



# Crofting Reform etc. Act 2007

2007 asp 7

## PART 2

### CROFTS

#### 6 New crofts

After section 3 of the 1993 Act, there is inserted—

#### “3A New crofts

(1) The Commission shall have power, on the application of the owner of any land situated—

- (a) in the crofting counties; or
- (b) in an area outwith the crofting counties which is, by order made by statutory instrument, designated for the purposes of this paragraph by the Scottish Ministers,

to constitute the land as a croft by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.

(2) The Commission shall have power—

- (a) on the application of the tenant of any holding situated as is mentioned in subsection (1)(b) above; and
- (b) provided that subsection (3) below is complied with and that the conditions set out in subsection (12) below are met,

to constitute the holding as a croft by entering it as such, in accordance with section 41 of this Act, in that register; and on the holding being so constituted the tenant shall be entitled to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.

(3) Any application under subsection (2) above must be accompanied by a certificate of the Land Court to the effect that the Court is satisfied that, as at the date of the certificate—

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- (a) the tenancy of the holding is one to which—
    - (i) section 32 of the Small Landholders (Scotland) Act 1911 (c. 49) applies; or
    - (ii) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies; and
  - (b) no part of the holding is leased other than as a tenancy mentioned in paragraph (a) above.
- (4) No such entry as is mentioned in subsection (2) above shall be made under that subsection—
- (a) until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned; and
  - (b) unless the Commission are satisfied—
    - (i) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being so constituted and that the amount has been duly paid;
    - (ii) that the applicant and owner have agreed that no amount in compensation is to be so payable; or
    - (iii) that any such amount found, by virtue of section 3B of this Act, to be so payable has been duly paid.
- (5) The Commission shall, on receipt of an application under subsection (1) or (2) above, give public notification of it.
- (6) Notification under subsection (5) above shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.
- (7) After the period mentioned in subsection (6) above has elapsed the Commission shall—
- (a) determine whether to exercise their power under subsection (1) or as the case may be (2) above; and
  - (b) give public notification of that determination.
- (8) In so determining, the Commission shall have regard to—
- (a) such comments, if any, as are duly made by virtue of subsection (6) above;
  - (b) the public interest and as the case may be the interests of the crofting community in the locality of the land; and
  - (c) whether social or economic benefits might be expected as a consequence of so constituting it.
- (9) No application is to be made under subsection (1) above in respect of an agricultural holding occupied by a tenant where—
- (a) the tenancy is—
    - (i) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)); or
    - (ii) a short limited duration tenancy or limited duration tenancy (within the meaning of that Act); or

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- (b) it is competent for the tenant to make an application under subsection (2) above,  
if the written agreement of the tenant has not been obtained; and on such a holding being constituted as a croft under subsection (1) above the tenant shall be entitled (unless not a natural person) to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.
- (10) The description is that the comments are made in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).
- (11) For the purposes of subsection (10) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.
- (12) The conditions are—
- (a) that the holding is not comprised within a larger agricultural unit, the holding and that larger unit being, or having been, worked, managed or let as a single unit;
  - (b) that the tenant is a natural person; and
  - (c) that such fixed equipment on the holding as is necessary to enable the tenant to cultivate the croft is not provided by the landlord.
- (13) An order under subsection (1)(b) above 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.

### **3B Compensation for constituting holding outwith crofting counties as croft on application of tenant**

- (1) Where, in relation to an application under subsection (2) of section 3A of this Act, there is no such agreement as is mentioned in subsection (4)(b)(i) or (ii) of that section, the compensation payable by the applicant to the owner in compensation for the holding being constituted as a croft is to be the difference between—
- (a) the value of the holding assuming that it is not to be so constituted; and
  - (b) its value assuming that it is so constituted,
- and is to be assessed by a valuer appointed by the applicant and the owner.
- (2) But where the applicant and the owner are unable to agree as to such an appointment the valuer is to be appointed by the Land Court or by a person nominated by the Court.
- (3) The valuer is to assess the value of the holding—
- (a) as at the date of the relevant application under section 3A(2);

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- (b) having regard to the value that would be likely to be agreed between a reasonable buyer and seller of such a holding assuming—
    - (i) that the buyer and seller are, as respects the transaction, willing; and
    - (ii) that the buyer is a sitting tenant;
  - (c) taking account, in so far as a buyer and a seller of the holding would do so, of any factor attributable to the known existence of a person who (not being the applicant) would be willing to buy the holding at a price higher than other persons because of a characteristic of the holding which relates peculiarly to that person's interest in buying it; and
  - (d) taking account of the terms and conditions of any lease of sporting interests affecting the land.
- (4) The valuer is to invite the owner and the applicant to make written representations about the valuation of the holding under this section and is to have regard to any such representation.
- (5) The valuer may—
- (a) enter onto land; and
  - (b) make any reasonable request of the owner or the applicant, for the purpose of any assessment under this section.
- (6) The valuer must, within 6 weeks after being appointed, send to the owner and the applicant a notice in writing specifying the compensation payable and setting out how its amount was calculated.
- (7) The expenses of the valuer accrued in carrying out his functions under this section are to be met by the applicant.
- (8) In this section “valuer” includes two valuers with an oversman.

### **3C Appeal against assessment under section 3B**

- (1) The owner or the applicant may appeal to the Lands Tribunal for Scotland against an assessment carried out under section 3B.
- (2) An appeal under this section—
  - (a) shall state the grounds on which it is made; and
  - (b) shall not be lodged more than 21 days after the date of the notice under section 3B(6) of this Act.
- (3) In an appeal under this section, the tribunal may reassess any value (and any factor affecting any value).
- (4) The valuer may be a witness in the appeal proceedings.
- (5) And in those proceedings, in addition to the owner and the applicant, any creditor in a standard security over the land or any part of it is entitled to be heard.
- (6) The tribunal is to give reasons for its decision on an appeal under this section and is to issue a written statement of those reasons.
- (7) The decision of the tribunal in an appeal under this section is final.”

