Crofting Reform etc. Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1
THE CROFTERS COMMISSION

1 The Crofters Commission: constitution etc. and general duties
2 Particular duties and powers
3 Equal opportunities
4 Power of the Commission to make schemes and arrangements for grants
5 Obtaining Commission approval or consent
6 Obtaining of information by Commission
7 Maintenance of and provision of information from the Register of Crofts
8 Maps and scheme of charges
9 Grants to Commission by the Scottish Ministers

PART 2
CROFTS

10 New crofts
11 The statutory conditions
12 Complaint as respects breach of the statutory conditions
13 Exchange of crofts or parts of crofts
14 Division of croft
15 Subletting
16 Assignation
17 Bequest of tenancy of croft
18 Prior rights, on intestacy, in relation to tenancy of croft
19 Transfer of tenancy of croft by executor: amendment of section 16 of the Succession (Scotland) Act 1964
20 Transfer of tenancy of croft by executor: special provision relating to the 1993 Act
21 Amendment of section 11 of the 1993 Act
22 Determination of the Land Court as to croft boundaries
23 Access to croft
24 Reorganisation schemes
25 Meaning of croft

PART 3
TERMINATION OF TENANCY, DECROFTING, ETC.

26 Resumption and reversion
27 Decrofting
28 Re-letting
29 Compensation for improvements for purposes other than cultivation or grazing etc.

**PART 4**

**COMMON GRAZINGS**

30 Use of common grazing
31 New common grazing
32 Contravention of, or failure to comply with, common grazings regulations
33 Further amendment of section 52: apportionment

**PART 5**

**SCHEMES FOR DEVELOPMENT**

34 Schemes for development

**PART 6**

**CROFTING COMMUNITY RIGHT TO BUY**

35 Crofting community right to buy

**PART 7**

**GENERAL AND MISCELLANEOUS**

**General**

36 Regulations concerning loans
37 Appeal to Land Court and jurisdiction of that court
38 Further amendments in relation to the Land Court
39 Public notification
40 “Members of a family”
41 “Crofting community”
42 “The 1993 Act”

**Miscellaneous**

43 Minor and consequential amendments
44 Savings
45 Transitional provision etc.
46 Repeals
47 Short title, Crown application and commencement

---

Schedule 1—The Crofters Commission
Schedule 2—Minor and consequential amendments
Schedule 3—Repeals
Crofting Reform etc. Bill  
[AS INTRODUCED]

An Act of the Scottish Parliament to make further provision as regards crofting and as regards the Scottish Land Court; and for connected purposes.

PART 1  
THE CROFTERS COMMISSION

5 1 The Crofters Commission: constitution etc. and general duties

(1) For section 1 of the 1993 Act, there is substituted—

“The Crofters Commission

(1) The Commission shall discharge such functions as are conferred on them by virtue of this Act and any other enactment.

(2) Schedule 1 to this Act shall have effect with respect to the Commission.

1A General duties

(1) The Commission shall have—

(a) the general duties of—

(i) regulating crofting tenure;
(ii) reorganising crofting townships;
(iii) promoting the interests of crofters and crofting communities; and
(iv) keeping under review matters relating to crofting tenure, crofting communities and the crofting way of life,

in the crofting counties; and

(b) such other general duties as the Scottish Ministers may in writing direct the Commission to discharge.

(2) In discharging their functions, the Commission shall—

(a) have regard to local circumstances and conditions; and
(b) act in the way they consider best contributes to the achievement of the sustainable development of crofting and of crofting communities.”.

(2) In section 61 of the 1993 Act (interpretation), for the definition of “the Commission” there is substituted—

“the Commission” means the Crofters Commission established by section 1 of the Crofters (Scotland) Act 1955 (c.21);”.

(3) Schedule 1 is to have effect.

2 Particular duties and powers

For section 2 of the 1993 Act, there is substituted—

"Particular duties and powers

2 Particular duties and powers

(1) In discharging their general duties mentioned in section 1A of this Act, the Commission shall—

(a) without prejudice to the generality of that section, keep under general review all matters relating to land settlement, croft-based businesses and products, the improvement of land and livestock, the planting of trees, the supply of agricultural equipment and requisites, the marketing of agricultural produce, experimental work on crofting methods, the provision of demonstration crofts, the needs of the crofting communities for public services of all kinds, the provision of social amenities and the need for industries to provide supplementary occupations for crofters or for their families;

(b) collaborate, so far as their functions permit, with any person or group of persons in the carrying out of any measures for the economic development and social improvement of the crofting counties;

(c) advise the Scottish Ministers on matters relating to crofts and crofting conditions; and

(d) exercise the powers conferred on them by this Act and any other enactment in such manner as may seem to them in each case desirable.

(2) For the purpose of assisting them in—

(a) the execution of their functions under this Act or any other enactment, the Commission may appoint a panel of persons, whom they consider to have suitable professional qualifications or experience, to conduct hearings on behalf of the Commission;

(b) the local execution of their functions under this Act or any other enactment, the Commission may appoint a panel of persons whom they consider to be suitable and who are resident in the crofting counties to act as assessors, when required by the Commission so to act.

(3) The Commission may pay to any person conducting a hearing on their behalf by virtue of subsection (2)(a) above, such payments as the Scottish Ministers may determine in respect of—

(a) professional fees attributable to the person conducting the hearing; and
(b) any expenses (including travelling and subsistence expenses) necessarily suffered or incurred and so attributable.

(4) The Commission may make to any person acting as an assessor by virtue of subsection (2)(b) above, such payments as the Scottish Ministers may determine in respect of—

(a) any loss of earnings; and

(b) any expenses (including travelling and subsistence expenses), necessarily suffered or incurred and attributable to the person so acting.

2A Regulating crofting: local policy

(1) In discharging any of their general duties mentioned in section 1A(1)(a) of this Act, the Commission may, where they consider it appropriate to do so, formulate and adopt a policy as respects an area which in their opinion is appropriate for that area (a “local policy”).

(2) An area as respects which the Commission may formulate and adopt a local policy shall comprise a crofting township (or two or more such townships) and shall include any common grazing associated with that township (or all such townships).

(3) If the Commission consider it appropriate to exercise their power under subsection (1) above, they shall—

(a) consult any grazings committee in the area they have in mind as respects what might be the appropriate geographical boundary of the area;

(b) prepare a scheme for the appointment of a panel of persons, whom they consider suitable, some or all of whom are resident in the area to be identified in the scheme or who (if not resident there) in the Commission’s opinion have relevant expertise, for the purpose of—

(i) advising the Commission as to the views of crofting communities there, and the panel’s views, as respects the needs of the area;

(ii) assisting the Commission in the development of an appropriate local policy for the area;

(c) identify in that scheme, by geographical boundaries, the area as respects which the Commission consider that a local policy is appropriate.

(4) A scheme prepared under subsection (3)(b) above shall require the approval of the Scottish Ministers; and after having obtained such approval the Commission shall appoint a panel of persons in accordance with the scheme as approved.

(5) In—

(a) carrying out any consultation under subsection (3)(a) above;

(b) preparing any scheme under subsection (3)(b) above;

(c) appointing a panel of persons under subsection (4) above,

the Commission shall satisfy such requirements as may be prescribed.

(6) In formulating a local policy to adopt for the area, or modifying or revoking any such policy, the Commission shall—
(a) consider the impact of their proposal on both crofting and non-crofting interests in the area;

(b) consult—

(i) the panel appointed under subsection (4) above for the area; and

(ii) such other persons, or groups of persons, as they consider appropriate,

on their proposals.

(7) The Commission may make to any person acting as a member of a panel appointed under subsection (4) above such payments as they may determine in respect of—

(a) any loss of earnings;

(b) any expenses (including travelling and subsistence expenses), necessarily suffered or incurred and attributable to the person so acting.

2B Directions by the Scottish Ministers

The Commission shall discharge their functions in accordance with such directions of a general or specific character as may from time to time be given to them in writing by the Scottish Ministers.”.

3 Equal opportunities

After section 59 of the 1993 Act, there is inserted—

“59A Equal opportunities

(1) The Commission shall discharge their functions in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunities requirements.

(2) In subsection (1) above, “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).”.

4 Power of the Commission to make schemes and arrangements for grants

After section 42 of the 1993 Act, there is inserted—

“42A Power of the Commission to make schemes and arrangements for grants

(1) For the purpose of supporting any reasonable use which promotes the sustainable development of crofts and similar holdings, the Commission may, subject to the approval of the Scottish Ministers, make schemes for providing grants to crofters and occupiers of holdings which are, in significant respects and in the opinion of the Commission, similar to crofts.

(2) Such schemes shall specify criteria for determining who shall be eligible for grants payable thereunder (as for example, the occupier’s income, or the rental or agricultural value or extent of his croft or similar holding); and different schemes may specify different criteria.

(3) The Commission may, in accordance with arrangements made by them with the approval of the Scottish Ministers, provide assistance to the persons listed
in subsection (4) below by way of grants towards the erection or improvement or rebuilding of dwelling houses and other buildings or towards the provision or improvement of roads, or water or electricity or gas supplies.

(4) The persons are—

5  
(a) crofters;
5  
(b) occupiers of crofts who also own them and who, in the opinion of the Commission, use them in a way substantially the same as that of a crofter;
10  
(c) occupiers of holdings, other than crofts, situated in the crofting counties which are, in significant respects and in the opinion of the Commission, similar to crofts; and
15  
(d) subtenants of crofts.

5  
(5) Any provision in a scheme under subsection (1) above, or any arrangement under subsection (3) above, which purports to give the Commission power to borrow or lend money shall be void.

5  
(6) Any scheme under subsection (1) above or arrangements under subsection (3) above may—

5  
(a) provide for the administration of the grants payable thereunder;
5  
(b) make provision enabling the Commission to recover the grant in such circumstances and from such person as may be specified in the scheme or arrangements;
10  
(c) provide that, where the grant is being given in respect of a common grazing and a grazings committee or a grazings constable has been appointed under section 47 of this Act, the Commission shall pay the grant to the clerk of the grazings committee or the constable for the benefit of the crofters concerned.

5  
(7) Arrangements shall be made by the Commission—

5  
(a) for securing that, where a grant has been made towards the erection, improvement or rebuilding of a dwelling-house or other building, conditions with respect to the occupation and maintenance thereof shall apply thereto for such period from the completion of the work (not being longer than 40 years) as may be specified in the arrangements;
5  
(b) for securing that in the event of a breach of any of the conditions the Commission may recover from such person as may be specified in the arrangements a sum bearing the same proportion to the grant paid as the period between the date of the breach of the condition and the expiration of the period mentioned in paragraph (a) above bears to the last mentioned period, together with interest on such sum from the date on which the grant was made at such a rate as may be specified in the arrangements;
5  
(c) for providing that the conditions applied by the arrangements to a dwelling-house or building shall cease to apply on payment to the Commission by such person as may be specified in the arrangements of such amount as may be so specified;
(d) for securing that—

(i) where any conditions apply to a dwelling-house or building by virtue of the arrangements, the Commission shall cause to be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland a notice in a form set out in the arrangements specifying the conditions which by virtue of the arrangements apply to the dwelling-house or building; and

(ii) where such conditions cease so to apply by virtue of such a payment to the Commission as is referred to in paragraph (c) above, the Commission shall cause to be so recorded or registered a notice in a form set out as aforesaid stating that the conditions no longer apply to the dwelling-house or building;

(e) for such other incidental and supplementary matters as appear to the Commission to be requisite or expedient for the purposes aforesaid.

