

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

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.

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

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.