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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**Commencement Information**

**II** S. 6 in force at 25.6.2007 by S.S.I. 2007/269, art. 2, Sch.

**7 The statutory conditions**

- (1) In section 5 of the 1993 Act (the statutory conditions)—
- (a) after subsection (1) there is inserted—
- “(1A) If the landlord considers that the crofter is failing to comply with the condition set out in paragraph 3A of that Schedule he may serve notice to that effect on the crofter.”;
- (b) after subsection (2) there is inserted—
- “(2A) But where the crofter, for the purpose of conserving—
- (a) the natural beauty of the locality of the croft; or
- (b) the flora and fauna of that locality,
- engages in, or refrains from, an activity, his so engaging or refraining is not to be treated as a breach of any of the statutory conditions as respects the croft.
- (2B) If, immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not to be treated as a breach of the statutory conditions as respects the croft.”; and
- (c) for subsection (3) there is substituted—
- “(3) Any contract or agreement made by a crofter by virtue of which he is deprived of any right conferred on him by—
- (a) a provision of this Act not mentioned in paragraph (b) below, shall to that extent be void unless the contract or agreement is approved by the Land Court;
- (b) any of sections 8, 12 to 19, 21 and 37 of this Act, may be intimated to the Commission by a party to the agreement (the intimation being in such form as the Commission may specify and there being provided to the Commission, along with the intimation, a copy of the contract or agreement).
- (4) On giving approval under subsection (3)(a) above, the Land Court shall intimate to the Commission that it has done so and provide them with a copy of the contract or agreement.
- (5) On receiving a copy, provided under subsection (3)(b) or (4) above, of a contract or agreement the Commission shall enter the copy in the Register of Crofts.
- (6) Where a copy is so entered then, subject to the terms of the contract or agreement, the deprivation in question is binding on the successors to the crofter's interest.

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- (7) Before the croft is put to any such use as is mentioned in paragraph 3(b) of the statutory conditions, the crofter must apply for the landlord's written consent and either—
- (a) obtain it unconditionally or subject to conditions which the crofter accepts; or
  - (b) obtain the consent of the Commission.
- (8) Any application for consent under paragraph (b) of subsection (7) above is to be made under this subsection but may be made only where consent under paragraph (a) of that subsection (whether unconditional or subject to such conditions as are mentioned in paragraph (a)) has not been obtained within 28 days after application under paragraph (a).
- (9) The Commission shall, on receipt of an application under subsection (8) above—
- (a) consult, as regards the proposed purposeful use, the landlord and the members of the crofting community in the locality of the land; and
  - (b) if the proposed purposeful use—
    - (i) constitutes a change for which planning permission is required; or
    - (ii) by virtue of any enactment (other than this Act) requires any other permission or approval,
 require it to be shown that the permission or approval has been given.
- (10) The Commission shall decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.”.
- (2) In Schedule 2 to that Act (which sets out conditions to which every tenancy of a croft is subject)—
- (a) in paragraph 3, for the words from “cultivate” to the end there is substituted “either or both—
    - (a) cultivate his croft;
    - (b) put it to some other use, being a purposeful use,
 so that every part of the croft either is cultivated or is put to such use. ”;
  - (b) after paragraph 3 there is inserted—
 

“3A

The croft shall be kept in a fit state for cultivation except in so far as a use to which it is put by virtue of paragraph 3(b) above is incompatible with its being so kept.

3B

Without prejudice to the generality of paragraph 3A above, in determining whether that paragraph is complied with regard shall be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and

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practicable, to control or eradicate vermin, bracken, whins, broom, rushes, iris and harmful weeds.”;

- (c) in paragraph 5, for the words from “persistently” to the end there is substituted “injure the croft—
  - (a) by allowing the dilapidation of buildings;
  - (b) where the croft is cultivated, by allowing, after relevant notice, the deterioration of the soil; or
  - (c) where the croft is put to some other purposeful use, by acting prejudicial to that use being acting carried out after relevant notice.”;
- (d) after paragraph 5 there is inserted—

“5A  
In sub-paragraphs (b) and (c) of paragraph 5 above, “relevant notice” means notice given by the landlord to the crofter not to do, or not to allow, a particular thing or not to engage in a particular course of conduct (being a thing or course of conduct specified in the notice and relevant to the deterioration or prejudice in question).”;

- (e) after paragraph 6 there is inserted—

“6A  
The crofter shall be responsible for ensuring, where the croft is sublet, that the subtenant adheres to the statutory conditions.”;

- (f) in paragraph 7, for the word “subdivide” there is substituted “divide”;
- (g) in paragraph 9, the word “persistently” is repealed;
- (h) after paragraph 11 there is inserted—

“11A  
Nothing in paragraph 11 above shall be held to allow, or require the crofter to allow, the landlord, or any person authorised by the landlord, to exercise unreasonably a right enjoyed by virtue of that paragraph.”; and

- (i) in paragraph 13, at the end there is added—

““purposeful use” is any planned and managed use, being a use which subject to the exception in paragraph 3A above, does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.”.

- (3) The amendment made by subsection (2)(a) above does not affect the right conferred by paragraph 3 of Schedule 2 to that Act, as originally enacted, in relation to a use for subsidiary or auxiliary occupations provided that such use subsists (having subsisted from before the coming into force of that subsection).

