GRAZINGS

26 Use of common grazing

(1) In section 50 of the 1993 Act (use of common grazings for forestry purposes)—

- (a) in subsection (1)—
 - (i) for the word “interested” there is substituted “who holds a right”; and
 - (ii) in paragraph (b), for the word “landlord” there is substituted “owner”;
- (b) in subsection (2)—
 - (i) for the words “A landlord's” there is substituted “An owner's”;
 - (ii) after paragraph (b) there is inserted—
 - “(bb) may be given subject to conditions provided that those conditions are reasonable;”;
 - (iii) in paragraph (c), for the word “landlord” there is substituted “owner”; and
 - (iv) in paragraph (e), for the word “landlord's” there is substituted “owner's”;
- (c) after subsection (2) there is inserted—

“(2A) An owner may refuse consent on (and only on) the grounds that implementation of the proposal would—

- (a) adversely affect the exercise of any rights which he has under or by virtue of Schedule 2 to this Act;
- (b) prevent an intended resumption by virtue of section 20(1) of this Act;
- (c) be detrimental to the sound management of the estate which comprises the land;
- (d) cause hardship to a crofter who shares in the common grazing;
- (e) cause the owner undue hardship; or

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- (f) lessen significantly the amenity of (either or both)—
- (i) the land;
 - (ii) its surrounding area;
- and without prejudice to subsection (2B) below any refusal shall be in writing and shall specify the grounds of refusal.
- (2B) If, within six weeks after application under subsection (1)(b) above, there has neither been written consent nor written refusal, the owner shall be deemed to have refused the application.
- (2C) If, on an application—
- (a) under sub-paragraph (i) of section 53(1)(e) in relation to a consent applied for under subsection (1)(b) above but refused, the Land Court is not satisfied that any of the grounds mentioned in subsection (2A) above has been made out, it may determine that the consent is to be deemed given, or
 - (b) under sub-paragraph (ii) of that section in relation to a consent so applied for but granted subject to a condition, the Land Court is not satisfied that the condition is reasonable, it may determine that the consent is to be deemed given—
 - (i) free of the condition; or
 - (ii) subject instead to a condition specified in the determination.”;
- (d) in subsection (3), for the words “A landlord's” there is substituted “An owner's”;
- (e) after subsection (3) there is inserted—
- “(3A) The Commission shall, on receipt of any application under subsection (1)(a) above, consult as regards the proposal the owner, the crofters who share in the common grazing and such other persons as appear to the Commission to have an interest.
- (3B) The reference in subsection (1) above to using as woodlands is to having the right to exclusive economic and recreational use, including (without prejudice to that generality)—
- (a) felling, removing, selling and replacing the trees in question;
 - (b) collecting trimmings, fallen timber, foliage, sap, flowers, fruit, seeds or nuts for use or sale;
 - (c) grazing animals in the woodlands; and
 - (d) selling timber, timber products and other forestry products,
- except that this subsection is without prejudice to any person’s access rights (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003 (asp 2)).
- (3C) Where the owner’s consent is, under subsection (2)(bb) above, subject to a condition that land be fenced, or otherwise enclosed, any expenditure incurred in complying with that condition (including expenditure incurred in that connection in maintenance, repair or renewal) shall be met—
- (a) in a case where the applicant is the grazings committee, by that committee, and

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- (b) in any other case, jointly and severally by the crofters sharing in the common grazing.”;
 - (f) for subsection (4) there is substituted—
 - “(4) In this section, “owner’s consent” means the consent of the owner referred to in subsection (1)(b) above (or a deemed such consent);”;
 - and
 - (g) at the end there is added—
 - “(5) This section is without prejudice to section 50A of this Act and is subject to the terms of any agreement under that section.”.
- (2) After section 50 of the 1993 Act, there is inserted—

“50A Joint forestry ventures etc.

