

# **CROFTING REFORM ETC. ACT 2007**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

#### *Definitions*

3. Throughout these explanatory notes the following definitions have been used:
  - “the Act” means the Crofting Reform etc. Act 2007;
  - “the 1993 Act” means the Crofting (Scotland) Act 1993;
  - “the 1964 Act” means the Succession (Scotland) Act 1964;
  - “the Commission” means the Crofters Commission.

#### *The Act*

4. The Act amends the 1993 Act and thus provides for changes to the provisions in the 1993 Act. Anyone considering the detailed legislative provisions will find it easier to understand if the Act is read in conjunction with that legislation. The Act also changes provisions in the Crofters Holdings (Scotland) Act 1886, The Deer (Scotland) Act 1996, the Land Reform (Scotland) Act 2003, the Succession (Scotland) Act 1964 and the Scottish Land Court Act 1993.

### **Part 1: the Crofters Commission**

#### *Section 1: Discharge of functions*

5. This section replaces section 1(3) of the 1993 Act and provides that the Scottish Ministers can give the Commission general and specific directions on the way that they carry out their functions.

#### *Section 2: Equal opportunities*

6. This section inserts new section 59A into the 1993 Act. Section 59A requires the Commission to observe equal opportunities in carrying out their functions.

**Section 3: Obtaining Commission approval or consent**

7. This section inserts a new section into the 1993 Act. New section 58A sets down the processes by which the majority of applications to the Commission will be determined. The Commission will no longer be required to determine every application made by crofters and landlords, but will still have a responsibility to intervene where there is an objection or where an application which raised no objections invokes separate criteria requiring the Commission to consider and decide whether the application should succeed. Excluded from these new arrangements are those applications which make substantial change to croft land: decrofting, apportionment and crofter forestry. These will continue in every case to require the Commission's written approval in order to succeed.
8. Subsection (2) of new section 58A provides that in every case in which the applicant is required to apply to the Commission for consent or approval to make the proposed changes, the form on which the application is to be made and any documentation and fee will be specified by the Commission. This will, for example, allow the Commission to include measures to reduce the risk of fraudulent applications.
9. Subsection (3) requires the applicant to give public notice of the application and where the applicant is not the landlord or the owner of the common grazing affected by the application, to notify the landlord or owner in writing. This is to ensure that those who may wish to object have adequate notice of what is proposed. Subsection (4) specifies the time allowed for making an objection and who may do so. Subsection (16) provides that the objection submitted in terms of subsection (4) be made in the form described and subsection (17) describes what constitutes an objection in writing.
10. Subsection (6)(a) provides that the Commission is not compelled to act upon an objection which it considers to be frivolous, vexatious or unreasonable but must otherwise intervene where there is an objection. In addition and in terms of subsection 6(b) the Commission has the discretion to intervene in relation to an objection where it considers that any of the general or specific conditions apply to the application.
11. Subsection (7) specifies what the Commission must do if they decide not to intervene, or they have no grounds to intervene, to consider an application on the basis of a timely objection. Subsection (8) deals with the effects of the Commission deciding to intervene if one of conditions specified in subsection (6)(b) applies. Subsection (9) lists the general conditions that apply for the purposes of subsection (6)(b)(i). Subsection (10)(a) provides that where the Commission does not intervene it must approve the application and enter it in the Register of Crofts. Subsection (10)(b) deals with what should be done by the Commission, and in which timescales, following a decision to intervene. It requires the Commission to inform those parties with an interest that the application is to be considered by the Commission and why the Commission intervened. It also informs the parties of their right to appeal to the Land Court against the decision by the Commission on the application.
12. Subsection (11) gives the Commission the power to set up procedures and arrangements for deciding whether or not to approve or consent to an application and makes it clear that a decision to intervene in an application is a decision to determine whether or not the application is to be approved. It is important to note that this provision allows the Commission to delegate the task of making the decision to any person the Commission considers appropriate.
13. Subsection (12) provides that where the Commission following an intervention decides to approve or consent to the application the Commission will record details of the application they have consented to in the Register of Crofts and notify those who would have been notified if the Commission had previously decided not to intervene in the application.

14. Subsection (13) provides that Scottish Ministers may issue guidance to the Commission on what constitutes sustainable development of the local crofting community and requires the Commission to have regard to that guidance in considering whether a proposal would adversely affect that sustainable development of the crofting community affected by the application.
15. Subsection (14) gives Scottish Ministers power to amend the general conditions set out in subsection (9) by means of a statutory instrument. Subsection (15) requires that any such statutory instrument must be approved by means of an order made by resolution of the Parliament.

#### ***Section 4: Obtaining of information by Commission***

16. **Section 4** amends section 40 of the 1993 Act. It changes section 40(1) to reflect the fact that the Commission will in future have another means of obtaining information about crofts. It changes section 40(1) and (2) so that these provisions of section 40 can also be used to obtain information as specified in the notice from the executor of a crofter. It also inserts new subsections (3), (4) and (5) into section 40. Subsection (3) provides that the Commission can refuse to process any application made to them where information required in connection with that application is not provided. Subsection (4) allows the Commission to alter a requirement to supply information where the original requirement cannot be met although the terms of subsection (3) shall still apply to such modified requirement. Subsection (5) allows the Commission to require the provision of information about a common grazing.

#### ***Section 5: Maintenance of and provision of information from the Register of Crofts***

17. **Section 5** amends section 41 of the 1993 Act so that a range of information previously not held on the Register of Crofts can be held there. This includes information previously recorded in the Crofters Holding Book. It also qualifies the requirement in that subsection for the Commission to insert, alter or omit entries by stating that the Register is to be kept consistent with the information the Commission has received under the provisions of the Act only in so far as it is practicable. Section 41(3) is replaced by two new subsections which provide for the Register of Crofts to be open to public scrutiny and requires the Commission to supply any person on request with certified extracts from the Register which extracts will be sufficient as evidence of the existence of a Register entry. New section 41(5) provides for the Crofters Holdings Book (previously the responsibility of the Scottish Land Court) to be incorporated in the Register of Crofts.

## **Part 2: Crofts**

#### ***Section 6: New crofts***

18. **Section 6** inserts new sections 3A, 3B and 3C into the 1993 Act to allow the creation of new crofts and the extension of crofting tenure beyond the crofting counties. Section 3A(1) empowers the Commission to constitute land as a croft in response to an application to that effect from the owner of the land in question. Section 3A(1)(b) provides that this can only be done outwith the crofting counties in an area specified by an order. Subsection (2) provides that the Commission may also constitute a tenanted holding as a croft where the applicant is a tenant and if the conditions specified in subsection (12) are met. Subsection (4) provides that the Commission may not constitute a holding as a croft in response to an application under subsection (2) until they are satisfied that the owner of the land has had an opportunity to appeal the application and the tenant has paid the owner any compensation agreed or found to be due for the impact of the change. Subsection (3) adds an administrative stage which the tenant of a holding is required to complete before he applies to the Commission. It requires the tenant to first obtain a certificate from the Land Court confirming his existing status under the Small Landholders legislation.

19. Subsections (5) to (8) specify a process that the Commission are required to follow before deciding whether or not to agree to the application and constitute the land as a croft. Subsection (9) ensures that all or part of an agricultural holding cannot become a croft without the consent of the tenant and that tenant cannot be dispossessed of the tenancy of land as a result of all or part of the holding being designated as a croft. Subsections (10) and (11) provide detail as to the form in which comments by the public on an application (as provided for in terms of subsection (6)) may be made.
20. Subsection (12) specifies the conditions that must be satisfied before a holding outwith the crofting counties can be constituted as a croft on the basis of an application by the tenant. This restricts this possibility of conversion to ensure that only a holding which is held by a natural person under the provisions of Small Landholder legislation will qualify.
21. Subsection (13) provides that an order designating an area outwith the crofting counties as an area in which new crofts may be created must be made by affirmative resolution of the Scottish Parliament.
22. New section 3B makes provision for assessing the amount of compensation to be paid by the tenant to the landlord where an application has been made by a tenant under the provisions of section 3A(2). It specifies that the amount of compensation shall be the difference in the value of the holding under the existing tenure arrangements and its value as a croft. It further specifies that in both instances the value is to be assessed as the market value likely to be realised where there is a willing seller and a willing buyer and the sale is in each case to the sitting tenant. It also requires that the valuer should take account of the known existence of any third party that might be prepared to pay more for the holding, the potential impact on the value of the land of any sporting lease of the land and any representations made by the owner and the applicant. The valuer must make his decision on the valuation within 6 weeks of appointment.
23. New section 3C makes provision for both the owner or the applicant to appeal an assessment of compensation, made by a valuer under section 3B, to the Lands Tribunal for Scotland and specifies the period in which such an appeal may be made.

### ***Section 7: The statutory conditions***

24. **Section 7** makes a number of significant changes to the statutory conditions referred to in section 5 and detailed in Schedule 2 to the 1993 Act including changes to the statutory conditions governing a crofter's use of his croft land and to the ability of crofters and landlords to contract to waive rights conferred on the crofter by that Act. Subsection (1) (a) of section 7 adds a new subsection (1A) to section 5 of the 1993 Act which provides that the landlord can serve notice on the croft tenant where there is a breach of a new condition of tenure (new paragraph 3A of Schedule 2 which is inserted by section 7(2) (b)).
25. **Section 7(1)(b)** inserts new subsections (2A) and (2B) in section 5 of the 1993 Act and provides that where a crofter is doing or not doing something in order to conserve the natural beauty, or the flora and fauna of the locality he is not to be treated as in breach of the statutory conditions. Further subsection (2B) provides that any subsidiary or auxiliary occupation undertaken on the croft and continued after the commencement of the Act should not constitute a breach of the statutory conditions.
26. **Section 7(1)(c)** adds new subsections (3) to (10) to section 5 of the 1993 Act. New subsections (3) to (6) supersede the existing subsection (3) and provide that any future contract or agreement between a crofter and landlord where it deprives the crofter of certain rights, other than in relation to sections 8, 12 to 19, 21 and 37 of the 1993 Act, is void unless it is approved by the Land Court. Once approved by the Land Court, the Court will intimate the matter to the Commission who will register the matter with the Register of Crofts. Any contract or agreement made under sections 8, 12 to 19, 21 and 37 may be similarly registered on intimation. Subsection (6) provides that where a copy

of a contract or agreement is entered in that register it will (depending on the terms of the contract or agreement) be binding on the successors to the croft tenancy. This provision is primarily to allow the creation of binding agreements necessary to facilitate energy developments on croft land. However, it also provides the means by which a tenant of a croft can enter into a binding agreement with the landlord undertaking not to exercise his right to buy or limiting the right to assign the croft. It therefore makes it possible for a landowner to create new crofts without the risk of these crofts being subject to the right to buy or assignation to a person whom the landowner considers to be unsuitable as a croft tenant.