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#### Commencement Information

- I2** S. 7(1)(a)(b)(2)(a)-(d)(i)(3) in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)
- I3** S. 7(1)(c) in force for specified purposes at 25.6.2007 by [S.S.I. 2007/269](#), [art. 2](#), [Sch.](#)
- I4** S. 7(1)(c) in force in so far as not already in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)
- I5** S. 7(2)(e)-(h) in force at 25.6.2007 by [S.S.I. 2007/269](#), [art. 2](#), [Sch.](#)

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## 8 Complaint as respects breach of the statutory conditions

After section 5 of the 1993 Act, there is inserted—

### “5A Complaint as respects breach of the statutory conditions

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, the landlord or any member of the crofting community in the locality of the croft may complain to the Commission that such a breach (other than a breach of the condition as to payment of rent) has occurred.
- (2) Provided—
  - (a) that no proceedings—
    - (i) such as are mentioned in subsection (1) above; or
    - (ii) under section 5B of this Act,
 have been initiated; and
  - (b) that the period allowed the crofter by virtue of subsection (4) below has elapsed,
 the Commission may make an application to the Land Court in relation to the breach; but this subsection is subject to subsection (3) below.
- (3) Except where the complaint was by the landlord, the Commission shall give him written notice of their intention to make the application; and if within 14 days after receipt of that notice he gives them intimation that he objects, being intimation of the description given in subsection (7) below, they shall not proceed with the application.
- (4) Before making the application, the Commission shall give written notice to the crofter of the breach complained of and give him the opportunity to remedy it within such reasonable period as they shall specify in the notice.
- (5) Where, on an application under subsection (2) above, the Land Court is satisfied that the breach complained of has occurred, it may—
  - (a) order that the breach be remedied and specify a time within which that must occur; and
  - (b) make such order regarding the payment of compensation by the crofter to the landlord as it thinks fit.
- (6) Where an order under subsection (5)(a) above is not complied with, the Commission may apply to the Land Court for an order—
  - (a) terminating the tenancy;
  - (b) declaring the croft to be vacant; and
  - (c) for the removal of the tenant from the croft.
- (7) The description is that the intimation is given in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).
- (8) For the purposes of subsection (7) above (and without prejudice to the generality of that subsection), an intimation is to be treated as given in writing where it is—

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- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

### **5B Termination of tenancy for misuse or neglect**

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, if the crofter—
  - (a) misuses; or
  - (b) neglects,the croft, the landlord or, with the consent of the landlord, the Commission may apply to the Land Court for an order—
  - (i) terminating the tenancy;
  - (ii) declaring the croft to be vacant; and
  - (iii) for the removal of the tenant from the croft.
- (2) Before making an application by virtue of paragraph (a) of subsection (1) above the landlord, or as the case may be the Commission, shall give written notice to the crofter of the misuse complained of and give him the opportunity to end that misuse within a period of 42 days commencing with the day on which notice is given.
- (3) Where, on an application made by virtue of paragraph (a) of subsection (1) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the misuse has been brought to an end.
- (4) If the circumstances are that an application made by virtue of paragraph (b) of subsection (1) above (in this section, the “current application”) is being made within 5 years after another application made by virtue of that paragraph as respects the croft, and that other application resulted in notification being given to the crofter under subsection (5) or (6) below, then before making the current application the landlord, or as the case may be the Commission, shall give written notice to the crofter of the neglect complained of and give him the opportunity to end that neglect within a period of 42 days commencing with the day on which notice is given.
- (5) Where, on an application made by virtue of paragraph (b) of subsection (1) above in circumstances other than are mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if—
  - (a) the crofter agrees forthwith that there has been neglect and undertakes to end that neglect; and
  - (b) by the end of a period of one year commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (6) Where, on an application made by virtue of paragraph (b) of subsection (1) above in the circumstances mentioned in subsection (4) above, the Court is

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mind to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.

- (7) For the purposes of subsection (1) above, a crofter—
- “misuses” a croft where he wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is duly consented to by virtue of section 5(7) of this Act;
  - “neglects” a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the Schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).
- (8) But where the crofter, for the purpose of conserving—
- (a) the natural beauty of the locality of the croft; or
  - (b) the flora and fauna of that locality,
- engages in, or refrains from, an activity, his so engaging or refraining is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (9) If, immediately before the coming into force of section 8 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (10) The Scottish Ministers may by order made by statutory instrument amend the definition of “neglects” in subsection (7) so as to substitute different standards for those for the time being mentioned in that subsection.
- (11) A statutory instrument containing an order under subsection (10) shall not be made unless a draft of the instrument has been—
- (a) laid before; and
  - (b) approved by resolution of,
- the Scottish Parliament.”.

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**Commencement Information**

**16** S. 8 in force at 25.6.2007 by S.S.I. 2007/269, art. 2, Sch.

## 9 Exchange of crofts or parts of crofts

After section 4 of the 1993 Act, there is inserted—

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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### *“Exchange of crofts*

#### **4A Exchange of crofts or parts of crofts**

- (1) A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless—
  - (a) he obtains the consent of—
    - (i) the landlord of his croft; and
    - (ii) the Commission;
  - (b) the exchanging crofters have the same landlord; and
  - (c) that landlord is the owner of any common grazing in which the crofters share.
- (2) The consent of the Commission shall not be given unless they are satisfied that the consent mentioned in paragraph (a)(i) of subsection (1) above has been obtained.
- (3) In the case of an application made by virtue of subsection (1) above, the special condition which applies for the purposes of section 58A(6)(b)(ii) of this Act is that there are reasonable grounds for concern that the proposed exchange would be unfair to either (or as the case may be any) of the crofters who are parties to the proposed exchange.
- (4) A new croft is not created by virtue only of such exchange.”.

#### **Commencement Information**

**I7** [S. 9](#) in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)

## **10 Division of croft**

For section 9 of the 1993 Act (sub-division of croft), there is substituted—

### **“9 Division of croft**

- (1) A crofter shall not divide his croft unless he obtains the consent of the Commission.
- (2) In the case of an application to divide a croft, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—
  - (a) that the application is for the creation of more than two new crofts; or
  - (b) that the original croft is one created as a consequence of an earlier division (or sub-division).
- (3) Any division of a croft to which the Commission have given their consent under this section shall take effect when such details of that division as the Commission may require by virtue of section 41 of this Act are entered in the Register of Crofts.
- (4) After division, the rent payable for the new crofts shall be that agreed between the landlord and the tenant.