- (1) A crofter who holds a right in a common grazing, or a grazings committee, may, with the agreement of the Commission, enter into a written agreement with the owner of the common grazing that they shall engage in a joint forestry venture to use woodlands as part of the common grazing concerned; and subject to subsection (4) below that agreement shall bind the parties to it and their successors.
- (2) Subject to the terms of any agreement under subsection (1) above, where there are, on part of a common grazing which is to be used as woodlands by virtue of section 50 of this Act, trees other than such as are mentioned in paragraph 11(d) of Schedule 2 to this Act, the owner and the grazings committee may agree—
 - (a) that those trees are to be sold to the committee at current value; or
 - (b) that the owner is to be entitled to a share of the timber obtained from such use, being a share which is proportionate having regard to the numbers, respectively, of those trees and of the trees planted (or obtained from planned natural regeneration of the trees planted) in the course of such use.
- (3) Where an agreement is entered into under subsection (1) or (2) above, a copy of that agreement shall be lodged with the Commission.
- (4) The persons who for the time being are bound by the agreement in question may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (3) above (or as the case may be that agreement as last amended under this subsection).
- (5) Any person who is for the time being bound by an agreement under subsection (2) above may appeal to the Land Court against a valuation carried out by virtue of paragraph (a), or the assessment of a share entitlement carried out by virtue of paragraph (b), of that subsection.
- (6) In an appeal under subsection (5) above, the Land Court may reassess the value or entitlement in question.
- (7) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

- (8) In subsection (2)(b) above “planned natural regeneration” means regeneration which takes place in accordance with—
- (a) an agreement entered into under or by virtue of this Act or of any other enactment; or
 - (b) the conditions of—
 - (i) any grant for purposes which include such regeneration and which is paid out of the Scottish Consolidated Fund; or
 - (ii) such other grant of a public nature as may be prescribed.

50B Use of common grazing for other purposes

- (1) A crofter who holds a right in a common grazing may propose to the grazings committee (or, if there is no grazings committee, to the grazings constable) that a part of the common grazing be used other than for—
- (a) grazings or a purpose mentioned in section 52(9) of this Act; or
 - (b) woodlands.
- (2) The use proposed must not be such as would be detrimental to—
- (a) the use being made, as at the time of application, of the other parts of the common grazing; or
 - (b) the interests of the owner.
- (3) On receipt of a proposal made under subsection (1) above the grazings committee (or as the case may be the grazings constable) shall, for the purpose of there being a discussion and vote on the proposal, summon a meeting of the crofters who share in the common grazing.
- (4) Regulations under section 49(2)(g) of this Act shall, in relation to any meeting so summoned, provide that—
- (a) the time, place and purpose of the meeting (including the proposal in question) should be—
 - (i) set out in a notice sent by registered post to each of those crofters and to the owner; and
 - (ii) intimated by public notification, at least 28 days before the meeting; and
 - (b) the grazings committee (or grazings constable) shall, in sending such notice to the owner—
 - (i) invite him to give his views as to the proposal; and
 - (ii) afford him the opportunity to discuss it, at such reasonable time before the meeting as is convenient to him, with a member of the committee (or with the grazings constable);
 - (c) at the meeting any views so given (or disclosed in discussion) shall be made known to the crofters attending;
 - (d) subject to subsection (5) below, the vote on the proposal shall be by simple majority of the votes cast by the crofters attending (a crofter being entitled to a single vote for each share in the common grazing which he holds);
 - (e) the result of the vote shall be declared at the meeting; and
 - (f) the owner shall be advised by the grazings committee (or grazings constable), by written notice given within two weeks after the meeting

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takes place, of its outcome (that is to say, of whether the proposal has been accepted or rejected, of the number of crofters present, of the numbers of votes, including votes by proxy or by post, respectively for and against and of the number of crofters attending but abstaining) and, if the vote is in favour of the proposal, of what subsection (6) of this section requires to be done.

