



# Crofting Reform (Scotland) Act 2010

## 2010 asp 14

### PART 4

#### FURTHER AMENDMENTS OF THE 1993 ACT

##### *Disposal of croft land, resumption and decrofting*

#### **40 Limitation on crofter's ability to nominate donee**

In section 13 of the 1993 Act (authorisation of the Land Court of acquisition of croft land), after subsection (1) insert—

“(1A) For the purposes of subsection (1)(a), only a member of the crofter's family may be the crofter's nominee.”.

#### **41 Extension of period during which sum is payable on disposal of croft land**

In section 14(3) of the 1993 Act (consideration payable in respect of disposal of croft land), for “five” substitute “ten”.

#### **42 Consideration of application to resume croft**

After subsection (1A) of section 20 of the 1993 Act (resumption of croft or part of croft by landlord) insert—

“(1AA) In determining whether it is satisfied as mentioned in subsection (1) above (and, in particular, whether the reasonable purpose mentioned there relates to the public interest) the Land Court—

- (a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1AC) below; and
- (b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

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and must authorise, or refuse to authorise, the resumption of the croft by the landlord accordingly.

(1AB) Subsection (1AA) above is without prejudice to subsection (1D) below.

(1AC) The matters mentioned in subsection (1AA)(a) above are—

- (a) the sustainability of—
  - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Land Court to be relevant;
  - (ii) the crofting community in that locality or the communities in such an area;
  - (iii) the landscape of that locality or such an area;
  - (iv) the environment of that locality or such an area;
- (b) the social and cultural benefits associated with crofting.

(1AD) In subsection (1AA) above—

“development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8);

“planning permission” is to be construed in accordance with Part 3 of that Act;

“effect” includes both a positive and negative effect.”.

### **43 Consideration of decrofting directions**

After subsection (1) of section 25 of the 1993 Act (provisions supplementary to section 24(3)) insert—

“(1A) In determining whether they are satisfied as mentioned in subsection (1)(a) above (and, in particular, whether the reasonable purpose mentioned there relates to the public interest), the Commission—

- (a) may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the matters mentioned in subsection (1B) below; and
- (b) where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate and the crofting community in the locality of the croft,

and must give the direction, or refuse to grant the application for it, accordingly.

(1B) The matters mentioned in subsection (1A)(a) above are—

- (a) the sustainability of—
  - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Commission to be relevant;
  - (ii) the crofting community in that locality or the communities in such an area;
  - (iii) the landscape of that locality or such an area;
  - (iv) the environment of that locality or such an area;
- (b) the social and cultural benefits associated with crofting.

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- (1C) In subsection (1A) above—
- “development” has the meaning given by section 26 of the Town and Country Planning (Scotland) Act 1997 (c.8);
  - “planning permission” is to be construed in accordance with Part 3 of that Act;
  - “effect” includes both a positive and negative effect.”.

#### *Letting of vacant crofts*

### **44 Requirements to submit proposals for re-letting crofts**

- (1) Section 11 of the 1993 Act (intestacy) is amended as follows.
- (2) In subsection (8)(a), after “them” insert “, before the expiry of the period of 4 months beginning with the day on which the notice is given,”.
- (3) Section 23 of the 1993 Act (vacant crofts) is amended as follows.
- (4) In subsection (5)—
  - (a) after “them” where it first occurs insert “, before the expiry of the period of 2 months beginning with the day on which the notice is given,”; and
  - (b) the words from “, and if,” to the end are repealed.
- (5) After that subsection insert—
  - (5ZA) No more than three proposals may be submitted to the Commission in response to a notice given under subsection (5).
  - (5ZB) Where a proposal for letting the croft is submitted to the Commission in response to a notice given under subsection (5), they must approve or reject the proposal—
    - (a) in a case where the croft is declared vacant under section 11(8), within the period of 5 months beginning with the day on which the notice under section 11(8)(a) is given; or
    - (b) in any other case, within the period of 3 months beginning with the day on which the notice under subsection (5) was given.
  - (5ZC) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (5B) and (5C) if—
    - (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of 2 months mentioned in subsection (5);
    - (b) the landlord has submitted one or two proposals for letting the croft within the period of 2 months mentioned in subsection (5) and—
      - (i) all such proposals are rejected by the Commission; and
      - (ii) the period of 2 months mentioned in subsection (5) has expired; or
    - (c) the landlord has submitted three proposals for letting the croft (within the period of 2 months mentioned in subsection (5)) and the Commission have rejected all three.”.
  - (6) For subsection (5A) substitute—

