

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 4 – Further Amendments of the 1993 Act

Disposal of croft land, resumption and decrofting

Section 40: Limitation on crofter’s ability to nominate donee

110. New section 40 inserts into section 13 of the 1993 Act (authorisation of the Land Court of acquisition of croft land) new subsection (1A) which clarifies that any nominee of the crofter exercising the right to buy the croft must be a family member.

Section 41: Extension of period during which sum is payable on disposal of croft land

111. **Section 41** amends subsection (3) of section 14 of the 1993 Act to extend the period during which a crofter who has acquired croft land under section 13(1), or a member of that crofter’s family who has since obtained title to that land, must pay the landlord one half of the profit made following disposal of the land. The period is extended from 5 years to 10 years.

Section 42: Consideration of application to resume croft

112. **Section 42** amends the 1993 Act by inserting new sections (1AA) to (1AD) into section 20 of that Act. Section 20 deals with resumption of croft land and the amendments will allow the Land Court to consider additional factors when determining resumption applications.
113. New subsection (1AA) details the additional matters which the Land Court may take into account in determining an application to resume croft land and, in particular, in relation to satisfying itself, under section 20(1) of the 1993 Act, that the proposed reasonable purpose for resumption relates to the public interest. Subsection (1AA)(a) allows the Court to take into account the effect the proposed purpose for resumption will have on the issues detailed in new section (1AC). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Court to consider the effect the proposal to resume would have on the social and cultural benefits associated with crofting. Subsection (1AA)(b) allows the Court to consider the effects of the purpose of the application and reach its own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1AB) provides that new subsection (1AA) does not affect the requirement for the Land Court to extend the period of resumption in line with an extension of a relevant planning consent. Subsection (1AD) defines terms used in new section (1AA).

Section 43: Consideration of decrofting directions

114. **Section 43** of the Act amends the 1993 Act by inserting new sections (1A) to (1C) into section 25 of that Act. Section 25 of the 1993 Act deals with decrofting and the amendments will allow the Commission to consider additional factors when determining applications to decroft.
115. This will allow the Commission to take into consideration the same factors when determining applications to decroft land as the Land Court may consider when considering applications to resume croft land following the amendments made by section 42 of the Act.
116. New subsection (1A) details the additional matters which the Commission may take into account in determining a decrofting application and, in particular, in relation to satisfying themselves, under section 25(1)(a) of the 1993 Act, that the proposed reasonable purpose for decrofting relates to the public interest. Subsection (1A)(a) allows the Commission to take into account the effect the proposed purpose for decrofting will have on the issues detailed in new section (1B). These issues include the sustainability of crofting in the locality of the croft and the sustainability of the crofting community in that area, as well as the sustainability of the landscape and environment in that area. It also allows the Commission to consider the effect the proposal to decroft would have on the social and cultural benefits associated with crofting. Subsection (1A)(b) allows the Commission to consider the effects of the purpose of the application and reach their own conclusion on whether the proposal and decrofting the land are in the public interest, notwithstanding the existence of planning permission. Subsection (1C) defines terms used in new subsection (1A).

Letting of vacant crofts

Section 44: Requirements to submit proposals for re-letting crofts

117. **Section 44** amends section 11 of the 1993 Act, which covers transfers of crofts on intestacy. Subsection (2) requires that, where the Commission declare the croft vacant under section 11, a notice to the landlord under that section will require the landlord to submit proposals for re-letting the croft before the expiry of four months beginning on the day on which notice is given.
118. **Section 44** also amends section 23 of the 1993 Act, which covers vacant crofts and the re-letting of crofts declared vacant under section 11. Subsection (4) amends section 23(5) so that, where the croft is vacant, the landlord is required to submit letting proposals to the Commission within two months from notice being given under section 23(5). Subsection (5) inserts new subsection (5ZA), (5ZB) and (5ZC) after section 23. These new subsections limit letting proposals to a maximum of 3 potential tenants when a croft becomes vacant and set out a clear process and timescales for submission and consideration of these proposals. These replace and clarify some of what was formerly provided in section 23(5), namely that, if no proposals are submitted within 2 months, the Commission must proceed to invite applications from prospective tenants under subsection (5B) and let the croft under subsection (5C). Subsection (5ZB) also provides that, if proposals are submitted within 2 months (or where, following the death of a crofter, a croft is declared vacant under section 11(8) of the 1993 Act (Intestacy), within 4 months), the Commission have a further month within which to approve or reject those proposals. Subsection (5ZC) provides that the Commission must proceed under subsections (5B) and (5C) if no proposals are accepted by them within two months of the notice being given under subsection (5).
119. Subsection (6) substitutes a new subsection (5A) for the existing subsection (5A) of section 23 of the 1993 Act. New subsection (5A) relates to the case where a croft is, under section 11(8) of the 1993 Act, declared vacant following the death of a crofter. It makes equivalent provision to that made by new subsection (5ZC) in relation to vacant