27. New subsections (7) to (10) of section 5 relate to the modification of paragraph 3 of Schedule 2 to the 1993 Act provided by section 7(2)(a). That modification allows for a croft to be put to a purposeful use other than agriculture. New subsection (7) specifies that a crofter must seek the consent of the landlord to do so before putting the croft to a purposeful use other than agriculture and if that consent is obtained may put the croft to the new use subject to any conditions attached to that consent. New subsection (8) allows the crofter to apply to the Commission for consent to a proposed purposeful use if the landlord's consent has been asked for and has not been obtained in terms of subsection (7) within 28 days of the application to the landlord. New subsection (9) requires the Commission to consult on the application for consent and check whether any planning or other consents are required for the proposed use and, if so, have been granted before it makes a decision.
28. **Section 7(2)** amends Schedule 2 to the 1993 Act. Subsection (2)(a) amends paragraph 3 of Schedule 2 (the requirement to cultivate a croft). It provides that a crofter can now cultivate the croft or put it to a purposeful use or do both but must do one or the other on every part of the croft. Subsection (2)(i) inserts a definition of "purposeful use" into paragraph 13 of Schedule 2. In order that the amendment to paragraph 3 has no impact on existing arrangements there is a saving provision at section 7(3) to the effect that existing rights relating to ancillary use are unaffected.
29. Subsection (2)(b) inserts 2 new paragraphs into Schedule 2. New paragraph 3A is a new condition that requires a crofter to keep his/her croft in a fit state for cultivation. New paragraph 3B defines some of the measures that might need to be taken to ensure that a croft remains fit for cultivation if not being put to some other purposeful use.
30. Subsection (2)(c) modifies and rewords paragraph 5 to provide a new definition of what constitutes injury to a croft.
31. Subsection (2)(d) inserts in Schedule 2 a definition of what constitutes "relevant notice" by the landlord to the crofter to stop action which would prejudice cultivation or the continuation of a purposeful use.
32. Subsection (2)(f) makes a consequential change to paragraph 7 of Schedule 2 to reflect a change to section 9 of the 1993 Act, relating to the division of a croft, which is detailed at section 10 of the Act.
33. Subsection (2)(h) inserts a new paragraph 11A into Schedule 2 which qualifies the landlord's rights set out in paragraph 11 of Schedule 2 such that the crofter does not have to tolerate unreasonable exercise of such rights.

### ***Section 8: Complaint as respects breach of the statutory conditions***

34. **Section 8** inserts new sections 5A and 5B into the 1993 Act after section 5. New section 5A provides a procedure whereby the Commission may take action in place of the landlord where there has been a breach of the statutory conditions (except for non-payment of rent) and the landlord has not taken action. This gives the Commission power to apply to the Land Court to determine sanctions against the crofter concerned, including terminating the tenancy and declaring the croft vacant. This measure provides

the means for dealing with the dereliction of crofts in cases where the landlord has no incentive to act.

35. The legislation continues to allow the landlord to take action against the croft tenant for breach of statutory conditions, but provides an alternative approach whereby the landlord or any other member of the crofting community can complain to the Commission of such a breach. Section 5A(2) provides that if the landlord is not already taking action, then the Commission may apply to the Land Court in connection with the breach. However section 5A(3) requires that the Commission must give the landlord prior notice of an intended application to the Land Court and if the landlord objects in writing within 14 days they may not proceed with the application. Section 5A(4) further requires the Commission to write to the crofter who is alleged to be in breach of the statutory conditions and give that crofter a reasonable time to remedy matters before making the application to the Land Court. Section 5A(2)(b) provides that the application to the Land Court may not be made until that period has expired.
36. Section 5A(5) specifies what the Land Court may do if it is satisfied that the breach of statutory conditions complained about has occurred. The Land Court can order remedy of the breach by a specific time and payment of compensation to the landlord as it thinks fit. Section 5A(6) provides that if a crofter fails to comply with such an order by the Land Court the Commission may apply to the Land Court to have the croft tenancy terminated, the croft declared vacant, and the tenant removed from the croft.
37. New section 5B creates provision whereby, if a crofter neglects or misuses a croft he or she can be readily removed from the tenancy.
38. Subsection (1) makes provisions for the landlord (or the Commission with the consent of the landlord) in cases of misuse or neglect to apply to the Land Court for an order terminating the tenancy, declaring the croft vacant and remove the tenant from the croft. Subsection (2) provides in relation to misuse that prior to making an application to the Court for an order the landlord, or the Commission, must give notice in writing to the crofter of the misuse and offer the crofter an opportunity to end the misuse within 42 days.
39. Subsection (3) provides that if the Land Court is minded to issue an order the crofter will be notified that the order will be issued within 42 days unless the crofter can satisfy the Court before the end of that period that the misuse has been brought to an end. Subsection (4) ensures that any breach, which constitutes neglect of a croft cannot be readily repeated. It provides that if notice has been previously given in accordance with the requirements of subsection (5) and (6) and remedial action taken but the same neglect is repeated within 5 years from the date of the initial application then on further notice being given the crofter will be allowed 42 days to end the neglect and if he fails to do so the landlord or the Commission may apply for an order to terminate the tenancy. If they do so and the Land Court is minded to grant the order then subsection (6) applies.
40. Subsection (5) deals with an application to the Land Court by a landlord, or with the landlord's consent the Commission, where it is alleged that there has been neglect of the croft. It provides that if the Land Court is minded to issue an order the Court will notify the crofter that it is their intention to do so. That notice will indicate that the order will not be issued if (a) the crofter agrees that there has been neglect and (b) by the end of a period of one year the crofter is able to satisfy the Court that the croft is being properly managed. Subsection (6) provides that if the Land Court are minded to issue an order in relation to a repeat application in connection with neglect within 5 years the Court will notify the crofter that it is their intention to do so unless the crofter is able to satisfy the Court within 42 days that the croft is being managed to the standard specified. Subsection (7) defines "misuse" and "neglect". Subsection (8) provides that action taken for conservation purposes may not be construed as neglect. Subsection (9) is a saving provision which provides that if a croft was being used for a purpose which was legitimate before these new provisions come into effect continuation of that use cannot be construed as misuse or neglect.

### ***Section 9: Exchange of crofts or parts of crofts***

41. **Section 9** closes a loophole in the current legislation, whereby crofters, with the agreement of their landlord, were able to exchange croft land without the approval of the Commission. While on the face of it this existing practice allows ease of arrangements and is deregulatory, there was concern expressed about the longer term effects of such changes. The new section 4A inserted into the 1993 Act by section 9 requires that an exchange of a croft or parts of a croft requires the consent of the landlord and the Commission. It also requires that the crofters exchanging must also have the same landlord who must also be the owner of any common grazing land affected by the exchange. It provides that the Commission cannot consent to the exchange unless the landlord has consented. The provisions in new section 58A of the 1993 Act (inserted by section 3 of the Act) apply as regards the consent of the Commission with the additional criterion for intervention by the Commission in new section 4A(3) of the 1993 Act being that the proposed exchange would be unfair to either (or as the case may be any) of the crofters involved. Subsection 4A(4) confirms that a new croft is not be created by such an exchange.

### ***Section 10: Division of croft***

42. Section 10 of the Act provides a complete replacement for the existing section 9 of the 1993 Act. The principal change is that the landlord's consent to division of the croft is no longer required. In addition the new procedure for obtaining the Commission's consent in new section 58A of the 1993 Act (inserted by section 3 of the Act) applies so that the Commission is required to make a decision only where there is an objection to the application or the Commission's criteria for intervention apply. The landlord has a right to object to the division of the croft by virtue of the provisions of new section 58A(4). New section 9(3) specifies that the division of a croft has no legal effect until details of the division are recorded in the Register of Crofts. The landlord's financial interests are secured by new section 9(4) which provides that the rent for a new croft created by division of an existing croft is to be agreed between the crofter and the landlord. In the event that they cannot reach agreement section 9(5) provides that either party can apply to the Land Court to have the rents determined by the Land Court with the fees payable in connection with the application being paid by the crofter. It should be noted that the term "subdivision" is replaced by the term "division", because the latter term more accurately describes the situation.

### ***Section 11: Subletting***

43. **Section 11** modifies the provisions of sections 27 and 29 of the 1993 Act and repeals section 28 of that Act. The main changes to section 27 are to alter subsection (1) to provide that the maximum duration of a sublet shall be for a period not exceeding 10 years and to replace subsections (3) and (4) with a new subsection (3) which provides the special conditions which will apply when the consent of the Commission is required in terms of new section 58A of the 1993 Act (inserted by section 3 of the Act).
44. **Section 11(2)** repeals section 28 of the 1993 Act, a provision which, had it ever been commenced, would have given the Commission power to impose a sub-tenant on a crofter.
45. **Section 11(3)** amends section 29 of the 1993 Act by inserting new subsections (2A) and (3A). New subsection (2A) provides that it would be a condition of any sublease that the croft tenant must give the subtenant not less than 6 months written notice of an intention by the tenant to assign, exchange or divide the croft and thereby terminate the sublease. New subsection (3A) makes specific provision in relation to the continuation in occupation by the sub-tenant on the death of the crofter.