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- “(5A) Where a croft is declared vacant under section 11(8), the Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (5B) and (5C) if—
- (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of 4 months mentioned in section 11(8)(a);
  - (b) the landlord has submitted one or two proposals for letting the croft within the period of 4 months mentioned in section 11(8)(a) and—
    - (i) all such proposals are rejected by the Commission; and
    - (ii) the period of 4 months mentioned in section 11(8)(a) has expired; or
  - (c) the landlord has submitted three proposals for letting the croft (within the period of 4 months mentioned in section 11(8)(a)) and the Commission have rejected all three.”.

#### **45 Application to decroft where action being taken to re-let vacant croft**

In section 24 of the 1993 Act (decrofting in case of resumption or vacancy), after subsection (3) insert—

- “(3A) The Commission need not consider any application made by the landlord under subsection (3) if—
- (a) they have given notice, under section 11(8)(a) or 23(5), requiring the landlord to submit proposals for re-letting the croft and the period mentioned in section 11(8)(a) or, as the case may be, 23(5) within which such proposals must be submitted has not expired; or
  - (b) no such proposals having been submitted before the expiry of that period or, such proposals having been submitted, no such proposal having been approved, they are proceeding in accordance with subsections (5B) and (5C) of section 23.”.

*Enlargement of crofts and common grazings*

#### **46 Enlargement of crofts**

For section 4 of the 1993 Act (enlargement of crofts) substitute—

##### **“4 Enlargement of crofts**

- (1) This section applies where an owner of land—
  - (a) which is not a croft; and
  - (b) which does not form part of a croft,
 agrees to grant a tenancy of that land to a crofter.
- (2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant.
- (3) Where a croft such as is mentioned in subsection (2) is an unregistered croft, the Commission—
  - (a) must not make a direction under subsection (4) unless an application for first registration of the croft is submitted before the expiry of the

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- period of 6 months beginning with the date on which the application for the direction is made;
- (b) need not, during that 6 month period, consider the application for the direction until an application for first registration of the croft is submitted.
- (4) The Commission may make a direction if they are satisfied that the enlargement of the croft—
- (a) would be of benefit to the croft or to the crofter;
- (b) would not result in the area of the enlarged croft substantially exceeding 30 hectares.
- (5) Where the Commission make a direction in relation to an unregistered croft or a first registered croft, the land forms part of the croft with effect from the later of—
- (a) the date of the direction; or
- (b) the date of entry under the tenancy.
- (6) Where the Commission make a direction in relation to a registered croft (other than a first registered croft)—
- (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the enlargement takes effect on the date of registration.
- (7) For the purposes of section 6 and paragraph 1 of schedule 2, the rent payable for the enlarged croft is the rent agreed by the landlord and the crofter.
- (8) In subsections (5) and (6), “first registered croft” means a croft mentioned in section 5(2) of the 2010 Act.”.

#### **47 Enlargement of common grazings**

For section 51 of the 1993 Act (enlargement of common grazings) substitute—

##### **“51 Enlargement of common grazings**

- (1) This section applies where—
- (a) an owner of land to which this Act does not apply agrees to grant rights in any pasture or grazing land to the crofters sharing in a common grazing; and
- (b) the owner and the crofters agree that such land will form part of the common grazing.
- (2) The owner and the crofters may apply jointly to the Commission for a direction that the land is to form part of the common grazing.
- (3) The Commission may make a direction if they are satisfied that the enlargement of the common grazing would be of benefit to the common grazing or the crofters sharing in it.
- (4) Where the Commission make a direction in relation to an unregistered common grazing, the land forms part of the common grazing from the later of—

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- (a) the date of the direction; or
  - (b) the date on which the rights mentioned in subsection (1)(a) are first exercisable.
- (5) Where the Commission make a direction in relation to a registered common grazing—
- (a) the direction expires at the end of the period of 3 months beginning with the date on which the direction is made unless an application for registration of the enlargement of the common grazing is submitted by virtue of section 25 of the 2010 Act before the expiry of that period;
  - (b) the enlargement takes effect on the date of registration.”.

