



# Crofters (Scotland) Act 1993

## 1993 CHAPTER 44

### *Rights of crofters and cottars to acquire their subjects*

#### **12 General provision**

- (1) A crofter may, failing agreement with the landlord as to the acquisition by the crofter of croft land tenanted by him, apply to the Land Court for an order authorising him to make such acquisition.
- (2) A crofter shall be entitled to a conveyance of the site of the dwelling-house on or pertaining to the croft tenanted by him, and a cottar shall be entitled to a conveyance of the site of the dwelling-house on or pertaining to his subject, and the crofter or cottar may, failing agreement with the landlord, apply to the Land Court for an order requiring the landlord to grant such a conveyance.
- (3) In this Act “croft land” includes any land being part of a croft, other than—
  - (a) the site of the dwelling-house on or pertaining to the croft;
  - (b) any land, comprising any part of a common grazing, unless the and has been apportioned under section 52(4) of this Act and—
    - (i) is adjacent or contiguous to any other part of the croft; or
    - (ii) consists of arable machair;
  - (c) any right to mines, metals or minerals or salmon fishings (not being salmon fishings in Orkney or Shetland) pertaining to the croft.
- (4) In this Act, “the site of the dwelling-house” includes any building thereon and such extent of garden ground as, failing agreement with the landlord, may be determined by the Land Court by order under 15(1) of this Act to be appropriate for the reasonable enjoyment of the dwelling-house as a residence but does not include—
  - (a) any right to mines, metals or minerals pertaining thereto; or
  - (b) where there is more than one dwelling-house on or pertaining to a croft or, as the case may be, the subject of a cottar, the site of more than one dwelling-house; or

- (c) where the site of the dwelling-house on or pertaining to a croft has been acquired by the crofter after 10th June 1976, the site of any dwelling-house erected after such acquisition on or pertaining to the remainder of the croft.
- (5) In this Act “cottar” means the occupier of a dwelling-house situated in the crofting counties with or without land who pays no rent, or the tenant from year to year of a dwelling-house situated as aforesaid who resides therein and who pays therefor an annual rent not exceeding £6, whether with or without garden ground but without arable or pasture land.

### **13 Authorisation by Land Court of acquisition of croft land**

- (1) The Land Court, on an application made to it under section 12(1) of this Act, may make an order—
- (a) authorising the crofter to acquire such croft land as may be specified in the order, subject to such terms and conditions as, failing agreement with the landlord, may be so specified, and requiring the landlord to convey the land to the crofter or his nominee in accordance with such terms and conditions; or
  - (b) refusing the application.
- (2) The Land Court shall not make an order in accordance with subsection (1)(a) above where it is satisfied by the landlord as to either or both of the following matters—
- (a) that, in all the circumstances pertaining to the landlord and having regard to the extent of land owned by him to which this Act applies, the making of such an order would cause a substantial degree of hardship to the landlord;
  - (b) that the making of such an order would be substantially detrimental to the interests of sound management of the estate of the landlord of which the croft land to which the application relates forms part.
- (3) The Land Court, in making an order in accordance with subsection (1)(a) above, may provide that the authorisation to acquire is conditional on the crofter granting a lease to the landlord of the shooting rights over or the fishing rights pertaining to the croft land and shall so provide where it is satisfied that if such a lease were not granted the interests of the landlord in the shooting or fishing rights of which the rights being acquired by the crofter form part would be materially affected; and any such lease shall be at such nominal annual rent, for such period of not less than 20 years and subject to such other terms and conditions as the Land Court may specify.
- (4) The Land Court, in making an order in accordance with subsection (1)(a) above, may include the condition that the crofter shall grant a standard security in favour of the landlord to secure any sum which may become payable to him or his personal representative under section 14(3) of this Act in the event of disposal of the croft land or any part thereof.
- (5) Where the Land Court proposes to make an order authorising the crofter to acquire—
- (a) land comprising any part of a common grazing which had been apportioned under subsection (4) of section 52 of this Act; or
  - (b) land held runrig which has been apportioned under subsection (8) of that section,
- and it is satisfied that the apportionment has been made subject to conditions imposed by the Commission under subsection (6) or, as the case may be, subsection (8) of that section, it shall have regard to the conditions so imposed.

