



Crofting Reform etc. Act 2007

2007 asp 7

PART 2

CROFTS

7 The statutory conditions

(1) In section 5 of the 1993 Act (the statutory conditions)—

(a) after subsection (1) there is inserted—

“(1A) If the landlord considers that the crofter is failing to comply with the condition set out in paragraph 3A of that Schedule he may serve notice to that effect on the crofter.”;

(b) after subsection (2) there is inserted—

“(2A) But where the crofter, for the purpose of conserving—

(a) the natural beauty of the locality of the croft; or

(b) the flora and fauna of that locality,

engages in, or refrains from, an activity, his so engaging or refraining is not to be treated as a breach of any of the statutory conditions as respects the croft.

(2B) If, immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7), the croft was being used for a subsidiary or auxiliary occupation by virtue of the right conferred by paragraph 3 of Schedule 2 to this Act (as that paragraph then applied), any continuation of use for that occupation is not to be treated as a breach of the statutory conditions as respects the croft.”; and

(c) for subsection (3) there is substituted—

“(3) Any contract or agreement made by a crofter by virtue of which he is deprived of any right conferred on him by—

(a) a provision of this Act not mentioned in paragraph (b) below, shall to that extent be void unless the contract or agreement is approved by the Land Court;

(b) any of sections 8, 12 to 19, 21 and 37 of this Act, may be intimated to the Commission by a party to the agreement (the

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intimation being in such form as the Commission may specify and there being provided to the Commission, along with the intimation, a copy of the contract or agreement).

- (4) On giving approval under subsection (3)(a) above, the Land Court shall intimate to the Commission that it has done so and provide them with a copy of the contract or agreement.
 - (5) On receiving a copy, provided under subsection (3)(b) or (4) above, of a contract or agreement the Commission shall enter the copy in the Register of Crofts.
 - (6) Where a copy is so entered then, subject to the terms of the contract or agreement, the deprivation in question is binding on the successors to the crofter's interest.
 - (7) Before the croft is put to any such use as is mentioned in paragraph 3(b) of the statutory conditions, the crofter must apply for the landlord's written consent and either—
 - (a) obtain it unconditionally or subject to conditions which the crofter accepts; or
 - (b) obtain the consent of the Commission.
 - (8) Any application for consent under paragraph (b) of subsection (7) above is to be made under this subsection but may be made only where consent under paragraph (a) of that subsection (whether unconditional or subject to such conditions as are mentioned in paragraph (a)) has not been obtained within 28 days after application under paragraph (a).
 - (9) The Commission shall, on receipt of an application under subsection (8) above—
 - (a) consult, as regards the proposed purposeful use, the landlord and the members of the crofting community in the locality of the land; and
 - (b) if the proposed purposeful use—
 - (i) constitutes a change for which planning permission is required; or
 - (ii) by virtue of any enactment (other than this Act) requires any other permission or approval,
 require it to be shown that the permission or approval has been given.
 - (10) The Commission shall decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.”.
- (2) In Schedule 2 to that Act (which sets out conditions to which every tenancy of a croft is subject)—
- (a) in paragraph 3, for the words from “cultivate” to the end there is substituted “either or both—
 - (a) cultivate his croft;
 - (b) put it to some other use, being a purposeful use,

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- so that every part of the croft either is cultivated or is put to such use.”;
- (b) after paragraph 3 there is inserted—
- “3A The croft shall be kept in a fit state for cultivation except in so far as a use to which it is put by virtue of paragraph 3(b) above is incompatible with its being so kept.
- 3B Without prejudice to the generality of paragraph 3A above, in determining whether that paragraph is complied with regard shall be had to whether appropriate measures (which may include the provision of drainage) are routinely undertaken, where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes, iris and harmful weeds.”;
- (c) in paragraph 5, for the words from “persistently” to the end there is substituted “injure the croft—
- (a) by allowing the dilapidation of buildings;
- (b) where the croft is cultivated, by allowing, after relevant notice, the deterioration of the soil; or
- (c) where the croft is put to some other purposeful use, by acting prejudicial to that use being acting carried out after relevant notice.”;
- (d) after paragraph 5 there is inserted—
- “5A In sub-paragraphs (b) and (c) of paragraph 5 above, “relevant notice” means notice given by the landlord to the crofter not to do, or not to allow, a particular thing or not to engage in a particular course of conduct (being a thing or course of conduct specified in the notice and relevant to the deterioration or prejudice in question).”;
- (e) after paragraph 6 there is inserted—
- “6A The crofter shall be responsible for ensuring, where the croft is sublet, that the subtenant adheres to the statutory conditions.”;
- (f) in paragraph 7, for the word “subdivide” there is substituted “divide”;
- (g) in paragraph 9, the word “persistently” is repealed;
- (h) after paragraph 11 there is inserted—
- “11A Nothing in paragraph 11 above shall be held to allow, or require the crofter to allow, the landlord, or any person authorised by the landlord, to exercise unreasonably a right enjoyed by virtue of that paragraph.”; and
- (i) in paragraph 13, at the end there is added—
- ““purposeful use” is any planned and managed use, being a use which subject to the exception in paragraph 3A above, does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.”.
- (3) The amendment made by subsection (2)(a) above does not affect the right conferred by paragraph 3 of Schedule 2 to that Act, as originally enacted, in relation to a use for subsidiary or auxiliary occupations provided that such use subsists (having subsisted from before the coming into force of that subsection).