*Commission’s approval and consent*

**48 Obtaining Commission approval or consent**

- (1) Section 58A of the 1993 Act (obtaining Commission approval or consent) is amended as follows.
- (2) At the beginning of subsection (3), insert “Subject to subsection (5B),”.
- (3) In subsection (4)—
- (a) the word “or” immediately preceding paragraph (c) is repealed; and
  - (b) at the end of that paragraph insert “; or
    - (d) any other person the Commission consider has a relevant interest in the application,”.
- (4) After subsection (5) insert—
- “(5A) Despite subsection (4), the Commission may accept an objection submitted after the end of the 28-day period if they consider there is a good reason why the objection is late.
- (5B) Where the application is an application for consent to divide a croft under section 9 made by an executor under section 10(4A)—
- (a) subsections (3) to (5A);
  - (b) in subsection (6), the words “When those 28 days have elapsed”;
  - (c) in subsection (12A), paragraph (b); and
  - (d) subsections (16) and (17),
- do not apply.”.
- (5) In subsection (6)—
- (a) after “Commission” insert “must, subject to subsection (6A), decide the application by”; and
  - (b) for paragraphs (a) and (b) substitute—
    - “(a) granting it;
    - (b) granting it subject to conditions; or
    - (c) refusing it.”.
- (6) After subsection (6) insert—
- “(6A) Where—

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- (a) the application for consent to divide the croft is made by an executor under section 10(4A); and
- (b) it relates to a bequest of the tenancy of the part of the croft comprising the site of the dwelling-house on or pertaining to the croft to one natural person and the tenancy of the remaining part to one other such person,

the Commission must grant the application (whether or not subject to conditions).”.

(7) For subsections (7) to (10) substitute—

“(7) In considering their decision on the application, the Commission must have regard to the following—

- (a) in the case of an application relating to a croft—
  - (i) whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft;
  - (ii) whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4);
- (b) the interests of the estate which comprises the land to which the application relates;
- (c) the interests of the crofting community in the locality of that land;
- (d) the sustainable development of that crofting community;
- (e) the interests of the public at large;
- (f) any objections received under subsection (4) or (5A);
- (g) any plan of the Commission approved and published under section 2C;
- (h) any other matter which the Commission consider relevant.”.

(8) In subsection (11), for the words “; and references in this section to their intervening are to their proceeding to such a determination” substitute “or grant it subject to conditions”.

(9) In subsection (12), the words “and give such notification as is mentioned in subsection (10)(a) above” are repealed.

(10) After subsection (12) insert—

“(12A) The Commission must, before the expiry of the period of 21 days beginning with the day on which the decision under subsection (6) is taken, give notice of that decision—

- (a) to the applicant;
- (b) to any person who objected under subsection (4) or (5A); and
- (c) where appropriate and in so far as not already given notice under paragraph (a) or (b), to—
  - (i) the crofter;
  - (ii) the owner-occupier crofter;
  - (iii) the landlord; and
  - (iv) as the case may be, the grazings committee.”.

(11) Subsections (13) to (15) are repealed.

(12) After section 58A insert—

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### **“58B Variation of conditions on approval or consent**

- (1) This section applies where the Commission grant, subject to conditions, an application under section 58A for their approval or consent.
- (2) The Commission may, on an application to them by the person who applied for the approval or consent (the “original applicant”), modify the conditions imposed by—
  - (a) varying a condition;
  - (b) removing a condition;
  - (c) adding a condition,
 as they consider appropriate.
- (3) Where the Commission so modify conditions they must, before the expiry of the period of 14 days beginning with the day on which they do so, give notice of their decision to—
  - (a) the original applicant;
  - (b) any other person who was given written notification under section 58A(12A) of the decision to grant the approval or consent subject to conditions; and
  - (c) any other person the Commission consider has a relevant interest.
- (4) Subject to subsection (5), subsections (2) to (5A), (16) and (17) of section 58A apply to an application under subsection (2) of this section as they apply to an application under subsection (1) of that section.
- (5) Where the original applicant is an executor who applied under section 10(4A) for consent to divide a croft under section 9, subsections (3) to (5A), (16) and (17) do not apply.”.