### **Section 12: Assignment**

46. **Section 12** makes significant changes to the provisions of section 8 of the 1993 Act affecting both family and non-family assignment. The replacement of much of the existing wording of subsection 8(1) removes the requirement that a family assignment must have the landlord's consent. New section 58A of the 1993 Act (inserted by section 3 of the Act) applies to the process of considering an application. The effect of this is that the landlord along with the other persons specified at section 58A(4) have a right to object to an assignment proposal. The anomaly requiring a landlord's permission for a family assignment, but not a non-family assignment, to succeed without Commission approval is replaced by the right (shared with others) to object in both cases, and requires the Commission to consider and make a decision.
47. In the case of an application to assign to a member of the crofter's family (see the definition of what constitutes family membership in section 36 of the Act) the Commission's power to intervene where there is no objection by a person entitled to object is as provided in new section 58A(6) (inserted by section 3 of the Act). However, section 8(2) to 8(4) is replaced by a new subsection (2) inserted by section 12(b) of the Act. The effect is that in the case of an assignment to a person who is not a member of the crofter's family the new section 8(2) inserted by section 12(b) provides a list of additional special conditions which trigger a requirement for the Commission to consider an application.
48. **Section 12(c)** is a technical amendment to section 8(5) of the 1993 Act consequential on the amendment to section 8(1).
49. **Section 12(d)** amends section 8(6) of the 1993 Act so as to allow a transfer of a croft tenancy to take place on dates other than Martinmas or Whitsunday.

### **Section 13: Bequest of tenancy of croft**

50. This section amends the provisions of section 10 of the 1993 Act.
51. **Section 13(2)** amends section 10(1) to make it clear that a crofter may only bequeath the tenancy of his croft to a "natural person". The tenancy must be left to an individual and not to a company or institution.
52. **Section 13(3)** amends section 10(2). Section 13(3)(a) introduces a requirement that the legatee must send a copy of the notice of the bequest to the Commission in addition to the current requirement that notice be given to the landlord. Sections 13(3)(b) and (e) extend by 2 months the periods available to the legatee to give notice of a bequest. Section 13(3)(c) emphasises that whether a cause is accepted to be "unavoidable" is a matter for the Commission to determine. Section 13(3)(d) clarifies that a legatee, as well as giving notice to the landlord within the further 6 month period for notification must also copy the notice to the Commission. Section 13(3)(h) repeals the latter half of section 10(2) which is replaced by the new sections inserted by section 13(4).
53. **Section 13(4)** creates 4 new subsections to be inserted after section 10(2). New section 10(2A) allows the executor to give notice of the bequest of the tenancy in addition to the current provision in section 10(2) requiring the legatee to do so. New section 10(2B) provides that the legatee will (provided there is no objection from the landlord in the case of a non-family legatee) take control of the tenancy on the date on which the Commission indicate that the information that they require under the provisions of new section 10(2C) has been provided. It also provides that when the legatee takes over the tenancy it will be as if the transfer took place on the date of the death of the previous tenant.
54. New section 10(2C) provides that on receipt of notice of a bequest from a legatee or executor the Commission must notify the legatee of the information required by the Commission to update the Register of Crofts. In the case of a legatee who is not a member of the deceased crofter's family they will only do so if there has not been an



objection from the landlord and in such cases must also indicate in the notification to the legatee that there has been no objection.

55. New section 10(2D) requires the Commission to notify the legatee once they are satisfied that the information set out in the notification given under section 10(2C) has been provided.
56. [Section 13\(5\)](#) replaces section 10(3) with a new but similar provision setting out the detail of how a landlord should exercise the right to object to a bequest to a person other than a member of the deceased crofter's family.
57. [Section 13\(6\)](#) replaces section 10(4)(b) with a new provision which retains the existing requirement to notify and adds a provision to the effect that the legatee should be notified by the Commission of the need to provide information to be entered in the Register of Crofts.
58. [Section 13\(7\)](#) inserts seven new subsections into section 10 after subsection (4). Section 10(4A) provides that, when the legatee has provided the information that new section 10(4)(b) requires the legatee to supply, the Commission must notify the legatee that this has been done. On receipt of that notice the legatee is empowered to take control of the tenancy except where there has been an appeal under the provisions of section 10(4B). New section 10(4B) sets out the arrangements for appealing a decision made by the Commission in accordance with the provision of section 10(4). It provides that appeal shall be by way of a stated case, on one or more of the grounds mentioned in new section 52A(3).
59. New section 10(4C) inserted into the 1993 Act introduces (in relation to appeals regarding bequests of croft tenancy) a power of open remit for the Land Court. After hearing an appeal the Land Court can confirm the decision, direct the Commission to come to a different decision or remit a case back to the Commission without directing the Commission as to what to do. New section 10(4D) explains what happens where the Land Court finds on appeal that a bequest should be upheld.
60. New section 10(4E) introduces a new provision to the effect that (a) a legatee accepting the bequest of a tenancy assumes responsibility for debts incurred by the deceased as former tenant of the croft and (b) the executor can recover reasonable expenses relating to the management of the tenancy from the legatee, including arrangements for the settlement of any disputes in the Land Court.
61. New section 10(4F) makes it clear that a croft tenancy is an asset of the deceased crofter's estate and so liable to be set against expenses and debts of the estate. This would require the legatee to contribute to the settlement of such expenses and debts if the legatee chooses to retain the tenancy.

#### ***Section 14: Prior rights, on intestacy, in relation to tenancy of croft***

62. The whole of section 14 consists of amendments to section 8 of the 1964 Act. These amendments extend the prior rights of a spouse or civil partner of a crofter to cover the whole of the croft rather than the croft house alone and convey the same rights to a cohabitant where there is no spouse or civil partner (a civil partnership is defined in section 1 of the Civil Partnership Act 2004 as a relationship between two people of the same sex which is formed when they register as civil partners of each other in accordance with provisions of that Act). (A cohabitant is defined for this purpose in section 14(5) which inserts a definition of "cohabitant" into section 8(6) of the 1964 Act). The effect of these changes is to afford a spouse or civil partner or cohabitant of a deceased crofter the same degree of protection in retaining the croft tenancy as the 1964 Act affords the spouse or civil partner of any other individual in retaining a dwelling-house owned by that person. This essentially means that where there is a house on the croft and the value of the relevant interest in that house is below the statutory threshold (currently £130,000), the spouse or civil partner or cohabitant of the deceased crofter is

entitled to the croft tenancy (including the house) up to that amount. Where the value is above that threshold the entitlement is to the sum specified by order under section 8(1)(b) of the 1964 Act.

63. The aforementioned changes are made by section 14(3) which provides new sections 8(2A) and 8(2B) in the 1964 Act. New subsection (2A) qualifies the existing provision in subsection (2) of that Act so as to provide that a croft tenancy is treated as being subject to prior rights in the same way as a house owned or leased under other forms of tenure. (Prior rights are the statutory rights of a spouse on intestacy to claim the house (with furniture and plenishings up to a certain value) and a fixed sum of money depending on whether or not the deceased is also survived by issue). New subsection (2B) sets out what happens when there is more than one property over which a spouse, civil partner or cohabitant could exercise a prior right.
64. **Section 14(4)** modifies section 8(4) of the 1964 Act to distinguish between properties to which prior rights apply which are crofts and those that are not.

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

65. This section modifies the provisions of section 16 of the 1964 Act relating to the transfer of tenancy by an executor to distinguish between transfer of a croft tenancy which will require the consent of the Commission and transfers of the tenancy of other leases which require the consent of the landlord. This is achieved mainly through section 15(3) which inserts new subsection (2A) into section 16 of the 1964 Act. The amendment to section 16(9) of the 1964 Act effected by section 15(4) clarifies the definition of croft for the purposes of the 1964 Act.

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

66. This section inserts a new section 16A into the Succession (Scotland) Act 1964. The overall effect is to empower executors to transfer croft tenancies as they think fit subject to the same requirements as apply where a crofter assigns the tenancy.
67. New section 16A(1) provides that the provisions of section 58A of the 1993 Act (inserted by section 3 of the Act) apply to a transfer covered by new section 16(2A). New section 16A(2) sets down the criteria for intervention by the Commission which will apply where there is an application to assign the tenancy of the deceased crofter to a person who is not a member of the deceased crofter's family. New section 16A(3) provides that if the executor does not seek the consent of the Commission before transferring the tenancy the transfer will be null and void and the Commission can declare the croft vacant. New section 16A(4) provides the process required to give effect to a transfer if the Commission consent to it.
68. New section 16A(5) provides for an appeal against a Commission decision to consent to or refuse consent to the transfer. It indicates the grounds on which an appeal can be made. New section 16A(6) states who may appeal against the decision of the Commission. New section 16A(7) sets a 42 day time limit for lodging an appeal. New section 16A(8) provides that the Land Court may uphold the Commission's decision or direct that it should come to a different decision.

***Section 17: Amendment of section 11 of the 1993 Act***

69. **Section 17** makes a number of amendments to section 11 of the 1993 Act to modify the arrangements that currently apply where the executor in an intestacy fails to find a new tenant. There are a number of changes but the most significant is that the Commission no longer have a role in identifying a tenant from amongst those who might be entitled to inherit the intestate estate of the deceased crofter. Instead, simpler arrangements are put in place, including a declaration by the Commission that the tenancy has fallen vacant.

If the tenancy is declared vacant the landlord is then required to re-let in accordance with the provisions of section 23 of the 1993 Act.

