



Crofting Reform etc. Act 2007

2007 asp 7

PART 2

CROFTS

6 New crofts

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

“3A New crofts

(1) The Commission shall have power, on the application of the owner of any land situated—

- (a) in the crofting counties; or
- (b) in an area outwith the crofting counties which is, by order made by statutory instrument, designated for the purposes of this paragraph by the Scottish Ministers,

to constitute the land as a croft by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.

(2) The Commission shall have power—

- (a) on the application of the tenant of any holding situated as is mentioned in subsection (1)(b) above; and
- (b) provided that subsection (3) below is complied with and that the conditions set out in subsection (12) below are met,

to constitute the holding as a croft by entering it as such, in accordance with section 41 of this Act, in that register; and on the holding being so constituted the tenant shall be entitled to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.

(3) Any application under subsection (2) above must be accompanied by a certificate of the Land Court to the effect that the Court is satisfied that, as at the date of the certificate—

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- (a) the tenancy of the holding is one to which—
 - (i) section 32 of the Small Landholders (Scotland) Act 1911 (c. 49) applies; or
 - (ii) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies; and
 - (b) no part of the holding is leased other than as a tenancy mentioned in paragraph (a) above.
- (4) No such entry as is mentioned in subsection (2) above shall be made under that subsection—
- (a) until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned; and
 - (b) unless the Commission are satisfied—
 - (i) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being so constituted and that the amount has been duly paid;
 - (ii) that the applicant and owner have agreed that no amount in compensation is to be so payable; or
 - (iii) that any such amount found, by virtue of section 3B of this Act, to be so payable has been duly paid.
- (5) The Commission shall, on receipt of an application under subsection (1) or (2) above, give public notification of it.
- (6) Notification under subsection (5) above shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.
- (7) After the period mentioned in subsection (6) above has elapsed the Commission shall—
- (a) determine whether to exercise their power under subsection (1) or as the case may be (2) above; and
 - (b) give public notification of that determination.
- (8) In so determining, the Commission shall have regard to—
- (a) such comments, if any, as are duly made by virtue of subsection (6) above;
 - (b) the public interest and as the case may be the interests of the crofting community in the locality of the land; and
 - (c) whether social or economic benefits might be expected as a consequence of so constituting it.
- (9) No application is to be made under subsection (1) above in respect of an agricultural holding occupied by a tenant where—
- (a) the tenancy is—
 - (i) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)); or
 - (ii) a short limited duration tenancy or limited duration tenancy (within the meaning of that Act); or

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- (b) it is competent for the tenant to make an application under subsection (2) above,
if the written agreement of the tenant has not been obtained; and on such a holding being constituted as a croft under subsection (1) above the tenant shall be entitled (unless not a natural person) to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.
- (10) The description is that the comments are 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).
- (11) For the purposes of subsection (10) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.
- (12) The conditions are—
- (a) that the holding is not comprised within a larger agricultural unit, the holding and that larger unit being, or having been, worked, managed or let as a single unit;
 - (b) that the tenant is a natural person; and
 - (c) that such fixed equipment on the holding as is necessary to enable the tenant to cultivate the croft is not provided by the landlord.
- (13) An order under subsection (1)(b) above is not made unless a draft of the statutory instrument containing the order has been—
- (a) laid before; and
 - (b) approved by a resolution of,
the Scottish Parliament.

3B Compensation for constituting holding outwith crofting counties as croft on application of tenant

- (1) Where, in relation to an application under subsection (2) of section 3A of this Act, there is no such agreement as is mentioned in subsection (4)(b)(i) or (ii) of that section, the compensation payable by the applicant to the owner in compensation for the holding being constituted as a croft is to be the difference between—
- (a) the value of the holding assuming that it is not to be so constituted; and
 - (b) its value assuming that it is so constituted,
- and is to be assessed by a valuer appointed by the applicant and the owner.
- (2) But where the applicant and the owner are unable to agree as to such an appointment the valuer is to be appointed by the Land Court or by a person nominated by the Court.
- (3) The valuer is to assess the value of the holding—
- (a) as at the date of the relevant application under section 3A(2);

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- (b) having regard to the value that would be likely to be agreed between a reasonable buyer and seller of such a holding assuming—
 - (i) that the buyer and seller are, as respects the transaction, willing; and
 - (ii) that the buyer is a sitting tenant;
 - (c) taking account, in so far as a buyer and a seller of the holding would do so, of any factor attributable to the known existence of a person who (not being the applicant) would be willing to buy the holding at a price higher than other persons because of a characteristic of the holding which relates peculiarly to that person's interest in buying it; and
 - (d) taking account of the terms and conditions of any lease of sporting interests affecting the land.
- (4) The valuer is to invite the owner and the applicant to make written representations about the valuation of the holding under this section and is to have regard to any such representation.
- (5) The valuer may—
- (a) enter onto land; and
 - (b) make any reasonable request of the owner or the applicant, for the purpose of any assessment under this section.
- (6) The valuer must, within 6 weeks after being appointed, send to the owner and the applicant a notice in writing specifying the compensation payable and setting out how its amount was calculated.
- (7) The expenses of the valuer accrued in carrying out his functions under this section are to be met by the applicant.
- (8) In this section “valuer” includes two valuers with an oversman.

3C Appeal against assessment under section 3B

- (1) The owner or the applicant may appeal to the Lands Tribunal for Scotland against an assessment carried out under section 3B.
- (2) An appeal under this section—
- (a) shall state the grounds on which it is made; and
 - (b) shall not be lodged more than 21 days after the date of the notice under section 3B(6) of this Act.
- (3) In an appeal under this section, the tribunal may reassess any value (and any factor affecting any value).
- (4) The valuer may be a witness in the appeal proceedings.
- (5) And in those proceedings, in addition to the owner and the applicant, any creditor in a standard security over the land or any part of it is entitled to be heard.
- (6) The tribunal is to give reasons for its decision on an appeal under this section and is to issue a written statement of those reasons.
- (7) The decision of the tribunal in an appeal under this section is final.”