- (5) A crofter who is unable to attend the meeting so summoned but who has notified the grazings committee (or grazings constable) of that circumstance may vote by proxy or by post (provided that any vote posted shall be valid only if received by the committee before the meeting).
- (6) If the vote is in favour of the proposal the committee (or grazings constable) shall, in such manner as the Commission may require, apply to the Commission seeking their approval for its implementation.
- (7) On receipt of an application under subsection (6) above the Commission shall—
 - (a) consult, as regards the proposal, the owner and any other person who appears to the Commission to have an interest; and
 - (b) give public notification—
 - (i) that the proposal has been made;
 - (ii) that they are considering whether to approve it; and
 - (iii) inviting written comments within such period as shall be specified in the notification.
- (8) Within 28 days after public notification is given under subsection (7)(b) above—
 - (a) the owner;
 - (b) any crofter who shares in the grazing; or
 - (c) any member of the crofting community in the locality of the grazing,may submit to the Commission an objection as regards the application, being an objection of the description given in section 58A(16) of this Act.
- (9) The 28 days mentioned in subsection (8) above include the day on which the notification in question is given.
- (10) If the Commission think fit, they may hear evidence as regards the proposal.
- (11) The period specified under subsection (7)(b)(iii) above and the period of 28 days mentioned in subsection (8) above both having expired, the Commission may approve or reject the implementation of the proposal and if they give their approval they may, if they think fit, impose conditions as respects that implementation; and they may, if requested by the grazings committee or the owner to review that implementation, decide to carry out such a review, and may by virtue of that decision (if they think fit)—
 - (a) either or both—
 - (i) vary or withdraw any such conditions,
 - (ii) impose further conditions, or
 - (b) revoke the approval.
- (12) Where the Commission give approval they are, if—
 - (a) the owner so requests; and

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- (b) they are satisfied that the circumstances are as mentioned in subsection (13) below,
- to impose under subsection (11) above a condition that the land is to be enclosed by means of a deer-proof barrier (as defined by section 45(1) of the Deer (Scotland) Act 1996 (c. 58)).
- (13) The circumstances are that—
- (a) implementation of the proposal is likely to result in the land to which the proposal relates becoming more attractive to deer; and
 - (b) there are sufficient reasons for imposing the condition, being reasons relating to—
 - (i) deer management; or
 - (ii) the protection or enhancement of the environment.
- (14) Within two weeks after coming to a decision as respects implementation of the proposal, the Commission shall advise—
- (a) the proposer;
 - (b) the grazings committee (or grazings constable);
 - (c) the owner; and
 - (d) every person who submitted written comments by virtue of subsection (7) or an objection under subsection (8), or gave evidence by virtue of subsection (10), above,
- as to the decision and as to any conditions imposed under subsection (11) above.
- (15) Where the decision is to approve implementation but subsequently the Commission vary or withdraw conditions, impose further conditions or revoke the approval they shall, within two weeks after doing so, advise the persons mentioned in paragraphs (a) to (d) of subsection (14) above accordingly.”.

27 **New common grazing**

After section 51 of the 1993 Act, there is inserted—

“51A New common grazing

- (1) The Commission shall have power, on the application of the owner of any eligible land, to constitute the land as a common grazing by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.
- (2) The Commission shall, on receipt of any such application, give public notification of it; and such notification shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.
- (3) After the period mentioned in subsection (2) above has elapsed the Commission—

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- (a) shall determine whether to exercise their power under subsection (1) above; and
 - (b) shall give public notification of that determination.
- (4) In so determining the Commission shall have regard to—
 - (a) such written comments, if any, as are duly made by virtue of subsection (2) above;
 - (b) the public interest and 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 constituting the land as a common grazing.
- (5) Land is eligible land for the purposes of subsection (1) above only if it is—
 - (a) neither tenanted nor occupied by a cottar;
 - (b) situated in the crofting counties but not constituted as a croft; and
 - (c) not adjacent or contiguous to a croft.
- (6) The owner and the persons who are to share in the common grazing shall agree in writing what the use of the common grazing is to be; and subject to subsection (8) below that agreement shall bind –
 - (a) the owner and those persons; and
 - (b) the successors of the owner and of those persons;and a copy of the agreement shall be lodged with the Commission.
- (7) The use mentioned in subsection (6) above may be for (any or all)—
 - (a) grazings;
 - (b) a purpose mentioned in section 52(9) of this Act;
 - (c) woodlands;
 - (d) a purpose other than is mentioned in paragraphs (a) to (c) above,and in the agreement different provision may be made for different parts of the common grazing.
- (8) The persons who for the time being are the owner and the persons sharing in the common grazing may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (6) above (or as the case may be that agreement as last amended under this subsection).
- (9) Section 6 of this Act applies in relation to land constituted as a common grazing under this section as it applies in relation to a croft.
- (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.”.

28 Contravention of, or failure to comply with, common grazings regulations

In section 52 of the 1993 Act (miscellaneous provisions as to common grazings etc.), for subsection (1) there is substituted—

“(1) Where it is averred by the grazings committee or the owner that a person has contravened, or failed to comply with, any common grazings regulations for the time being in force under section 49 of this Act, the committee or as the case may be the owner may apply to the Commission for a determination in the matter.