(8) Arrangements under subsection (7) above may provide that the conditions applied to any dwelling-house by the arrangements shall not apply to such dwelling-house in such circumstances and to such extent as may be specified in the arrangements.

(9) No grant under subsection (1) above, nor assistance under subsection (3) above, shall be given towards carrying out any works if assistance out of public money by way of grant or subsidy has been given under any other enactment towards the works in question.

(10) A person shall not be disqualified for receiving a grant under subsection (1) above nor assistance under subsection (3) above by reason only that, after he has applied for and the Commission have undertaken to provide such a grant or assistance, he has become the owner of the croft or similar holding in respect of which the application was made.

(11) Any scheme under subsection (1) above or arrangements under subsection (3) above may provide that a person’s economic status is a criterion for eligibility for grants payable thereunder.

(12) Any scheme under subsection (1) above or arrangements under subsection (3) above shall be administered by the Commission and any expenses in connection with such administration shall be met by the Commission.

(13) If any person, for the purpose of obtaining for himself or any other person a grant under a scheme made under subsection (1) above, or under arrangements made under subsection (3) above, knowingly or recklessly makes a false statement he shall be guilty of an offence and shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.”.

5 Obtaining Commission approval or consent

After section 58 of the 1993 Act, there is inserted—

“58A Obtaining Commission approval or consent

(1) Any requirement, under or by virtue of this Act, to obtain the approval or consent of the Commission, shall (subject to any express provision made by this Act in respect of any category of case) be complied with as follows.
(2) The application for approval or consent must—

   (a) be in such form; and
   (b) be accompanied by such documents and fee,

as the Commission shall specify; and the Commission may make different provision for different categories of case.

(3) The person making the application shall—

   (a) forthwith give public notification of it; and
   (b) if he is not the landlord (or, where the land to which the application relates is, or is part of, a common grazing, not the owner) give written notification of it to the landlord (or to the owner).

(4) Within 28 days after public notification of an application made in compliance with subsection (2) above—

   (a) the landlord (or where the land to which the application relates is, or is part of, a common grazing, the owner);
   (b) any member of the crofting community in the locality of that land (including, where that land is, or is part of, a common grazing, the grazings committee or any crofter who shares in the grazing); or
   (c) any other person if he is identified for the purposes of this subsection by the provision which imposes the requirement mentioned in subsection (1) above,

may submit to the Commission an objection as regards the application, being an objection of the description given in subsection (15) below.

(5) The 28 days mentioned in subsection (4) above include the day on which the notification in question is given.

(6) When those 28 days have elapsed the Commission—

   (a) must, in a case where they have received such objections by virtue of subsection (4) above and do not consider them to be frivolous, vexatious or unreasonable, intervene as respects the application;
   (b) may, in any other case, decide to do so if it appears to them that any of—

(i) the general conditions; or
(ii) any conditions (if any) special to applications of the category in question,

applies as respects the application.

(7) If, as regards an objection duly submitted under subsection (4) above, the Commission decide not to have regard to it or that it does not provide them with grounds for intervention as respects the application they shall notify—

   (a) the applicant, the landlord (or owner) and, as the case may be, the grazings committee of the terms of the objection and of the reason for that decision; and
   (b) the objector, of that reason.
(8) If, other than by reason of any such objection, the Commission decide to intervene as respects the application, they shall notify the applicant, the landlord (or owner) and, as the case may be, the grazings committee of their decision to intervene, stating their reasons for intervention.

(9) The general conditions are—

(a) that, were the proposal to be implemented, there is reason to suppose that any or all of the following would be affected adversely—

(i) the interests of the estate which comprises the land;

(ii) the interests of the crofting community mentioned in subsection (4)(b) above;

(iii) the interests of the public at large;

(iv) the sustainable development of the community so mentioned; and

(b) that such information as is contained in the application and its accompanying documents is insufficient for them to come to a decision as respects the proposal.

(10) If the Commission—

(a) do not intervene, they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and notify—

(i) the applicant;

(ii) the landlord (or owner);

(iii) any person who objected under subsection (4) above; and

(iv) as the case may be, the grazings committee,

that the proposal is approved and may be implemented or as the case may be that the matter is consented to and may be proceeded with accordingly;

(b) intervene, they shall, within 21 days after the 28 days mentioned in subsection (4) above have elapsed—

(i) notify the persons mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above of their decision to intervene, stating their reasons for intervention;

(ii) inform those persons (provided in the case of a person who objected under subsection (4) above that the objection was not considered by the Commission to be frivolous, vexatious or unreasonable) that they may, after the Commission make a determination under subsection (11) below, have the right to appeal to the Land Court as respects that determination.

(11) Subject to any other provision of this Act as to procedure, the Commission may determine by such procedure and arrangements (including arrangements as to delegation and the powers and duties of persons delegated) as they consider appropriate whether or not to grant the approval or consent applied for; and references in this section to their intervening are to their proceeding to such a determination.
(12) Where the Commission grant the approval or consent applied for they shall enter the proposal or the matter consented to (and if and in so far as they think fit any information obtained by them by virtue of subsection (2) above and pertaining to that proposal or matter) in the Register of Crofts and give such notification as is mentioned in subsection (10)(a) above.

(13) The Scottish Ministers may by order made by statutory instrument amend—

(a) subsection (9) above;

(b) any provision of this Act in which are set out criteria mentioned in subsection (6)(b)(ii) above,

so as to add to, vary or revoke criteria.

(14) A statutory instrument containing an order under subsection (13) above shall not be made unless a draft of the instrument has been—

(a) laid before; and

(b) approved by resolution of,

the Scottish Parliament.

(15) The description is that the objection is made 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).

(16) For the purposes of subsection (15) above (and without prejudice to the generality of that subsection), an objection is to be treated as made in writing where it is—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference.”.

6 Obtaining of information by Commission

In section 40 of the 1993 Act (obtaining of information by the Commission)—

(a) in subsection (1)—

(i) for the words “The Commission may by notice” there is substituted “Without prejudice to any other provision of this Act whereby information may or shall be obtained by them, the Commission may by notice under this section”; and

(ii) after the words “any holding” insert “, or on the executor of the person who most recently was the owner or occupier of any holding,”;

(b) in subsection (2), for the words “owner or occupier” there is substituted “owner, occupier or executor”; and

(c) after subsection (2) there is added—

“(3) Where the Commission impose a requirement—

(a) under subsection (1) above, to provide information; or

(b) by virtue of section 41A(1)(a)(i) of this Act, to provide a map,
on any person making an application under this Act (the requirement being for the purposes of the application), the Commission may if they think fit decline to do anything in relation to the application until they are satisfied either that the requirement has been complied with or that it is not practicable to comply with the requirement.

(4) If the Commission are satisfied that it is not practicable to comply with the requirement (the “original requirement”) they may modify it; and subsection (3) above shall apply in relation to the modified requirement as that subsection applies to the original requirement.

(5) This section applies in relation to a common grazing as it applies in relation to a holding except that for the purposes of that application references in the section to an occupier of a holding are to be construed as references to a crofter who shares in the common grazing.”.

7 **Maintenance of and provision of information from the Register of Crofts**

In section 41 of the 1993 Act (Register of Crofts)—

(a) in subsection (2)—

(i) for paragraph (c) there is substituted—

“(ca) the landlord’s address and, where the tenant’s address is different from the address of the croft, the tenant’s address;

(cb) where the landlord’s estate is managed on his behalf by another person, a statement that it is so managed and the name and address of that other person;

(cc) where the tenant of a croft holds a right in a common grazing—

(i) the location and boundaries of the grazing;

(ii) the owner of the grazing and his address;

(iii) any use of the grazing as woodlands by virtue of section 50, or of woodlands as part of the grazing by virtue of section 50A, of this Act; and

(iv) any other use of the grazing, except use for grazing purposes, use as woodlands or use regulated by a scheme drawn up by the Commission under section 52(9) of this Act;

(cd) any—

(i) determination by the Commission under section 3A(6)(a) of this Act or by the Land Court on any question coming before it (whether or not on appeal) under this Act;

(ii) order under section 22(1) of this Act;

(iii) direction under section 24(3) or 25(4) of this Act;

(iv) reorganisation scheme prepared under section 38(8)(a) of this Act;

(v) apportionment under section 52(3) or (4) of this Act; and

(vi) order under section 53B(2) of this Act;
(ce) any other order, determination, consent, authorisation or other proceeding of theirs which they consider it is appropriate to have recorded in the Register of Crofts;

(cf) any agreement between a landlord and a crofter concerning access between a public road and the croft by a route lying wholly over land owned by the landlord, being an agreement intimated to the Commission by the landlord or crofter (the intimation being in such form as the Commission may require and there being provided to the Commission, along with the intimation, a copy of the agreement);

(cg) any agreement for a loan sent to the Commission by virtue of section 46A(2)(e) of this Act;”; and

(ii) for the words “the accuracy of the Register” there is substituted “, so far as practicable, that the Register is consistent with such information as the Commission has obtained under or by virtue of this Act”; and

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

“(3) A person requesting from the Commission a copy or extract of an entry in the Register of Crofts is entitled to receive it from them on payment of such fee (if any) as may be chargeable by virtue of section 41B(4) of this Act.

(3A) An extract of an entry in the Register of Crofts shall be certified as such by a person authorised for the purposes of this subsection by the Commission; and a document which bears to be an extract so certified shall be sufficient evidence that the Register contains the entry.”; and

(c) after subsection (4) there is added—

“(5) The Crofters Holdings Book shall be incorporated into the Register of Crofts and as so incorporated shall be deemed to have been compiled by the Commission in pursuance of subsection (1) above.”.

8 Maps and scheme of charges

After section 41 of the 1993 Act, there is inserted—

“41A Provision of maps for inclusion in Register of Crofts etc.

(1) The Scottish Ministers may by regulations—

(a) confer on the Commission power—

(i) to require, or permit, the provision to the Commission by any person mentioned in section 40(1) of this Act, whether for inclusion in the Register of Crofts or in relation to the exercise by the Commission of their functions under this Act, of maps of crofts and common grazings; and

(ii) to determine procedure and arrangements to apply as respects such provision; and

(b) specify requirements with which maps provided shall comply.

(2) The regulations—

(a) shall in any event specify—
(i) the circumstances in which, the date from which and the timescales within which the Commission may require maps to be provided; and
(ii) the form and scale of any maps provided; and
5
(b) may make different provision for different cases or categories of case or for different purposes.

(3) The Commission shall enter in the Register of Crofts such maps as are provided to them in accordance with the regulations.

41B Scheme of charges in relation to Register of Crofts

(1) The Commission may, in accordance with a scheme to be compiled and maintained by them, charge fees in respect of maintenance by them of the Register of Crofts (including charges for inserting, altering or omitting entries or including or omitting maps).

(2) The amount of any fees charged in accordance with such a scheme shall not be greater than is reasonably sufficient for defraying the expenses of maintaining the Register (including the expenses of the improvement of the system of maintaining the Register and including maps in it).

(3) The Commission shall obtain the approval of the Scottish Ministers to a scheme compiled under subsection (1) above (including, without prejudice to that generality, any modifications to the scheme).

(4) The Scottish Ministers may, after consultation with the Commission, make rules as to fees to be chargeable by the Commission for searching, or providing information or extracts from, the Register of Crofts.