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- (5) In the event that such agreement cannot be reached, the Land Court, on the application of the landlord or the tenant, shall have the power to determine the rent in accordance with subsections (3) and (4) of section 6 of this Act, the fees payable in connection with such an application being borne by the tenant.
- (6) In this section—
- “division” means the division of a croft into two or more new crofts (“divide” being construed accordingly);
  - “original croft” means the croft which is the subject of an application for division; and
  - “new crofts” mean each of the crofts created by the division of the original croft.”.

**Commencement Information**

**I8** S. 10 in force at 28.1.2008 by S.S.I. 2007/568, art. 2

## 11 Subletting

- (1) In section 27 of the 1993 Act (provisions as to right to sublet)—
- (a) in subsection (1), after the words “his croft” there is inserted “, for a period not exceeding 10 years, ”; and
  - (b) for subsections (3) and (4) there is substituted—
    - “(3) In the case of any application for such consent, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—
      - (a) that there are reasonable grounds for concern as regards the use which the proposed subtenant intends to make of the croft; and
      - (b) that the proposed subtenant will not reside on, or within 16 kilometres of, the croft.”.
- (2) Section 28 of that Act (special provisions regarding subletting of crofts not adequately used) is repealed.
- (3) In section 29 of that Act (miscellaneous provisions regarding subleases of crofts)—
- (a) after subsection (2) there is inserted—
    - “(2A) The conditions of let must specify that the crofter shall give the subtenant not less than 6 months written notice of any intention to assign, exchange or divide the croft and that the sublease shall come to an end on such assignation, exchange or division.”; and
  - (b) after subsection (3) there is inserted—
    - “(3A) Where the tenancy of a croft is terminated by virtue of the death of the crofter, the Commission shall, as part of their consideration in determining whether to make an order under the proviso to subsection (3) above and if so what period of occupation to permit—
      - (a) consult the deceased crofter's executor; and

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- (b) have regard in particular to such hardship as might, according to what they decide, be occasioned—
  - (i) the former subtenant; or
  - (ii) an assignee or transferee of the interest of tenant.”.

#### Commencement Information

**I9** S. 11(1) in force at 28.1.2008 by S.S.I. 2007/568, art. 2

**I10** S. 11(2)(3) in force at 25.6.2007 by S.S.I. 2007/269, art. 2, Sch.

## 12 Assignation

In section 8 of the 1993 Act (assignation of croft)—

- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “ unless he obtains the consent of the Commission ”;
- (b) for subsections (2) to (4) there is substituted—

“(2) In the case of an application made by virtue of subsection (1) above in respect of an assignation to a person other than a member of the crofter's family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

- (a) that the proposed assignee lives, or intends to live, more than 16 kilometres distant from the croft;
  - (b) that he already owns or is tenant of a croft;
  - (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
  - (d) that he is the grazings clerk or a member of the grazings committee;
  - (e) where the landlord is not a natural person, that the proposed assignee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;
  - (f) that there are reasonable grounds for concern over the use to which the proposed assignee intends to put the croft.”;
- (c) in subsection (5), for the words from “in writing” to “above” there is substituted “ of the Commission ”; and
  - (d) in subsection (6), for the words from “at the term” to “may be,” there is substituted “ on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the crofter) unless before that date ”.

#### Commencement Information

**I11** S. 12 in force at 28.1.2008 by S.S.I. 2007/568, art. 2

## 13 Bequest of tenancy of croft

- (1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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(2) For subsection (1), there is substituted—

“(1) A crofter may, by will or other testamentary writing, bequeath the tenancy of his croft to any one natural person.”.

(3) In subsection (2)—

- (a) after the word “landlord”, where it first occurs, there is inserted “ and send a copy of the notice to the Commission, both ”;
- (b) for the word “2” there is substituted “ 4 ”;
- (c) for the words “unavoidable cause” there is substituted “ cause, being a cause which the Commission accept is unavoidable, ”;
- (d) after the words “give such notice” there is inserted “ (and send such a copy) ”;
- (e) for the word “4” there is substituted “ 6 ”;
- (f) after the word “given” there is inserted “ (and copy sent) ”;
- (g) after the words “the provisions of this subsection”, there is inserted “ or subsection (2A) below ”; and
- (h) the words from “The giving of such notice” to the end are repealed.

(4) After subsection (2) there is inserted—

“(2A) Notice under subsection (2) above of the bequest may be given by an executor of the deceased crofter authorised for that purpose by the legatee.

(2B) The giving of notice to the landlord in accordance with the provisions of subsection (2) or (2A) above shall import acceptance of the bequest; and the legatee if—

- (a) he is a member of the deceased crofter's family; or
- (b) he is a person other than a member of the deceased crofter's family and the landlord does not intimate objection to the legatee in accordance with subsection (3) below,

shall come into the place of the deceased crofter (as from the date of death of the deceased crofter) on the relevant date mentioned in subsection (2D) below.

(2C) Where notice is given in accordance with the provisions of subsection (2) or (2A) above and—

- (a) the legatee is a member of the deceased crofter's family, the Commission shall notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy; or
- (b) the legatee is a person other than a member of the deceased crofter's family and the Commission receive no intimation of objection to the legatee in accordance with subsection (3) below, they shall notify the legatee—

(i) to that effect; and

(ii) of the information referred to in paragraph (a) above.

(2D) The Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under subsection (2C) above; and the “relevant date” referred to in subsection (2B) above is the date on which the Commission notify the legatee under this subsection.”.

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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(5) For subsection (3), there is substituted—

“(3) Where the legatee is a person other than a member of the deceased crofter's family, the landlord may, within one month (or such longer period as may be determined by the Commission on an application made to them by the landlord) after the date of the notice given to him in accordance with subsection (2) or (2A) above, intimate to—

- (a) the legatee; and
- (b) the Commission,

that he objects to the legatee becoming tenant of the croft; and any such intimation shall state the grounds of objection.”.

(6) In subsection (4), for paragraph (b) there is substituted—

“(b) not so satisfied, they shall—

- (i) notify the landlord and the legatee to that effect; and
- (ii) notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy.”.

