



# Crofters (Scotland) Act 1993

## 1993 CHAPTER 44

*[<sup>F1</sup><sup>F2</sup>Crofters' duties relating to residency, use, misuse and neglect of crofts]*

### Textual Amendments

- F1** Ss. 5A, 5B inserted (25.6.2007) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), ss. 8, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F2** S. 5AA and cross-heading inserted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), ss. 33(2), 57(2) (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)

### **5AA Crofters: residency duty**

A crofter must be ordinarily resident on, or within 32 kilometres of, that crofter's croft.]

### **[<sup>F3</sup>5B Termination of tenancy for misuse or neglect**

- (1) A crofter must not misuse or neglect the crofter's croft.
- (2) A crofter misuses a croft where the crofter—
  - (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is consented to under section 5C(4);
  - (b) fails to use the croft for the purposes of its being cultivated; or
  - (c) fails to put the croft to any such purposeful use.
- (3) A crofter neglects a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).
- (4) But where the crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—
  - (a) the natural beauty of the locality of the croft; or
  - (b) the flora and fauna of that locality,

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the crofter's so engaging or refraining is not to be treated as misuse or neglect as respects the croft.

- (5) 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 misuse or neglect as respects the croft.
- (6) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (3) so as to substitute different standards for those for the time being mentioned in that subsection.]

#### Textual Amendments

**F3** Ss. 5B, 5C substituted for s. 5B (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 33(3), 57(2)** (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), **art. 3, sch. Pt. 1** (with [art. 4](#))

#### [<sup>F2</sup>5C Crofters: duty to cultivate and maintain

- (1) A crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the crofter—
- (a) must—
    - (i) cultivate the croft; or
    - (ii) put it to another purposeful use,
 

so that every part of the croft which is capable of being cultivated or put to another purposeful use either is cultivated or is put to such use;
  - (b) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).
- (3) Without prejudice to the generality of paragraph (b) of subsection (2), in determining whether that paragraph is complied with, regard is to 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 and harmful weeds.
- (4) A crofter may only put the croft to a use mentioned in subsection (2)(a)(ii) if—
- (a) the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or
  - (b) the Commission have consented to the use.
- (5) But a crofter may not apply to the Commission for consent under subsection (4)(b) until—
- (a) the landlord has refused consent (or granted consent subject to conditions unacceptable to the crofter); or
  - (b) the period of 28 days, commencing with the date on which the request for the consent of the landlord was made, has expired,
- whichever occurs first.
- (6) The Commission must, on receipt of such an application for consent—

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- (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.
- (7) The Commission must decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.
- (8) In this Act—
- “cultivate” includes the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands;
  - “purposeful use” means any planned and managed use which does not adversely affect—
    - (a) the croft;
    - (b) the public interest;
    - (c) the interests of the landlord or (if different) the owner; or
    - (d) the use of adjacent land.]

#### Textual Amendments

- F3** Ss. 5B, 5C substituted for s. 5B (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), ss. **33(3)**, 57(2) (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)

## 6 Rent.

- (1) The rent payable by a crofter as one of the statutory conditions shall be the yearly rent, including money and any prestations other than money, payable for the year current at the commencement of this Act or, in the case of a croft let after the commencement of this Act, fixed at the date of the letting, unless and until that rent is altered in accordance with the provisions of this Act.
- (2) The rent may be altered by agreement in writing between the landlord and the crofter to such amount and for such period as may be so agreed; and thereupon the rent so agreed shall be the rent payable by the crofter so long as the agreement subsists and thereafter so long as—
- (a) no new agreement between the landlord and the crofter shall have been made; or
  - (b) no different rent shall have been fixed by the Land Court under this Act.
- (3) The Land Court may, on the application of the crofter or the landlord, determine what is a fair rent to be paid by the crofter to the landlord for the croft [<sup>F4</sup>or for any part of the croft], and may pronounce an order accordingly; and the rent so fixed by the Land Court shall be the rent payable by the crofter as from the first term of Whitsunday or Martinmas next succeeding the decision of the Land Court:

Provided that—

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- (a) where the rent payable for the croft [<sup>F5</sup>or for any part of the croft] has been fixed by the Land Court it shall not be altered, except by mutual agreement between the crofter and the landlord, for a period of 7 years from the term at which it first became payable; and
- (b) where a croft is let after the commencement of this Act, the rent [<sup>F6</sup>for it or for any part of it] shall not be altered by the Land Court for a period of 7 years from the term at which it first became payable or for such longer period as may have been agreed upon between the crofter and the landlord.

[ The proviso to subsection (3) above does not have the consequence that a <sup>F7</sup>(3A) determination which is not to take effect during any period mentioned in that proviso cannot competently be made under that subsection during that period.]

- (4) Before determining what is a fair rent for a croft [<sup>F8</sup>or for any part of a croft] , the Land Court shall hear the parties and shall take into consideration all the circumstances of the case, of the croft and of the district, and in particular shall take into consideration any permanent or unexhausted improvements on the croft and suitable thereto which have been executed or paid for by the crofter or his predecessors in the tenancy.