(5) The power to make rules under subsection (4) above shall be exercisable by statutory instrument; and a statutory instrument containing such rules shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

9 Grants to Commission by the Scottish Ministers

After section 58A of the 1993 Act (inserted by section 5 of this Act), there is inserted—

“58B Grants to Commission by the Scottish Ministers

(1) The Scottish Ministers may make grants to the Commission of such amounts as they think fit.

(2) Any grant under this section may be made subject to such conditions as the Scottish Ministers think appropriate, including (without prejudice to that generality) conditions as to the use of the money or requiring the repayment of all, or any part of, a grant in the event of non-compliance with any other condition; and the Ministers may from time to time after the grant is made vary such terms and conditions.”.
PART 2

CROFTS

10 New crofts

After section 3 of the 1993 Act, there is inserted—

3A New crofts

(1) The Commission shall have power, on the application of the owner of any land situated—

(a) in the crofting counties; or

(b) in an area outwith the crofting counties which is, by order made by statutory instrument, designated for the purposes of this paragraph by the Scottish Ministers,

to constitute the land as a croft by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(3) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.

(2) The Commission shall have power—

(a) on the application of the tenant of any holding situated as is mentioned in subsection (1)(b) above; and

(b) provided that the conditions set out in subsection (11) below are met,

to constitute the holding as a croft by entering it as such, in accordance with section 41 of this Act, in that register; and on the holding being so constituted the tenant shall be entitled to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.

(3) No such entry shall be made under subsection (2) above—

(a) until the period mentioned in section 52A(3) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned; and

(b) unless the Commission are satisfied—

(i) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being so constituted and that the amount has been duly paid;

(ii) that the applicant and owner have agreed that no amount in compensation is to be so payable; or

(iii) that any such amount found, by virtue of section 3B of this Act, to be so payable has been duly paid.

(4) The Commission shall, on receipt of an application—

(a) under subsection (1) or (2) above, give public notification of it;

(b) under subsection (2) above, provide the Land Court with a copy of the application and ascertain whether that Court is satisfied as is mentioned in paragraphs (a) and (b) of subsection (11) below.
(5) Notification under paragraph (a) of subsection (4) above shall specify a period within which comments as regards the application, being comments of the description given in subsection (9) below, may be made.

(6) After the period mentioned in subsection (5) above has elapsed the Commission shall—

(a) determine whether to exercise their power under subsection (1) or as the case may be (2) above; and

(b) give public notification of that determination.

(7) In so determining, the Commission shall have regard to—

(a) such comments, if any, as are duly made by virtue of subsection (5) above;

(b) the public interest and as the case may be the interests of the crofting community in the locality of the land; and

(c) whether social or economic benefits might be expected as a consequence of so constituting it.

(8) No application is to be made under subsection (1) above in respect of an agricultural holding occupied by a tenant where—

(a) the tenancy is—

(i) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)); or

(ii) a short limited duration tenancy or limited duration tenancy (within the meaning of that Act); or

(b) it is competent for the tenant to make an application under subsection (2) above,

if the written agreement of the tenant has not been obtained; and on such a holding being constituted as a croft under subsection (1) above the tenant shall be entitled (unless not a natural person) to be registered, in accordance with section 41(2)(b) of this Act, as its tenant.

(9) The description is that the comments are made 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).

(10) For the purposes of subsection (9) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference.

(11) The conditions are—

(a) that the Land Court is satisfied that the tenancy of the holding is one to which—
(i) section 32 of the Small Landholders (Scotland) Act 1911 (c.49) (provisions as to statutory small tenants) applies; or

(ii) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies;

(b) that the Land Court is satisfied that no part of the holding is leased other than as a tenancy mentioned in paragraph (a) above;

(c) that the holding does not exceed 30 hectares;

(d) that the holding is not comprised within a larger agricultural unit, the holding and that larger unit being, or having been, worked, managed or let as a single unit;

(e) that the tenant is a natural person; and

(f) that such fixed equipment on the holding as is necessary to enable the tenant to cultivate the croft is not provided by the landlord.

(12) An order under subsection (1)(b) above is not made unless a draft of the statutory instrument containing the order has been—

(a) laid before; and

(b) approved by a resolution of,

the Scottish Parliament.

3B Compensation for constituting holding outwith crofting counties as croft on application of tenant

(1) Where, in relation to an application under subsection (2) of section 3A of this Act, there is no such agreement as is mentioned in subsection (3)(b)(i) or (ii) of that section, the compensation payable by the applicant to the owner in compensation for the holding being constituted as a croft is to be the difference between—

(a) the value of the holding assuming that it is not to be so constituted; and

(b) its value assuming that it is so constituted,

and is to be assessed by a valuer appointed by the applicant and the owner.

(2) But where the applicant and the owner are unable to agree as to such an appointment the valuer is to be appointed by the Land Court or by a person nominated by the Court.

(3) The valuer is to assess the value of the holding—

(a) as at the date of the relevant application under section 3A(2);

(b) having regard to the value that would be likely to be agreed between a reasonable buyer and seller of such a holding assuming—

(i) that the buyer and seller are, as respects the transaction, willing; and

(ii) that the buyer is a sitting tenant;
(c) taking account, in so far as a buyer and a seller of the holding would do so, of any factor attributable to the known existence of a person who (not being the applicant) would be willing to buy the holding at a price higher than other persons because of a characteristic of the holding which relates peculiarly to that person’s interest in buying it; and

(d) taking account of the terms and conditions of any lease of sporting interests affecting the land.

(4) The valuer is to invite the owner and the applicant to make written representations about the valuation of the holding under this section and is to have regard to any such representation.

(5) The valuer may—

(a) enter onto land; and

(b) make any reasonable request of the owner or the applicant, for the purpose of any assessment under this section.

(6) The valuer must, within 6 weeks after being appointed, send to the owner and the applicant a notice in writing specifying the compensation payable and setting out how its amount was calculated.

(7) The expenses of the valuer accrued in carrying out his functions under this section are to be met by the applicant.

(8) In this section “valuer” includes two valuers with an oversman.

3C Appeal against assessment under section 3B

(1) The owner or the applicant may appeal to the Lands Tribunal for Scotland against an assessment carried out under section 3B.

(2) An appeal under this section—

(a) shall state the grounds on which it is made; and

(b) shall not be lodged more than 21 days after the date of the notice under section 3B(6) of this Act.

(3) In an appeal under this section, the tribunal may reassess any value (and any factor affecting any value).

(4) The valuer may be a witness in the appeal proceedings.

(5) And in those proceedings, in addition to the owner and the applicant, any creditor in a standard security over the land or any part of it is entitled to be heard.

(6) The tribunal is to give reasons for its decision on an appeal under this section and is to issue a written statement of those reasons.

(7) The decision of the tribunal in an appeal under this section is final.”.
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 11 of the Crofting Reform etc. Act 2006 (asp 00), 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 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 deprival 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,

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 actings prejudicial to that use being actings 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).”;

(c) 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).

12 Complaint as respects breach of the statutory conditions

After section 5 of the 1993 Act, there is inserted—

“5A Complaint as respects breach of the statutory conditions

(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 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

5B Termination of tenancy for misuse or neglect

(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.

(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 12 of the Crofting Reform etc. Act 2006 (asp 00), 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, 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.”.

13 Exchange of crofts or parts of crofts

After section 4 of the 1993 Act, there is inserted—

“Exchange of crofts

4A Exchange of crofts or parts of crofts

(1) A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless—

(a) he obtains the consent of—

(i) the landlord of his croft; and
(ii) the Commission;

(b) the exchanging crofters have the same landlord; and
(c) that landlord is the owner of any common grazing in which the crofters share.

(2) The consent of the Commission shall not be given unless they are satisfied that the consent mentioned in paragraph (a)(i) of subsection (1) above has been obtained.

(3) In the case of an application made by virtue of subsection (1) above, the special condition which applies for the purposes of section 58A(6)(b)(ii) of this Act is that there are reasonable grounds for concern that the proposed exchange would be unfair to either (or as the case may be any) of the crofters who are parties to the proposed exchange.

(4) A new croft is not created by virtue only of such exchange.”.
14 Division of croft

For section 9 of the 1993 Act (sub-division of croft), there is substituted—

“9 Division of croft

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

(2) In the case of an application to divide a croft, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

(a) that the application is for the creation of more than two new crofts; or

(b) that the original croft is one created as a consequence of an earlier division (or sub-division).

(3) Any division of a croft to which the Commission have given their consent under this section shall take effect when such details of that division as the Commission may require by virtue of sections 41 and 41A of this Act are entered in the Register of Crofts.

(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.”.

15 Subletting

(1) In section 27 of the 1993 Act (provisions as to right to sublet)—

(a) in subsection (1), after the words “his croft” there is inserted “, for a period not exceeding 10 years,”; and

(b) for subsections (3) and (4) there is substituted—

“(3) In the case of any application for such consent, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

(a) that there are reasonable grounds for concern as regards the use which the proposed subtenant intends to make of the croft; and

(b) that the proposed subtenant will not reside on, or within 16 kilometres of, the croft.”.

(2) Section 28 of that Act (special provisions regarding subletting of crofts not adequately used) is repealed.
(3) In section 29 of that Act (miscellaneous provisions regarding subleases of crofts)—

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

“(2A) The conditions of let must specify that the crofter shall give the subtenant not less than 6 months written notice of any intention to assign, exchange or divide the croft and that the sublease shall come to an end on such assignment, exchange or division.”; and

(b) after subsection (3) there is inserted—

“(3A) Where the tenancy of a croft is terminated by virtue of the death of the crofter, the Commission shall, as part of their consideration in determining whether to make an order under the proviso to subsection (3) above and if so what period of occupation to permit—

(a) consult the deceased crofter’s executor; and

(b) have regard in particular to such hardship as might, according to what they decide, be occasioned—

(i) the former subtenant; or

(ii) an assignee or transferee of the interest of tenant.”.

16 Assigment

In section 8 of the 1993 Act (assignation of croft)—

(a) in subsection (1), for paragraphs (a) and (b) there is substituted “unless he obtains the consent of the Commission”;

(b) for subsections (2) to (4) there is substituted—

“(2) In the case of an application made by virtue of subsection (1) above in respect of an assignation to a person other than a member of the crofter’s family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

(a) that the proposed assignee lives, or intends to live, more than 16 kilometres distant from the croft;

(b) that he already owns or is tenant of a croft;

(c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;

(d) that he is the grazings clerk or a member of the grazings committee;

(e) where the landlord is not a natural person, that the proposed assignee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;

(f) that there are reasonable grounds for concern over the use to which the proposed assignee intends to put the croft.”;

(c) in subsection (5), for the words from “in writing” to “above” there is substituted “of the Commission”; and

(d) in subsection (6), for the words from “at the term” to “may be,” there is substituted “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”.

17 **Bequest of tenancy of croft**

(1) Section 10 of the 1993 Act (bequest of croft) is amended as follows.

(2) For subsection (1), there is substituted—

“(1) A crofter may, by will or other testamentary writing, bequeath the tenancy of his croft to any one natural person.”.

(3) In subsection (2)—

(a) after the word “landlord”, where it first occurs, there is inserted “and send a copy of the notice to the Commission, both”;  
(b) for the word “2” there is substituted “4”;
(c) for the word “4” there is substituted “6”;
(d) after the words “the provisions of this subsection”, there is inserted “or subsection (2A) below”; and
(e) the words from “The giving of such notice” to the end are repealed.

(4) After subsection (2) there is inserted—

“(2A) Notice under subsection (2) above of the bequest may be given by an executor of the deceased crofter authorised for that purpose by the legatee.

