



Crofters (Scotland) Act 1993

1993 CHAPTER 44

Subletting of crofts

27 Provisions as to right to sublet

- (1) Notwithstanding any enactment or rule of law, a crofter shall be entitled to sublet his croft without the consent of the landlord of the croft.
- (2) A crofter shall not sublet his croft otherwise than with the consent in writing of the Commission and in accordance with such conditions (which shall not include conditions relating to rent) as the Commission in giving their consent may impose; and any sublease of his croft granted by a crofter otherwise than as aforesaid shall be null and void:

Provided that nothing in this subsection shall be construed as debarring a crofter from subletting any dwelling-house or other building forming part of his croft to holiday visitors.

- (3) On applying to the Commission for their consent to a proposed sublease of his croft, a crofter shall furnish such information with respect to the proposed sublease, including the name of the subtenant, the duration of the sublease and the terms and conditions of the sublease (other than those relating to rent), as the Commission may require.
- (4) The Commission shall, on an application being made to them by a crofter for their consent to a proposed sublease of a croft, serve on the landlord of the croft a notice stating that such application has been made and specifying the name and designation of the proposed subtenant, and in deciding whether to give or to refuse consent to such sublease the Commission shall have regard to any observations made to them by the landlord within 14 days commencing with the date of the service of such notice.
- (5) The Commission may, in giving their consent to a proposed sublease of a croft, impose such conditions (other than any relating to rent) as they may think fit.

28 Special provisions regarding subletting of crofts not adequately used

- (1) Where the Commission are of the opinion that any crofter is failing to make adequate use of his croft, they may serve on him a preliminary notice setting out their opinion as aforesaid and stating that, unless he satisfies them within one year from the date of the service of such preliminary notice that he is making adequate use of his croft, the Commission may, in accordance with subsection (2) below, serve on him a notice of requirement to sublet.

The Commission may at any time withdraw a preliminary notice served by them on a crofter under this subsection.

- (2) Where a crofter on whom a preliminary notice has been served under subsection (1) above fails to satisfy the Commission within the period mentioned in that subsection that he is making adequate use of his croft, the Commission may, within 1 month from the expiry of that period, serve on such crofter a notice stating that, subject to subsection (3) below, the croft will, on the expiry of 1 month from the date of the service of the notice or such longer period as may be specified in the notice, become subject to a requirement that it be sublet.
- (3) A crofter on whom a notice is served under subsection (2) above by the Commission may, at any time before his croft becomes subject, in terms of such notice, to a requirement that it be sublet, refer to the Secretary of State the question whether he is making adequate use of his croft, and the Secretary of State, after affording to the crofter an opportunity of making representations to him and, if the crofter does not object to such consultation, after consulting with any grazings committee appointed under section 47 of this Act in respect of common grazings in the township in which the croft is situated, may annul the notice or may confirm it.
- (4) Where a notice is served under subsection (2) above on a crofter by the Commission and either no reference is made under subsection (3) above to the Secretary of State by the crofter or on such a reference the Secretary of State confirms the notice, the Commission may, within 1 month from the last date on which a reference might have been made as aforesaid or from the date on which the notice was confirmed by the Secretary of State, as the case may be, serve on the crofter a further notice requiring that he shall, within 3 months from the date of the service of such further notice, submit to them for their approval proposals (other than any relating to rent) for subletting his croft.
- (5) The Commission shall, on proposals for subletting a croft being submitted to them by a crofter as aforesaid, serve on the landlord of the croft a notice stating that such proposals have been submitted and specifying the name and designation of the proposed subtenant, and in deciding whether or not to approve such proposals the Commission shall have regard to any observations made to them by the landlord within 14 days from the date of the service of such notice.
- (6) The Commission may, in giving their approval to any proposals submitted to them by a crofter as aforesaid, impose such conditions (other than any relating to rent) as they may think fit, and any reference in this section or in section 29 of this Act to proposals submitted to the Commission under subsection (4) above and approved by them shall include a reference to conditions imposed by the Commission under this subsection in giving their approval to such proposals.
- (7) If a crofter on whom a further notice is served under subsection (4) above by the Commission fails within the period mentioned in that subsection to submit proposals

for subletting his croft, or if any proposals submitted by such a crofter are not approved by the Commission, or if such a crofter fails to sublet the croft in accordance with proposals approved by the Commission, the Commission themselves may, subject to the following provisions of this section, grant a sublease of the croft to such person as they may think fit.