(7) After that subsection, there is inserted—

“(4A) In a case where subsection (4)(b) above applies, the Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under sub-paragraph (ii) of that subsection; and, if no appeal is made under subsection (4B) below against the Commission's decision under subsection (4)(b) above, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter's death) on the date on which the Commission notify the legatee under this subsection.

(4B) The legatee or, as the case may be, the landlord may, within 42 days after the giving of notification of the Commission's decision under paragraph (a) or (b) of subsection (4) above in relation to the objection, appeal by way of stated case, on one or more of the grounds mentioned in section 52A(3) of this Act, to the Land Court against that decision.

(4C) In an appeal under subsection (4B) above the Court may—

- (a) confirm the decision;
- (b) direct the Commission to come to a different decision; or
- (c) remit the case to the Commission without so directing them.

(4D) Where, on an appeal under subsection (4B) above, the Land Court directs the Commission to decide that a bequest under subsection (1) above be upheld, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter's death) on the date the Court directs under this subsection.

(4E) A legatee who comes into the place of a deceased crofter in accordance with subsection (2B), (4A) or, as the case may be, (4D) above, in doing so—

- (a) becomes liable for such debts of the deceased crofter's estate as are attributable to the tenancy; and
- (b) shall, if requested to do so by the executor, pay the reasonable expenses necessarily and wholly incurred by the executor in relation to the administration and management of the tenancy during the

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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period beginning with the date of the deceased crofter's death and ending immediately before the date when the legatee so comes into the place of the deceased crofter; and such expenses—

(i) shall, in the event of a dispute as to amount, be determined by the Land Court on the application of the executor or the legatee; and

(ii) shall not fall to be met from the deceased crofter's estate.

(4F) Notwithstanding that a legatee comes into the place of the deceased crofter as mentioned in subsection (4E) above, the tenancy is an asset of the deceased crofter's estate, available along with the other assets of the estate to meet the other expenses of administration, and debts, of the estate; and any such legatee is liable to contribute to such expenses and debts accordingly.”.

**Commencement Information**

**I12** S. 13 in force at 28.1.2008 by S.S.I. 2007/568, art. 2

**14 Prior rights, on intestacy, in relation to tenancy of croft**

(1) Section 8 of the Succession (Scotland) Act 1964 (c. 41) (prior rights, on intestacy, in dwelling house and furniture) is amended as follows.

(2) In subsection (1)—

(a) for the words “dwelling house to which this section applies,” there is substituted “dwelling house mentioned in subsection (4)(a) of this section,”;

(b) after the words “shall be entitled” there is inserted “, subject to subsection (2B) of this section,”; and

(c) the proviso is repealed.

(3) After subsection (2), there is inserted—

“(2A) Where the tenant of a croft dies intestate leaving a spouse or civil partner or, where he dies leaving no spouse or civil partner, leaving a cohabitant, and the intestate estate includes a relevant interest in a dwelling house mentioned in subsection (4)(b) of this section, the surviving spouse, civil partner or, as the case may be, cohabitant shall be entitled, subject to subsection (2B) of this section, to receive out of the intestate estate—

(a) where the value of the relevant interest does not exceed the amount for the time being fixed by order under subsection (1)(a) of this section, the tenancy of the croft;

(b) in any other case, the sum for the time being fixed by order under subsection (1)(b) of this section.

(2B) If the intestate estate comprises—

(a) a relevant interest in two or more dwelling houses mentioned in subsection (4)(a) of this section, subsection (1) of this section shall have effect only in relation to such one of them as the surviving spouse or civil partner may elect for the purposes of subsection (1) within 6 months after the date of death of the intestate;

(b) a relevant interest in two or more dwelling houses mentioned in subsection (4)(b) of this section, subsection (2A) of this section shall

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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have effect only in relation to such one of them as the surviving spouse, civil partner or cohabitant may elect for the purposes of subsection (2A) within 6 months after that date;

- (c) a relevant interest in both—
- (i) one or more dwelling houses mentioned in subsection (4)(a) of this section; and
  - (ii) one or more dwelling houses mentioned in subsection (4)(b) of this section,

the surviving spouse or civil partner shall not be entitled to receive both the entitlement under subsection (1) of this section and that under subsection (2A) of this section and must elect within 6 months after that date whether to take the entitlement under the said subsection (1) or under the said subsection (2A).”.

- (4) For subsection (4), there is substituted—

“(4) The dwelling house is—

- (a) in a case mentioned in subsection (1) of this section, any dwelling house in which the surviving spouse or civil partner of the intestate was ordinarily resident at the date of death of the intestate and which did not, at that date, form part of a croft of which the intestate was tenant;
- (b) in a case mentioned in subsection (2A) of this section, any dwelling house in which the surviving spouse, civil partner or cohabitant was ordinarily resident at the date of death of the intestate and which, at that date, formed part of a croft of which the intestate was tenant.”.

- (5) In subsection (6), before paragraph (a) there is inserted—

- “(za) “cohabitant” means a person—
- (i) who was living with the intestate as if married to him; or
  - (ii) who was living with the intestate as if in civil partnership with him,
- and had been so living for at least 2 years.”.

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**Commencement Information**

**I13** S. 14 in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)

**15 Transfer of tenancy of croft by executor: amendment of section 16 of the Succession (Scotland) Act 1964**

- (1) Section 16 of the Succession (Scotland) Act 1964 (powers of executor to assign lease which prohibits assignation) is amended as follows.
- (2) In subsection (2), for the words from “notwithstanding” to the end, there is substituted “subject to subsection (2A) of this section, to transfer the interest.”.
- (3) After that subsection, there is inserted—

“(2A) Transfer by an executor pursuant to subsection (2) of this section—

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (a) of an interest under an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c. 44) shall require the consent of the Crofters Commission; and
  - (b) of an interest under any other lease (including any agricultural lease which does not fall within paragraph (a) of this subsection) and which is not a transfer to one of the persons entitled to succeed to the deceased's intestate estate or to claim legal rights or the prior rights of a surviving spouse or civil partner out of the estate, in satisfaction of that person's entitlement or claim, shall require the consent of the landlord.”.
- (4) In subsection (9), in the definition of “agricultural lease”, for the words “Act of 1955” there is substituted “ Crofters (Scotland) Act 1993 (or of any part of a croft if it is a part consisting of a right mentioned in section 3(4)(a) of that Act) ”.