(2B) The giving of notice to the landlord in accordance with the provisions of subsection (2) or (2A) above shall import acceptance of the bequest; and the legatee if—

(a) he is a member of the deceased crofter’s family; or  
(b) he is a person other than a member of the deceased crofter’s family and the landlord does not intimate objection to the legatee in accordance with subsection (3) below,

shall come into the place of the deceased crofter (as from the date of death of the deceased crofter) on the relevant date mentioned in subsection (2D) below.

(2C) Where notice is given in accordance with the provisions of subsection (2) or (2A) above and—

(a) the legatee is a member of the deceased crofter’s family, the Commission shall notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy; or

(b) the legatee is a person other than a member of the deceased crofter’s family and the Commission receive no intimation of objection to the legatee in accordance with subsection (3) below, they shall notify the legatee—

(i) to that effect; and

(ii) of the information referred to in paragraph (a) above.
(2D) The Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under subsection (2C) above; and the “relevant date” referred to in subsection (2B) above is the date on which the Commission notify the legatee under this subsection.”.

(5) For subsection (3), there is substituted—

“(3) Where the legatee is a person other than a member of the deceased crofter’s family, the landlord may, within one month (or such longer period as may be determined by the Commission on an application made to them by the landlord) after the date of the notice given to him in accordance with subsection (2) or (2A) above, intimate to—

(a) the legatee; and

(b) the Commission,

that he objects to the legatee becoming tenant of the croft; and any such intimation shall state the grounds of objection.”.

(6) In subsection (4), for paragraph (b) there is substituted—

“(b) not so satisfied, they shall—

(i) notify the landlord and the legatee to that effect; and

(ii) notify the legatee of the information they require for the purpose of updating the Register of Crofts in relation to the tenancy.”.

(7) After that subsection, there is inserted—

“(4A) In a case where subsection (4)(b) above applies, the Commission shall notify the legatee when they are satisfied that he has provided the information required by them in their notification to him under sub-paragraph (ii) of that subsection; and, if no appeal is made under subsection (4B) below against the Commission’s decision under subsection (4)(b) above, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter’s death) on the date on which the Commission notify the legatee under this subsection.

(4B) The legatee or, as the case may be, the landlord may, within 42 days after the giving of notification of the Commission’s decision under paragraph (a) or (b) of subsection (4) above in relation to the objection, appeal to the Land Court against that decision; and in an appeal under this subsection, the Court may confirm the decision or direct the Commission to come to a different decision.

(4C) Where, on an appeal under subsection (4B) above, the Land Court directs the Commission to decide that a bequest under subsection (1) above be upheld, the legatee shall come into the place of the deceased crofter (as from the date of the deceased crofter’s death) on the date the Court directs under this subsection.

(4D) A legatee who comes into the place of a deceased crofter in accordance with subsection (2B), (4A) or, as the case may be, (4C) above, in doing so—

(a) becomes liable for such debts of the deceased crofter’s estate as are attributable to the tenancy; and
(b) shall, if requested to do so by the executor, pay the reasonable expenses necessarily and wholly incurred by the executor in relation to the administration and management of the tenancy during the period beginning with the date of the deceased crofter’s death and ending immediately before the date when the legatee so comes into the place of the deceased crofter; and such expenses—

(i) shall, in the event of a dispute as to amount, be determined by the Land Court on the application of the executor or the legatee; and

(ii) shall not fall to be met from the deceased crofter’s estate.

(4E) Notwithstanding that a legatee comes into the place of the deceased crofter as mentioned in subsection (4D) above, the tenancy (and accordingly its market value as at the date of the deceased crofter’s death) is an asset of the deceased crofter’s estate, available along with the other assets of the estate to meet the other expenses of administration, and debts, of the estate; and any such legatee is liable to contribute to such expenses and debts accordingly.

(4F) For the purposes of subsection (4E) above, the market value of the tenancy, failing agreement between the executor and the legatee, shall be as determined by the Land Court under subsection (4G) below on the application of the executor or the legatee.

(4G) The market value of the tenancy as determined by the Land Court shall be the amount which a willing assignee, on the open market, might be expected to pay.”.

Prior rights, on intestacy, in relation to tenancy of croft

(1) Section 8 of the Succession (Scotland) Act 1964 (c.41) (prior rights, on intestacy, in dwelling house and furniture) is amended as follows.

(2) In subsection (1)—

(a) for the words “dwelling house to which this section applies,”, there is substituted “dwelling house mentioned in subsection (4)(a) of this section,”;

(b) after the words “shall be entitled” there is inserted “, subject to subsection (2B) of this section,”; and

(c) the proviso is repealed.

(3) After subsection (2), there is inserted—

“(2A) Where the tenant of a croft dies intestate leaving a spouse or civil partner or, where he dies leaving no spouse or civil partner, leaving a cohabitant, and the intestate estate includes a relevant interest in a dwelling house mentioned in subsection (4)(b) of this section, the surviving spouse, civil partner or, as the case may be, cohabitant shall be entitled, subject to subsection (2B) of this section, to receive out of the intestate estate—

(a) where the value of the relevant interest does not exceed the amount for the time being fixed by order under subsection (1)(a) of this section, the tenancy of the croft;

(b) in any other case, the sum for the time being fixed by order under subsection (1)(b) of this section.

(2B) If the intestate estate comprises—
(a) a relevant interest in two or more dwelling houses mentioned in subsection (4)(a) of this section, subsection (1) of this section shall have effect only in relation to such one of them as the surviving spouse or civil partner may elect for the purposes of subsection (1) within 6 months after the date of death of the intestate;

(b) a relevant interest in two or more dwelling houses mentioned in subsection (4)(b) of this section, subsection (2A) of this section shall have effect only in relation to such one of them as the surviving spouse, civil partner or cohabitant may elect for the purposes of subsection (2A) within 6 months after that date;

(c) a relevant interest in both—

(i) one or more dwelling houses mentioned in subsection (4)(a) of this section; and

(ii) one or more dwelling houses mentioned in subsection (4)(b) of this section,

the surviving spouse or civil partner shall not be entitled to receive both the entitlement under subsection (1) of this section and that under subsection (2A) of this section and must elect within 6 months after that date whether to take the entitlement under the said subsection (1) or under the said subsection (2A).”.

(4) For subsection (4), there is substituted—

“(4) The dwelling house is—

(a) in a case mentioned in subsection (1) of this section, any dwelling house in which the surviving spouse or civil partner of the intestate was ordinarily resident at the date of death of the intestate and which did not, at that date, form part of a croft of which the intestate was tenant;

(b) in a case mentioned in subsection (2A) of this section, any dwelling house in which the surviving spouse, civil partner or cohabitant was ordinarily resident at the date of death of the intestate and which, at that date, formed part of a croft of which the intestate was tenant.”.

(5) In subsection (6), before paragraph (a) there is inserted—

“(za) “cohabitant” means a person—

(i) who was living with the intestate as if married to him; or

(ii) who was living with the intestate as if in civil partnership with him,

and had been so living for at least 2 years.”.

19 Transfer of tenancy of croft by executor: amendment of section 16 of the Succession (Scotland) Act 1964

(1) Section 16 of the Succession (Scotland) Act 1964 (powers of executor to assign lease which prohibits assignation) is amended as follows.

(2) In subsection (2), for the words from “notwithstanding” to the end, there is substituted “subject to subsection (2A) of this section, to transfer the interest.”.

(3) After that subsection, there is inserted—
“(2A) Transfer by an executor pursuant to subsection (2) of this section—

(a) of an interest under an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c.44) shall require the consent of the Crofters Commission; and

(b) of an interest under any other lease (including any agricultural lease which does not fall within paragraph (a) of this subsection) and which is not a transfer to one of the persons entitled to succeed to the deceased’s intestate estate or to claim legal rights or the prior rights of a surviving spouse or civil partner out of the estate, in satisfaction of that person’s entitlement or claim, shall require the consent of the landlord.”.

(4) In subsection (9), in the definition of “agricultural lease”, for the words “Act of 1955” there is substituted “Crofters (Scotland) Act 1993 (or of any part of a croft if it is a part consisting of a right mentioned in section 3(4)(a) of that Act)”.

Transfer of tenancy of croft by executor: special provision relating to the 1993 Act

After section 16 of the Succession (Scotland) Act 1964, there is inserted—

“16A Leases of crofts: special provision relating to the Crofters (Scotland) Act 1993

(1) The requirement in section 16(2A)(a) of this Act to obtain the consent of the Crofters Commission shall be treated as if it were a requirement under the Crofters (Scotland) Act 1993 (c.44) and accordingly section 58A of that Act shall apply for the purposes of the requirement as it applies for the purposes of a requirement under that Act.

(2) In the case of an application for the consent of the Crofter’s Commission made by virtue of section 16(2A)(a) of this Act in respect of a transfer to a person other than a member of the crofter’s family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of the Crofters (Scotland) Act 1993—

(a) that the proposed transferee lives, or intends to live, more than 16 kilometres distant from the croft;

(b) that he already owns or is tenant of a croft;

(c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;

(d) that he is the grazings clerk or a member of the grazings committee;

(e) where the landlord is not a natural person, that the proposed transferee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;

(f) that there are reasonable grounds for concern over the use to which the proposed transferee intends to put the croft.

(3) Where the consent of the Crofter’s Commission to a transfer is required by section 16(2A)(a) of this Act, and the executor transfers the interest without the consent of the Commission—

(a) the transfer and any deed purporting so to transfer the interest shall be null and void; and
(b) the Commission may declare the croft to be vacant.

(4) A transfer to which the Crofter’s Commission have given their consent under section 16(2A)(a) of this Act shall take effect 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 executor) unless before that date the executor and the transferee jointly give to the Commission notice in writing that they do not intend to proceed with the transfer.

(5) An appeal shall lie on any question of fact or law to the Land Court against a decision of the Crofters Commission on an application made to them under section 16(2A)(a) of this Act.

(6) The appellant may be the applicant or any person with an interest in the application.

(7) An appeal under subsection (5) of this section must be brought within 42 days after the Commission dispose of the application.

(8) Section 52A(4) and (5) of the Crofters (Scotland) Act 1993 shall apply to an appeal by an executor under subsection (5) of this section as it applies to an appeal under that section.

(9) In an appeal under subsection (5) of this section, the Land Court may confirm the decision or direct the Commission to come to a different decision.”.

21 Amendment of section 11 of the 1993 Act

(1) Section 11 of the 1993 Act (intestacy) is amended as follows.

(2) In subsection (2), for the word “3” there is substituted “12”.

(3) In subsection (3)—

(a) paragraph (a) is repealed;

(b) in paragraph (b)—

(i) the word “otherwise” is repealed; and

(ii) after the word “tenancy,” there is inserted “the date (no later than 2 months after the date of death of the deceased crofter) on which the Commission receive notification of the death or, where no such notification is received,”; and

(c) in paragraph (d), for the words “on which the Commission notified the landlord and the legatee” there is substituted “of notification by the Commission”.

(4) For subsections (4) to (9), there is substituted—

“(4) If at the expiry of the period of 12 months referred to in subsection (2) above, it appears to the Commission (whether from notification under that subsection or otherwise) that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above, they shall give notice in such manner as they think proper, whether by advertisement or otherwise—

(a) to the landlord;

(b) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
(c) if no executor is so confirmed, to each person of whom the Commission are aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate, that they propose to terminate the tenancy and declare the croft vacant and inviting the recipients of the notice to make representations as respects the proposal to the Commission before the expiry of the period of one month after the date of the notice.

