



Crofting Reform etc. Act 2007

2007 asp 7

PART 7

GENERAL AND MISCELLANEOUS

General

VALID FROM 25/06/2007

32 Regulations concerning loans

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

“46A Regulations concerning loans

- (1) The Scottish Ministers may in accordance with regulations made by them under subsection (2) below provide loans to—
 - (a) crofters;
 - (b) cottars;
 - (c) owners of holdings to which section 46(2) of this Act applies.
- (2) Regulations under this subsection may make provision as to—
 - (a) who is to be eligible for a loan;
 - (b) the amount which may be lent;
 - (c) the circumstances under which, and the purposes for which, a loan may be provided;
 - (d) the terms and conditions applicable to any loan;
 - (e) arrangements for recording documents in connection with a loan in the Register of Crofts, the Land Register of Scotland or the Register of Sasines;
 - (f) arrangements for recovery of any loan (whether or not in its entirety) when the borrower dies;

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- (g) arrangements for assignation of the borrower's liabilities in consequence of the borrower dying or no longer occupying the holding in respect of which the loan was provided.”.

VALID FROM 25/06/2007

33 Appeal to Land Court and jurisdiction of that court

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

“52A Appeal to Land Court: general

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

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of this Act.

(6) Subsections (1), (2) and (4) above do not apply where an appeal lies under section 10(4B), 25(8) or 38A of this Act.

(7) In subsections (1) to (4) above, “decision” does not include a decision under section 58A of this Act as to whether or not to intervene and “determination” does not include any determination by the Commission that an objection under subsection (4) of that section is frivolous, vexatious or unreasonable.”.

(2) In section 53 of the 1993 Act (jurisdictional provisions)—

(a) in subsection (1), after paragraph (d) there is added—

“(e) the question—

(i) whether any of the grounds mentioned in subsection (2A) of section 50 of this Act as grounds for refusing consent applied for under subsection (1) of that section is made out; or

(ii) whether conditions subject to which any such consent is given are reasonable”;

(b) in the proviso to subsection (1), for paragraph (ii) (and the word “or” immediately preceding that paragraph) there is substituted—

“(ii) (other than on a reference made to it by the Commission) any question arising by virtue of an application to the Commission under this Act; or

(iii) any other question (other than a question of law), if it is a question decided by the Scottish Ministers or the Commission in the discharge of any of their respective functions under this Act.”; and

(c) in subsection (2), for the words “this Act” there is substituted “subsection (1) above”.

(3) In Schedule 1 to the 1993 Act (provisions as to the Crofters Commission), at the end there is added—

“Appeals to the Land Court etc.

14 The Commission may do anything which appears to them to be necessary or expedient for the preparation of a stated case in an appeal to the Land Court under this Act; and without prejudice to that generality may make rules prescribing procedures to be complied with, and by whom, in such preparation.

15 The Commission may be a party to any such appeal or in any proceedings on a question coming before that Court on an application under section 53(1) of this Act.”.

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VALID FROM 25/06/2007

34 Further amendments in relation to the Land Court

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

“6A
 On any question being determined by the Land Court, whether or not by virtue of paragraph 6 of this Schedule, the Chairman shall have a casting vote.”.
- (5) After paragraph 7 there is inserted—

“7A
 The reference in paragraph 6(2) of this Schedule to nominated former members is to such members as have vacated office, whether or not under paragraph 2 of this Schedule, and in relation to the particular review have been nominated under this paragraph by the principal clerk.”.
- (6) In paragraph 10, in sub-paragraph (1)—
 - (a) the existing words from “shall” to the end become head (a) of the sub-paragraph; and
 - (b) after that head there is added “; and
 - (b) may, when not acting in accordance with a direction under head (a) above or under sub-paragraph (2) below, act in place of a member of the Court other than the Chairman.”.
- (7) In paragraph 12—
 - (a) after the word “may” there is inserted “, by order made by statutory instrument”, and
 - (b) in paragraph (a), for the words “they think” there is substituted “it thinks”.
- (8) In paragraph 18 (payments to persons appointed etc.), for the words “or employed under paragraph 7” there is substituted “, employed or as the case may be nominated under paragraph 7, 7A”.

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35 Public notification

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

“55A Public notification

- (1) For the purposes of this Act, public notification shall be given by publishing or causing to be published a notice in appropriate form in one or more newspapers circulating in the district in which the croft or, as the case may be, common grazing to which the application relates (or in the case of public notification under section 50B(4)(a)(ii) the regulations relate) is situated.
- (2) A notice is in appropriate form if—
 - (a) its form and content comply, or do so as far as is reasonably practicable, with the form and content specified by the Commission for an application of that type (or as the case may be for regulations under section 49(2)(g) of this Act); and
 - (b) it specifies—
 - (i) the purpose of the application to which it relates (or in the case of regulations the matters which are required to be set out in it by virtue of section 50B(4)(a)(i) of this Act);
 - (ii) a description of the croft land or, as the case may be, common grazing to which the application relates (or regulations relate); and
 - (iii) in the case of an application, the period during which, and manner in which, objections may be made.
- (3) Where, in accordance with the provisions of this Act, a person giving public notification is also required to serve notice on a landlord, tenant or occupier of croft land to which the application relates or, if applicable, on the owner of, or a crofter sharing in, the common grazing, such notice shall be in the form required by subsection (2) above.”

VALID FROM 25/06/2007

36 “Members of a family”

In section 61 of the 1993 Act (interpretation)—

- (a) in subsection (2), for the words from “the wife” to the end, there is substituted “the individual in question’s—
 - (a) spouse or civil partner (or cohabitant provided that the individual has no spouse or civil partner and that the cohabitation has included cohabitation for at least two years in a dwelling-house on or pertaining to the croft);
 - (b) sibling;
 - (c) sibling’s spouse or civil partner;
 - (d) spouse’s or civil partner’s sibling;

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- (e) father;
- (f) mother;
- (g) son;
- (h) daughter;
- (i) son's or daughter's spouse or civil partner;
- (j) grandchild;
- (k) grandchild's spouse or civil partner;
- (l) aunt;
- (m) uncle;
- (n) nephew; or
- (o) niece.”; and

(b) after that subsection there is added—

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

- (a) in a married relationship; or
- (b) in civil partnership.

(4) In subsection (2) above—

“sibling” includes a sibling by virtue only of adoption, marriage or civil partnership and a sibling of the half blood; “son”, “daughter” or “grandchild” includes a person so related by virtue only of adoption, marriage or civil partnership; and “son” or “daughter” includes a son, or as the case may be a daughter, of the individual's cohabitant provided that such son or daughter resides with the individual and that such residence has included residence for at least two years in a dwelling-house on or pertaining to the croft.”.

VALID FROM 25/06/2007

37 “Crofting community”

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

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

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

38 “The 1993 Act”

In this Act “the 1993 Act” means the Crofters (Scotland) Act 1993 (c. 44).

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Miscellaneous

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39 Minor and consequential amendments

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

40 Savings

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

41 Transitional provision etc.

- (1) The Scottish Ministers may, by order made by statutory instrument, make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, this Act.
- (2) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) An order under subsection (1) may make different provision for different cases or for different classes of case.
- (4) An order under subsection (1), if it includes provision amending or repealing an enactment contained in an Act, is not made unless a draft of the statutory instrument containing the order has been—
 - (a) laid before; and
 - (b) approved by a resolution of,
the Scottish Parliament.

VALID FROM 25/06/2007

42 Repeals

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

43 Short title, Crown application and commencement

- (1) This Act may be cited as the Crofting Reform etc. Act 2007.

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

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