(1A) On receipt of an application made under subsection (1) above the Commission—

- (a) shall serve notice on the person of the averment; and
- (b) shall send a copy of that notice to the grazings committee and to the owner.

(1B) The person, the committee and the owner shall all be afforded the opportunity to make representations as regards the averment and if the Commission think fit the Commission may hear evidence in the matter.

(1C) If the Commission determine that the averred contravention or failure has occurred they may require the person—

- (a) to conform with the regulation in question, and
- (b) to make good, within such reasonable period as they shall specify, any damage which has directly resulted from the occurrence.

(1D) Where—

- (a) a requirement imposed under subsection (1C) above is not complied with (and subsection (1E) below does not apply), the Commission—
 - (i) may determine that all or part of the person’s share in the common grazing is suspended for such period as they shall specify; and
 - (ii) if the non-compliance consists in a failure to make good damage within the period specified under subsection (1C)(b) above, may require it be made good within such further period as they may specify,
- (b) all requirements imposed under subsection (1C)(a) above and any requirement imposed under sub-paragraph (ii) of paragraph (a) above (whether or not as that sub-paragraph applies by virtue of subsection (1E)(a) below) are complied with, the Commission may end a suspension imposed under sub-paragraph (i) of that paragraph.

(1E) Where, while all or part of the person’s share in the common grazing is suspended by virtue of subsection (1D)(a)(i) above, a requirement imposed under subsection (1C)(a) above is not complied with as regards so much of the share as is not suspended, or as the case may be a requirement imposed under subsection (1D)(a)(ii) above is not complied with, the Commission—

- (a) may (but on one occasion only) extend either or both periods mentioned in subsection (1D)(a) above; or
- (b) may—
 - (i) determine that all or part of the person’s share is terminated; and

(ii) apportion the share or part to other persons sharing in the common grazing.

(1F) Reference in this section to a share in the common grazing includes reference to any rights and privileges pertaining to that share.”.

29 Further amendment of section 52: apportionment

(1) Section 52 of the 1993 Act is amended as follows.

(2) In subsection (4), for the words “interested, after consultation with the grazings committee, apportion a part of a” there is substituted “who holds a right in a common grazing, and after consultation with the grazings committee, apportion a part of the”.

(3) At the end there is added—

“(10) Without prejudice to the generality of subsections (3), (4) and (8) above, the Commission may under any of those subsections (either or both)—

- (a) apportion a part for a period;
- (b) determine that an apportionment shall be subject to review at fixed intervals,

which they shall specify.

(11) The Commission may extend any such period as is mentioned in subsection (10)(a) above on the application of the township which, or as the case may be the crofter who, has exclusive use.

(12) Without prejudice to subsection (10)(b) above, the Commission may, on the application of that township or crofter or of the grazings committee or owner—

- (a) review an apportionment made in pursuance of subsection (3) or (4) above;
- (b) (whether or not on such review)—
 - (i) vary or revoke any condition imposed under subsection (6) above;
 - (ii) impose a new condition under that subsection;
 - (iii) bring an apportionment made as mentioned in paragraph (a) above to an end.

(13) Where—

- (a) a period of apportionment fixed under subsection (10)(a) above (or so fixed and extended under subsection (11) above) comes to an end; or
- (b) it is determined on review under subsection (10)(b) above, or is determined under subsection (12)(b)(iii) above, that an apportionment is to come to an end,

the land in question reverts to being a common grazing.

(14) Where land reverts under subsection (13) above, the Commission may, having regard to the rights held in the common grazing immediately before the apportionment in question, make such determination as they consider equitable as to shares in the common grazing.

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- (15) Subsections (10) to (14) above do not apply as respects land constituted as common grazing under section 51A of this Act.”.