(5) If, having considered representations (if any) made to them in accordance with subsection (4) above, the Commission are satisfied that—

(a) the landlord or the executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964;

(b) the executor is proposing to transfer the tenancy; or

(c) a person is entitled to a transfer of the tenancy in or towards the satisfaction of his claim to prior rights or his entitlement to succeed to the deceased’s intestate estate,

they are not to implement their proposal; but if not so satisfied they may implement their proposal if they consider it appropriate to do so.

(6) If, by virtue of subsection (5) above, the Commission are not entitled to implement their proposal, but it appears to them subsequently (by means of representations made to them or otherwise) that the tenancy is not being transferred or is unable to be transferred, the Commission may give notice again as mentioned in subsection (4) above.

(7) If, having considered representations (if any) made to them in accordance with subsection (4) above as respects a proposal contained in a notice given by virtue of subsection (6) above, the Commission are satisfied that it is appropriate to implement their proposal they may do so.

(8) Where the Commission, in pursuance of this section, declare the croft vacant—

(a) they shall give notice to that effect—

(i) to the landlord;

(ii) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and

(iii) if no executor is so confirmed, to each person of whom the Commission is aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

and any such notice to the landlord shall require him to submit to them such proposals as are mentioned in section 23(5) of this Act;

(b) any right of any person in, or in relation to, the tenancy shall be extinguished; and

(c) the landlord shall be liable to pay to the executor of the deceased crofter the value of the permanent improvements on the croft in so far as—

(i) the improvement is suitable to the croft;
(ii) the improvement was executed or paid for by the deceased crofter or by any of the predecessors of the deceased crofter in the tenancy; and

(iii) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.”.

(5) In subsection (10), for the words from the beginning to “In this subsection the expression “the value of the”, there is substituted “In subsection (8)(c) above, the expression “the value of the permanent”.

(6) In subsection (11)(a), for the words “subsection (8) above” there is substituted “this section”.

22 Determination of the Land Court as to croft boundaries

After section 53 of the 1993 Act, there is inserted –

“53A Extent of boundaries

Where an application is made to the Land Court to determine a question under section 53(1)(c) of this Act and the evidence available to the Court is insufficient to enable any boundary to be clearly determined, the Court shall declare the boundary to be that which in all the circumstances it considers appropriate.”.

23 Access to croft

After section 53A of the 1993 Act (inserted into that Act by section 22 of this Act), there is inserted—

“53B Access to croft

(1) Where a crofter considers that—

(a) he requires access from a public road to his croft; and

(b) it would be reasonable for such access to be taken by a route lying wholly over land owned by his landlord,

the crofter may make application to the Land Court for an order under subsection (2) below.

(2) On an application under subsection (1) above, the Land Court shall make such order as it considers appropriate in all the circumstances, and the order may in particular make provision—

(a) specifying an access route from the public road to the croft lying wholly over land owned by the landlord;

(b) as to the arrangements under which the crofter may carry out works to construct or improve a road over the access route;
(c) as to the conditions subject to which access may be exercised, including conditions as to what types of vehicle may be taken along the access route;

(d) requiring the crofter to indemnify the landlord in respect of any claim for compensation made against the landlord under paragraph 11 of Schedule 2 to this Act in consequence of works such as are described in paragraph (b) above;

(e) requiring the crofter to make a payment to the landlord in respect of expenses incurred by the landlord in connection with matters which are the subject of the application.

(3) Any order under subsection (2) above shall have effect as if the matters for which the order makes provision had been the subject of an agreement between the crofter and the landlord.

(4) The right of a crofter to make application to the Land Court under subsection (1) above shall be without prejudice to any other right which that crofter may have in connection with access to his croft.”.

24 Reorganisation schemes

(1) The 1993 Act is amended as follows.

(2) In section 38 (reorganisation schemes)—

(a) in subsection (1), after the words “prepare a” there is inserted “provisional”;

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

“(1A) Before proceeding to prepare a provisional draft reorganisation scheme the Commission must give intimation in writing to each of the persons mentioned in subsection (10) below that the Commission are satisfied as is mentioned in subsection (1) above and that they intend so to proceed.”;

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

“(3) A reorganisation scheme may, if the Commission—

(a) obtain the prior written consent of the Scottish Ministers, make provision with respect to the inclusion of any land in the vicinity of the township, being land to which this Act does not apply, which in the opinion of the Commission ought to be used for the enlargement of crofts in the township or of a common grazing used exclusively, or shared in, by the township;

(b) think fit, make provision with respect to all or any of the following matters—

(i) the admission into the township of new crofters and the allocation to them of shares in the common grazing;

(ii) the apportionment for the exclusive use of the township of a part of any common grazing in which it shares;

(iii) the inclusion in any croft formed under the scheme of a part of the common grazing or of any land held in runrig;

(iv) any other matter incidental to or consequential on the provisions of the scheme.”;
(d) in subsection (4)—

(i) after the words “reorganisation scheme”, there is inserted “, or provisional draft or draft of such a scheme,”; and

(ii) after the words “the scheme” there is inserted “ or, as the case may be, of the provisional draft or draft,”; and

5

(c) for subsections (5) to (7), there is substituted—

“(5) Where, in relation to any township, the Commission prepare a provisional draft reorganisation scheme under subsection (1) above, they shall serve on each of the persons mentioned in subsection (10) below a copy of the provisional draft together with a notice—

(a) naming a place within the locality in which the township is situated where a copy of the maps and plans prepared by the Commission under subsection (4) above in relation to the provisional draft scheme may be inspected at all reasonable hours;

(b) inviting the person on whom the provisional draft and notice are served, within two months of the date of such service, to make in writing to the Commission such comments as they may wish to make on the provisional draft, maps or plans.

10

(6) Where, having taken into account comments (if any) made to them by virtue of subsection (5) above, the Commission are still satisfied as mentioned in subsection (1) above, they shall—

(a) prepare a draft reorganisation scheme in relation to the township taking into account such comments;

(b) serve on each of the persons mentioned in subsection (10) below a copy of the draft scheme together with a notice—

(i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under subsection (4) above in relation to the draft scheme may be inspected at all reasonable hours; and

(ii) requesting that the person on whom the draft and notice are served, within one month after the date of such service, intimates to the Commission in writing whether or not that person is in favour of the draft scheme.

15

(7) Where any person on whom a notice has been served under subsection (6) above fails to comply with the request contained in the notice, that person shall for the purposes of this section be deemed to have intimated to the Commission, in compliance with the request, that the person is in favour of the draft scheme.

20

(8) If, within the period of one month mentioned in subsection (6)(b)(ii) above, a majority of the crofters on whom a copy of a draft reorganisation scheme and a notice have been served under that subsection have intimated to the Commission, in compliance with the request contained in the notice, that they are in favour of the draft scheme, the Commission shall, where they remain satisfied as mentioned in subsection (1) above—

(a) prepare a reorganisation scheme in relation to the township; and
(b) serve on each of the persons mentioned in subsection (10) below a copy of the scheme together with a notice—

(i) naming a place within the locality in which the township is situated where a copy of any maps and plans prepared by the Commission under subsection (4) above in relation to the scheme may be inspected at all reasonable hours; and

(ii) advising of the right of appeal to the Land Court under section 38A of this Act against the Commission’s decision to reorganise the township or the scheme and of the time limit within which an appeal may be made.

(9) For the purposes of section 38A of this Act, the Commission’s proceeding, under subsection (8)(a) above, to prepare a reorganisation scheme shall be taken to comprise their decision to reorganise the township.

(10) The persons referred to in subsections (1A), (5), (6)(b) and (8)(b) above and section 38A(2)(b) of this Act are—

(a) each crofter who is the tenant of a croft situated in the township;
(b) the landlord of each such croft;
(c) each grazings committee appointed under section 47 of this Act in respect of any common grazing shared in by each such crofter;
(d) each person occupying land which is contiguous to a croft situated in the township;
(e) the owner of, and each person who holds shares in, a common grazing associated with the township.

(11) The requirements of subsections (1A) and (6)(b)(ii) above that intimation be in writing and in subsection (5)(b) above that comments be made in writing are to be taken to be satisfied by—

(a) the giving of intimation; or
(b) as the case may be, the making of comments,

in a form other than writing 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).”.

(3) After that section, there is inserted—

“38A Appeal to Land Court: special provision as respects reorganisation schemes

(1) Any crofter who is the tenant of a croft situated in the township in relation to which a reorganisation scheme is made or the landlord of any such croft or the owner of any common grazing associated with the township may, within 42 days after the Commission serve a copy of the reorganisation scheme on him under section 38(8)(b), appeal to the Land Court against—

(a) the Commission’s decision to reorganise the township; or
(b) the scheme.

(2) In an appeal under this section, the Court may—

(a) confirm the decision and the scheme;
(b) confirm the decision and require the Commission to—

(i) make, by a date specified by the Court, such modifications to the scheme as the Court directs; and

(ii) serve a copy of the modified scheme on each of the persons mentioned in section 38(10) of this Act; or

(c) revoke the Commission’s decision.”.

(4) In section 39 (putting schemes into effect)—

(a) for subsection (1), there is substituted—

“(1) The Commission shall not take any steps in discharge of their duties or powers under this section in relation to a reorganisation scheme until (whichever first occurs)—

(a) the period of 42 days mentioned in section 38A(1) of this Act has elapsed without any appeal to the Land Court under that section being made; or

(b) every such appeal timeously made is—

(i) decided and, where by virtue of subsection (2)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, those modifications have been made and the Commission have complied with subsection (2)(b)(ii) of that section; or

(ii) abandoned.

(1A) The Commission—

(a) shall put into effect a reorganisation scheme—

(i) prepared by them under section 38(8)(a); or

(ii) where by virtue of subsection (2)(b)(i) of section 38A of this Act the Land Court has required modifications to be made to the scheme, of which they have served a copy by virtue of subsection (2)(b)(ii) of that section; and

(b) may do all such things as are required for that purpose.”;

(b) in subsection (3), for the words “shall, on a reorganisation scheme being confirmed by the Secretary of State,” there is substituted “may”;

(c) after subsection (5) there is inserted—

“(5A) Subsection (3A) of section 6 of this Act applies in relation to subsection (5) above as it applies in relation to the proviso to subsection (3) of that section.”;

(d) in subsection (7), the words “, on the scheme being confirmed by the Secretary of State,” are repealed;

(e) in subsection (8)—

(i) for the words “Secretary of State shall, on confirming the scheme,” there is substituted “Commission shall”; and

(ii) at the end of paragraph (b), there is inserted “, and shall send a copy of each notice served by them under this subsection to the Scottish Ministers” ;
(f) in subsection (10)(b), for the words “of the confirmation of the scheme is served on him under paragraph 7 of Schedule 4 to this Act” there is substituted “is served on him under subsection (6) above”.

(5) Schedule 4 (confirmation of schemes by Scottish Ministers etc.) is repealed.

