



Crofters (Scotland) Act 1993

1993 CHAPTER 44

The conditions of tenure

5 The statutory conditions. S

- (1) Every tenancy of a croft shall be subject to the conditions set out in Schedule 2 to this Act (in this Act referred to as “the statutory conditions”).
- (2) A crofter shall not be subject to be removed from the croft of which he is tenant except—
 - (a) where one year’s rent of the croft is unpaid;
 - (b) in consequence of the breach of one or more of the statutory conditions, other than the condition as to payment of rent; or
 - (c) in pursuance of any enactment, including any enactment contained in this Act.
- (3)
- [^{F1}(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 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.

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- (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.]

Textual Amendments

- F1** S. 5(3)-(10) substituted for s. 5(3) (25.6.2007 for specified purposes, 28.1.2008 in force in so far as not already in force) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 7(1)(c), 43(3)** (with **ss. 40, 43(2)**); [S.S.I. 2007/269](#), art. 2, sch.; [S.S.I. 2007/568](#), art. 2

[^{F2}5A **Complaint as respects breach of the statutory conditions** **S**

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, the landlord or any member of the crofting community in the locality of the croft may complain to the Commission that such a breach (other than a breach of the condition as to payment of rent) has occurred.
- (2) Provided—
- (a) that no proceedings—
 - (i) such as are mentioned in subsection (1) above; or
 - (ii) under section 5B of this Act,
 have been initiated; and
 - (b) that the period allowed the crofter by virtue of subsection (4) below has elapsed,
- the Commission may make an application to the Land Court in relation to the breach; but this subsection is subject to subsection (3) below.
- (3) Except where the complaint was by the landlord, the Commission shall give him written notice of their intention to make the application; and if within 14 days after

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- receipt of that notice he gives them intimation that he objects, being intimation of the description given in subsection (7) below, they shall not proceed with the application.
- (4) Before making the application, the Commission shall give written notice to the crofter of the breach complained of and give him the opportunity to remedy it within such reasonable period as they shall specify in the notice.
- (5) Where, on an application under subsection (2) above, the Land Court is satisfied that the breach complained of has occurred, it may—
- (a) order that the breach be remedied and specify a time within which that must occur; and
 - (b) make such order regarding the payment of compensation by the crofter to the landlord as it thinks fit.
- (6) Where an order under subsection (5)(a) above is not complied with, the Commission may apply to the Land Court for an order—
- (a) terminating the tenancy;
 - (b) declaring the croft to be vacant; and
 - (c) for the removal of the tenant from the croft.
- (7) The description is that the intimation is given 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).
- (8) For the purposes of subsection (7) above (and without prejudice to the generality of that subsection), an intimation is to be treated as given in writing where it is—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.

Textual Amendments

F2 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.

5B Termination of tenancy for misuse or neglect **S**

- (1) Without prejudice to any right which the landlord has to initiate proceedings in relation to a breach of the statutory conditions as respects a croft, if the crofter—
- (a) misuses; or
 - (b) neglects,
- the croft, the landlord or, with the consent of the landlord, the Commission may apply to the Land Court for an order—
- (i) terminating the tenancy;
 - (ii) declaring the croft to be vacant; and
 - (iii) for the removal of the tenant from the croft.
- (2) Before making an application by virtue of paragraph (a) of subsection (1) above the landlord, or as the case may be the Commission, shall give written notice to the crofter of the misuse complained of and give him the opportunity to end that misuse within a period of 42 days commencing with the day on which notice is given.

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- (3) Where, on an application made by virtue of paragraph (a) of subsection (1) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the misuse has been brought to an end.
- (4) If the circumstances are that an application made by virtue of paragraph (b) of subsection (1) above (in this section, the “current application”) is being made within 5 years after another application made by virtue of that paragraph as respects the croft, and that other application resulted in notification being given to the crofter under subsection (5) or (6) below, then before making the current application the landlord, or as the case may be the Commission, shall give written notice to the crofter of the neglect complained of and give him the opportunity to end that neglect within a period of 42 days commencing with the day on which notice is given.
- (5) Where, on an application made by virtue of paragraph (b) of subsection (1) above in circumstances other than are mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if—
- (a) the crofter agrees forthwith that there has been neglect and undertakes to end that neglect; and
 - (b) by the end of a period of one year commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (6) Where, on an application made by virtue of paragraph (b) of subsection (1) above in the circumstances mentioned in subsection (4) above, the Court is minded to make the order applied for, it shall so notify the crofter but shall not make the order (the crofter being advised accordingly in the notification) if, by the end of a period of 42 days commencing with the day on which notification is given, he is able to satisfy the Court that the croft is being managed so as to meet the standards mentioned in subsection (7) below.
- (7) For the purposes of subsection (1) above, a crofter—
- “misuses” a croft where he wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is duly consented to by virtue of section 5(7) of this Act;
- “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).
- (8) 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, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.
- (9) If, immediately before the coming into force of section 8 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

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then applied), any continuation of use for that occupation is not, for the purposes of subsection (1) above, to be treated as misuse or neglect as respects the croft.

- (10) The Scottish Ministers may by order made by statutory instrument amend the definition of “neglects” in subsection (7) so as to substitute different standards for those for the time being mentioned in that subsection.
- (11) A statutory instrument containing an order under subsection (10) shall not be made unless a draft of the instrument has been—
- (a) laid before; and
 - (b) approved by resolution of,
the Scottish Parliament.]

Textual Amendments

F2 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.**

6 Rent. **S**

- (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 [^{F3}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—

- (a) where the rent payable for the croft [^{F4}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 [^{F5}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.

[^{F6}(3A) The proviso to subsection (3) above does not have the consequence that a determination which is not to take effect during any period mentioned in that proviso cannot competently be made under that subsection during that period.]

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- (4) Before determining what is a fair rent for a croft [^{F7}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

- F3** 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.
- 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\(4\)\(a\)\(ii\)](#) (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\(4\)\(a\)\(iii\)](#) (with [ss. 40, 43\(2\)](#)); S.S.I. 2007/269, art. 2, sch.
- F6** 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.
- F7** 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. **S**

- (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. **S**

- (1) A crofter shall not assign his croft—
- (a) to a member of his family unless he obtains the consent in writing of his landlord or, failing such consent, the consent in writing of the Commission on an application made to them;
 - (b) to a person other than a member of his family unless he obtains the consent in writing of the Commission on an application made to them.
- (2) A landlord who has given his consent in pursuance of subsection (1)(a) above shall notify the Commission of the assignment and the name of the assignee.
- (3) The Commission shall give notice to the landlord of any application made to them for their consent to the assignment of the tenancy of a croft and before deciding whether to give or to withhold their consent shall afford to the crofter and to the landlord an opportunity of making representations to them.
- (4) In considering any application made as aforesaid the Commission shall take into account the family and other circumstances of the crofter and of the proposed assignee of the croft and the general interests of the township in which the croft is situated.
- (5) Where a crofter assigns his croft otherwise than with the consent in writing of the Commission in a case where he is required to obtain such consent in pursuance

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of subsection (1) above, such assignation 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) An assignation to which the Commission have given their consent under this section shall take effect at the term of Whitsunday or Martinmas first occurring not less than two months after the date on which such consent was intimated to the crofter, unless before the said term of Whitsunday or Martinmas, as the case may be, 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 assignation.
- (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.

9 Sub-division of croft. **S**

A crofter shall not, except with the consent in writing of the landlord and of the Commission, sub-divide his croft, and any sub-division of a croft otherwise than with such consent shall be null and void.

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