PART 5

SCHEMES FOR DEVELOPMENT

30 Schemes for development

- (1) After section 19 of the 1993 Act, there is inserted—

“19A Schemes for development

- (1) The landlord (or owner), or any person acting with the consent of the landlord (or owner)—
- (a) may by application to the Land Court seek its consent to—
 - (i) croft land or common grazing; or
 - (ii) land near to croft land or common grazing if rights and liabilities in relation to the croft land or common grazing would be affected,
 being developed in accordance with a scheme appended to the application; or
 - (b) may intimate to that Court that every person who has rights in or over croft land or a common grazing consents to its being developed in accordance with a scheme appended to the intimation,
- and the applicant shall send a copy of the application or as the case may be of the intimation (and, in either case, of the appended scheme) to the Commission.
- (2) Consent under paragraph (a) of subsection (1) above is not to be given unless the Court is satisfied—
- (a) that the development is for a reasonable purpose;
 - (b) that to carry it out would not be unfair;
 - (c) that the scheme provides for there to be fair recompense to each member of the crofting community in the area affected by the development for the effects of the development (including, in relation to the croft land of each such member, recompense at least equivalent to the recompense which the member might be expected to have obtained had that croft land been resumed); and
 - (d) that, were the development carried out—
 - (i) that community would be likely to benefit financially; and
 - (ii) such benefit would be at least commensurate with any financial benefit which the members of that community might obtain on the development proceeding other than by virtue of this section.
- (3) For the purposes of subsection (2) above—

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- (a) the definition of “reasonable purpose” in subsection (3) of section 20 of this Act applies as it does for the purposes of subsection (1) of that section;
 - (b) it is unfair to carry out a development only where to do so would have significant adverse consequences for one or more of the members of the crofting community in the area affected by the development and either those consequences would be disproportionately greater than the adverse consequences for the other members of that community or there would be no adverse consequences for those other members;
 - (c) whether recompense is fair is to be determined having regard both to the value of the development and to its effect on the member in question; and
 - (d) an effect for which there is to be fair recompense may be an effect of any kind whatsoever (and in particular need not be an effect on a croft qua croft).
- (4) An application under paragraph (a) of subsection (1) above or intimation under paragraph (b) of that subsection shall—
- (a) be made in such form; and
 - (b) be accompanied by such fee,
- as the Court shall specify; and the Court may make different provision for different categories of case.
- (5) Provision made under subsection (4)(a) above shall include provision as to the form and content of the appended scheme.
- (6) A person making an application under paragraph (a) of subsection (1) above or giving intimation under paragraph (b) of that subsection shall forthwith give public notification of the application or intimation.
- (7) Within 28 days after the public notification is given (including the day on which given)—
- (a) the Commission; or
 - (b) any other interested party,
- may submit to the Court written objections, on one or more of the grounds mentioned in subsection (8) below, as respects the application or intimation; and the Court shall hear the objectors (if any) before determining whether to give consent under this section or as the case may be before determining whether to proceed under subsection (10) below as respects the intimation.
- (8) The grounds are—
- (a) that the development is not for a reasonable purpose (the definition of “reasonable purpose” in subsection (3) of section 20 of this Act applying for the purposes of this paragraph as it applies for the purposes of subsection (1) of that section);
 - (b) that to carry out the development would be unfair to the crofting community;
 - (c) in the case of a submission under paragraph (a) of subsection (7) above, that the scheme does not provide for there to be fair recompense to each member of the crofting community;
 - (d) in the case of a submission under paragraph (b) of subsection (7) above—

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- (i) that to carry out the development would be unfair to the objector;
 - (ii) that the scheme does not provide for there to be fair recompense to the objector;
 - (e) that, were the development to be carried out, the crofting community would be unlikely to benefit financially;
 - (f) that, were the development to be carried out, any financial benefit to the crofting community would not be as mentioned in subparagraph (ii) of subsection (2)(d) above.
- (9) The Court shall, whether or not there is a hearing under subsection (7) above, give reasons for any such determination.
- (10) On—
- (a) giving consent under this section; or
 - (b) determining to proceed under this subsection as respects an intimation,
- the Court shall advise the Commission that it has done so and provide them with a copy of the scheme in accordance with which the development is to take place; and the Commission shall enter that copy in the Register of Crofts.
- (11) When so entered the scheme shall, in so far as its terms so provide, be binding on—
- (a) the landlord (or owner);
 - (b) any member of the crofting community in the area affected by the development;
 - (c) any person who, though not described in paragraph (b) above, is—
 - (i) a tenant of a croft; or
 - (ii) a holder of grazing rights,
 in that area; and
 - (d) the successors to the persons mentioned in paragraphs (a) to (c) above.”.
- (2) In section 49 of the 1993 Act (common grazings regulations), after subsection (8) there is added—
- “(9) Nothing contained in a scheme a copy of which has been entered, under section 19A of this Act, in the Register of Crofts is, for the purposes of subsection (8) above, an agreement.”.