25 Meaning of croft

In section 3 of the 1993 Act (meaning of “croft” and “crofter”)—

(a) in subsection (1)—

(i) after paragraph (e) there is inserted—

“(cc) as from the date of registration, every holding situated—

(i) as aforesaid; or

(ii) as is mentioned in subsection (1)(b) of section 3A of this Act, and registered by virtue of an application under that section;

(cd) as from the date of reversion, every holding reverting under section 20(1B), or by virtue of section 21A(1), of this Act;”;

(ii) in paragraph (d), for the words “as aforesaid” there is substituted “in the crofting counties”; and

(iii) after paragraph (e) there is inserted—

“(f) as from the relevant commencement date, every holding—

(i) entered in the Register of Crofts on that date which has been so entered for a continuous period of at least twenty years ending with that date; and

(ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is on that date pending before any court;

(g) as from the date twenty years after registration, every holding—

(i) entered in the Register of Crofts for a continuous period of twenty years ending after the relevant commencement date; and

(ii) in respect of which no application or reference seeking a declaration or order that the holding is not a croft is at the end of that period pending before any court”; and

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

“(1A) In paragraphs (f) and (g) of subsection (1) above, “the relevant commencement date” is the date on which section 25 of the Crofting Reform etc. Act 2006 comes into force.”.

35 Part 3

Termination of tenancy, decrofting, etc.

26 Resumption and reversion

(1) In section 20 of the 1993 Act (resumption of croft or part of croft by landlord)—
(a) in subsection (1), after the word “interest” there is inserted “or the interests of the crofting community in the locality of the croft”;
(b) after that subsection there is inserted—

“(1A) A landlord making application under subsection (1) above must give notice of it to the Commission; and the Commission may, if they think fit, oppose or support the application.

(1B) Without prejudice to the generality of subsection (1) above, resumption may be authorised under that subsection for a specified period of time (such resumption being in this Act referred to as “temporary resumption” and resumption other than for a specified period of time as “ordinary resumption”) and the land shall revert to being a croft (or to being part of a croft)—

(a) on the date on which the period (or as the case may be the period as extended under subsection (1D) below) elapses; or
(b) on such earlier date as the Land Court may specify in an order under section 21A(1) of this Act.

(1C) Subject to subsection (1D) below, the Land Court may, on the application of the landlord, extend the period specified under subsection (1B) above.

(1D) Where a planning permission granted for a limited period subsists for a change of the use of the land, being a change for which resumption was authorised, the Land Court must, on such application, extend the period so specified; but not to a date later than the end of the period specified in the condition under subsection (1)(b) of section 41 of the Town and Country Planning (Scotland) Act 1997 (c.8) to which the permission is subject.

(1E) In subsection (1D) above, “planning permission granted for a limited period” shall be construed in accordance with subsection (3) of that section.

(1F) The Land Court may, on the application of the landlord made before the expiry of the specified period of time referred to in subsection (1B) above, determine that a resumption authorised as a temporary resumption is to be taken to be an ordinary resumption; and where such a determination is made—

(a) subsections (1B) to (1D) above and the exception to subsection (2)(b) of section 21A of this Act shall cease to be applicable as respects the resumption; and
(b) the Land Court may determine (either or both)—

(i) that the landlord shall make further compensation under subsection (1) above;
(ii) that the crofter shall, under section 21(1) of this Act, be entitled to a further share in the value of the land.”.

(c) in subsection (3)(a), after sub-paragraph (viii) (but before the word “or” which immediately follows that sub-paragraph), there is inserted—

“(viiia)the generation of energy;”.

(2) In section 21 of the 1993 Act (crofter’s right to share in value of land resumed by landlord)—

(a) after subsection (1) there is inserted—
“(1A) If it thinks fit the Land Court may, having regard to how the purpose for which resumption is authorised is to be carried out, determine that a sum awarded under this section shall be payable in instalments of such amounts and on such dates as it shall specify in the determination.

(1B) On making a determination under subsection (1A), the Land Court shall intimate to the Commission that it has done so and provide them with a copy of the determination; and the Commission shall enter that copy in the Register of Crofts.

(1C) When so entered the determination shall bind any successor to the landlord as it binds the landlord.”; and

(b) in subsection (6), after the word “payable” there is inserted “, or in the case of payment by instalments as from the date when the unpaid balance of such sum is payable,”.

(3) After section 21 of the 1993 Act, there is inserted—

“21A Reversion of resumed land

(1) The Land Court may, on the application of any relevant person and on being satisfied that the conditions specified in subsection (2) below are met, make an order that land resumed by virtue of section 20(1) of this Act shall revert to being a croft (or to being part of a croft).

(2) The conditions are—

(a) no debt is for the time being secured by way of a standard security over, or over any real right in, the land or any part of it;

(b) except in the case of a temporary resumption, not less than 5 nor more than 20 years have elapsed since the resumption of the croft was authorised;

(c) the purpose for which the landlord desired to resume the croft has not been carried out;

(d) no planning permission relating to a change of the use of the land subsists;

(e) the land remains suitable for use by crofters for cultivation; and

(f) the land is owned by the person who was authorised to resume the croft.

(3) For the purposes of subsection (2)(e) above, “cultivate” has the same meaning as in Schedule 2 to this Act.

(4) Where land reverts by virtue of subsection (1) above, the Land Court may make such order (if any) as it thinks fit as to the repayment, in whole or in part, of any sum awarded as compensation under section 20(1), or any share in value paid by virtue of section 21(1), of this Act.

(5) Where land which reverts by virtue of subsection (1) above or under section 20(1B) of this Act comprises a common grazing, the Land Court may make such order as it thinks fit as to shares in the common grazing.

(6) “Relevant person” in subsection (1) above means the Commission, the landlord, the person who surrendered the land or, where the land comprises a common grazing, the owner or the grazings committee.”.
Decrofting

In the 1993 Act—

(a) in section 24 (decrofting in case of resumption or vacancy of croft)—

(i) in subsection (2), after the words “do so” there are inserted the following paragraphs—

“(a) forthwith or on the refusal of an application made under paragraph (b) below; or

(b) at the end of such further period as the Land Court, on the application of the Commission, may allow,”; and

(ii) after that subsection there is inserted—

“(2A) Where a further period is allowed by virtue of subsection (2)(b) above, the Commission shall be liable to the landlord for an amount equal to the rent which would have been payable for the croft in respect of that period.”; and

(b) in section 25 (provisions supplementary to section 24(3)—

(i) in subsection (1)(a), after the word “interest” there is inserted “or to the interests of the crofting community in the locality of the croft”; and

(ii) in subsection (1), after paragraph (b) there is added “or

(c) the application is made in respect of a croft the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act”;

(iii) in subsection (2), for the words “(1)(b)” there is substituted “(1)(b) or (c)”; and

(iv) in subsection (3), after the word “conditions” there is inserted “(which may include provision as to timescales)”;

(v) after subsection (3) there is inserted—

“(3A) Conditions imposed by virtue of subsection (3) above may include a condition that the use be initiated by a time specified in the condition.

(3B) The Commission may from time to time modify any conditions so imposed.

(3C) No such further direction as is mentioned in subsection (3) above shall be made if—

(a) more than 20 years have elapsed since the direction under section 24(3) of this Act;

(b) the land, or any part of it, has, since the direction under that section, been conveyed to a person other than the former crofter or a member of the former crofter’s family; or

(c) a debt is for the time being secured by way of a standard security over, or over any real right in, the land or any part of it.”;

(vi) after subsection (4) there is inserted—

“(4A) Written notice of an application under subsection (4) above made in respect of a part of a croft consisting only of the site of the dwelling-house on or pertaining to the croft shall be given to the landlord by the applicant; and the Commission—
(a) shall not give a direction by virtue of that subsection on an application so made unless they are satisfied (in addition to what is required by subsection (1)(b) above) that; and

(b) may include in any such direction conditions for the purpose of ensuring that,

implementation of the proposal would not prevent or impede access to another part of the croft or to other croft land.”; and

(vii) For subsections (7) and (8) there is substituted—

“(7) The Commission shall give both—

(a) notice in writing to the applicant; and

(b) public notification, of their direction on an application made to them under the said section 24(3) or subsection (4) above, specifying the nature of and the reasons for the direction and, as the case may be, for any conditions imposed in the direction.

(7A) The Commission shall—

(a) give written notification to the owner of land—

(i) to which a further direction under subsection (3) above relates of the making of that direction; and

(ii) of the modification, under subsection (3B) above, of a condition which relates to that land; and

(b) give public notification of those matters.

(8) As regards—

(a) a direction (including a condition in a direction) by the Commission on an application—

(i) under section 24(3) of this Act, the applicant or any member of the crofting community in the locality of the land;

(ii) under subsection (4) above, the applicant or the owner of the land, may within 42 days after the giving of public notification of the making of the direction;

(b) a notification under subsection (3) above, of a condition which relates to land, the owner, or any tenant of the land or any member of the crofting community in the locality of the land, may within 42 days after the giving of public notification of the modification; or

(c) a further direction under subsection (3) above, the owner, or any tenant, of the land, may within 42 days after the making of that direction, appeal to the Land Court.

(9) The Land Court may hear or consider such evidence as it thinks fit in order to enable it to dispose of an appeal under subsection (8) above.”.

28 Re-letting

In section 23 of the 1993 Act (vacant crofts)—
“(3) The landlord of a croft shall not, without the approval of the Commission, let the croft or any part of it to any person; and any letting of the croft otherwise than with such approval shall be null and void.

(3A) In the case of an application made by virtue of subsection (3) above, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of this Act—

(a) that the proposed tenant lives, or intends to live, more than 16 kilometres distant from the croft;
(b) that he already owns or is tenant of a croft;
(c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
(d) that he is the grazings clerk, a member of the grazings committee, the owner of the common grazing or a member of the landlord’s family;
(e) where the landlord is not a natural person, that the proposed tenant is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord; and
(f) that there are reasonable grounds for concern over the use to which the proposed tenant intends to put the croft.”;

(b) in subsection (5)—

(i) at the beginning there is inserted “Subject to subsection (5A) below,”; and
(ii) for the words from “the Commission refuse” to the end of the proviso there is substituted “the Commission’s approval of them is not obtained, the Commission must proceed in accordance with subsections (5B) and (5C) below.

(5A) Where the croft is declared vacant in pursuance of section 11(8) of this Act, if, within a period of four months from the giving of notice under that section, the proposals required by that notice to be submitted are not submitted or the Commission’s approval of them is not obtained, the Commission must proceed in accordance with subsections (5B) and (5C) below.

(5B) The Commission shall, by public notification, invite applications for tenancy of the croft within such period as shall be specified in the notification.

(5C) When that period has elapsed, the Commission shall determine—

(a) to which of the applicants (if any) to let the croft; and
(b) in consultation with the landlord, on what terms and conditions.”.

Compensation for improvements for purposes other than cultivation or grazing etc.

In section 30 of the 1993 Act (compensation to crofter for improvements), after subsection (6) there is inserted—

“(6A) Subject to subsection (6B) below, in this Act “improvement” does not include anything erected or carried out wholly for—
(a) putting a croft to such other purposeful use as is mentioned in paragraph 3(b) of Schedule 2 to this Act; or

(b) using part of a common grazing for a purpose other than is mentioned in paragraph (a) or (b) of section 50B(1) of this Act.

(6B) Subsection (6A) above does not apply if—

(a) in any written consent given under section 5(7)(a) of this Act as respects the use in question, the landlord agrees that the subsection should not apply; or

(b) before the Commission approve under section 50B(9) of this Act implementation of the proposal for the use in question, the owner gives written intimation to the proposer that, as respects that use, he so agrees.”.