### *Succession to crofts*

#### **49 Bequest of crofts**

- (1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.
- (2) In subsection (1), for the words from “bequeath” to the end substitute—
  - “(a) bequeath the tenancy of the whole of the crofter’s croft to any one natural person; or
  - (b) bequeath the tenancy of that croft to two or more natural persons provided that—
    - (i) each person would come into the place of the crofter in relation to the tenancy of part of the croft; and
    - (ii) no part of the croft would, were all the bequests accepted, be untenanted.”.
- (3) For subsection (2) substitute—
  - “(2) A person to whom the tenancy of a croft (or of part of a croft) is bequeathed (in this section, the “legatee”) must, if the legatee accepts the bequest—
    - (a) give notice of the bequest to the landlord; and

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(b) send a copy of the notice to the Commission,  
before the end of the period of 12 months beginning with the death of the  
crofter.”.

(4) For subsections (2B) to (4D) substitute—

“(3) The bequest is null and void if—

- (a) in the case of a bequest such as is mentioned in subsection (1)(a), no notice is given (and no copy sent) in accordance with subsection (2) or (2A);
- (b) in the case of a bequest such as is mentioned in subsection (1)(b), any legatee fails to give notice (and send a copy) in accordance with subsection (2) or (2A).

(4) Where, in the case of a bequest as is mentioned in subsection (1)(a), notice is given (and a copy sent) in accordance with subsection (2) or (2A), the legatee comes into the place of the deceased crofter (as from the date of death of that crofter) on the relevant date of registration.

(4A) Where—

- (a) a crofter bequeaths the tenancy of a croft as mentioned in subsection (1)(b); and
- (b) each legatee gives notice (and sends a copy) in accordance with subsection (2) or (2A),

the deceased crofter’s executor must apply to the Commission for consent under section 9 to divide the croft accordingly.

(4B) Where the Commission give their consent to the division of the croft under section 9, each legatee comes into the place of the deceased crofter in relation to that legatee’s new croft (as from the date of death of that crofter) on the relevant date.

(4C) The bequest is null and void if—

- (a) the Commission do not give their consent to the division of the croft under section 9; or
- (b) such consent is given but an application for registration of the division is not made in accordance with subsection (3)(a) of that section.”.

(5) In subsection (4E)—

- (a) at the beginning insert “Subject to subsection (4EA),”; and
- (b) for “(2B), (4A) or, as the case may be, (4D)” substitute “(4) or, as the case may be, (4B)”.

(6) After that subsection insert—

“(4EA) Where, as a result of the Commission giving their consent to the division of the croft under section 9, two or more legatees come into the place of the deceased crofter, those legatees are jointly and severally liable for—

- (a) the debts mentioned in subsection (4E)(a); and
- (b) any expenses mentioned in subsection (4E)(b).”.

(7) After subsection (6) insert—

“(7) In subsection (4), the “relevant date of registration” is—

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- (a) where the croft was unregistered, the date of registration in relation to the application for registration of the croft by virtue of section 4(4)(e) of the 2010 Act;
- (b) where the croft was registered, the date of registration in relation to the application for registration of the notice by virtue of section 5(3)(e) of that Act.

(8) In subsection (4B)—

“legatee’s new croft” means the new croft, formed by division under section 9, which corresponds to the part of the original croft bequeathed to the legatee (“division”, “new croft” and “original croft” being construed in accordance with section 9(6));

“relevant date” means—

- (a) where the croft was unregistered, the date the Keeper receives notification of the Commission’s consent to divide the croft by virtue of section 10(7) of the 2010 Act;
- (b) where the croft was registered, the date of registration in relation to the application for registration of the division by virtue of section 5(3)(d)(i) of that Act.”.

### *Appeals*

## **50 Appeals: procedure**

(1) In the 1993 Act—

- (a) in section 25(8) (provisions supplementary to section 24(3)), the words “by way of stated case” are repealed;
- (b) in section 38A(1) (appeal to Land Court: special provision as respects reorganisation schemes), the words “by way of stated case” are repealed;
- (c) in section 52A(2)(a) (appeal to the Land Court: general), the words “by way of stated case,” are repealed.

(2) In section 52A of that Act (appeal to the Land Court: general), after subsection (4) insert—

“(4B) The Commission may be a party to any appeal to the Land Court under this Act or in any proceedings on a question coming before that Court on an application under section 53(1) of this Act.”.