PART 6

CROFTING COMMUNITY RIGHT TO BUY

31 Crofting community right to buy

- (1) The Land Reform (Scotland) Act 2003 ([asp 2](#)) is amended as follows.
- (2) After section 69 there is inserted—

“69A Land which may be bought: interest of tenant over land

- (1) This section applies where a tenancy which is neither—
 - (a) a croft tenancy; nor
 - (b) the tenancy of a dwelling-house,has been created over land at least part of which is eligible croft land (the land over which the tenancy has been created being in this section referred to as the “tenanted land”).
 - (2) Where this section applies, a crofting community body may apply, under section 73 below, to buy the interest mentioned in subsection (3) below—
 - (a) where—
 - (i) it is simultaneously applying; or
 - (ii) it has made an application in respect of which Ministers have not made a decision,to buy eligible croft land any part of which is part of the tenanted land (any such eligible croft land being in this section referred to as the “principal subjects”); or
 - (b) if the conditions set out in subsection (4) below are met, during the relevant period.
 - (3) The interest is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.
 - (4) The conditions are that the crofting community body—
 - (a) has provided confirmation under section 85(1) below of its intention to proceed to buy the principal subjects; or
 - (b) has bought and retained those subjects in accordance with the provisions of this Part of this Act.
 - (5) In subsection (2) above, “relevant period” means the period beginning with the date on which Ministers consented to the application under section 73 to buy the principal subjects and ending—
 - (a) where the crofting community body does not proceed to exercise its right to buy those subjects, on the date on which it withdraws, under section 85(2) below, its confirmation so to proceed; or
 - (b) where the crofting community body has bought and retained those subjects, five years after the date on which the crofting community body bought those subjects.”.
- (3) After section 88 there is inserted—

“88A Acquisition of interest of tenant over land: allocation of rents etc.

- (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

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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.”.

(4) After section 97 there is inserted—

“97A Construction of certain references to “tenant”

In this Part, “tenant”, in any case where the reference is not to a tenant of a croft, includes sub-tenant (analogous expressions being construed accordingly).”.

PART 7

GENERAL AND MISCELLANEOUS

General

32 Regulations concerning loans

After section 46 of the 1993 Act, there is inserted—

“46A Regulations concerning loans

(1) The Scottish Ministers may in accordance with regulations made by them under subsection (2) below provide loans to—

- (a) crofters;
- (b) cottars;
- (c) owners of holdings to which section 46(2) of this Act applies.

(2) Regulations under this subsection may make provision as to—

- (a) who is to be eligible for a loan;
- (b) the amount which may be lent;
- (c) the circumstances under which, and the purposes for which, a loan may be provided;
- (d) the terms and conditions applicable to any loan;
- (e) arrangements for recording documents in connection with a loan in the Register of Crofts, the Land Register of Scotland or the Register of Sasines;
- (f) arrangements for recovery of any loan (whether or not in its entirety) when the borrower dies;
- (g) arrangements for assignation of the borrower’s liabilities in consequence of the borrower dying or no longer occupying the holding in respect of which the loan was provided.”.