70. **Section 17(2)** amends section 11(2) of the 1993 Act so as to increase the time limit available to an executor to notify the landlord of the particulars of a proposed new tenant to 12 months from the relevant date, thus giving the executor more time to find a suitable tenant.
71. **Section 17(3)** repeals section 11(3)(a) of the 1993 Act. This provision is no longer necessary because the change made to section 10 of the 1993 Act by section 13(3) of the Act means that the Commission are informed of a bequest at the same time as the landlord. The change made to the 1993 Act by section 17(3)(b)(i) of the Act is consequential upon the repeal of section 11(3)(a) of that Act. The change made to the 1993 Act by section 17(3)(b)(ii) of the Act has the effect of giving the executor up to 2 months to notify the Commission of the death of the crofter before the 12 month period allowed for the transfer of the tenancy starts. A failure to notify however means that the 12 month period will start at the date of death of the crofter. The Bill, therefore, creates a time penalty for a failure to notify the Commission.
72. **Section 17(4)** deletes subsections (4) to (9) of section 11 of the 1993 Act (measures that give the Commission power to get involved in finding a member of the deceased crofter's family who is suitable to be the new croft tenant and nominating that person as the tenant). In place of these provisions it puts in place new subsections (4) to (8) setting out a simpler process by which if a suitable tenant is not found by the executor the Commission will eventually declare the croft vacant and thus available for re-let by the landlord.
73. New section 11(4) of the 1993 Act requires the Commission to notify the landlord, the executor and, if there is no executor, such persons as the Commission know of and believe might have rights in the intestate estate that the 12 months from the relevant date has expired and the Commission propose to terminate the tenancy and declare the croft vacant. This provision does not require the Commission to take steps to try and identify every person who might be entitled to claim rights in the intestate estate. The Commission are only required to notify the individuals they were aware of at that time. That notice would invite those to whom it was sent to make representations on the proposal within a month of the date of the notice.
74. New section 11(5) of the 1993 Act allows the Commission, after considering any representations in terms of section 11(4), to proceed to terminate the tenancy, if they consider it appropriate to do so, providing that the tenancy had not been terminated already, the executor had not planned to transfer the tenancy or there was not someone entitled to exercise prior rights in relation to the tenancy.
75. New section 11(6) of the 1993 Act allows the Commission to issue a further termination notice under the provisions of new section 11(4) if they conclude that the tenancy is not or cannot be transferred. New section 11(7) allows the Commission to terminate the tenancy following that further notice if they consider it appropriate to do so.
76. New section 11(8) of the 1993 Act requires the Commission on deciding to terminate a tenancy to give notice to the same people as received notice under new section 11(4). The notice given to the landlord requires the landlord to submit re-letting proposals. Section 11(8) also provides that when that notice is given the rights any person may have in relation to the tenancy are terminated and sets out the landlord's liability to pay the executor the value of the permanent improvements on the croft.
77. **Section 17(5)** amends section 11(10) of the 1993 Act to leave only a definition of the value of improvements for the purposes of new section 11(8)(c). The effect of the amendment is to end the requirement for the landlord to repay from the value of the improvements any sums due by the deceased crofter to the Scottish Ministers.

78. **Section 17(6)** is a technical amendment necessary as a consequence of other changes to section 11.

***Section 18: Determination of the Land Court as to croft boundaries***

79. **Section 18** introduces a new section 53A into the 1993 Act. The purpose of this section is to reduce the future incidence and cost of disputes over croft boundaries. Section 53(1) (c) of the 1993 Act provides that the Land Court has power to settle any question relating to the boundaries of crofts. However, croft boundaries are not well documented and therefore it is often difficult to determine what these boundaries are. New section 53A provides that where the evidence is insufficient to allow the boundary to be clearly determined, the Land Court shall have the power to declare the boundary as it considers appropriate.

***Section 19: Access to croft***

80. New section 53B is inserted into the 1993 Act after new section 53A referred to above. New section 53B(1) provides that a crofter can apply to the Land Court for an order granting access from a public road to his croft, where it would be reasonable for the access to be taken by a route lying wholly over land owned by his landlord. Subsection (2)(a) to (c) provides that where the Land Court make such an order on an application under subsection (1) it may make provision regarding the access route over the land, arrangements under which the crofter may carry out works and conditions to which exercise of that access may be subject.

***Section 20: Reorganisation schemes***

81. **Section 20** amends sections 38 and 39 of the 1993 Act, inserts a new section 38A and repeals Schedule 4 to the 1993 Act. These measures together change the approach to reorganisation of crofting townships by reducing timescales and allowing for more extensive consultation. The control exerted by Scottish Ministers under the current legislation is largely replaced by detailed provisions aimed at ensuring that interested parties are made aware of the scheme proposals and final version, coupled with a right of appeal to the Land Court. Scottish Ministers have only a limited role in the process and that is where it might involve acquisition of land which is not in crofting tenure.
82. **Section 20(2)(a)** amends section 38(1) so that it is clear that the initial scheme prepared by the Commission is a provisional proposal. Section 20(2)(b) inserts new section 38(1A) which requires the Commission to notify the persons identified in new section 38(10) of the intention to prepare a provisional draft reorganisation scheme.
83. **Section 20(2)(c)** replaces section 38(3) of the 1993 Act with new provisions for reorganisation schemes. The main change is the addition of section 38(3)(a) which is a new provision to allow the Commission to include land which is not croft land in the scheme but only if Scottish Ministers have consented to the inclusion of that land.
84. **Section 20(2)(e)** replaces sections 38(5) to (7) of the 1993 Act with new sections 38(5) to (11). This changes the process for preparing reorganisation schemes and removes the previous requirement that the scheme must be confirmed by Scottish Ministers. The main change introduced by new section 38(5) of the 1993 Act is to require the Commission to send a copy of the scheme to and serve notice on the range of people identified in new section 38(10). The notice allows those to whom such documents are sent two months in which to comment (previously four months). The recipients of such notices are not asked at this stage to indicate specifically whether or not they were in favour of the scheme. The notice must also indicate a local venue where, and times when, maps and plans of the reorganisation can be seen.
85. Where the Commission have received comments on the provisional draft and are still satisfied that there ought to be a reorganisation new section 38(6) of the 1993 Act requires them to prepare a draft scheme which takes account of the comments. The

Commission, on completion of that draft, are required to issue copies and give notice as provided in new section 38(5) of the 1993 Act. The period for responding is one month and on this occasion the persons to whom the notice is sent are asked to indicate whether or not they are in favour of the draft scheme.

86. New section 38(7) of the 1993 Act provides that a failure to respond to the notice given under new section 38(6) is deemed to be an intimation that the person who failed to respond is in favour of the scheme.
87. New section 38(8) of the 1993 Act provides for the Commission to finalise a reorganisation scheme provided the majority of the crofters previously given notice of the draft scheme have intimated that they are in favour of the scheme. It also provides that the finalised scheme must be copied to all the persons previously given notice of the draft scheme and they are again given notice of where and when maps and plans can be inspected. In addition the notice advises of the new right to appeal the decision to reorganise the township which section 20(3) of the Act provides (see below).
88. New section 38(9) provides that if the Commission proceed with the preparation of a reorganisation scheme in accordance with new section 38(8)(a) that means that the Commission have decided to reorganise the township and therefore a decision which can be appealed has been made.
89. [Section 20\(3\)](#) inserts a new section 38A into the 1993 Act. New section 38A(1) specifies that any tenant of a croft in the township, the landlord of any such croft, the owner of any associated common grazing or the owner of any land which is not croft land but is included in the scheme is able to appeal a Commission decision to reorganise a township or the reorganisation scheme or the preparation of a scheme. It further specifies that the appeal by way of a stated case, on one or more of the grounds mentioned in new section 52A(3), is to the Land Court and must be lodged within 42 days of the date a copy of the reorganisation scheme was issued to the appellant under the provisions of new section 38(8).
90. New section 38A(3) of the 1993 Act sets out what the Land Court may determine in an appeal. It also provides that if the Court requires the Commission to modify the scheme the Commission must send a copy of the modified scheme to all those who previously had an opportunity to comment on the scheme.
91. [Section 20\(4\)](#) amends section 39 of the 1993 Act. Section 24(4)(a) replaces section 39(1) with a new version, the effect of which is that instead of the Commission, as at present, having a duty to proceed with a reorganisation when the scheme is approved by Scottish Ministers the Commission will instead be constrained not to start to implement the scheme until the period allowed for lodging an appeal has ended, every appeal has been decided and any modification required as a consequence of a successful appeal effected. Section 20(4)(a) also inserts a new section 39(1A) into the 1993 Act. This requires the Commission to give effect to the reorganisation in accordance with the scheme previously prepared (or modified where required to do so by the Land Court on appeal).
92. [Sections 20\(4\)\(b\)](#) and (d) make amendments to sections 39(3) and (7) of the 1993 Act and section 20(4)(c) adds new subsection (5A) to take account of the fact that the Commission will no longer require to have the scheme confirmed by the Scottish Ministers.
93. [Section 20\(4\)\(e\)](#) amends section 39(8) of the 1993 Act so that the role of Scottish Ministers in serving notice on occupiers and owners is taken on by the Commission. It also provides for copies of these notices to be sent to Scottish Ministers.

### ***Section 21: Meaning of croft***

94. Section 3(1) of the 1993 Act is amended by the insertion of new provisions. New subsection (cc) recognises the existence of crofts created under the provisions of new

section 3A. New subsection (1)(cd) recognises land reverting back to croft land under new section 20(1B) and 21A(1) of the 1993 Act as croft land. New subsections (1)(f) and (1)(g) extend the definition of croft to include any holding which at the date of commencement of this section of the Act or on any subsequent date has been entered on the Register of Crofts for more than 20 years. These provisions however exclude a holding that is the subject of an ongoing dispute in any court as to its status as a croft at the 20<sup>th</sup> anniversary of the registration of that holding in the Register of Crofts.