crofts, except that in this case the period within which the landlord must submit re-letting proposals is 4 months.

Section 45: Application to decroft where action being taken to re-let vacant croft

120. **Section 45** inserts a new subsection (3A) into section 24 of the 1993 Act (which deals with decrofting in the case of resumption or vacancy). New subsection (3A) will allow the Commission not to consider a decrofting application made by the landlord under section 24(3) if the Commission have given notice under section 11(8)(a) or 23(5) requiring re-letting proposals to be submitted and the period within which the proposals must be submitted has not expired. It also allows them not to consider such an application where, because no proposals have been submitted before the period has expired or, where proposals have been submitted, because none have been approved, the Commission are proceeding under section 23(5B) and (5C). So these provisions limit consideration by the Commission of decrofting applications in specific circumstances.

Enlargement of crofts and common grazings

Section 46: Enlargement of crofts

121. **Section 46** substitutes a new section 4 for that currently in the 1993 Act. Presently, the 1993 Act allows for the enlargement of a croft upon agreement between the crofter and the landlord and it is only where this enlargement would result in the croft area exceeding 30 hectares that a joint application from the landlord and the crofter must be submitted to the Commission for approval. As the intention is for the Crofting Register to capture any significant change in the extent of, or interests in, a croft, the new section 4 requires the Commission to approve any enlargement of a croft (regardless of the resulting size of the croft) and this in turn will require a first registration or amendment to the Crofting Register. Subsection (3) prevents the Commission from granting a regulatory application to enlarge an unregistered croft unless an application to register the croft is made within 6 months of the regulatory application being made. It also allows the Commission not to consider a regulatory application during the 6 month period until an application for first registration is made. Subsection (4) of new section 4 allows the Commission to make a direction for the enlargement of a croft provided that the resulting enlargement would be of benefit to the croft or the crofter and would not result in the area substantially exceeding 30 hectares. Subsection (5) provides that a direction enlarging an unregistered croft, or a croft which has been registered as a result of the application for enlargement, takes effect on either the date of the direction or the date of entry under the tenancy of the enlarged area, whichever is later. Subsection (6) requires a registration application to be submitted within 3 months of the Commission's direction where it relates to a registered croft, otherwise the direction expires. It also provides that an enlargement of a registered croft only takes effect when registered.

Section 47: Enlargement of common grazings

122. **Section 47** provides a replacement section 51 in the 1993 Act to align procedures for the enlargement of common grazings with those for the enlargement of crofts. Subsection (1) provides that this section applies when an owner provides non-croft land to form part of a common grazing. Subsection (2) allows the owner and crofters to apply jointly to the Commission for a direction for the land to form part of the common grazing. Subsection (3) requires the Commission, in approving the enlargement application, to be satisfied that the enlargement would benefit the common grazing or the crofters sharing in it. Subsection (4) provides that, where the common grazing is unregistered, the enlargement is effective from the date of the direction or the date on which the rights are first exercisable. Subsection (5) provides that the enlargement of a registered common grazing cannot take effect unless an application to register the enlargement is submitted within 3 months of the direction being made and only takes effect on the date of registration.