PART 4
COMMON GRAZINGS

30 Use of common grazing

(1) In section 50 of the 1993 Act (use of common grazings for forestry purposes)—

(a) in subsection (1)—

(i) for the word “interested” there is substituted “who holds a right”; and

(ii) in paragraph (b), for the word “landlord” there is substituted “owner”;  

(b) in subsection (2)—

(i) for the words “A landlord’s” there is substituted “An owner’s”;  

(ii) after paragraph (b) there is inserted—

“(bb) may be given subject to conditions provided that those conditions are reasonable;”;

(iii) in paragraph (c), for the word “landlord” there is substituted “owner”; and

(iv) in paragraph (e), for the word “landlord’s” there is substituted “owner’s”;  

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

“(2A) An owner may refuse consent on (and only on) the grounds that implementation of the proposal would—

(a) adversely affect the exercise of any rights which he has under or by virtue of Schedule 2 to this Act;

(b) prevent an intended resumption by virtue of section 20(1) of this Act;

(c) be detrimental to the sound management of the estate which comprises the land;

(d) cause hardship to a crofter who shares in the common grazing;

(e) cause the owner undue hardship; or

(f) lessen significantly the amenity of (either or both)—

(i) the land;
(ii) its surrounding area;

and without prejudice to subsection (2B) below any refusal shall be in writing and shall specify the grounds of refusal.

(2B) If, within six weeks after application under subsection (1)(b) above, there has neither been written consent nor written refusal, the owner shall be deemed to have refused the application.

(2C) If, on an application—

(a) under sub-paragraph (i) of section 53(1)(e) in relation to a consent applied for under subsection (1)(b) above but refused, the Land Court is not satisfied that any of the grounds mentioned in subsection (2A) above has been made out, it may determine that the consent is to be deemed given, or

(b) under sub-paragraph (ii) of that section in relation to a consent so applied for but granted subject to a condition, the Land Court is not satisfied that the condition is reasonable, it may determine that the consent is to be deemed given—

(i) free of the condition; or

(ii) subject instead to a condition specified in the determination."

(d) in subsection (3), for the words “A landlord’s” there is substituted “An owner’s”;

(e) after subsection (3) there is inserted—

“(3A) The Commission shall, on receipt of any application under subsection (1)(a) above, consult as regards the proposal the owner, the crofters who share in the common grazing and such other persons as appear to the Commission to have an interest.

(3B) The reference in subsection (1) above to using as woodlands is to having the right to exclusive economic and recreational use, including (without prejudice to that generality)—

(a) felling, removing, selling and replacing the trees in question;

(b) collecting trimmings, fallen timber, foliage, sap, flowers, fruit, seeds or nuts for use or sale;

(c) grazing animals in the woodlands; and

(d) selling timber, timber products and other forestry products.

(3C) Where the owner’s consent is, under subsection (2)(bb) above, subject to a condition that land be fenced, or otherwise enclosed, any expenditure incurred in complying with that condition (including expenditure incurred in that connection in maintenance, repair or renewal) shall be met—

(a) in a case where the applicant is the grazings committee, by that committee, and

(b) in any other case, jointly and severally by the crofters sharing in the common grazing.”;

(f) for subsection (4) there is substituted—

“(4) In this section, “owner’s consent” means the consent of the owner referred to in subsection (1)(b) above (or a deemed such consent);”; and
(g) at the end there is added—

“(5) This section is without prejudice to section 50A of this Act and is subject to the terms of any agreement under that section.”.

(2) After section 50 of the 1993 Act, there is inserted—

“50A Joint forestry ventures etc.

(1) A crofter who holds a right in a common grazing, or a grazings committee, may, with the agreement of the Commission, enter into a written agreement with the owner of the common grazing that they shall engage in a joint forestry venture to use woodlands as part of the common grazing concerned; and subject to subsection (4) below that agreement shall bind the parties to it and their successors.

(2) Subject to the terms of any agreement under subsection (1) above, where there are, on part of a common grazing which is to be used as woodlands by virtue of section 50 of this Act, trees other than such as are mentioned in paragraph 11(d) of Schedule 2 to this Act, the owner and the grazings committee may agree—

(a) that those trees are to be sold to the committee at current value; or

(b) that the owner is to be entitled to a share of the timber obtained from such use, being a share which is proportionate having regard to the numbers, respectively, of those trees and of the trees planted (or obtained from planned natural regeneration of the trees planted) in the course of such use.

(3) Where an agreement is entered into under subsection (1) or (2) above, a copy of that agreement shall be lodged with the Commission.

(4) The persons who for the time being are bound by the agreement in question may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (3) above (or as the case may be that agreement as last amended under this subsection).

(5) Any person who is for the time being bound by an agreement under subsection (2) above may appeal to the Land Court against a valuation carried out by virtue of paragraph (a), or the assessment of a share entitlement carried out by virtue of paragraph (b), of that subsection.

(6) In an appeal under subsection (5) above, the Land Court may reassess the value or entitlement in question.

(7) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

(8) In subsection (2)(b) above “planned natural regeneration” means regeneration which takes place in accordance with—

(a) an agreement entered into under or by virtue of this Act or of any other enactment; or

(b) the conditions of—

(i) any grant for purposes which include such regeneration and which is paid out of the Scottish Consolidated Fund; or

(ii) such other grant of a public nature as may be prescribed.
50B Use of common grazing for other purposes

(1) A crofter who holds a right in a common grazing may propose to the grazings committee (or, if there is no grazings committee, to the grazings constable) that a part of the common grazing be used other than for—

(a) grazings or a purpose mentioned in section 52(9) of this Act; or

(b) woodlands.

(2) The use proposed must not be such as would be detrimental to—

(a) the use being made, as at the time of application, of the other parts of the common grazing; or

(b) the interests of the owner.

(3) On receipt of a proposal made under subsection (1) above the grazings committee (or as the case may be the grazings constable) shall, for the purpose of there being a discussion and vote on the proposal, summon a meeting of the crofters who share in the common grazing.

(4) Regulations under section 49(2)(g) of this Act shall, in relation to any meeting so summoned, provide that—

(a) the time, place and purpose of the meeting (including the proposal in question) should be—

(i) set out in a notice sent by registered post to each of those crofters and to the owner; and

(ii) intimated by public notification,

at least 28 days before the meeting; and

(b) the grazings committee (or grazings constable) shall, in sending such notice to the owner—

(i) invite him to give his views as to the proposal; and

(ii) afford him the opportunity to discuss it, at such reasonable time before the meeting as is convenient to him, with a member of the committee (or with the grazings constable);

(c) at the meeting any views so given (or disclosed in discussion) shall be made known to the crofters attending;

(d) subject to subsection (5) below, the vote on the proposal shall be by simple majority of the votes cast by the crofters attending (a crofter being entitled to a single vote for each share in the common grazing which he holds);

(e) the result of the vote shall be declared at the meeting; and
(f) the owner shall be advised by the grazings committee (or grazings constable), by written notice given within two weeks after the meeting takes place, of its outcome (that is to say, of whether the proposal has been accepted or rejected, of the number of crofters present, of the numbers of votes, including votes by proxy or by post, respectively for and against and of the number of crofters attending but abstaining) and, if the vote is in favour of the proposal, of what subsection (6) of this section requires to be done.

(5) A crofter who is unable to attend the meeting so summoned but who has notified the grazings committee (or grazings constable) of that circumstance may vote by proxy or by post (provided that any vote posted shall be valid only if received by the committee before the meeting).

(6) If the vote is in favour of the proposal the committee (or grazings constable) shall, in such manner as the Commission may require, apply to the Commission seeking their approval for its implementation.

(7) On receipt of an application under subsection (6) above the Commission shall—

(a) consult, as regards the proposal, the owner and any other person who appears to the Commission to have an interest; and

(b) give public notification—

(i) that the proposal has been made;

(ii) that they are considering whether to approve it; and

(iii) inviting written comments within such period as shall be specified in the notification.

(8) If the Commission think fit, they or members of the panel appointed under section 2(2)(a) of this Act may hear evidence as regards the proposal.

(9) The Commission may approve or reject the implementation of the proposal; and if they give their approval they may, if they think fit, impose conditions as respects that implementation; and they may, if requested by the grazings committee or the owner to review that implementation, carry out such a review, and (if they think fit)—

(a) either or both—

(i) vary or withdraw any such conditions,

(ii) impose further conditions, or

(b) revoke the approval.

(10) Where the Commission give approval they are, if—

(a) the owner so requests; and

(b) they are satisfied that the circumstances are as mentioned in subsection (11) below,

to impose under subsection (9) above a condition that the land is to be enclosed by means of a deer-proof barrier (as defined by section 45(1) of the Deer (Scotland) Act 1996 (c.58)).

(11) The circumstances are that—
(a) implementation of the proposal is likely to result in the land to which the proposal relates becoming more attractive to deer; and

(b) there are sufficient reasons for imposing the condition, being reasons relating to—

(i) deer management; or

(ii) the protection or enhancement of the environment.

(12) Within two weeks after coming to a decision as respects implementation of the proposal, the Commission shall advise—

(a) the proposer;

(b) the grazings committee (or grazings constable);

(c) the owner; and

(d) every person who submitted written comments by virtue of subsection (7), or gave evidence by virtue of subsection (8), above,

as to the decision and as to any conditions imposed under subsection (9) above.

(13) Where the decision is to approve implementation but subsequently the Commission vary or withdraw conditions, impose further conditions or revoke the approval they shall, within two weeks after doing so, advise the persons mentioned in paragraphs (a) to (d) of subsection (12) above accordingly.”.

31 New common grazing

After section 51 of the 1993 Act, there is inserted—

“51A New common grazing

(1) The Commission shall have power, on the application of the owner of any eligible land, to constitute the land as a common grazing by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(3) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.

(2) The Commission shall, on receipt of any such application, give public notification of it; and such notification shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.

(3) After the period mentioned in subsection (2) above has elapsed the Commission—

(a) shall determine whether to exercise their power under subsection (1) above; and

(b) shall give public notification of that determination.

(4) In so determining the Commission shall have regard to—

(a) such written comments, if any, as are duly made by virtue of subsection (2) above;

(b) the public interest and the interests of the crofting community in the locality of the land; and
(c) whether social or economic benefits might be expected as a consequence of constituting the land as a common grazing.

(5) Land is eligible land for the purposes of subsection (1) above only if it is—
(a) neither tenanted nor occupied by a cottar;
(b) situated in the crofting counties but not constituted as a croft; and
(c) not adjacent or contiguous to a croft.

(6) The owner and the persons who are to share in the common grazing shall agree in writing what the use of the common grazing is to be; and subject to subsection (8) below that agreement shall bind—
(a) the owner and those persons; and
(b) the successors of the owner and of those persons;
and a copy of the agreement shall be lodged with the Commission.

(7) The use mentioned in subsection (6) above may be for (any or all)—
(a) grazings;
(b) a purpose mentioned in section 52(9) of this Act;
(c) woodlands;
(d) a purpose other than is mentioned in paragraphs (a) to (c) above,
and in the agreement different provision may be made for different parts of the common grazing.

(8) The persons who for the time being are the owner and the persons sharing in the common grazing may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (6) above (or as the case may be that agreement as last amended under this subsection).

(9) Section 6 of this Act applies in relation to land constituted as a common grazing under this section as it applies in relation to a croft.

(10) The description is that the comments are made 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).

(11) For the purposes of subsection (10) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—
(a) transmitted by electronic means;
(b) received in legible form; and
(c) capable of being used for subsequent reference.”.
32 Contravention of, or failure to comply with, common grazings regulations

In section 52 of the 1993 Act (miscellaneous provisions as to common grazings etc.), for subsection (1) there is substituted—

“(1) Where it is averred by the grazings committee or the owner that a person has contravened, or failed to comply with, any common grazings regulations for the time being in force under section 49 of this Act, the committee or as the case may be the owner may apply to the Commission for a determination in the matter.