### **Part 3: Termination of Tenancy, Decrofting, Etc.**

#### ***Section 22: Resumption and reversion***

95. **Section 22** makes a number of changes to the handling of resumption of land from crofting tenure including the extension of the definition of “reasonable purpose” to include the generation of energy. It also provides that the Commission must be given notice of all resumption proposals and may oppose or support the proposal in the Land Court. It empowers the Land Court to allow resumption for a specified period, being known as a temporary resumption, rather than the permanent arrangement required by the previous legislation. It also empowers the Land Court to determine that payments to crofters of a share in the value of resumed land may be made by instalments rather than in a lump sum. This removes a potential obstacle to the development of land where income is deferred or spread over a lengthy period. Finally, it empowers the Land Court to restore resumed land to crofting tenure in certain circumstances.
96. **Section 22(1)(a)** amends section 20(1) of the 1993 Act to extend the matters which the Land Court must take into account when considering a resumption application to include the interests of the crofting community. Section 22(1)(b) inserts new subsections (1A) to (1F) into section 20 of the 1993 Act. The effect of new section 20(1A) is that the landlord must give notice of the application to the Commission and the Commission may oppose or support the application. This means that applications which are unopposed by crofters can nevertheless be challenged where there is concern about the impact of or need for resumption. New section 20(1B) allows the Land Court to specify that land is to be resumed for a specified period rather than permanently. New section 20(1C) allows the Land Court to extend that period on request and new section 20(1D) specifies circumstances where the Land Court is bound to extend the period of resumption in line with an extension of a relevant planning consent. New section 20(1F) allows the landlord to apply to the Land Court to turn a resumption for a specified period into a permanent resumption and provides for any necessary further compensation payment or further payment of a share in the value of the land to be made to the crofter. Section 22(1)(c) amends section 20(3)(a) of the 1993 Act to include generation of energy as a reasonable purpose.
97. **Section 22(2)** amends section 21 of the 1993 Act by adding new subsections (1A) to (1C) to provide that the Land Court may direct that sums payable to a crofter in connection with a resumption can be paid by instalments. It also provides for any such direction to be recorded in the Register of Crofts and so made binding on the successors to the landlord.
98. **Section 22(3)** inserts a new section 21A into the 1993 Act. This new section allows any “relevant person”, being a landlord of a croft, the person who was the tenant of the land when it was resumed or if the land had been part of a common grazing the owner or the grazings committee, and the Commission to apply to the Land Court to have the land restored to crofting tenure. The Court is empowered to agree to the land being returned to crofting tenure provided the conditions specified in new section 21A(2) are met. If the Court determines that the land should be restored to crofting tenure new section 21A(4) empowers the Court to specify that crofters should return all or part of the compensation or share of value paid on resumption. Where the land is to be restored as a common grazing new section 21A(5) empowers the Court to specify how the question of shares in the grazing is to be resolved.

### **Section 23: Decrofting**

99. **Section 23(a)** amends section 24 of the 1993 Act so that the Commission are no longer bound in certain circumstances to decroft a croft which has become vacant through Commission action. At present if such a croft remains vacant for 6 months the landlord can within the next 3 months give notice to the Commission requiring the Commission to decroft it. The new provision allows the Commission to apply to the Land Court for an extension of the period in which the croft may remain vacant thus allowing more time to find a suitable new tenant. If the Land Court grants an extension the Commission will become liable to make a payment to the landlord equivalent to the rent which would be due for the period of the extension.
100. **Section 23(b)** amends section 25 of the 1993 Act to effect a number of changes. Section 25(1)(a) is amended so that the Commission must in addition have regard to the interests of the local crofting community in determining that a croft shall cease to be a croft. A new section 25(1)(c) is inserted to provide that the special arrangements for decrofting the site of a house would also apply to a croft which had been feued in accordance with the provisions of sections 17 or 18 of the 1955 Act (these were feus of house sites with existing houses to persons who had given up their croft for re-letting. Because there was no provision for decrofting these sites in the 1955 Act they have never been decrofted and thus are still in crofting tenure although no longer associated with other croft land).
101. Section 25(3) of the 1993 Act is amended to allow the Commission to impose timescales for any new use. New subsection (3A) enables the Commission to set a time limit within which the land being decrofted begins to be used for the purpose for which it has been decrofted and new subsection (3B) enables the Commission to modify the conditions that apply to a decrofting direction. However, the power given in section 25(3) to make a further direction specifying that land subject to a previous decrofting direction is a vacant croft is constrained by the circumstances specified in new subsection (3C).
102. New section 25(4A) makes two changes to the decrofting procedure. Firstly, it requires a crofter who is applying for a decrofting direction whilst still the croft tenant to inform the landlord of the application and, secondly, it provides that the Commission will not give a direction if implementation of the application would impede access to another part of the croft or other croft land.
103. **Section 23(b)** also replaces sections 25(7) and (8) with new subsections (7), (7A), and (8). The main effects are firstly, to require the Commission to notify the landlord, applicant and the public of any decrofting direction they make setting out details of the decision and secondly, to extend the right to appeal that decision in the Land Court, by way of a stated case and on one or more of the grounds mentioned in new section 52A(3), to the landlord and other members of the crofting community, with the time allowed for making that appeal specified as 42 days.

### **Section 24: Re-letting**

104. **Section 24** amends section 23 of the 1993 Act. By replacing section 23(3) it removes the right of the landlord to seek the consent of Scottish Ministers to a re-let when the Commission have not consented to it. The procedure set out in new section 58A of the 1993 Act (inserted by section 3 of the Act) will apply to the process of obtaining Commission approval and new section 23(3A) sets out the additional criteria which will apply to consideration of re-let. Section 24(b) makes changes consequential to the removal of the right to seek the consent of Scottish Ministers by amending section 23(5). The new sub-sections 23(5A), (5B) and (5C) also require the Commission to seek by public notification prospective tenants for the croft where the landlord has failed to find a suitable tenant.

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

105. This provision reflects the introduction of the concept of using a croft for another purposeful use (defined at Schedule 2 paragraph 3(b) of the 1993 Act (as amended by section 7(2) of the Act) or use of common grazing land for other purposes defined in new section 50B of the 1993 Act inserted by section 26 of the Act). By the insertion of new subsections (6A) and (6B) it alters the previous effect of section 30 of the 1993 Act which dealt with compensation payable to the crofter by the landlord in respect of improvements to the croft. It means that a landlord will now be required to compensate a crofter for things that the crofter does in order to use the croft for a non-agricultural purpose only if the landlord has previously agreed to do so.
106. This reflects the fact that these things may be of no value to either the landlord or an incoming croft tenant. It also reflects the fact that the croft tenant could readily realise the value of such improvements (if they have any value) by assignation or purchase and sale of the croft. New section 30(6A) of the 1993 Act specifies what would not be considered an improvement for the purposes of section 30 and new section 30(6B) qualifies that by indicating that the works mentioned in new section 30(6A) will be classed as improvements if the landlord has agreed in writing that the croft can be used as proposed.
107. It is worth noting that in many instances the provisions of Schedule 3 of the 1993 Act would be likely to preclude any entitlement to compensation. However, this new provision will impart greater clarity and certainty for both parties.

**Part 4: Common Grazings**

***Section 26: Use of common grazing***

108. This section introduces a number of changes connected with common grazings and their uses.
109. **Section 26(1)** makes changes to section 50 of the 1993 Act. It inserts six new subsections which modify matters relating to consent by the owner and use of woodlands.
110. New section 50(2A) restricts the right of the owner of common grazing land to refuse consent for crofter forestry purposes by specifying the grounds on which consent may be refused. The grounds on which consent may be refused are intended to cover the situations in which there would be a loss or harm to the interests of the owner or a crofter if the planned crofter forestry scheme proceeded. It also specifies that a refusal of consent must be in writing giving reasons for refusal. New section 50(2B) further provides that a failure to give or refuse consent within 6 weeks is to be treated as refusal of consent. In the event that consent is refused or granted with conditions the crofters have the right to challenge that refusal of consent in the Land Court. New section 50(2C) specifies what the Land Court may do if it determines that the refusal of consent was unjustified or the conditions imposed are unreasonable.
111. New section 50(3A) requires the Commission to consult on receipt of an application for approval of a crofter forestry proposal and specifies who they must consult. New section 50(3B) clarifies the kinds of activity which might be included in using land as woodlands.
112. New section 50(3C) makes clear that responsibility for the cost of fencing land enclosed for crofter forestry and for subsequent maintenance, repair and renewal of that fence rests with the grazings committee or where there is no grazings committee with the crofters sharing in the grazing.
113. **Section 26(2)** inserts new sections 50A and 50B after section 50 in the 1993 Act. New section 50A provides scope for joint forestry ventures between the owner of the common grazing and crofters. It provides for the crofters and owner to make agreements



which are binding on their successors and which can be amended at a later date only by agreement. It provides in section 50A(2) for the possibility of such agreements including existing trees. It also provides (new section 50A(3)) for a copy of such an agreement to be held by the Commission and in terms of section 50A(4) for such agreement to be amended by written agreement also lodged with the Commission. It also makes provision in new sections 50A(5) to (7) for the parties to resolve, in the Land Court, any disputes that arise as to value of the trees or the size of the entitlement to a share of the timber produced.

114. New section 50B provides that common grazings may be used by crofters for purposes other than those such as grazing, forestry, peat-cutting, use of seaweed and use of heather and grass for roofing which are currently permitted. This change in use would require agreement of those crofters with shares in a common grazing and approval of the Commission (the Commission decision would be subject to a right of appeal to the Land Court by a shareholder or the owner of the common grazing in terms of section 52A of the 1993 Act as inserted by section 33 of the Act).
115. New section 50B also creates a process for making and considering a proposal to put a common grazing to another use. New section 50B(1) identifies who may propose an alternative use for a part of the common grazing. New section 50B(2) provides that the proposed new use cannot be one which is detrimental to the current use of other parts of the common grazing or to the owner's interests.
116. New sections 50B(4) to (6) set out requirements for convening a meeting of the grazings committee to consider a proposal, consultation with the owner before the meeting, making the owner's views known to the meeting, voting rights, conducting the vote, declaring the result of the vote and communicating the details of the decision of the meeting and the detailed results of the vote to the owner after the meeting.
117. New sections 50B(7) to (11) specify how the Commission should consider the matter and reach a decision after allowing 28 days for receipt of objections. If that decision is to approve a proposal, new section 50B(11) provides how the Commission may deal with a proposal and if they approve the implementation of the proposal, how they may later review their decision.
118. New sections 50B(12) and (13) require the Commission to impose a condition requiring provision of a deer-proof barrier around the land affected by a proposal where the owner asks for it to be provided, the Commission consider that the implementation of the proposal would make the land more attractive to deer and there are deer management and/or environmental enhancement/protection reasons for doing so.
119. New sections 50B(14) and (15) provide how the Commission will communicate their decision.

