

# CROFTING REFORM ETC. ACT 2007

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## EXPLANATORY NOTES

### BACKGROUND

#### *The Act*

#### **Part 2: Crofts**

#### *Section 7: The statutory conditions*

24. **Section 7** makes a number of significant changes to the statutory conditions referred to in section 5 and detailed in Schedule 2 to the 1993 Act including changes to the statutory conditions governing a crofter's use of his croft land and to the ability of crofters and landlords to contract to waive rights conferred on the crofter by that Act. Subsection (1) (a) of section 7 adds a new subsection (1A) to section 5 of the 1993 Act which provides that the landlord can serve notice on the croft tenant where there is a breach of a new condition of tenure (new paragraph 3A of Schedule 2 which is inserted by section 7(2) (b)).
25. **Section 7(1)(b)** inserts new subsections (2A) and (2B) in section 5 of the 1993 Act and provides that where a crofter is doing or not doing something in order to conserve the natural beauty, or the flora and fauna of the locality he is not to be treated as in breach of the statutory conditions. Further subsection (2B) provides that any subsidiary or auxiliary occupation undertaken on the croft and continued after the commencement of the Act should not constitute a breach of the statutory conditions.
26. **Section 7(1)(c)** adds new subsections (3) to (10) to section 5 of the 1993 Act. New subsections (3) to (6) supersede the existing subsection (3) and provide that any future contract or agreement between a crofter and landlord where it deprives the crofter of certain rights, other than in relation to sections 8, 12 to 19, 21 and 37 of the 1993 Act, is void unless it is approved by the Land Court. Once approved by the Land Court, the Court will intimate the matter to the Commission who will register the matter with the Register of Crofts. Any contract or agreement made under sections 8, 12 to 19, 21 and 37 may be similarly registered on intimation. Subsection (6) provides that where a copy of a contract or agreement is entered in that register it will (depending on the terms of the contract or agreement) be binding on the successors to the croft tenancy. This provision is primarily to allow the creation of binding agreements necessary to facilitate energy developments on croft land. However, it also provides the means by which a tenant of a croft can enter into a binding agreement with the landlord undertaking not to exercise his right to buy or limiting the right to assign the croft. It therefore makes it possible for a landowner to create new crofts without the risk of these crofts being subject to the right to buy or assignation to a person whom the landowner considers to be unsuitable as a croft tenant.
27. New subsections (7) to (10) of section 5 relate to the modification of paragraph 3 of Schedule 2 to the 1993 Act provided by section 7(2)(a). That modification allows for a croft to be put to a purposeful use other than agriculture. New subsection (7) specifies that a crofter must seek the consent of the landlord to do so before putting the croft to

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

a purposeful use other than agriculture and if that consent is obtained may put the croft to the new use subject to any conditions attached to that consent. New subsection (8) allows the crofter to apply to the Commission for consent to a proposed purposeful use if the landlord's consent has been asked for and has not been obtained in terms of subsection (7) within 28 days of the application to the landlord. New subsection (9) requires the Commission to consult on the application for consent and check whether any planning or other consents are required for the proposed use and, if so, have been granted before it makes a decision.

28. **Section 7(2)** amends Schedule 2 to the 1993 Act. Subsection (2)(a) amends paragraph 3 of Schedule 2 (the requirement to cultivate a croft). It provides that a crofter can now cultivate the croft or put it to a purposeful use or do both but must do one or the other on every part of the croft. Subsection (2)(i) inserts a definition of "purposeful use" into paragraph 13 of Schedule 2. In order that the amendment to paragraph 3 has no impact on existing arrangements there is a saving provision at section 7(3) to the effect that existing rights relating to ancillary use are unaffected.
29. Subsection (2)(b) inserts 2 new paragraphs into Schedule 2. New paragraph 3A is a new condition that requires a crofter to keep his/her croft in a fit state for cultivation. New paragraph 3B defines some of the measures that might need to be taken to ensure that a croft remains fit for cultivation if not being put to some other purposeful use.
30. Subsection (2)(c) modifies and rewords paragraph 5 to provide a new definition of what constitutes injury to a croft.
31. Subsection (2)(d) inserts in Schedule 2 a definition of what constitutes "relevant notice" by the landlord to the crofter to stop action which would prejudice cultivation or the continuation of a purposeful use.
32. Subsection (2)(f) makes a consequential change to paragraph 7 of Schedule 2 to reflect a change to section 9 of the 1993 Act, relating to the division of a croft, which is detailed at section 10 of the Act.
33. Subsection (2)(h) inserts a new paragraph 11A into Schedule 2 which qualifies the landlord's rights set out in paragraph 11 of Schedule 2 such that the crofter does not have to tolerate unreasonable exercise of such rights.