Commission's approval and consent

Section 48: Obtaining Commission approval or consent

123. **Section 48** amends section 58A of the 1993 Act, which sets out the procedure to be followed in obtaining the consent or approval of the Commission. The main change is to make the current process simpler by requiring the Commission simply to approve applications for consent, reject them, or approve them subject to conditions. Subsection (3) extends subsection (4) of section 58A of the 1993 Act to allow any person the Commission considers to have a relevant interest in the application to object to that application. Subsection (4) amends section 58A to allow the Commission, under new subsection (5A), to consider objections submitted after the 28 day period specified in section 58A(4) if they are satisfied that there is good reason why the objection was late. New subsection (5B) disapplies public notification and objection provisions in section 58A where an executor applies for the division of a croft pursuant to a bequest under section 10 of the 1993 Act.
124. Subsection (5) of section 48 amends section 58A(6) to set out more clearly the options open to the Commission in determining an application to which section 58A applies. Subsection (6) requires the Commission to grant an application made by an executor to divide the site of the dwelling house from the remainder of the croft. Subsection (7) replaces sections 58A(7) to (10) with new subsection (7), which sets out the factors to which the Commission are to have regard when considering applications. Subsections (8) and (9) make consequential changes to section 58A.
125. Subsection (10) inserts a new subsection (12A) into section 58A of the 1993 Act and details those persons who are to be notified by the Commission of a decision on an application. Subsection (12) inserts a new section 58B into the 1993 Act, which sets out the procedure for varying the conditions of approval or consent under section 58A as amended. New subsection 58B(2) sets out the Commission's options for modification of a condition following application by the person who applied for the approval or consent and subsection (3) details those to be notified of the decision within 14 days of modification. Subsection (4) applies certain aspects of the section 58A procedures (e.g. the form in which an application must be made) to applications for modification of conditions under subsection 58B(2). Subsection (5) disapplies public notification and objection provisions in section 58A where the application relates to the division of a croft pursuant to a bequest under section 10 of the 1993 Act.

Succession to crofts

Section 49: Bequest of crofts

126. **Section 49** amends provisions relating to the bequest of the tenancy of a croft in section 10 of the 1993 Act to address various issues relating to bequests of crofts and inadvertent intestacy. Subsection (2) provides for two types of bequests: the tenancy of the whole croft to one natural person and the tenancy of the croft to two or more individuals, providing that no part of the land subject to the bequest is left untenanted.
127. Subsection (3) requires the individual accepting the tenancy of the croft, or part thereof which is subject to the bequest, to give notice of the bequest to the landlord and copy that notice to the Commission, within 12 months of the death of the crofter.
128. Subsection (4) provides new subsections (3) to (4C) to replace subsections (2B) to (4D) of section 10 of the 1993 Act. New subsection (3) provides for the bequest to be null and void if: (a) no notice is given of the acceptance of the bequest of the croft and no copy of the notice is sent to the Commission where the croft is bequeathed to one person, or (b) where the croft is bequeathed to more than one individual, any of the legatees fails to give notice or send a copy to the Commission. New subsection (4) provides for the legatee to take the place of the deceased crofter (as from the death of the crofter) when the details are entered on the Crofting Register, in a case where

*These notes relate to the Crofting Reform (Scotland) Act
2010 (asp 14) which received Royal Assent on 6 August 2010*

the croft is bequeathed to one person. Subsection (4A) requires the deceased crofter's executor to apply to the Commission for consent to divide the croft where two or more legatees accept the bequests for their parts of the croft where the croft is bequeathed to more than one person, and, following Commission consent, subsection (4B) provides for each legatee to take the place of the deceased crofter (as from the death of the crofter) when the details are entered on the Crofting Register. Subsection (4C) states that the bequest is null and void if the Commission does not consent to division of the croft or an application for division is not made as required under section 9(3)(a) of the 1993 Act.

129. Subsections (5) and (6) amend section 10 of the 1993 Act so that, where there is more than one legatee, all legatees are jointly and severally liable for the debts and expenses relating to the tenancy and its administration.
130. Subsection (7) defines the "relevant date of registration" in section 10(4) of the 1993 Act and "legatee's new croft" and related expressions and "relevant date" for the purposes of section 10(4B).

Appeals

Section 50: Appeals: procedure

131. **Section 50(1)** removes the requirement for an appeal to the Land Court to be by 'stated case'. This allows for a simplified appeal process to the Land Court. Subsection (2) allows, but does not require, the Commission to be party to any appeal to, or proceedings before, the Land Court under the 1993 Act.