### ***Section 27: New common grazing***

120. This provision inserts a new section 51A into the 1993 Act to provide for the creation of a new common grazing by a land owner. New section 51A(1) empowers the Commission acting on an application from the owner of the land to record eligible land as a common grazing in the Register of Crofts. Such change cannot be recorded until any appeal against such change has been decided. New sections 51A(2) to (4) detail how the Commission should go about considering and determining an application.
121. New section 51A(5) defines what constitutes eligible land for the purposes of this section. New section 51A(5)(c) excepts land adjacent to a croft (because such land can be turned into common grazing land under existing provisions of the 1993 Act).
122. New sections 51A(6) to (8) provide that where a new common grazing is created the parties must agree in writing how the land is to be used, that this agreement is binding on the parties and their successors, that it may only be amended by agreement (see new section 51A(8)) and that a copy of the agreement will be held by the Commission.

Subsection (7) also outlines the purposes for which the common grazing is to be used. It should be noted that since the parties would remain bound by the agreement the procedure for enabling the use of parts of the common grazing for other purposes and for crofter forestry, insofar as they allow for an owner's refusal of consent to be overridden, will not be relevant to a new grazing.

123. New section 51A(9) applies section 6 of the 1993 Act with the effect that the land will be treated as a croft for rent purposes. New sections 51A(10) and (11) specify ways in which valid comments may be submitted.

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

124. **Section 28** amends the provisions of section 52 of the 1993 Act so as to provide a new means of enforcing common grazings regulations. As a result of the replacement of the previous section 52(1) with a new section 52(1), breach of grazing regulations will no longer be a criminal offence.
125. A new procedure is put in place by means of new subsections (1) to (1F). These provisions provide for the Commission to intervene at the request of the owner or grazings committee where grazings regulations are not being observed. If the Commission are asked to intervene new section 52(1A) requires them to give notice of the contravention to the person accused of not observing the regulations, the grazings committee and the owner. The Commission, or a person appointed by the Commission, are thereafter required by new section 52(1B) to allow all these parties to make representations about the allegation and evidence may also be heard. If the Commission determine there has been a contravention of or failure to comply with grazings regulations in terms of new section 52(1C) they can require the offender to comply with the regulations and make good any damage. Where an offender does not so comply, new section 52(1D) allows the Commission either to determine that all or part of that person's share in the common grazing is suspended or, if the person is required to make good damage to the grazing, to allow a further period for that to be done. This section also allows the Commission to end a period of suspension. New section 52(1E) provides that when a grazing share has been suspended and a requirement imposed by the Commission is still not complied with, the Commission can extend the period for making good damage done or determine that the share is terminated and apportion it to the other shareholders. New section 52(1F) confirms what other rights are included within the meaning of the term share.
126. It is important to note that each determination by the Commission under section 52(1C), (1D) and (1E) is subject to the appeal provisions in new section 52A (see section 33 of the Act.) This therefore affords the person accused of a breach the opportunity to challenge the Commission's actions in court at each stage.

***Section 29: Further amendment of section 52: apportionment***

127. **Section 29** amends section 52 of the 1993 Act. Section 29(2) amends the description in section 52(4) of a person who may apply for an apportionment to be a person who holds a right in a common grazing.
128. **Section 29(3)** inserts new subsections (10) to (15) into section 52. New subsection (10) allows the Commission to specify that an apportionment should be for a particular period and/or subject to review at fixed intervals. New section 52(11) allows the Commission to extend the original period and new section 52(12) allows it to vary the conditions attached to an apportionment if either the crofter or township asks for that to be done.
129. New section 52(13) provides that when a period of apportionment ends or the apportionment is terminated the land will revert to being a common grazing.

130. New section 52(14) provides that the Commission may reallocate grazing shares when land reverts to common grazing use, having regard to the rights held in the common before the original apportionment was granted.
131. New section 52(15) makes it clear these powers will not extend to land newly constituted as common grazing under new section 51A of the 1993 Act (inserted by section 27 of the Act) as that section provides that such land may only be used as agreed by the owner and those sharing in that new common grazing.

## **Part 5: Schemes for Development**

### ***Section 30: Schemes for development***

132. **Section 30** introduces a set of concepts designed to enable development of croft land for non-crofting use while retaining the role of the Land Court in ensuring that the interests of crofters are protected and maximising the scope for retaining land in crofting tenure. It does this by means of section 30(1), which inserts a new section 19A into the 1993 Act. New section 19A allows a landlord or owner to apply to the Land Court for consent to develop croft land and common grazing in accordance with a scheme which is to accompany the application. The scheme could include the ending of all or some of crofters' rights on that land or make different arrangements for different parts of the land. This ending of rights would be binding upon both crofters and their successors in tenancy. The most useful example of the flexibility this approach allows would be where a development is built on one area of land (which might be fenced off with no access for grazing), while rights to burn heather or shoot ground game are ended on a neighbouring stretch in order to secure the future operation of the development.
133. New section 19A(1) provides that an application to make a scheme may be made by the landlord (or owner) or an agent for the landlord or owner. The application can include land adjacent to the croft land or common grazing if there is an effect on the rights and liabilities relative to the croft land or common grazing. The proposed scheme is to accompany the application. It also provides that the landlord or owner may intimate a scheme to the court without explicitly seeking its consent if every person with rights in the croft land or common grazing has consented to the scheme. It also provides that the application or intimation must be copied to the Commission.
134. New section 19A(2) provides the criteria such a scheme must meet in order to obtain the Land Court's consent to it. Firstly, the development has to be for a reasonable purpose and, as new section 19A(3)(a) indicates, this means the same as it would mean in the context of resumption and decrofting. Secondly, the development must not be unfair and what is unfair is explained in new section 19A(3)(b). Thirdly, the scheme must provide for fair recompense to each member of the crofting community (how fair recompense is determined is explained in new section 19A(3)(c), and crofting community for this purpose is defined in section 37 of the Act). That new section also sets a minimum acceptable amount of compensation that is to be paid to each member of the community. Finally, the development must be one which would be likely to bring benefits to the community at least comparable with the benefit which could be achieved if the development had progressed by other means.
135. New sections 19A(4) and (5) make provision for the Land Court to specify the form in which the application or intimation must be made, the form and content of the scheme to accompany the application, and to set the amount of court fees.
136. New section 19A(6) ensures that details of the application or intimation are made public by requiring the applicant to give public notification of it (public notification is defined in new section 55A of the 1993 Act inserted by section 35 of the Act). New section 19A(7) specifies the time limit (28 days after public notification is given) for lodging objections (on certain specified grounds) to the application and the scheme and who may object. The right to object is widely drawn and specifically includes the

Commission as well as any other interested party. The Land Court is required to hear the objections before reaching a decision on the scheme.

137. New section 19A(8) sets out the grounds of objection referred to in section 19A(7).
138. New section 19A(10) requires the Land Court, where it has consented to or otherwise permitted a scheme to proceed, to provide the Commission with a copy of the scheme and requires the Commission to enter the copy in the Register of Crofts. New section 19A(11) provides that once the copy is entered in the Register of Crofts the scheme will be binding on all the parties with an interest and their successors.
139. It is important to note that this section makes no provision for the amendment of the scheme by the Land Court or by the person applying for consent to the scheme once the application is made. The scheme in the application will therefore stand or fall on its merits. This implies that to obtain consent to the scheme there will require to have been substantial discussion with and investigation of the circumstances of the community and each member of the community before an application is made. It would also not be necessary for the scheme to have the consent of the community.
140. [Section 30\(2\)](#) makes a minor technical amendment to section 49 of the 1993 Act which is consequential on the provisions of new section 19A. The effect is to ensure that grazings regulations cannot ignore the terms of a new scheme made under section 19A.

## **Part 6: Crofting Community Right to Buy**

### ***Section 31: Crofting community right to buy***

141. This section amends Part 3 (crofting community right to buy) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) . It enables crofting communities that have successfully applied or are applying to buy land under the crofting community right to buy to also purchase the interest of the tenant in a lease over the land which they have bought or are buying.
142. [Section 31\(2\)](#) adds a new section 69A to the 2003 Act and thus amends that Act to allow a crofting community body to purchase a tenant’s interest in any lease over eligible croft land over which they are or will become the landlord. New section 69A(1) excludes certain leases from the new right to buy. This prevents the crofting community body from seeking to buy a croft tenancy or a tenancy of a dwelling house.
143. New section 69A(2) defines the circumstances under which a crofting community body may purchase the right over eligible croft land. The crofting community must be simultaneously applying to purchase eligible croft land or it must have made an application to purchase eligible croft land in respect of which Ministers have not made a decision. In terms of section 69A(3) it is only the tenant’s interest in the lease insofar as it coincides with the eligible croft land which can be acquired. Thus if the lease extends beyond the eligible croft land, that portion of the lease which is outwith the eligible croft land cannot be acquired. A crofting community may also purchase such rights during the “relevant period” in the circumstances specified in new section 69A(4). These circumstances are that the crofting community body wishing to purchase rights to eligible croft land must either have provided confirmation of its intention to purchase that land under section 85(1) of the 2003 Act or should have already bought and retained that land in accordance with the provisions of the 2003 Act.
144. New section 69A(5) defines “relevant period” as being the period beginning with the date on which Ministers consented to the application under section 73 of the 2003 Act to buy the eligible croft land and ending either on the date when the crofting community body does not proceed to exercise its right to buy and withdraws its application or, where the crofting community body has bought and retained that land, five years after the date on which the crofting community body bought that land.

145. **Section 31(3)** inserts a new section 88A into the 2003 Act to make provision for the situation where it is not the entire tenant's interest in a lease which is being acquired by the crofting community body. In such circumstances any question as to the allocation of rents or rights and obligations generally payable or receivable under the lease will be determined by the valuer appointed under section 88(1) of the 2003 Act.
146. **Section 31(4)** inserts a new section 97A into the 2003 Act. That section states that "tenant" includes "sub-tenant", with analogous expressions being construed accordingly.

## **Part 7: General and Miscellaneous**

### ***Section 32: Regulations concerning loans***

147. **Section 32** adds a new section 46A to the 1993 Act. New section 46A(1) provides for Scottish Ministers to make regulations governing the provision of loans to crofters, cottars and owners of holdings specified in section 46(2) (holdings sharing some of the characteristics of crofts). New section 46A(2) provides that these regulations may specify who is eligible, the amount that can be lent, the circumstances under which a loan may be given, the terms and conditions, arrangements for recording details of the loan and arrangements for recovery or assignation of liability for the loan on the death of the borrower. New section 46A(2)(f) clarifies that the regulations may cover arrangements for recovery of the whole or part of a loan when a borrower dies.