- (8) Before granting a sublease of any croft under subsection (7) above the Commission shall consult with any grazings committee appointed under section 47 of this Act in respect of common grazings in the township in which the croft is situated, and thereafter the Commission shall, if they propose to grant such sublease, serve on the landlord of the croft and on the crofter a notice to that effect which shall also specify the name and designation of the proposed subtenant, and in deciding whether or not to grant the sublease the Commission shall have regard to any observations made to them by the landlord or by the crofter within 14 days from the date of the service of such notice.
- (9) Where the Commission grant a sublease of any croft under subsection (7) above, they shall forthwith give to the landlord of the croft, to the crofter and to the subtenant under the sublease a notice intimating that they have granted the sublease as aforesaid and setting out the name of the subtenant, the duration of the sublease, and the terms and conditions on which it has been granted, and the Commission shall also make a record of the condition as at the date of entry under the sublease of any fixed equipment let thereunder.
- (10) A sublease of a croft granted by the crofter in accordance with proposals submitted to the Commission under subsection (4) above and approved by them, or by the Commission under subsection (7) above, shall not, unless the crofter so wishes, include the sublease of—
- (a) any dwelling-house or garden ground forming part of the croft;
 - (b) any buildings or other structures erected, or any works executed, on the croft which, by virtue of subsection (2) or (3) of section 31 of this Act, are permanent improvements on the croft;
 - (c) such part of the croft as the Commission shall determine, being a part which (taken together with the site of any dwelling-house, garden ground, buildings, structures or works which, by virtue of the foregoing provisions of this subsection, are not included in the sublease) extends to one half hectare;
 - (d) any right pertaining to the tenancy of the croft to cut or take peat.
- (11) A sublease of any croft granted under subsection (7) above by the Commission shall have effect in all respects as if it has been granted by the crofter in accordance with proposals submitted to the Commission under subsection (4) above and approved by them.
- (12) The rent payable under a sublease granted under subsection (7) above by the Commission shall, in the case of a sublease of a whole croft, or of a whole croft other than any subjects which, by virtue of subsection (10) above, are not included in the sublease, be a sum equal to one and one quarter times the rent payable to the landlord by the crofter in respect of the croft, and, in any other case, be such proportion of the said sum as the Commission may determine:

Provided that the Land Court may, on an application in that behalf made by the crofter within 6 months from the date on which notice intimating the grant of the sublease was given to him under subsection (9) above by the Commission, vary the rent fixed by or under this subsection and substitute therefor such other rent, whether higher or

lower than the rent so fixed, as may appear to the Land Court to be just in all the circumstances, and the rent determined by the Land Court in pursuance of this proviso shall be payable under the sublease, in place of the rent fixed as aforesaid, as from the date of entry under the sublease.

(13) The duration of any sublease granted under subsection (7) above by the Commission shall, subject to subsection (14) below and section 29(3) of this Act, be such number of years, not exceeding 5, as the Commission may determine, and any such sublease shall be granted subject to the following terms and conditions—

- (a) the subtenant shall make adequate use of the land comprised in the sublease;
- (b) the subtenant shall maintain any permanent improvements existing on such land at the date of the commencement of the sublease in as good a state of repair as they were in at the said date and, if he fails to do so, shall on the termination of the sublease pay to the crofter the cost, as at the date of such termination, of making good any deterioration of, or damage to, such improvements due to his failure, which cost shall, failing agreement between the subtenant and the crofter, be determined by the Land Court;
- (c) the subtenant shall not make any permanent improvements on the land comprised in the sublease, other than an improvement falling under head 3, 4, 5 or 6 of Schedule 3 to this Act, and the crofter shall not be held responsible for the maintenance of any permanent improvements erected by the subtenant without the consent of the crofter;

and to such other terms and conditions as may be specified in the sublease.