#### Textual Amendments

- F4** Words in s. 6(3) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(4)(a)(i)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F5** Words in s. 6(3) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(4)(a)(ii)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F6** Words in s. 6(3) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(4)(a)(iii)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F7** S. 6(3A) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(4)(b)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.
- F8** Words in s. 6(4) inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), s. 43(3), **sch. 1 para. 2(4)(c)** (with ss. 40, 43(2)); S.S.I. 2007/269, art. 2, sch.

## 7 Renunciation of tenancy.

- (1) A crofter shall be entitled, on one year's notice in writing to the landlord, to renounce his tenancy as at any term of Whitsunday or Martinmas.
- (2) If a crofter renounces his tenancy the landlord shall be entitled to set off all rent due or to become due against any sum found to be due by the landlord to the crofter or to the Secretary of State by way of compensation for permanent improvements made on the croft.

## 8 Assignment of croft.

- (1) A crofter shall not assign his croft— [<sup>F9</sup>unless he obtains the consent of the Commission]

[ Where a crofter applies for consent to assign a croft by virtue of subsection (1), the <sup>F10</sup>(1A) crofter must

- (a) notify the Commission as to where the proposed assignee would intend, following any such assignment, ordinarily to reside; and

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- (b) provide the Commission with any other information it requests in connection with the application.
- (1B) Where consent is applied for under subsection (1) in relation to an unregistered croft, the Commission—
- (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
  - (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.]
- <sup>F11</sup>(2) . . . . .
- <sup>F12</sup>(3) . . . . .
- <sup>F12</sup>(4) . . . . .
- (5) Where a crofter assigns his croft otherwise than with the consent [<sup>F13</sup>of the Commission], such assignment and any deed purporting so to assign the tenancy shall be null and void and the Commission may declare the croft to be vacant.
- (6) [<sup>F14</sup>In relation to an unregistered croft or a first registered croft,] An assignment to which the Commission have given their consent under this section shall take effect [<sup>F15</sup>on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the crofter) unless before that date] the crofter or his executor or legatee and the assignee jointly give to the Commission notice in writing that they do not intend to proceed with the assignment.
- [ In relation to a registered croft (other than a first registered croft)—
- <sup>F16</sup>(6A) (a) any consent of the Commission given under this section to an assignment expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the assignment is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the assignment takes effect on the date of registration.]
- (7) Any reference in this section to a croft shall include a reference to a part of a croft, being a part consisting of any right in pasture or grazing land deemed by virtue of section 3(4) of this Act to form part of a croft.]

#### Textual Amendments

- F9** Words in s. 8(1) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 12(a)**, 43(3) (with **ss. 40, 43(2)**); [S.S.I. 2007/568](#), **art. 2**
- F10** S. 8(1A)(1B) inserted (1.10.2011 for specified purposes, 30.11.2013 in force in so far as not already in force) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), s. 57(2), **sch. 4 para. 3(8)(a)** (with s. 57(4)); [S.S.I. 2011/334](#), **art. 3, sch. Pt. 1** (with **art. 4**); [S.S.I. 2012/288](#), **art. 3(1)(c)** (with **Sch. 2 para. 10**)
- F11** S. 8(2) repealed (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), s. 57(2), **sch. 4 para. 3(8)(b)** (with s. 57(4)); [S.S.I. 2011/334](#), **art. 3, sch. Pt. 1** (with **art. 4**)
- F12** S. 8(2) substituted for s. 8(2)-(4) (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 12(b)**, 43(3) (with **ss. 40, 43(2)**); [S.S.I. 2007/568](#), **art. 2**
- F13** Words in s. 8(5) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 12(c)**, 43(3) (with **ss. 40, 43(2)**); [S.S.I. 2007/568](#), **art. 2**

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- F14** Words in s. 8(6) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(8)(c)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(n)(o))
- F15** Words in s. 8(6) substituted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 12(d)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F16** S. 8(6A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(8)(d)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(n)(o))

## **[<sup>F17</sup>9 Division of croft**

(1) A crofter shall not divide his croft unless he obtains the consent of the Commission.

**[<sup>F18</sup>(1A)** Where consent is applied for under subsection (1) in relation to an unregistered croft, the Commission—

- (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
- (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.]

**<sup>F19</sup>(2)** .....

**[<sup>F20</sup>(3)** In relation to a registered croft (other than a first registered croft)—

- (a) any consent of the Commission given under this section to a division of the croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
- (b) the division takes effect on the date of registration.

**(3A)** The Keeper must make up and maintain a registration schedule in accordance with section 11 of the 2010 Act in respect of a new croft created by a division under this section.]

(4) After division, the rent payable for the new crofts shall be that agreed between the landlord and the tenant.

(5) In the event that such agreement cannot be reached, the Land Court, on the application of the landlord or the tenant, shall have the power to determine the rent in accordance with subsections (3) and (4) of section 6 of this Act, the fees payable in connection with such an application being borne by the tenant.

(6) In this section—

“division” means the division of a croft into two or more new crofts (“divide” being construed accordingly);

“original croft” means the croft which is the subject of an application for division; and

“new crofts” mean each of the crofts created by the division of the original croft.]

## **Textual Amendments**

- F17** S. 9 substituted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 10**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2

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- F18** S. 9(1A) inserted (30.11.2013) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(9)(a)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(c) (with sch. 2 para. 11(1))
- F19** S. 9(2) repealed (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(9)(b)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F20** S. 9(3)(3A) substituted for s. 9(3) (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(9)(c)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 1(p)11(2))

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