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**Commencement Information**

**I14** S. 15 in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)

**16 Transfer of tenancy of croft by executor: special provision relating to the 1993 Act**

After section 16 of the Succession (Scotland) Act 1964, there is inserted—

**“16A Leases of crofts: special provision relating to the Crofters (Scotland) Act 1993**

- (1) The requirement in section 16(2A)(a) of this Act to obtain the consent of the Crofters Commission shall be treated as if it were a requirement under the Crofters (Scotland) Act 1993 (c. 44) and accordingly section 58A of that Act shall apply for the purposes of the requirement as it applies for the purposes of a requirement under that Act.
- (2) In the case of an application for the consent of the Crofter's Commission made by virtue of section 16(2A)(a) of this Act in respect of a transfer to a person other than a member of the crofter's family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of the Crofters (Scotland) Act 1993—
  - (a) that the proposed transferee lives, or intends to live, more than 16 kilometres distant from the croft;
  - (b) that he already owns or is tenant of a croft;
  - (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
  - (d) that he is the grazings clerk or a member of the grazings committee;
  - (e) where the landlord is not a natural person, that the proposed transferee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;
  - (f) that there are reasonable grounds for concern over the use to which the proposed transferee intends to put the croft.

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (3) Where the consent of the Crofter's Commission to a transfer is required by section 16(2A)(a) of this Act, and the executor transfers the interest without the consent of the Commission—
  - (a) the transfer and any deed purporting so to transfer the interest shall be null and void; and
  - (b) the Commission may declare the croft to be vacant.
- (4) A transfer to which the Crofter's Commission have given their consent under section 16(2A)(a) of this Act shall take effect on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the executor) unless before that date the executor and the transferee jointly give to the Commission notice in writing that they do not intend to proceed with the transfer.
- (5) An appeal shall lie on any question of fact or law to the Land Court against a decision of the Crofters Commission on an application made to them under section 16(2A)(a) of this Act.
- (6) The appellant may be the applicant or any person with an interest in the application.
- (7) An appeal under subsection (5) of this section must be brought within 42 days after the Commission dispose of the application.
- (8) In an appeal under subsection (5) of this section, the Land Court may confirm the decision or direct the Commission to come to a different decision.”

**Commencement Information**

**I15** S. 16 in force at 28.1.2008 by S.S.I. 2007/568, art. 2

**17 Amendment of section 11 of the 1993 Act**

- (1) Section 11 of the 1993 Act (intestacy) is amended as follows.
- (2) In subsection (2), for the word “3” there is substituted “ 12 ”.
- (3) In subsection (3)—
  - (a) paragraph (a) is repealed;
  - (b) in paragraph (b)—
    - (i) the word “otherwise” is repealed; and
    - (ii) after the word “tenancy,” there is inserted “ the date (no later than 2 months after the date of death of the deceased crofter) on which the Commission receive notification of the death or, where no such notification is received, ”; and
  - (c) in paragraph (d), for the words “on which the Commission notified the landlord and the legatee” there is substituted “ of notification by the Commission ”.
- (4) For subsections (4) to (9), there is substituted—

“(4) If at the expiry of the period of 12 months referred to in subsection (2) above, it appears to the Commission (whether from notification under that subsection

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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or otherwise) that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above, they shall give notice in such manner as they think proper, whether by advertisement or otherwise—

- (a) to the landlord;
- (b) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
- (c) if no executor is so confirmed, to each person of whom the Commission are aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

that they propose to terminate the tenancy and declare the croft vacant and inviting the recipients of the notice to make representations as respects the proposal to the Commission before the expiry of the period of one month after the date of the notice.

(5) If, having considered representations (if any) made to them in accordance with subsection (4) above, the Commission are satisfied that—

- (a) the landlord or the executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964;
- (b) the executor is proposing to transfer the tenancy; or
- (c) a person is entitled to a transfer of the tenancy in or towards the satisfaction of his claim to prior rights or his entitlement to succeed to the deceased's intestate estate,

they are not to implement their proposal; but if not so satisfied they may implement their proposal if they consider it appropriate to do so.

(6) If, by virtue of subsection (5) above, the Commission are not entitled to implement their proposal, but it appears to them subsequently (by means of representations made to them or otherwise) that the tenancy is not being transferred or is unable to be transferred, the Commission may give notice again as mentioned in subsection (4) above.

(7) If, having considered representations (if any) made to them in accordance with subsection (4) above as respects a proposal contained in a notice given by virtue of subsection (6) above, the Commission are satisfied that it is appropriate to implement their proposal they may do so.

(8) Where the Commission, in pursuance of this section, declare the croft vacant—

- (a) they shall give notice to that effect—
  - (i) to the landlord;
  - (ii) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
  - (iii) if no executor is so confirmed, to each person of whom the Commission is aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

and any such notice to the landlord shall require him to submit to them such proposals as are mentioned in section 23(5) of this Act;

- (b) any right of any person in, or in relation to, the tenancy shall be extinguished; and

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (c) the landlord shall be liable to pay to the executor of the deceased crofter the value of the permanent improvements on the croft in so far as—
- (i) the improvement is suitable to the croft;
  - (ii) the improvement was executed or paid for by the deceased crofter or by any of the predecessors of the deceased crofter in the tenancy; and
  - (iii) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.”.
- (5) In subsection (10), for the words from the beginning to “In this subsection the expression “the value of the”, there is substituted “ In subsection (8)(c) above, the expression “the value of the permanent” ”.
- (6) In subsection (11)(a), for the words “subsection (8) above” there is substituted “ this section ”.