## 14 Consideration payable in respect of acquisition of croft land

- (1) Where the Land Court makes an order in accordance with section 13(1)(a) of this Act and the crofter and the landlord have failed to reach agreement about the consideration payable in respect of the acquisition, the consideration shall, subject to subsection (3) below, be the crofting value of the croft land specified in the order as determined by the Land Court under subsection (2) below.
- (2) The crofting value of the croft land, as determined by the Land Court for the purposes of subsection (1) above, shall be such amount as the Land Court may determine to be the proportion attributable to the croft land of the current rent payable for the croft of which the croft land forms part, such amount being multiplied by the factor of 15:

Provided that the Land Court, on an application made to it by the landlord at any time before it makes a final order under section 13(1) of this Act, may determine a fair rent for the croft which shall be deemed to be the current rent for the purposes of this subsection; and section 6(4) of this Act shall apply for the purposes of this proviso as if for the word “parties” there were substituted the words “landlord and the crofter”.

- (3) If the person who has acquired croft land by virtue of section 13(1) of this Act (“the former crofter”) or a member of the former crofter’s family who has obtained the title to that land either—
  - (i) as the nominee of the former crofter, or
  - (ii) from the former crofter or his nominee,disposes of that land or any part of it (“the relevant land”) to anyone who is not a member of the former crofter’s family, by any means other than by a lease for crofting or agricultural purposes, forthwith or at any time within five years of the date of its acquisition by the former crofter then, subject to subsection (6) below, the person disposing of the relevant land shall pay to the landlord referred to in the said section 13(1) or to his personal representative a sum equal to one half of the difference between—
  - (a) the market value of the relevant land (on the date of such disposal) which, failing agreement between the parties concerned, shall be as determined by the Land Court under subsection (4) below on the application of such landlord or personal representative; and
  - (b) the consideration which was paid under subsection (1) above in respect of the relevant land.
- (4) The market value of the relevant land as determined by the Land Court shall be the amount which the land, if sold in the open market by a willing seller, might be expected to realise assuming that on the date of the disposal—
  - (a) there were no improvements on the land which, if the land were let to a crofter, would be permanent improvements in respect of which the crofter would be entitled to compensation under section 30 of this Act on renunciation of the tenancy of the croft of which the land formed part;
  - (b) no other development had been carried out on the land (not being development carried out on the land, when it was subject to the tenancy of the former crofter or any of his predecessors in the tenancy, by a person other than that crofter or any of such predecessors); and
  - (c) no development of the land which consisted of the making of such an improvement as is referred to in paragraph (a) above were or would be permitted in pursuance of the 1972 Act.

- (5) If the relevant land comprises only part of the land which was acquired under section 13(1) of this Act, the Land Court may, failing agreement between the parties concerned, on an application made to it by the person disposing of the relevant land or the landlord referred to in the said section 13(1) or his personal representative, determine for the purposes of subsection (3)(b) above the proportion of the amount of the consideration which was paid under subsection (1) above in respect of the relevant land.
- (6) No payment shall be made under subsection (3) above in respect of the disposal of the relevant land in a case where payment is made in respect of such disposal in accordance with an agreement entered into between the landlord and the person disposing of that land.

## **15 Determination by Land Court of terms and conditions for conveyance of the site of the dwelling-house**

- (1) The Land Court, on an application made to it under section 12(2) of this Act, may make an order requiring the landlord to convey the site of the dwelling-house to the crofter or cottar or his nominee with such boundaries and subject to such terms and conditions as, failing agreement, may be specified in the order.
- (2) Where the parties have failed to reach agreement about the consideration payable in respect of the conveyance the consideration shall be—
- (a) the amount as determined by the Land Court which the site, if sold in the open market by a willing seller, might be expected to realise assuming that—
    - (i) there were or would be no buildings on the site;
    - (ii) the site were available with vacant possession;
    - (iii) the site were not land to which this Act applies; and
    - (iv) no development of the site were or would be permitted in pursuance of the 1972 Act;
- and in addition, in a case where the landlord has provided fixed equipment on the site—
- (b) an amount equal to one half of the proportion attributable to that fixed equipment, as determined by the Land Court, of the value of the site, such value being the amount as so determined which the site, if sold as aforesaid, might be expected to realise making the assumptions referred to in subparagraphs (ii), (iii) and (iv) of paragraph (a) above.
- (3) The Land Court in making an order under subsection (1) above may determine that any of the expenses of the conveyance of the site and other expenses necessarily incurred by the landlord in relation thereto shall be borne by the crofter or cottar:

Provided that where the order relates to the conveyance of the site of the dwelling-house on or pertaining to a croft, any such determination shall be subject to the condition that the conveyance is not included in a deed which also provides for the conveyance of croft land.

