

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

Section 8: Complaint as respects breach of the statutory conditions

34. **Section 8** inserts new sections 5A and 5B into the 1993 Act after section 5. New section 5A provides a procedure whereby the Commission may take action in place of the landlord where there has been a breach of the statutory conditions (except for non-payment of rent) and the landlord has not taken action. This gives the Commission power to apply to the Land Court to determine sanctions against the crofter concerned, including terminating the tenancy and declaring the croft vacant. This measure provides the means for dealing with the dereliction of crofts in cases where the landlord has no incentive to act.
35. The legislation continues to allow the landlord to take action against the croft tenant for breach of statutory conditions, but provides an alternative approach whereby the landlord or any other member of the crofting community can complain to the Commission of such a breach. Section 5A(2) provides that if the landlord is not already taking action, then the Commission may apply to the Land Court in connection with the breach. However section 5A(3) requires that the Commission must give the landlord prior notice of an intended application to the Land Court and if the landlord objects in writing within 14 days they may not proceed with the application. Section 5A(4) further requires the Commission to write to the crofter who is alleged to be in breach of the statutory conditions and give that crofter a reasonable time to remedy matters before making the application to the Land Court. Section 5A(2)(b) provides that the application to the Land Court may not be made until that period has expired.
36. Section 5A(5) specifies what the Land Court may do if it is satisfied that the breach of statutory conditions complained about has occurred. The Land Court can order remedy of the breach by a specific time and payment of compensation to the landlord as it thinks fit. Section 5A(6) provides that if a crofter fails to comply with such an order by the Land Court the Commission may apply to the Land Court to have the croft tenancy terminated, the croft declared vacant, and the tenant removed from the croft.
37. New section 5B creates provision whereby, if a crofter neglects or misuses a croft he or she can be readily removed from the tenancy.
38. Subsection (1) makes provisions for the landlord (or the Commission with the consent of the landlord) in cases of misuse or neglect to apply to the Land Court for an order terminating the tenancy, declaring the croft vacant and remove the tenant from the croft. Subsection (2) provides in relation to misuse that prior to making an application to the Court for an order the landlord, or the Commission, must give notice in writing to the crofter of the misuse and offer the crofter an opportunity to end the misuse within 42 days.

39. Subsection (3) provides that if the Land Court is minded to issue an order the crofter will be notified that the order will be issued within 42 days unless the crofter can satisfy the Court before the end of that period that the misuse has been brought to an end. Subsection (4) ensures that any breach, which constitutes neglect of a croft cannot be readily repeated. It provides that if notice has been previously given in accordance with the requirements of subsection (5) and (6) and remedial action taken but the same neglect is repeated within 5 years from the date of the initial application then on further notice being given the crofter will be allowed 42 days to end the neglect and if he fails to do so the landlord or the Commission may apply for an order to terminate the tenancy. If they do so and the Land Court is minded to grant the order then subsection (6) applies.
40. Subsection (5) deals with an application to the Land Court by a landlord, or with the landlord's consent the Commission, where it is alleged that there has been neglect of the croft. It provides that if the Land Court is minded to issue an order the Court will notify the crofter that it is their intention to do so. That notice will indicate that the order will not be issued if (a) the crofter agrees that there has been neglect and (b) by the end of a period of one year the crofter is able to satisfy the Court that the croft is being properly managed. Subsection (6) provides that if the Land Court are minded to issue an order in relation to a repeat application in connection with neglect within 5 years the Court will notify the crofter that it is their intention to do so unless the crofter is able to satisfy the Court within 42 days that the croft is being managed to the standard specified. Subsection (7) defines "misuse" and "neglect". Subsection (8) provides that action taken for conservation purposes may not be construed as neglect. Subsection (9) is a saving provision which provides that if a croft was being used for a purpose which was legitimate before these new provisions come into effect continuation of that use cannot be construed as misuse or neglect.