

# **CROFTING REFORM ETC. ACT 2007**

---

## **EXPLANATORY NOTES**

### **BACKGROUND**

#### *The Act*

#### **Part 7: General and Miscellaneous**

#### ***Section 33: Appeal to the Land Court and jurisdiction of that court***

148. This section creates a new and wide ranging right of appeal to the Land Court against decisions and other actions taken by the Commission. Section 33(1) inserts new section 52A into the 1993 Act. New section 52A(1) sets out the detail of the new right of appeal against any decision, determination or direction of the Commission or any imposition by them of a condition in response to an application made to them under the 1993 Act as amended by this Act. For example this right of appeal would apply to a decision by the Commission to refuse consent for an assignation of a croft or a determination by the Commission that there had been a contravention of grazings regulations by a particular shareholder in a grazing. New section 52A(2)(a) extends that right of appeal to any person with an interest in the application and that would include for example prospective tenants in the case of applications for assignation and re-let. It also provides that the appeal must be made by way of a stated case, which means that the Commission is required to provide a statement of the facts that have been established and the reasons for its decision. New section 52A(2)(b) provides for the time allowed for the appeal and new sections 52A(3)(a) to (f) set out the grounds on which an appeal can be made.
149. New section 52A(4) provides the Land Court with an open remit in that it can confirm the decision etc. taken by the Commission, require the Commission to come to a different conclusion or remit the case back to the Commission without telling the Commission what to do next.
150. New section 52A(5) provides that the appeal arrangements will also apply to Commission approval or withholding of such approval to the re-letting of a croft and variation, withdrawal, imposition and revocation of approval of the use of common grazings for other purposes (all actions which are not covered by the wording of new section 52A(1) because these cannot be described as a decision, determination or direction).
151. New section 52A(6) narrates the cases which are excluded from the appeals procedure under new section 52A, in one case because a specific appeal provision is already in place within section 25(8) of the 1993 Act and in the other two cases because specific new appeal provisions are created by sections 13 and 20 of the Act.
152. New section 52A(7) provides that a decision by the Commission under the provisions of new section 58A of the 1993 Act (inserted by section 3 of this Act) not to intervene or a determination by them that an objection under that section is frivolous, vexatious or unreasonable cannot be the subject of an appeal. The decisions under new section 58A that in consequence can be appealed are decisions to grant or refuse an application.

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

153. **Section 33(2)** amends the provisions in section 53 of the 1993 Act dealing with the jurisdiction of the Land Court to determine questions of fact or law arising under the Act. The effect of the new proviso (ii) to section 53(1) is that the Land Court cannot decide in the first instance a matter for which there is a right of appeal under new section 52A. The Land Court may in such cases only deal with the appeal under that section. The effect of the new proviso (iii) is essentially the same as the previous proviso (ii). It ensures that the Land Court cannot substitute its own decision for a decision by the Scottish Ministers or the Commission made under the provisions of the 1993 Act as amended by this Bill except on a question of law.
154. **Section 33(3)** amends Schedule 1 to the 1993 Act. It empowers the Commission to take the steps necessary to state a case and to prescribe procedures that must be followed by others (e.g. the appellant) in relation to the preparation of the stated case. It also clarifies that the Commission may be a party to any appeal or a reference to the Land Court under section 53(1) of the Crofters (Scotland) Act 1993.