33 Appeal to Land Court and jurisdiction of that court

(1) Before section 53 of the 1993 Act there is inserted—

“52A Appeal to Land Court: general

- (1) An appeal shall lie to the Land Court, on one or more of the grounds mentioned in subsection (3) below, against—
 - (a) any decision, determination or direction of; or
 - (b) the imposition of a condition by,the Commission on an application made to them under this Act.
 - (2) The appeal—
 - (a) is to be made by way of stated case, at the instance of the applicant or of any person with an interest in the application; and
 - (b) must be brought within 42 days after the Commission dispose of the application.
 - (3) The grounds are that the Commission, in reaching their decision or as the case may be in determining as they did, in making their direction or in imposing the condition in question—
 - (a) erred on a point of law;
 - (b) made a finding as to a fact material to the decision, determination, direction or imposition but did not have sufficient evidence on which to base that finding;
 - (c) acted contrary to natural justice,
 - (d) took into account certain irrelevant or immaterial considerations;
 - (e) failed to take into account certain relevant or material considerations;
 - (f) exercised their discretion in an unreasonable manner.
 - (4) In an appeal under subsection (1) above the Court may—
 - (a) confirm the decision, determination, direction or imposition;
 - (b) direct the Commission to come to a different decision, make a different determination or direction or impose a different (or no) condition; or
 - (c) remit the case to the Commission without so directing them.
 - (5) Subsections (1) to (4) above also apply, but with such modifications as are necessary, to—
 - (a) a granting or withholding of approval under section 23(3); or
 - (b) a variation, withdrawal, imposition or revocation under section 50B(11),of this Act.
 - (6) Subsections (1), (2) and (4) above do not apply where an appeal lies under section 10(4B), 25(8) or 38A of this Act.
 - (7) In subsections (1) to (4) above, “decision” does not include a decision under section 58A of this Act as to whether or not to intervene and “determination” does not include any determination by the Commission that an objection under subsection (4) of that section is frivolous, vexatious or unreasonable.”.
- (2) In section 53 of the 1993 Act (jurisdictional provisions)—
- (a) in subsection (1), after paragraph (d) there is added—

“(e) the question—

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- (i) whether any of the grounds mentioned in subsection (2A) of section 50 of this Act as grounds for refusing consent applied for under subsection (1) of that section is made out; or
 - (ii) whether conditions subject to which any such consent is given are reasonable”;
 - (b) in the proviso to subsection (1), for paragraph (ii) (and the word “or” immediately preceding that paragraph) there is substituted—
 - “(ii) (other than on a reference made to it by the Commission) any question arising by virtue of an application to the Commission under this Act; or
 - (iii) any other question (other than a question of law), if it is a question decided by the Scottish Ministers or the Commission in the discharge of any of their respective functions under this Act.”; and
 - (c) in subsection (2), for the words “this Act” there is substituted “subsection (1) above”.
- (3) In Schedule 1 to the 1993 Act (provisions as to the Crofters Commission), at the end there is added—

“Appeals to the Land Court etc.

- 14 The Commission may do anything which appears to them to be necessary or expedient for the preparation of a stated case in an appeal to the Land Court under this Act; and without prejudice to that generality may make rules prescribing procedures to be complied with, and by whom, in such preparation.
- 15 The Commission may be a party to any such appeal or in any proceedings on a question coming before that Court on an application under section 53(1) of this Act.”.

34 Further amendments in relation to the Land Court

- (1) Schedule 1 to the Scottish Land Court Act 1993 (c. 45) (incorporation etc. of the Scottish Land Court) is amended as follows.
- (2) In paragraph 5 (quorum), for the words “three members of the Land Court shall be a quorum” there is substituted “a quorum of the Land Court shall be—
 - (a) three of its members if none of the three is the Chairman; or
 - (b) the Chairman and one other of its members”.
- (3) In paragraph 6 (delegation)—
 - (a) in sub-paragraph (2), for the words from “shall” to the end there is substituted “, other than a delegation to one member where that member is the Chairman, shall be subject to review upon appeal by three or more members, or nominated former members, of the Land Court sitting together; and one of the members so sitting shall be the Chairman.”; and
 - (b) sub-paragraph (3) is repealed.
- (4) After paragraph 6 there is inserted—

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“6A On any question being determined by the Land Court, whether or not by virtue of paragraph 6 of this Schedule, the Chairman shall have a casting vote.”.

(5) After paragraph 7 there is inserted—

“7A The reference in paragraph 6(2) of this Schedule to nominated former members is to such members as have vacated office, whether or not under paragraph 2 of this Schedule, and in relation to the particular review have been nominated under this paragraph by the principal clerk.”.

(6) In paragraph 10, in sub-paragraph (1)—

- (a) the existing words from “shall” to the end become head (a) of the sub-paragraph; and
- (b) after that head there is added “; and
 - (b) may, when not acting in accordance with a direction under head (a) above or under sub-paragraph (2) below, act in place of a member of the Court other than the Chairman.”.

(7) In paragraph 12—

- (a) after the word “may” there is inserted “, by order made by statutory instrument”, and
- (b) in paragraph (a), for the words “they think” there is substituted “it thinks”.

(8) In paragraph 18 (payments to persons appointed etc.), for the words “or employed under paragraph 7” there is substituted “, employed or as the case may be nominated under paragraph 7, 7A”.