- (4) Failing agreement between the parties as to the amount of such expenses, the auditor of the Land Court may, on the application of either party, determine such amount; and may determine that the expenses of taxing such expenses shall be borne by the parties in such proportion as he thinks fit.

## **16 Provisions relating to conveyance**

- (1) A landlord shall have power to execute a valid conveyance in pursuance of sections 12 to 15 of this Act, notwithstanding that he may be under any such disability as is mentioned in section 7 of the Lands Clauses Consolidation (Scotland) Act 1845.
- (2) Where the Land Court is satisfied, on the application of the crofter or cottar or his nominee that the landlord has failed to execute a conveyance of land in favour of such person in compliance with an order under section 13(1) or 15(1) of this Act within such time as the Land Court considers reasonable, it shall make an order authorising its principal clerk to execute the conveyance and such other deeds as adjusted at his sight as may be necessary to give effect to the order; and a conveyance executed by the principal clerk under this subsection shall have the like force and effect in all respects as if it had been executed by the landlord.
- (3) Where the principal clerk of the Land Court has executed a conveyance in pursuance of subsection (2) above, the Land Court may make such order as it thinks fit with regard to the payment of the consideration in respect of the conveyance and in particular providing for the distribution of the sum comprised in the consideration according to the respective estates or interests of persons making claim to such sum.
- (4) Notwithstanding that the Land Court has made an order under section 13(1) or 15(1) of this Act determining the terms and conditions on which land is to be conveyed, the crofter or, as the case may be, the cottar and the landlord may arrange for the conveyance of the land on any other terms and conditions that they may agree.
- (5) Where a person other than the landlord is infeft in the subjects to be conveyed, the second references in sections 12(2) and 13(1) of this Act and the reference in the said section 15(1) and in the foregoing provisions of this section to the landlord shall be construed as references to the landlord and such other person for their respective rights.
- (6) The Land Court in specifying in an order under the said section 13(1) or 15(1) the terms and conditions on which land is to be conveyed shall have regard to any existing land obligations as defined in section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 relating to such land.
- (7) Where the landlords are the National Trust for Scotland, they shall not be required to convey land by an order of the Land Court under the said section 13(1) or 15(1) otherwise than by a grant in feu; but section 4(2) of the Order confirmed by the National Trust for Scotland Order Confirmation Act 1947 (which requires the consent of the Lord Advocate to grants in feu by the Trust exceeding 8 hectares) shall not apply to such a grant.
- (8) Where the Land Court is satisfied, on the application of the landlord, that the crofter or his nominee has failed to execute a standard security in favour of the landlord in compliance with a condition imposed by the Land Court under section 13(4) of this Act within such time as the Land Court considers reasonable, it shall make an order authorising its principal clerk to execute the standard security; and a standard security executed by the principal clerk under this subsection shall have the like force and effect in all respects as if it had been executed by the crofter or his nominee.

## **17 Provisions supplementary to sections 13 and 15**

- (1) An order of the Land Court under section 13(1)(a) or 15(1) of this Act shall have effect for a period of 2 years from the date of intimation of the order or for such other period

as may at any time be agreed to in writing by the crofter or, as the case may be, the cottar and the landlord or as may be determined by the Land Court on the application of either party.

(2) Where an order has been made by the Land Court under the said section 13(1)(a) or 15(1) in relation to croft land or the site of the dwelling-house on or pertaining to a croft or under the said section 15(1) in relation to the site of the dwelling-house on or pertaining to the subject of a cottar, then, so long as the order has effect—

- (a) the crofter shall not be entitled under section 30(1) of this Act to compensation for any permanent improvement made on the croft land or site; and
- (b) the landlord of the croft shall not be entitled under section 30(6) of this Act to recover from the crofter compensation for any deterioration of, or damage to, any fixed equipment provided by the landlord in respect of the croft land or site; or
- (c) the cottar shall not be entitled under section 36(1) of this Act to compensation for any permanent improvement made on the site,

being compensation to which the crofter and the landlord or, as the case may be, the cottar would be entitled but for this subsection.

(3) Any condition or provision to the effect that—

- (a) the superior of any feu shall be entitled to a right of pre-emption in the event of a sale thereof or any part thereof by the proprietor of the feu, or
- (b) any other person with an interest in land shall be entitled to a right of pre-emption in the event of a sale thereof or of any part thereof by the proprietor for the time being,

shall not be capable of being enforced where the sale is by a landlord to a crofter or his nominee of croft land or to a crofter or a cottar or his nominee of the site of the dwelling-house on the croft or on or pertaining to the subject of the cottar in pursuance of an order under the said section 13(1) or, as the case may be, 15(1).