(14) If the Commission are satisfied in relation to any sublease granted by them under subsection (7) above—

- (a) that the subtenant has broken one or more of the terms or conditions of the sublease, or
- (b) where representations in that behalf are made by the crofter or by the subtenant, that the circumstances of either of them have so materially altered that it is reasonable that the sublease should be terminated,

the Commission may serve on the crofter and on the subtenant a notice in writing terminating the sublease on such date as may be specified in the notice, being a date not later than one year from the date of the service of the notice.

(15) Where any person occupying a croft—

- (a) has, by virtue of any of the provisions of this section, ceased to be entitled to occupy such croft; or
- (b) is a subtenant to whom the croft has been sublet by the crofter after the date on which a further notice was served on the crofter by the Commission under subsection (4) above and otherwise than in accordance with proposals submitted to the Commission under that subsection and approved by them;

the Commission may serve on such person a notice in writing requiring him to give up his occupation of the croft on or before such date as may be specified in the notice, being a date not less than one month from the date of the service of the notice; and if he fails to give up his occupation of the croft on or before the date so specified, section 22(3) of this Act shall, subject to any necessary modifications, apply as it applies where a crofter fails to give up the occupation of a croft as mentioned in that subsection.

- (16) In this section “adequate use” in relation to a croft means such use of the croft for agriculture as, having regard to its nature and location, a tenant reasonably skilled in husbandry might be expected to make of it.
- (17) This section shall come into operation on a day appointed by the Secretary of State by order made by statutory instrument, but no order shall be made under this subsection unless a draft of such order has been laid before Parliament and approved by resolution of each House thereof.

29 Miscellaneous provisions regarding subleases of crofts

- (1) Subject to subsection (2) below, the subtenant under a sublease of a croft shall not be held to be a crofter or to be the tenant of an agricultural holding within the meaning of the Agricultural Holdings (Scotland) Act 1991.
- (2) Where under a sublease of any croft a right in any common grazing is let to the subtenant, and the sublease is one which-
- (a) has been intimated to the Commission under section 11(1)(a) or (b) of the Crofters (Scotland) Act 1961; or
 - (b) has been granted by the crofter with the consent of the Commission and in accordance with any conditions imposed by them, as mentioned in section 27(2) of this Act, or
 - (c) has been granted by the crofter in accordance with proposals submitted to the Commission under section 28(4) of this Act and approved by them, or
 - (d) has been granted under section 28(7) of this Act by the Commission,
- the subtenant shall come in place of the crofter in relation to any matter which concerns such right, and any grazings regulations applicable to such common grazing shall apply to the subtenant accordingly.
- (3) Where the tenancy of a croft is terminated, any sublease of that croft subsisting immediately before the date of such termination shall come to an end on that date:

Provided that where a sublease comes to an end by virtue of the foregoing provisions of this subsection the Commission may, on an application in that behalf made to them by the subtenant within one month or such longer period not exceeding 3 months as the Commission may in all the circumstances think reasonable from the date on which the sublease came to an end as aforesaid, make an order permitting the subtenant to remain in occupation of the croft for such period, not exceeding one year from the said date, and subject to such conditions, as may be specified in the order; and no proceedings for the removal of the subtenant from the croft shall be taken by the owner of the croft before the expiry of the said period of one month or the said longer period or, if an application is made under this subsection to the Commission by the subtenant within that period, before the date of the determination of the Commission on such application.

- (4) In this section and in sections 27 and 28 of this Act any reference to a croft shall include a reference to a part of a croft.