

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

Section 6: New crofts

18. **Section 6** inserts new sections 3A, 3B and 3C into the 1993 Act to allow the creation of new crofts and the extension of crofting tenure beyond the crofting counties. Section 3A(1) empowers the Commission to constitute land as a croft in response to an application to that effect from the owner of the land in question. Section 3A(1)(b) provides that this can only be done outwith the crofting counties in an area specified by an order. Subsection (2) provides that the Commission may also constitute a tenanted holding as a croft where the applicant is a tenant and if the conditions specified in subsection (12) are met. Subsection (4) provides that the Commission may not constitute a holding as a croft in response to an application under subsection (2) until they are satisfied that the owner of the land has had an opportunity to appeal the application and the tenant has paid the owner any compensation agreed or found to be due for the impact of the change. Subsection (3) adds an administrative stage which the tenant of a holding is required to complete before he applies to the Commission. It requires the tenant to first obtain a certificate from the Land Court confirming his existing status under the Small Landholders legislation.
19. Subsections (5) to (8) specify a process that the Commission are required to follow before deciding whether or not to agree to the application and constitute the land as a croft. Subsection (9) ensures that all or part of an agricultural holding cannot become a croft without the consent of the tenant and that tenant cannot be dispossessed of the tenancy of land as a result of all or part of the holding being designated as a croft. Subsections (10) and (11) provide detail as to the form in which comments by the public on an application (as provided for in terms of subsection (6)) may be made.
20. Subsection (12) specifies the conditions that must be satisfied before a holding outwith the crofting counties can be constituted as a croft on the basis of an application by the tenant. This restricts this possibility of conversion to ensure that only a holding which is held by a natural person under the provisions of Small Landholder legislation will qualify.
21. Subsection (13) provides that an order designating an area outwith the crofting counties as an area in which new crofts may be created must be made by affirmative resolution of the Scottish Parliament.
22. New section 3B makes provision for assessing the amount of compensation to be paid by the tenant to the landlord where an application has been made by a tenant under the provisions of section 3A(2). It specifies that the amount of compensation shall be the difference in the value of the holding under the existing tenure arrangements and its value as a croft. It further specifies that in both instances the value is to be assessed as

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

the market value likely to be realised where there is a willing seller and a willing buyer and the sale is in each case to the sitting tenant. It also requires that the valuer should take account of the known existence of any third party that might be prepared to pay more for the holding, the potential impact on the value of the land of any sporting lease of the land and any representations made by the owner and the applicant. The valuer must make his decision on the valuation within 6 weeks of appointment.

23. New section 3C makes provision for both the owner or the applicant to appeal an assessment of compensation, made by a valuer under section 3B, to the Lands Tribunal for Scotland and specifies the period in which such an appeal may be made.