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**Commencement Information**

**I16** S. 17 in force at 28.1.2008 by [S.S.I. 2007/568](#), [art. 2](#)

## **18 Determination of the Land Court as to croft boundaries**

After section 53 of the 1993 Act, there is inserted—

### **“53A Extent of boundaries**

Where an application is made to the Land Court to determine a question under section 53(1)(c) of this Act and the evidence available to the Court is insufficient to enable any boundary to be clearly determined, the Court shall declare the boundary to be that which in all the circumstances it considers appropriate.”.

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**Commencement Information**

**I17** S. 18 in force at 25.6.2007 by [S.S.I. 2007/269](#), [art. 2](#), [Sch.](#)

## **19 Access to croft**

After section 53A of the 1993 Act (inserted into that Act by section 18 of this Act), there is inserted—

### **“53B Access to croft**

- (1) Where a crofter considers that—

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (a) he requires access from a public road to his croft; and
- (b) it would be reasonable for such access to be taken by a route lying wholly over land owned by his landlord,

the crofter may make application to the Land Court for an order under subsection (2) below.

(2) On an application under subsection (1) above, the Land Court shall make such order as it considers appropriate in all the circumstances, and the order may in particular make provision—

- (a) specifying an access route from the public road to the croft lying wholly over land owned by the landlord;
- (b) as to the arrangements under which the crofter may carry out works to construct or improve a road over the access route;
- (c) as to the conditions subject to which access may be exercised, including conditions as to what types of vehicle may be taken along the access route;
- (d) requiring the crofter to indemnify the landlord in respect of any claim for compensation made against the landlord under paragraph 11 of Schedule 2 to this Act in consequence of works such as are described in paragraph (b) above;
- (e) requiring the crofter to make a payment to the landlord in respect of expenses incurred by the landlord in connection with matters which are the subject of the application.

(3) Any order under subsection (2) above shall have effect as if the matters for which the order makes provision had been the subject of an agreement between the crofter and the landlord.

(4) The right of a crofter to make application to the Land Court under subsection (1) above shall be without prejudice to any other right which that crofter may have in connection with access to his croft.”

#### **Commencement Information**

**I18** S. 19 in force at 25.6.2007 by S.S.I. 2007/269, art. 2, Sch.

## **20 Reorganisation schemes**

(1) The 1993 Act is amended as follows.

(2) In section 38 (reorganisation schemes)—

- (a) in subsection (1), after the words “prepare a” there is inserted “provisional”;
- (b) after subsection (1) there is inserted—

“(1A) Before proceeding to prepare a provisional draft reorganisation scheme the Commission must give intimation in writing to each of the persons mentioned in subsection (10) below that the Commission are satisfied as is mentioned in subsection (1) above and that they intend so to proceed.”;

- (c) for subsection (3) there is substituted—

“(3) A reorganisation scheme may, if the Commission—

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (a) obtain the prior written consent of the Scottish Ministers, make provision with respect to the inclusion of any land in the vicinity of the township, being land to which this Act does not apply, which in the opinion of the Commission ought to be used for the enlargement of crofts in the township or of a common grazing used exclusively, or shared in, by the township;
- (b) think fit, make provision with respect to all or any of the following matters—
  - (i) the admission into the township of new crofters and the allocation to them of shares in the common grazing;
  - (ii) the apportionment for the exclusive use of the township of a part of any common grazing in which it shares;
  - (iii) the inclusion in any croft formed under the scheme of a part of the common grazing or of any land held in runrig;
  - (iv) any other matter incidental to or consequential on the provisions of the scheme.”;
- (d) in subsection (4)—
  - (i) after the words “reorganisation scheme”, there is inserted “, or provisional draft or draft of such a scheme, ”; and
  - (ii) after the words “the scheme” there is inserted “ or, as the case may be, of the provisional draft or draft, ”; and
- (e) for subsections (5) to (7), there is substituted—
  - “(5) Where, in relation to any township, the Commission prepare a provisional draft reorganisation scheme under subsection (1) above, they shall serve on each of the persons mentioned in subsection (10) below a copy of the provisional draft together with a notice—
    - (a) naming a place within the locality in which the township is situated where a copy of the maps and plans prepared by the Commission under subsection (4) above in relation to the provisional draft scheme may be inspected at all reasonable hours;
    - (b) inviting the person on whom the provisional draft and notice are served, within two months of the date of such service, to make in writing to the Commission such comments as they may wish to make on the provisional draft, maps or plans.
  - (6) Where, having taken into account comments (if any) made to them by virtue of subsection (5) above, the Commission are still satisfied as mentioned in subsection (1) above, they shall—
    - (a) prepare a draft reorganisation scheme in relation to the township taking into account such comments;
    - (b) serve on each of the persons mentioned in subsection (10) below a copy of the draft scheme together with a notice—
      - (i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- subsection (4) above in relation to the draft scheme may be inspected at all reasonable hours; and
- (ii) requesting that the person on whom the draft and notice are served, within one month after the date of such service, intimates to the Commission in writing whether or not that person is in favour of the draft scheme.
- (7) Where any person on whom a notice has been served under subsection (6) above fails to comply with the request contained in the notice, that person shall for the purposes of this section be deemed to have intimated to the Commission, in compliance with the request, that the person is in favour of the draft scheme.
- (8) If, within the period of one month mentioned in subsection (6)(b) (ii) above, a majority of the crofters on whom a copy of a draft reorganisation scheme and a notice have been served under that subsection have intimated to the Commission, in compliance with the request contained in the notice, that they are in favour of the draft scheme, the Commission shall, where they remain satisfied as mentioned in subsection (1) above—
- (a) prepare a reorganisation scheme in relation to the township; and
- (b) serve on each of the persons mentioned in subsection (10) below a copy of the scheme together with a notice—
- (i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under subsection (4) above in relation to the scheme may be inspected at all reasonable hours; and
- (ii) advising of the right of appeal to the Land Court under section 38A of this Act against the Commission's decision to reorganise the township or the scheme and of the time limit within which an appeal may be made.
- (9) For the purposes of section 38A of this Act, the Commission's proceeding, under subsection (8)(a) above, to prepare a reorganisation scheme shall be taken to comprise their decision to reorganise the township.
- (10) The persons referred to in subsections (1A), (5), (6)(b) and (8)(b) above and section 38A(3)(b) of this Act are—
- (a) each crofter who is the tenant of a croft situated in the township;
- (b) the landlord of each such croft;
- (c) each grazings committee appointed under section 47 of this Act in respect of any common grazing shared in by each such crofter;
- (d) each person occupying land which is contiguous to a croft situated in the township;