### ***Section 33: Appeal to the Land Court and jurisdiction of that court***

148. This section creates a new and wide ranging right of appeal to the Land Court against decisions and other actions taken by the Commission. Section 33(1) inserts new section 52A into the 1993 Act. New section 52A(1) sets out the detail of the new right of appeal against any decision, determination or direction of the Commission or any imposition by them of a condition in response to an application made to them under the 1993 Act as amended by this Act. For example this right of appeal would apply to a decision by the Commission to refuse consent for an assignation of a croft or a determination by the Commission that there had been a contravention of grazings regulations by a particular shareholder in a grazing. New section 52A(2)(a) extends that right of appeal to any person with an interest in the application and that would include for example prospective tenants in the case of applications for assignation and re-let. It also provides that the appeal must be made by way of a stated case, which means that the Commission is required to provide a statement of the facts that have been established and the reasons for its decision. New section 52A(2)(b) provides for the time allowed for the appeal and new sections 52A(3)(a) to (f) set out the grounds on which an appeal can be made.
149. New section 52A(4) provides the Land Court with an open remit in that it can confirm the decision etc. taken by the Commission, require the Commission to come to a different conclusion or remit the case back to the Commission without telling the Commission what to do next.
150. New section 52A(5) provides that the appeal arrangements will also apply to Commission approval or withholding of such approval to the re-letting of a croft and variation, withdrawal, imposition and revocation of approval of the use of common grazings for other purposes (all actions which are not covered by the wording of new section 52A(1) because these cannot be described as a decision, determination or direction).
151. New section 52A(6) narrates the cases which are excluded from the appeals procedure under new section 52A, in one case because a specific appeal provision is already in place within section 25(8) of the 1993 Act and in the other two cases because specific new appeal provisions are created by sections 13 and 20 of the Act.

152. New section 52A(7) provides that a decision by the Commission under the provisions of new section 58A of the 1993 Act (inserted by section 3 of this Act) not to intervene or a determination by them that an objection under that section is frivolous, vexatious or unreasonable cannot be the subject of an appeal. The decisions under new section 58A that in consequence can be appealed are decisions to grant or refuse an application.
153. **Section 33(2)** amends the provisions in section 53 of the 1993 Act dealing with the jurisdiction of the Land Court to determine questions of fact or law arising under the Act. The effect of the new proviso (ii) to section 53(1) is that the Land Court cannot decide in the first instance a matter for which there is a right of appeal under new section 52A. The Land Court may in such cases only deal with the appeal under that section. The effect of the new proviso (iii) is essentially the same as the previous proviso (ii). It ensures that the Land Court cannot substitute its own decision for a decision by the Scottish Ministers or the Commission made under the provisions of the 1993 Act as amended by this Bill except on a question of law.
154. **Section 33(3)** amends Schedule 1 to the 1993 Act. It empowers the Commission to take the steps necessary to state a case and to prescribe procedures that must be followed by others (e.g. the appellant) in relation to the preparation of the stated case. It also clarifies that the Commission may be a party to any appeal or a reference to the Land Court under section 53(1) of the Crofters (Scotland) Act 1993.

#### ***Section 34: Further amendments in relation to the Land Court***

155. This section amends the provisions of Schedule 1 to the Scottish Land Court Act 1993. Subsection (2) redefines what constitutes a quorum of members of the Land Court. The effect of this is to ensure that when the Chairman is sitting only one other member of the Land Court is required to constitute a quorum. Subsection (3) amends paragraph 6 of Schedule 1 with regard to appeals against orders or determinations which have been delegated from the full court and makes provision for former members of the Land Court to be used as members of the full court to hear appeals on decisions taken by a single member of the Court (other than the Chairman). Subsection (4) makes provision for the Chairman of the Land Court to have a casting vote. Subsection (5) defines what is meant by nominated former members of the Land Court. Subsection (6) amends paragraph 10(1) of Schedule 1 to the Scottish Land Court Act to provide a mechanism for the Chairman and Deputy to sit in Court at the same time. Subsection (7) enables forms of application and procedure, rules of the Scottish Land Court, scales of fees and other fee matters to be prescribed by order made by statutory instrument. Subsection (8) is a consequential provision.

#### ***Section 35: Public notification***

156. This section inserts new section 55A into the 1993 Act and describes what constitutes public notification for the purposes of the Act where such notification is required by the Act. (Public notification is required for example by new sections 58A(3) of the 1993 Act inserted by section 3 of the Act and new section 19A(6) of the 1993 Act inserted by section 30 of the Act). It is given by publication of an appropriate notice in one or more local newspapers. The contents of the notice will generally be specified by the Commission (new section 55A(2)). However, new section 55A(2) provides that the notice must always specify the purpose of the application to which it relates, include a description of the land to which it relates and specify the period during which objections to the proposals in the notice may be made and the manner in which they should be made. New section 55A(3) provides that in any case where notification is to be given to a specified person that notification should be in the same form as the public notification.

#### ***Section 36: "Members of a family"***

157. This section amends section 61(2) of the 1993 Act to the extent that it amends the definition of persons who comprise members of a person's or crofter's family for

purposes of the 1993 Act. This reduces the breadth of “family” within the context of crofting legislation. The current definition defines family as extending to anyone who is, or would in any circumstances be, entitled to succeed to the crofter’s estate on intestacy by virtue of the provisions of the Succession (Scotland) Act 1964. This would include cousins and more distant blood relatives. The new definition also now includes a civil partner or cohabitant and defines the terms cohabitant, sibling and son or daughter.

### ***Section 37: “Crofting community”***

158. This section defines the expression “crofting community” for the purposes of the 1993 Act by adding this definition to the list of definitions in section 61(1) of the 1993 Act. It therefore defines which persons will be considered to be members of the crofting community and therefore are afforded a right to lodge an objection to certain proposals considered by the Commission.

### ***Section 40: Savings***

159. This section ensures continuity of any process leading to a decision by the Commission, Scottish Ministers or the courts which has started before the new provisions come into force. The effect is that any decision on such a process will be reached in accordance with the un-amended provisions of the 1993 Act.

### ***Schedule 1***

160. This Schedule sets out certain amendments to existing legislation.
161. [Paragraph 1](#) amends a provision of the Crofters Holdings (Scotland) Act 1886 which is still in force.
162. All amendments under paragraph 2 of Schedule 1 are amendments made to the 1993 Act. Paragraph 2(3) leaves the determination of the initial rent of an enlarged croft to be settled between landlord and tenant.
163. [Paragraph 2\(4\)](#) amends section 6 of the 1993 Act. Paragraph 2(4)(b) provides that a rent assessment can be made during a period when a change of rent is not permitted if the change of rent is to take effect at the end of that period. Paragraph 2(4)(a) amends section 6(3) to allow the Land Court to fix a rent for part of a croft. Paragraph 2(4)(c) amends section 6(4) to apply it also to the assessment of rent for part of a croft.
164. [Paragraph 2\(5\)](#) allows the Land Court, in authorising a tenant to purchase croft land, to direct that the costs of the action be borne by the tenant. This is consistent with the arrangements that already apply when the croft tenant is acquiring a house site.
165. [Paragraph 2\(6\)](#) extends the provisions of section 24(1) permitting enlargement of crofts to new crofts and land reverting to being crofts under the respective provisions in sections 6 and 22 of the Act.
166. [Paragraph 2\(7\)](#) means that the Commission is no longer required to publicise an application to decroft land conveyed as a feu under the provisions of the Crofters (Scotland) Act 1955. This means that, in this respect, such applications are treated in the same way as an application to decroft a house site.
167. [Paragraph 2\(8\)](#) amends section 26(1) to make it clear that an order by the Land Court in relation to non-payment of rent or a breach of statutory conditions involves terminating the tenancy and declaring the croft vacant as well as removal of the crofter and extends the provision to apply this sanction to cases where the order has been the subject of an application under either new section 5A or new section 5B inserted by section 8 of the Act.
168. [Paragraph 2\(9\)](#) makes a technical amendment to section 41(1) and amends section 41(2) to provide that the Register of Crofts includes details of common grazings and require

owners and those who have shares in the grazings to provide information about the grazings in the same way as landlords and croft tenants are required to do for crofts.

169. [Paragraph 2\(10\)\(a\)](#) amends subsection (1) of section 42 of the 1993 Act to widen the use to which grants paid to crofters by Scottish Ministers may be put. It, together with paragraph 2(10)(c), (d)(ii), (e) and (j), by repealing any mention of “loan”, withdraws from the Scottish Ministers the right to make loans under this section (new section 46A (inserted by section 32 of the Act) provides Scottish Ministers with a revised power to make loans). Paragraph 2(10)(b) inserts a new subsection 42(1A) into the 1993 Act and this requires that grant schemes shall have specific criteria as to who may receive grant (which, for example, opens up the possibility of applying an economic status test to applicants who are crofters). Paragraph 2(10)(d)(ii) removes the power of Scottish Ministers to supply crofters with building materials. Paragraph 2(10)(f) provides for recovery of grant by the Commission acting on behalf of Scottish Ministers. Paragraph 2(10)(g) extends the existing prohibition on double funding from public sector sources. Paragraph 2(10)(h) extends entitlement to persons who become owner occupiers after making a grant application. Paragraph 2(10)(i) makes clear that economic status can be one of the criteria for determining eligibility for grant.
170. [Paragraph 2\(11\)](#) removes provisions enabling the Scottish Ministers to make loans or supply building materials to cottars.
171. [Paragraph 2\(12\)](#) is a consequential amendment to section 45 resulting from the changes in the power of Scottish Ministers to provide loans.
172. [Paragraph 2\(13\)](#) removes provisions in section 46 enabling the Scottish Ministers to make loans or supply building materials to owners of crofts and persons of like status to crofters. It also modifies the test of status for determining eligibility and makes consequential changes resulting from the changes in the power of Scottish Ministers to provide loans.
173. [Paragraph 2\(14\)](#) modifies section 47(1) to apply the provisions of section 35 of this Act to the process of convening a meeting to appoint a grazing committee and repeals section 47(2) which as a consequence is no longer required. There are also technical amendments to sections 47(6) and (8) relating to the description of the clerk to a grazings committee and technical changes to do with rationalisation of the use of “common grazing” and “common grazings” in the legislation.
174. [Paragraph 2\(15\)](#) amends section 48 of the 1993 Act to empower the grazings committee to put the common grazing to any wider use approved under the provisions of new section 50B (inserted by section 26 of the Act), to carry out works for that purpose and to maintain the common grazing for that use. It also empowers the committee to raise funds to implement a wider use approved under section 50B(11) but only if a majority of the grazings committee votes to do so. It also contains technical changes to do with rationalisation of the use of “common grazing” and “common grazings” in the legislation.
175. [Paragraph 2\(16\)](#) makes technical changes similar to those mentioned in relation to paragraph 2(15) and to substitute “owner” for “landlord” in relation to common grazings. It also makes further changes to ensure that the substantive changes made in paragraph 2(15) are given effect in common grazings regulations.
176. [Paragraph 2\(17\)](#), as elsewhere, changes the reference in section 52 of the 1993 Act to “grazings” to the singular and the description of a crofter “interested” in the grazing to one who holds a right in a common grazing.
177. [Paragraph 2\(18\)](#) clarifies the postal method required for notices which require to be sent by post.
178. [Paragraph 3](#) introduces a technical amendment to the Scottish Land Court Act 1993 to update the jurisdiction of the Scottish Land Court following devolution.



