

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

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.

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

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.