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (e) the owner of, and each person who holds shares in, a common grazing associated with the township;
  - (f) if the reorganisation scheme makes (or as the case may be is to make) provision with respect to the inclusion of such land as is mentioned in subsection (3)(a) above, the owner of, and each person occupying, that land.
- (11) The requirements of subsections (1A) and (6)(b)(ii) above that intimation be in writing and in subsection (5)(b) above that comments be made in writing are to be taken to be satisfied by—
- (a) the giving of intimation; or
  - (b) as the case may be, the making of comments, in a form other than writing which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).”
- (3) After that section, there is inserted—

**“38A Appeal to Land Court: special provision as respects reorganisation schemes**

- (1) Any crofter who is the tenant of a croft situated in the township in relation to which a reorganisation scheme is made or the landlord of any such croft or the owner of any common grazing associated with the township or the owner of any land included in the scheme by virtue of subsection (3)(a) of section 38 of this Act may, within 42 days after the Commission serve a copy of the reorganisation scheme on him under subsection (8)(b) of that section, appeal by way of stated case, on one or more of the grounds mentioned in section 52A(3) of this Act, to the Land Court against—
- (a) the Commission's decision to reorganise the township; or
  - (b) the scheme.
- (2) For the purposes of this section, the references in section 52A(3) to a “direction” and to “making” a direction are to be construed as including, respectively, references to a reorganisation scheme and to preparing such a scheme.
- (3) In an appeal under this section, the Court may—
- (a) confirm the decision and the scheme;
  - (b) confirm the decision and require the Commission to—
    - (i) make, by a date specified by the Court, such modifications to the scheme as the Court directs; and
    - (ii) serve a copy of the modified scheme on each of the persons mentioned in section 38(10) of this Act; or
  - (c) revoke the Commission's decision.”
- (4) In section 39 (putting schemes into effect)—
- (a) for subsection (1), there is substituted—

“(1) The Commission shall not take any steps in discharge of their duties or powers under this section in relation to a reorganisation scheme until (whichever first occurs)—

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*Changes to legislation: There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (a) the period of 42 days mentioned in section 38A(1) of this Act has elapsed without any appeal to the Land Court under that section being made; or
- (b) every such appeal timeously made is—
  - (i) decided and, where by virtue of subsection (3)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, those modifications have been made and the Commission have complied with subsection (3)(b)(ii) of that section; or
  - (ii) abandoned.

(1A) The Commission—

- (a) shall put into effect a reorganisation scheme—
  - (i) prepared by them under section 38(8)(a); or
  - (ii) where by virtue of subsection (3)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, of which they have served a copy by virtue of subsection (3)(b)(ii) of that section; and
- (b) may do all such things as are required for that purpose.”;
- (b) in subsection (3), for the words “shall, on a reorganisation scheme being confirmed by the Secretary of State,” there is substituted “ may ”;
- (c) after subsection (5) there is inserted—
 

“(5A) Subsection (3A) of section 6 of this Act applies in relation to subsection (5) above as it applies in relation to the proviso to subsection (3) of that section.”;
- (d) in subsection (7), the words “, on the scheme being confirmed by the Secretary of State,” are repealed;
- (e) in subsection (8)—
  - (i) for the words “Secretary of State shall, on confirming the scheme,” there is substituted “ Commission shall ”; and
  - (ii) at the end of paragraph (b), there is inserted “ , and shall send a copy of each notice served by them under this subsection to the Scottish Ministers ” ;
- (f) in subsection (10)(b), for the words “of the confirmation of the scheme is served on him under paragraph 7 of Schedule 4 to this Act” there is substituted “ is served on him under subsection (6) above ”.

(5) Schedule 4 (confirmation of schemes by Scottish Ministers etc.) is repealed.

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**Commencement Information**

**I19** S. 20 in force at 25.6.2007 by *S.S.I. 2007/269*, art. 2, *Sch.*

**21 Meaning of croft**

In section 3 of the 1993 Act (meaning of “croft” and “crofter”)—

- (a) in subsection (1)—

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**Changes to legislation:** *There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2. (See end of Document for details)*

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- (i) after paragraph (c) there is inserted—
    - “(cc) as from the date of registration, every holding situated—
      - (i) as aforesaid; or
      - (ii) as is mentioned in subsection (1)(b) of section 3A of this Act,and registered by virtue of an application under that section;
    - (cd) as from the date of reversion, every holding reverting under section 20(1B), or by virtue of section 21A(1), of this Act;”;
  - (ii) in paragraph (d), for the words “as aforesaid” there is substituted “ in the crofting counties ”; and
  - (iii) after paragraph (e) there is inserted—
    - “(f) as from the relevant commencement date, every holding—
      - (i) entered in the Register of Crofts on that date which has been so entered for a continuous period of at least twenty years ending with that date; and
      - (ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is on that date pending before any court;
    - (g) as from the date twenty years after registration, every holding—
      - (i) entered in the Register of Crofts for a continuous period of twenty years ending after the relevant commencement date; and
      - (ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is at the end of that period pending before any court”;
- (b) after subsection (1) there is inserted—
- “(1A) In paragraphs (f) and (g) of subsection (1) above, “the relevant commencement date” is the date on which section 21 of the Crofting Reform etc. Act 2007 (asp 7) comes into force.”.

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**Commencement Information**

**I20** S. 21 in force at 25.6.2007 by S.S.I. 2007/269, art. 2, Sch.

**Changes to legislation:**

There are currently no known outstanding effects for the Crofting Reform etc. Act 2007, Part 2.