(4) Where the landlords are the National Trust for Scotland, the Land Court, in making an order under the said section 13(1) or 15(1), shall have regard to the purposes of the Trust.

(5) A compulsory purchase order which authorises the compulsory purchase of land, being land which was held inalienably by the National Trust for Scotland on the date of the passing of this Act and was acquired from the Trust by a crofter in pursuance of an order under section 13(1) or 15(1) of this Act, shall in so far as it so authorises be subject to special parliamentary procedure in any case where an objection has been duly made by the Trust under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and has not been withdrawn; and in this subsection “held inalienably” has the same meaning as in section 7(1) of the said Act of 1947.

(6) Where the site of the dwelling-house on or pertaining to a croft has been acquired after the passing of this Act by a person, who immediately before the acquisition was the tenant of the croft, that person and the wife or husband of that person may, so long as either of them continues to occupy the subjects conveyed, enjoy any right to cut and take peats for the use of those subjects which that person enjoyed immediately before the acquisition:

Provided that this subsection is without prejudice to any right to cut and take peats effeiring to the tenancy of the remainder of the croft.

- (7) Any person acquiring croft land shall, unless and until the land ceases to be a croft by a direction of the Commission under section 24(3) of this Act, be required to give notice to the Commission of the change of ownership of the land.

## **18 Adjustment of rent for remainder of croft where part conveyed to crofter**

Where a crofter acquires the site of the dwelling-house on or pertaining to his croft or any croft land forming part of his croft, then, notwithstanding that it is less than 7 years since the term at which the existing rent for the croft first became payable, the Land Court may, on the application of the crofter or his landlord, determine a fair rent for the part of the croft which remains subject to the tenancy of the crofter, and accordingly subsections (3) and (4) of section 6 of this Act shall apply for the purposes of such a determination as if the provisos to subsection (3) were omitted; but thereafter the said provisos shall apply to a rent so determined.

## **19 Provisions relating to existing loans and heritable securities**

- (1) Where—

- (a) a crofter who acquires the site of the dwelling-house on or pertaining to his croft is on the date of the acquisition under any liability to the Secretary of State or Highlands and Islands Enterprise (“HIE”), or
- (b) a cottar who acquires the site of the dwelling-house on or pertaining to his subject is on the date of the acquisition under any liability to the Secretary of State,

in respect of any loan, the amount outstanding in respect of such liability shall be deemed, as from the last day on which the crofter or cottar was liable to pay rent in respect of that site or on which the cottar was entitled to occupy the site as a cottar, to be a loan by the Secretary of State to the crofter or cottar or, as the case may be, by HIE to the crofter, and the provisions of Schedule 5 to this Act shall apply in relation to any such loan by the Secretary of State and, subject to any necessary modifications, to any such loan by HIE.

- (2) Any question arising under subsection (1) above as to the day from which the outstanding amount is deemed to be a loan shall be determined by the Land Court.
- (3) Any rights of HIE created under subsection (1) above shall be postponed to any rights, whensoever constituted, of the Secretary of State under that subsection; and such rights of the Secretary of State and HIE shall have priority over any other loan in respect of which the crofter or the cottar or his nominee as owner of the site of the dwelling-house is under any liability and shall be postponed only to such items as are referred to in heads (i), (ii) and (iii) of paragraph 4(b) of Schedule 9 to the Housing (Scotland) Act 1987.
- (4) Any heritable security which immediately before the execution of a conveyance in pursuance of sections 12 to 18 of this Act burdened the subjects conveyed shall, as from the date of recording of the conveyance in the Register of Sasines or of registration of the interest conveyed in the Land Register of Scotland (as the case may be)—
  - (a) in the case of a conveyance in feu, cease to burden the *dominium utile* of the subjects conveyed and burden only the superiority thereof;
  - (b) in the case of a conveyance otherwise than in feu where the heritable security burdened only the subjects conveyed, cease to burden those subjects;

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*Status: This is the original version (as it was originally enacted).*

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(c) in the case of a conveyance otherwise than in feu where the heritable security also burdened other land, burden only that other land;  
and, unless the creditors in right of any such security otherwise agree, the landlord shall pay to them according to their respective rights and preferences any sum paid to him by the crofter or cottar as consideration for the subjects conveyed.