*These notes relate to the Crofting Reform etc. Act 2007  
(asp 7) which received Royal Assent on 1 March 2007*

179. [Paragraph 4](#) introduces a change to the Deer (Scotland) Act 1996 which enables a grazings committee to appoint a person to shoot deer marauding in enclosed areas of the common grazing.
180. [Paragraph 5](#) makes a number of amendments to various sections of the 2003 Act, all of which are consequential on the changes to that Act included in section 31 of the Act.
181. [Paragraph 5\(2\)](#) amends section 68 of the 2003 Act. It makes the right to buy eligible croft land subject also to the right to buy the tenant's interest in a lease over that land.
182. [Paragraph 5\(3\)](#) amends section 73 of the 2003 Act to make it clear that section 73 will also apply to an application for a right to buy a tenancy under the provisions of new section 69A. It further provides that the application to buy can include the tenant's interest in a lease where that interest may be held by one individual or jointly or in common with other parties. It also applies the requirements of the application to buy to the tenant's interest in the lease in the same way as they apply to the land or sporting interests which may be subject to the application.
183. [Paragraph 5\(4\)](#) amends section 74 of the 2003 Act to the effect that whilst an application to buy must relate to eligible croft land (as that term is defined) that land might also be subject to a tenancy.
184. [Paragraph 5\(5\)](#) amends section 75 of the 2003 Act to make it clear that a ballot must be conducted in accordance with the provisions of section 75 in connection with an application for a right to buy a tenant's interest in a lease under the provisions of new section 69A and that a failure to conduct a ballot will result in the application being extinguished. It also modifies the section in order to define who may vote as a croft tenant in the ballot.
185. [Paragraph 5\(6\)](#) amends section 76 of the 2003 Act to provide also for a tenant's interest in a lease. It also amends section 76(4) to provide that the tenant under any lease which is the subject of the application should be notified of the application.
186. [Paragraph 5\(7\)](#) amends section 81 of the 2003 Act to provide that the person who makes a reference to the Land Court should include the tenant under any lease, where the interest of that tenant is the subject of the application. In terms of subsection (2) the Land Court should also have regard to the representations made by such tenant.
187. [Paragraph 5\(8\)](#) amends section 82 of the 2003 Act and provides for notification of the Minister's decision on an application.
188. [Paragraph 5\(9\)](#) amends section 85 of the 2003 Act to include arrangements for confirming the intention to purchase the tenancy or withdraw an application for a right to buy a tenancy under the provisions of new section 69A.
189. [Paragraph 5\(10\)](#) amends section 86 of the 2003 Act to make it clear that where a crofting community body have been given Ministerial consent to their buying a tenant's rights in an area of eligible croft land the owner and the tenant will be required to make deeds and other documents needed to complete the purchase (which will include the assignation of the tenant's interest in the lease) available to the crofting community body.
190. [Paragraph 5\(11\)](#) amends section 87 of the 2003 Act to make it clear that the provisions of that section regarding the consideration payable, the date for settlement and what should happen if the consideration is not paid on time will also apply to the exercise of a right to buy a tenancy. Also where the tenant's interest in the lease is subject to a standard security that security will not be discharged to the extent that it burdens any part of the interest which is not assigned to the crofting community body.
191. [Paragraph 5\(12\)](#) amends section 88 of the 2003 Act to specify how the assessment of the value of a tenant's interest in a lease being acquired under the right to buy will be conducted.

192. [Paragraph 5\(13\)](#) amends section 89 of the 2003 Act to make it clear that the provisions of section 89 regarding payment of compensation will also convey an entitlement to compensation to the tenant of a lease which was the subject of an application for a right to buy a tenancy under the provisions of new section 69A.
193. [Paragraph 5\(14\)](#) amends section 90 of the 2003 Act to make it clear that grants may also be given to a crofting community body which has a liability to pay compensation under section 89 in connection with an application to purchase a tenant's interest in a lease under section 69A.
194. [Paragraph 5\(15\)](#) amends section 91 of the 2003 Act to make it clear that a Ministerial decision on an application for a right to buy a tenant's interest in a lease under the provisions of new section 69A may be the subject of an appeal to the Sheriff Court.
195. [Paragraph 5\(16\)](#) amends section 92 of the 2003 Act to make it clear that a valuation in connection with a right to buy a tenant's interest in a lease under the provisions of new section 69A may be the subject of an appeal to the Land Court.
196. [Paragraph 5\(17\)](#) amends section 95 of the 2003 Act to also apply the anti-avoidance measures in that section to the acquisition of the tenant's interest in a lease where Scottish Ministers have consented to an application for a right to buy that interest under the provisions of new section 69A.
197. [Paragraph 5\(18\)](#) extends the limitation on Part 3 of 2003 Act to ensure that a crofting community body is not prevented from acquiring a tenancy of eligible croft land by agreement.

## ***Schedule 2***

198. This Schedule gives details of provisions of the Crofters (Scotland) Act 1993 and the Succession (Scotland) Act 1964 which are being repealed.
199. The repeal in section 4 of the 1993 Act means that that the rental value of a holding is no longer relevant to Commission consideration of enlargements of crofts. The effect is that in future the Commission will not be able to agree to an enlargement of a croft where the effect of doing so would be to create a croft holding substantially in excess of 30 hectares.
200. The repeal of the proviso to section 15(3) reflects the fact that the provisions inserted into section 13 by schedule 1 paragraph 2(5) means that the provisions as to the payment of the landlords conveyancing expenses in connection with the right to buy the croft under section 12 will be the same as those that apply to the right to buy the house and garden ground under section 15.
201. The repeal in section 30(2) of the 1993 Act reflects the change to section 44 effected by paragraph 2(11) of schedule 1.
202. The repeal in section 39 of the 1993 Act removes a constraint on the Land Court when fixing rents on crofts formed under a reorganisation scheme.
203. The repeal of the proviso to section 41(2) of the 1993 Act is required because it is inconsistent with the provisions of new section 58A and new section 41(3).
204. The repeal of section 54 of the 1993 Act is consequential on the new section 41(5) which is inserted into the 1993 Act by section 5 of the Act.
205. The repeals to parts of section 16 of the 1964 Act reflect the new provisions which the Act inserts into section 10 of the 1993 Act.

## PARLIAMENTARY HISTORY

206. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
2 March 2006	Bill as introduced (SP Bill 57)
<b>Stage 1</b>	
<i>(a) Environment and Rural Development Committee</i>	
12 <sup>th</sup> Meeting, 19 April 2006	Col 2993 - 3054
13 <sup>th</sup> Meeting, 24 April 2006	Col 3061 - 3104
14 <sup>th</sup> Meeting, 3 May 2006	Col 3105 - 3160
15 <sup>th</sup> Meeting, 8 May 2006	Col 3166 - 3226
16 <sup>th</sup> Meeting, 15 May 2006	Col 3227 - 3284
21 <sup>st</sup> Meeting, 14 June 2006	Col 3341 - 3394
11 <sup>th</sup> Report, 2006 (Session 2), 5 July 2006	Stage 1 Report on the Crofting Reform etc. Bill (SP Paper 620)
<i>(b) Finance Committee</i>	
8 <sup>th</sup> Meeting, 14 March 2006	Col 3504
<i>(c) Subordinate Legislation Committee</i>	
13 <sup>th</sup> Meeting, 25 April 2006	Col 1734 - 1740
15 <sup>th</sup> Meeting, 9 May 2006	Col 1779 - 1787
Report to the Environment and Rural Development Committee	Committee Report
<i>(d) Consideration by the Parliament</i>	
Stage 1 Debate, 27 September 2006	Col 27881 - 27932
<b>Stage 2</b>	
<i>(a) Environment and Rural Development Committee</i>	
32 <sup>nd</sup> Meeting, 15 November 2006	Col 3691 - 3714
33 <sup>rd</sup> Meeting, 22 November 2006	Col 3725 - 3746
34 <sup>th</sup> Meeting, 29 November 2006	Col 3749 - 3761
Bill as amended at Stage 2	Bill as amended (SP Bill 57)
<i>(b) Subordinate Legislation Committee</i>	
2 <sup>nd</sup> Meeting, 16 January 2007	Col 2237 - 2238
<b>Stage 3</b>	
Stage 3 Debate, 25 January 2007	Col 31414 - 31467

*These notes relate to the Crofting Reform etc. Act 2007  
(asp 7) which received Royal Assent on 1 March 2007*

<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
Bill as Passed, 25 January 2007	Bill as passed (SP Bill 57)
<b>Royal Assent – 1 March 2007</b>	Scottish Parliament - Business Bulletin 2 March 2007