



Crofting Reform etc. Act 2007

2007 asp 7

PART 1

THE CROFTERS COMMISSION

3 Obtaining Commission approval or consent

After section 3 of the 1993 Act, there is inserted—

“58A Obtaining Commission approval or consent

- (1) Any requirement, under or by virtue of this Act, to obtain the approval or consent of the Commission, shall (subject to any express provision made by this Act in respect of any category of case) be complied with as follows.
- (2) The application for approval or consent must—
 - (a) be in such form; and
 - (b) be accompanied by such documents and fee,as the Commission shall specify; and the Commission may make different provision for different categories of case.
- (3) The person making the application shall—
 - (a) forthwith give public notification of it; and
 - (b) if he is not the landlord (or, where the land to which the application relates is, or is part of, a common grazing, not the owner) give written notification of it to the landlord (or to the owner).
- (4) Within 28 days after public notification of an application made in compliance with subsection (2) above—
 - (a) the landlord (or where the land to which the application relates is, or is part of, a common grazing, the owner);
 - (b) any member of the crofting community in the locality of that land (including, where that land is, or is part of, a common grazing, the grazings committee or any crofter who shares in the grazing); or

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- (c) any other person if he is identified for the purposes of this subsection by the provision which imposes the requirement mentioned in subsection (1) above,
may submit to the Commission an objection as regards the application, being an objection of the description given in subsection (16) below.
- (5) The 28 days mentioned in subsection (4) above include the day on which the notification in question is given.
- (6) When those 28 days have elapsed the Commission—
- (a) must, in a case where they have received such objections by virtue of subsection (4) above and do not consider them to be frivolous, vexatious or unreasonable, intervene as respects the application;
 - (b) may, in any other case, decide to do so if it appears to them that any of—
 - (i) the general conditions; or
 - (ii) any conditions (if any) special to applications of the category in question,
 applies as respects the application.
- (7) If, as regards an objection duly submitted under subsection (4) above, the Commission decide not to have regard to it or that it does not provide them with grounds for intervention as respects the application they shall notify—
- (a) the applicant, the landlord (or owner) and, as the case may be, the grazings committee of the terms of the objection and of the reason for that decision; and
 - (b) the objector, of that reason.
- (8) If, other than by reason of any such objection, the Commission decide to intervene as respects the application, they shall notify the applicant, the landlord (or owner) and, as the case may be, the grazings committee of their decision to intervene, stating their reasons for intervention.
- (9) The general conditions are—
- (a) that, were the proposal to be implemented, there is reason to suppose that any or all of the following would be affected adversely—
 - (i) the interests of the estate which comprises the land;
 - (ii) the interests of the crofting community mentioned in subsection (4)(b) above;
 - (iii) the interests of the public at large;
 - (iv) the sustainable development of the crofting community so mentioned; and
 - (b) that such information as is contained in the application and its accompanying documents is insufficient for them to come to a decision as respects the proposal.
- (10) If the Commission—
- (a) do not intervene, they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and notify—
 - (i) the applicant;
 - (ii) the landlord (or owner);

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- (iii) any person who objected under subsection (4) above; and
 - (iv) as the case may be, the grazings committee,

that the proposal is approved and may be implemented or as the case may be that the matter is consented to and may be proceeded with accordingly;
 - (b) intervene, they shall, within 21 days after the 28 days mentioned in subsection (4) above have elapsed—
 - (i) notify the persons mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above of their decision to intervene, stating their reasons for intervention;
 - (ii) inform those persons (provided in the case of a person who objected under subsection (4) above that the objection was not considered by the Commission to be frivolous, vexatious or unreasonable) that they may, after the Commission make a determination under subsection (11) below, have the right to appeal to the Land Court as respects that determination.
- (11) Subject to any other provision of this Act as to procedure, the Commission may determine by such procedure and arrangements (including arrangements as to delegation and the powers and duties of persons delegated) as they consider appropriate whether or not to grant the approval or consent applied for; and references in this section to their intervening are to their proceeding to such a determination.
- (12) Where the Commission grant the approval or consent applied for they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and give such notification as is mentioned in subsection (10)(a) above.
- (13) The Scottish Ministers may issue guidance to the Commission for the purposes of subsection (9)(a)(iv) above; and the Commission must have regard to any guidance so issued.
- (14) The Scottish Ministers may by order made by statutory instrument amend—
 - (a) subsection (9) above;
 - (b) any provision of this Act in which are set out conditions mentioned in subsection (6)(b)(ii) above,so as to add to, vary or revoke the general conditions or as the case may be the conditions so mentioned.
- (15) A statutory instrument containing an order under subsection (14) above shall not be made unless a draft of the instrument has been—
 - (a) laid before; and
 - (b) approved by resolution of,the Scottish Parliament.
- (16) The description is that the objection is made in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).

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- (17) For the purposes of subsection (16) above (and without prejudice to the generality of that subsection), an objection is to be treated as made in writing where it is—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.”.