

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

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.

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

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.
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.

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

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.

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

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.