35 Public notification

After section 55 of the 1993 Act, there is inserted—

“55A Public notification

- (1) For the purposes of this Act, public notification shall be given by publishing or causing to be published a notice in appropriate form in one or more newspapers circulating in the district in which the croft or, as the case may be, common grazing to which the application relates (or in the case of public notification under section 50B(4)(a)(ii) the regulations relate) is situated.
- (2) A notice is in appropriate form if—
 - (a) its form and content comply, or do so as far as is reasonably practicable, with the form and content specified by the Commission for an application of that type (or as the case may be for regulations under section 49(2)(g) of this Act); and
 - (b) it specifies—
 - (i) the purpose of the application to which it relates (or in the case of regulations the matters which are required to be set out in it by virtue of section 50B(4)(a)(i) of this Act);
 - (ii) a description of the croft land or, as the case may be, common grazing to which the application relates (or regulations relate); and

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(iii) in the case of an application, the period during which, and manner in which, objections may be made.

(3) Where, in accordance with the provisions of this Act, a person giving public notification is also required to serve notice on a landlord, tenant or occupier of croft land to which the application relates or, if applicable, on the owner of, or a crofter sharing in, the common grazing, such notice shall be in the form required by subsection (2) above.”.

36 “Members of a family”

In section 61 of the 1993 Act (interpretation)—

(a) in subsection (2), for the words from “the wife” to the end, there is substituted “the individual in question’s—

(a) spouse or civil partner (or cohabitant provided that the individual has no spouse or civil partner and that the cohabitation has included cohabitation for at least two years in a dwelling-house on or pertaining to the croft);

(b) sibling;

(c) sibling’s spouse or civil partner;

(d) spouse’s or civil partner’s sibling;

(e) father;

(f) mother;

(g) son;

(h) daughter;

(i) son’s or daughter’s spouse or civil partner;

(j) grandchild;

(k) grandchild’s spouse or civil partner;

(l) aunt;

(m) uncle;

(n) nephew; or

(o) niece.”; and

(b) after that subsection there is added—

“(3) In subsection (2)(a) above, and in the definition of “son” or “daughter” in subsection (4) below, the reference to an individual’s cohabitant is to a person, whether or not of the same sex as the individual, who lives with the individual as if—

(a) in a married relationship; or

(b) in civil partnership.

(4) In subsection (2) above—

“sibling” includes a sibling by virtue only of adoption, marriage or civil partnership and a sibling of the half blood;

“son”, “daughter” or “grandchild” includes a person so related by virtue only of adoption, marriage or civil partnership; and

“son” or “daughter” includes a son, or as the case may be a daughter, of the individual’s cohabitant provided that such son or daughter resides with the individual and that such residence has

included residence for at least two years in a dwelling-house on or pertaining to the croft.”.

37 “Crofting community”

In section 61(1) of the 1993 Act (interpretation), at the appropriate place there is inserted—

““crofting community” means all the persons who (either or both)—

- (a) occupy crofts within a township which consists of two or more crofts registered with the Crofters Commission;
- (b) hold shares in a common grazing associated with that township;”.

38 “The 1993 Act”

In this Act “the 1993 Act” means the Crofters (Scotland) Act [1993 \(c. 44\)](#).

Miscellaneous

39 Minor and consequential amendments

Schedule 1 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

40 Savings

- (1) Nothing in this Act affects an application made, a loan provided, or proceedings commenced, before this section comes into force.
- (2) Nothing in this Act affects any provision of the 1993 Act amended or repealed by this Act in that provision’s operation in relation to an offence committed before the amendment is made or, as the case may be, the provision is repealed.

41 Transitional provision etc.

- (1) The Scottish Ministers may, by order made by statutory instrument, make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, this Act.
- (2) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) An order under subsection (1) may make different provision for different cases or for different classes of case.
- (4) An order under subsection (1), if it includes provision amending or repealing an enactment contained in an Act, 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,

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the Scottish Parliament.

42 Repeals

The enactments mentioned in schedule 2 to this Act are repealed to the extent mentioned in the second column of that schedule.

43 Short title, Crown application and commencement

- (1) This Act may be cited as the Crofting Reform etc. Act 2007.
- (2) This Act binds the Crown.
- (3) The provisions of this Act, except this section and sections 38, 40 and 41, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (4) Different days may be so appointed for different provisions and for different purposes.