

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 3: Termination of Tenancy, Decrofting, Etc.

Section 22: Resumption and reversion

95. **Section 22** makes a number of changes to the handling of resumption of land from crofting tenure including the extension of the definition of “reasonable purpose” to include the generation of energy. It also provides that the Commission must be given notice of all resumption proposals and may oppose or support the proposal in the Land Court. It empowers the Land Court to allow resumption for a specified period, being known as a temporary resumption, rather than the permanent arrangement required by the previous legislation. It also empowers the Land Court to determine that payments to crofters of a share in the value of resumed land may be made by instalments rather than in a lump sum. This removes a potential obstacle to the development of land where income is deferred or spread over a lengthy period. Finally, it empowers the Land Court to restore resumed land to crofting tenure in certain circumstances.
96. **Section 22(1)(a)** amends section 20(1) of the 1993 Act to extend the matters which the Land Court must take into account when considering a resumption application to include the interests of the crofting community. Section 22(1)(b) inserts new subsections (1A) to (1F) into section 20 of the 1993 Act. The effect of new section 20(1A) is that the landlord must give notice of the application to the Commission and the Commission may oppose or support the application. This means that applications which are unopposed by crofters can nevertheless be challenged where there is concern about the impact of or need for resumption. New section 20(1B) allows the Land Court to specify that land is to be resumed for a specified period rather than permanently. New section 20(1C) allows the Land Court to extend that period on request and new section 20(1D) specifies circumstances where the Land Court is bound to extend the period of resumption in line with an extension of a relevant planning consent. New section 20(1F) allows the landlord to apply to the Land Court to turn a resumption for a specified period into a permanent resumption and provides for any necessary further compensation payment or further payment of a share in the value of the land to be made to the crofter. Section 22(1)(c) amends section 20(3)(a) of the 1993 Act to include generation of energy as a reasonable purpose.
97. **Section 22(2)** amends section 21 of the 1993 Act by adding new subsections (1A) to (1C) to provide that the Land Court may direct that sums payable to a crofter in connection with a resumption can be paid by instalments. It also provides for any such direction to be recorded in the Register of Crofts and so made binding on the successors to the landlord.
98. **Section 22(3)** inserts a new section 21A into the 1993 Act. This new section allows any “relevant person”, being a landlord of a croft, the person who was the tenant of the land

when it was resumed or if the land had been part of a common grazing the owner or the grazings committee, and the Commission to apply to the Land Court to have the land restored to crofting tenure. The Court is empowered to agree to the land being returned to crofting tenure provided the conditions specified in new section 21A(2) are met. If the Court determines that the land should be restored to crofting tenure new section 21A(4) empowers the Court to specify that crofters should return all or part of the compensation or share of value paid on resumption. Where the land is to be restored as a common grazing new section 21A(5) empowers the Court to specify how the question of shares in the grazing is to be resolved.

Section 23: Decrofting

99. **Section 23(a)** amends section 24 of the 1993 Act so that the Commission are no longer bound in certain circumstances to decroft a croft which has become vacant through Commission action. At present if such a croft remains vacant for 6 months the landlord can within the next 3 months give notice to the Commission requiring the Commission to decroft it. The new provision allows the Commission to apply to the Land Court for an extension of the period in which the croft may remain vacant thus allowing more time to find a suitable new tenant. If the Land Court grants an extension the Commission will become liable to make a payment to the landlord equivalent to the rent which would be due for the period of the extension.
100. **Section 23(b)** amends section 25 of the 1993 Act to effect a number of changes. Section 25(1)(a) is amended so that the Commission must in addition have regard to the interests of the local crofting community in determining that a croft shall cease to be a croft. A new section 25(1)(c) is inserted to provide that the special arrangements for decrofting the site of a house would also apply to a croft which had been feued in accordance with the provisions of sections 17 or 18 of the 1955 Act (these were feus of house sites with existing houses to persons who had given up their croft for re-letting. Because there was no provision for decrofting these sites in the 1955 Act they have never been decrofted and thus are still in crofting tenure although no longer associated with other croft land).
101. Section 25(3) of the 1993 Act is amended to allow the Commission to impose timescales for any new use. New subsection (3A) enables the Commission to set a time limit within which the land being decrofted begins to be used for the purpose for which it has been decrofted and new subsection (3B) enables the Commission to modify the conditions that apply to a decrofting direction. However, the power given in section 25(3) to make a further direction specifying that land subject to a previous decrofting direction is a vacant croft is constrained by the circumstances specified in new subsection (3C).
102. New section 25(4A) makes two changes to the decrofting procedure. Firstly, it requires a crofter who is applying for a decrofting direction whilst still the croft tenant to inform the landlord of the application and, secondly, it provides that the Commission will not give a direction if implementation of the application would impede access to another part of the croft or other croft land.
103. **Section 23(b)** also replaces sections 25(7) and (8) with new subsections (7), (7A), and (8). The main effects are firstly, to require the Commission to notify the landlord, applicant and the public of any decrofting direction they make setting out details of the decision and secondly, to extend the right to appeal that decision in the Land Court, by way of a stated case and on one or more of the grounds mentioned in new section 52A(3), to the landlord and other members of the crofting community, with the time allowed for making that appeal specified as 42 days.

Section 24: Re-letting

104. **Section 24** amends section 23 of the 1993 Act. By replacing section 23(3) it removes the right of the landlord to seek the consent of Scottish Ministers to a re-let when the Commission have not consented to it. The procedure set out in new section 58A of the 1993 Act (inserted by section 3 of the Act) will apply to the process of obtaining

Commission approval and new section 23(3A) sets out the additional criteria which will apply to consideration of re-let. Section 24(b) makes changes consequential to the removal of the right to seek the consent of Scottish Ministers by amending section 23(5). The new sub-sections 23(5A), (5B) and (5C) also require the Commission to seek by public notification prospective tenants for the croft where the landlord has failed to find a suitable tenant.

Section 25: Compensation for improvements for purposes other than cultivation or grazing etc.

105. This provision reflects the introduction of the concept of using a croft for another purposeful use (defined at Schedule 2 paragraph 3(b) of the 1993 Act (as amended by section 7(2) of the Act) or use of common grazing land for other purposes defined in new section 50B of the 1993 Act inserted by section 26 of the Act). By the insertion of new subsections (6A) and (6B) it alters the previous effect of section 30 of the 1993 Act which dealt with compensation payable to the crofter by the landlord in respect of improvements to the croft. It means that a landlord will now be required to compensate a crofter for things that the crofter does in order to use the croft for a non-agricultural purpose only if the landlord has previously agreed to do so.
106. This reflects the fact that these things may be of no value to either the landlord or an incoming croft tenant. It also reflects the fact that the croft tenant could readily realise the value of such improvements (if they have any value) by assignation or purchase and sale of the croft. New section 30(6A) of the 1993 Act specifies what would not be considered an improvement for the purposes of section 30 and new section 30(6B) qualifies that by indicating that the works mentioned in new section 30(6A) will be classed as improvements if the landlord has agreed in writing that the croft can be used as proposed.
107. It is worth noting that in many instances the provisions of Schedule 3 of the 1993 Act would be likely to preclude any entitlement to compensation. However, this new provision will impart greater clarity and certainty for both parties.