(1A) On receipt of an application made under subsection (1) above the Commission—

(a) shall serve notice on the person of the averment; and

(b) shall send a copy of that notice to the grazings committee and to the owner.

(1B) The person, the committee and the owner shall all be afforded the opportunity to make representations as regards the averment and if the Commission think fit—

(a) the Commission; or

(b) members of the panel appointed under section 2(2)(a) of this Act, may hear evidence in the matter.

(1C) If the Commission determine that the averred contravention or failure has occurred they may require the person—

(a) to conform with the regulation in question, and

(b) to make good, within such reasonable period as they shall specify, any damage which has directly resulted from the occurrence.

(1D) Where—

(a) a requirement imposed under subsection (1C) above is not complied with (and subsection (1E) below does not apply), the Commission—

(i) may determine that all or part of the person’s share in the common grazing is suspended for such period as they shall specify; and

(ii) if the non-compliance consists in a failure to make good damage within the period specified under subsection (1C)(b) above, may require it be made good within such further period as they may specify,

(b) all requirements imposed under subsection (1C)(a) above and any requirement imposed under sub-paragraph (ii) of paragraph (a) above (whether or not as that sub-paragraph applies by virtue of subsection (1E)(a) below) are complied with, the Commission may end a suspension imposed under sub-paragraph (i) of that paragraph.

(1E) Where, while all or part of the person’s share in the common grazing is suspended by virtue of subsection (1D)(a)(i) above, a requirement imposed under subsection (1C)(a) above is not complied with as regards so much of the share as is not suspended, or as the case may be a requirement imposed under subsection (1D)(a)(ii) above is not complied with, the Commission—
(a) may (but on one occasion only) extend either or both periods mentioned in subsection (1D)(a) above; or

(b) may—

(i) determine that all or part of the person’s share is terminated; and

(ii) apportion the share or part to other persons sharing in the common grazing.

(1F) Reference in this section to a share in the common grazing includes reference to any rights and privileges pertaining to that share.”.

33 Further amendment of section 52: apportionment

(1) Section 52 of the 1993 Act is amended as follows.

(2) In subsection (4), for the words “interested, after consultation with the grazings committee, apportion a part of a” there is substituted “who holds a right in a common grazing, and after consultation with the grazings committee, apportion a part of the”.

(3) At the end there is added—

“(10) Without prejudice to the generality of subsections (3), (4) and (8) above, the Commission may under any of those subsections (either or both)—

(a) apportion a part for a period;

(b) determine that an apportionment shall be subject to review at fixed intervals,

which they shall specify.

(11) The Commission may extend any such period as is mentioned in subsection (10)(a) above on the application of the township which, or as the case may be the crofter who, has exclusive use.

(12) Without prejudice to subsection (10)(b) above, the Commission may, on the application of that township or crofter or of the grazings committee or owner—

(a) review an apportionment made in pursuance of subsection (3) or (4) above;

(b) (whether or not on such review)—

(i) vary or revoke any condition imposed under subsection (6) above;

(ii) impose a new condition under that subsection;

(iii) bring an apportionment made as mentioned in paragraph (a) above to an end.

(13) Where—

(a) a period of apportionment fixed under subsection (10)(a) above (or so fixed and extended under subsection (11) above) comes to an end; or

(b) it is determined on review under subsection (10)(b) above, or is determined under subsection (12)(b)(iii) above, that an apportionment is to come to an end,

the land in question reverts to being a common grazing.
(14) Where land reverts under subsection (13) above, the Commission may, having regard to the rights held in the common grazing immediately before the apportionment in question, make such determination as they consider equitable as to shares in the common grazing.

(15) Subsections (10) to (14) above do not apply as respects land constituted as common grazing under section 51A of this Act.”.

PART 5

SCHEMES FOR DEVELOPMENT

34 Schemes for development

(1) After section 19 of the 1993 Act, there is inserted—

“19A Schemes for development

(1) The landlord (or owner), or any person acting with the consent of the landlord (or owner)—

(a) may by application to the Land Court seek its consent to—

(i) croft land or common grazing; or

(ii) land near to croft land or common grazing if rights and liabilities in relation to the croft land or common grazing would be affected, being developed in accordance with a scheme appended to the application; or

(b) may intimate to that Court that every person who has rights in or over croft land or a common grazing consents to its being developed in accordance with a scheme appended to the intimation, and the applicant shall send a copy of the application or as the case may be of the intimation (and, in either case, of the appended scheme) to the Commission.

(2) Consent under paragraph (a) of subsection (1) above is not to be given unless the Court is satisfied—

(a) that the development is for a reasonable purpose;

(b) that to carry it out would not be unfair;

(c) that the scheme provides for there to be fair recompense to each member of the crofting community in the area affected by the development for the effects of the development (including, in relation to the croft land of each such member, compensation at least equivalent to the compensation which the member might be expected to have obtained had that croft land been resumed); and

(d) that, were the development carried out—

(i) that community would be likely to benefit financially; and

(ii) such benefit would be at least commensurate with any financial benefit which the members of that community might obtain on the development proceeding other than by virtue of this section.
(3) For the purposes of subsection (2) above—

(a) the definition of “reasonable purpose” in subsection (3) of section 20 of this Act applies as it does for the purposes of subsection (1) of that section;

(b) it is unfair to carry out a development only where to do so would have significant adverse consequences for one or more of the members of the crofting community in the area affected by the development and either those consequences would be disproportionately greater than the adverse consequences for the other members of that community or there would be no adverse consequences for those other members;

(c) whether recompense is fair is to be determined having regard both to the value of the development and to its effect on the member in question; and

(d) an effect for which there is to be fair recompense may be an effect of any kind whatsoever (and in particular need not be an effect on a croft qua croft).

(4) An application under paragraph (a) of subsection (1) above or intimation under paragraph (b) of that subsection shall—

(a) be made in such form; and

(b) be accompanied by such fee,

as the Court shall specify; and the Court may make different provision for different categories of case.

(5) Provision made under subsection (4)(a) above shall include provision as to the form and content of the appended scheme.

(6) A person making an application under paragraph (a) of subsection (1) above or giving intimation under paragraph (b) of that subsection shall forthwith give public notification of the application or intimation.

(7) Within 28 days after the public notification is given (including the day on which given)—

(a) the Commission; or

(b) any other interested party,

may submit to the Court written objections as respects the application or intimation; and the Court shall hear the objectors (if any) before determining whether to give consent under this section or as the case may be before determining whether to proceed under subsection (9) below as respects the intimation.

(8) The Court shall, whether or not there is a hearing under subsection (7) above, give reasons for any such determination.

(9) On—

(a) giving consent under this section; or

(b) determining to proceed under this subsection as respects an intimation,
the Court shall advise the Commission that it has done so and provide them with a copy of the scheme in accordance with which the development is to take place; and the Commission shall enter that copy in the Register of Crofts.

(10) When so entered the scheme shall, in so far as its terms so provide, be binding on—

(a) the landlord (or owner);
(b) any member of the crofting community in the area affected by the development;
(c) any person who, though not described in paragraph (b) above, is—
   (i) a tenant of a croft; or
   (ii) a holder of grazing rights,
   in that area; and
(d) the successors to the persons mentioned in paragraphs (a) to (c) above.”.

(2) In section 49 of the 1993 Act (common grazings regulations), after subsection (8) there is added—

“(9) Nothing contained in a scheme a copy of which has been entered, under section 19A of this Act, in the Register of Crofts is, for the purposes of subsection (8) above, an agreement.”.

**PART 6**

**CROFTING COMMUNITY RIGHT TO BUY**

(1) The Land Reform (Scotland) Act 2003 (asp 2) is amended as follows.

(2) After section 69 there is inserted—

“69A Real right of tenant

(1) This section applies where a tenancy which is not—

(a) a croft tenancy;
(b) the tenancy of a dwelling-house; or
(c) a statutory tenancy,

has been created over eligible croft land.

(2) Where this section applies, a crofting community body may apply, under section 73 below, to buy the real right of the tenant over that land—

(a) where—
   (i) it is simultaneously applying; or
   (ii) it has made an application in respect of which Ministers have not made a decision,

   to buy the eligible croft land; or
(b) during the relevant period.
(3) Such an application may be made during the relevant period only where the crofting community body—

(a) has provided confirmation under section 85(1) below of its intention to proceed to buy the eligible croft land; or

(b) has bought and retained that land in accordance with the provisions of this Part of this Act.

(4) In subsection (1) above, “statutory tenancy” is to be construed in accordance with section 3 of the Rent (Scotland) Act 1984 (c.58).

(5) In subsection (2) above, “relevant period” means the period beginning with the date on which Ministers consented to the application under section 73 to buy the eligible croft land and ending—

(a) where the crofting community body does not proceed to exercise its right to buy that land, on the date on which it withdraws, under section 85(2) below, its confirmation so to proceed; or

(b) where the crofting community body has bought and retained that land, five years after the date on which the crofting community body bought that land.”.

(3) After section 97 there is inserted—

“97A Construction of references to “tenant”

In this Part, “tenant” includes sub-tenant (analogous expressions being construed accordingly).”.

PART 7

GENERAL AND MISCELLANEOUS

General

36 Regulations concerning loans

After section 46 of the 1993 Act, there is inserted—

“46A Regulations concerning loans

(1) The Scottish Ministers may in accordance with regulations made by them under subsection (2) below provide loans to—

(a) crofters;

(b) cottars;

(c) owners of holdings to which section 46(2) of this Act applies.

(2) Regulations under this subsection may make provision as to—

(a) who is to be eligible for a loan;

(b) the amount which may be lent;

(c) the circumstances under which, and the purposes for which, a loan may be provided;

(d) the terms and conditions applicable to any loan;
(e) arrangements for recording documents in connection with a loan in the Register of Crofts, the Land Register of Scotland or the Register of Sasines;

(f) arrangements for recovery of any part of a loan when the borrower dies;

(g) arrangements for assignation of the borrower’s liabilities in consequence of the borrower dying or no longer occupying the holding in respect of which the loan was provided.”.

37 **Appeal to Land Court and jurisdiction of that court**

(1) Before section 53 of the 1993 Act there is inserted—

“52A **Appeal to Land Court: general**

(1) An appeal shall lie on any question of fact or law to the Land Court against—

(a) any decision, determination or direction of, or

(b) the imposition of a condition by,

the Commission on an application made to them under this Act.

(2) The appellant may be the applicant or any person with an interest in the application.

(3) The appeal must be brought within 42 days after the Commission dispose of the application.

(4) The appellant shall give notice in writing to the Commission that he has appealed; and the Commission shall, as soon as practicable after receiving such notice, provide the Land Court with a written statement as to the circumstances out of which the application arose (as found by them or agreed with the appellant) and as to why they disposed of the application as they did.

(5) The Land Court shall send the appellant a copy of that statement.

(6) In an appeal under subsection (1) above the Court may confirm the decision, determination, direction or imposition or direct the Commission to come to a different decision, make a different determination or direction or impose a different (or no) condition.

(7) Subsections (1) to (6) above also apply, but with such modifications as are necessary, to—

(a) a granting of approval under section 23(3), or

(b) a variation, withdrawal or revocation under section 50B(9),

of this Act.

(8) Subsections (1) to (6) above do not apply where an appeal lies under section 10(4B), 25(8) or 38A of this Act.

(9) In subsections (1) to (6) above, “decision” does not include a decision under section 58A of this Act as to whether or not to intervene or any determination by the Commission that an objection under subsection (4) of that section is frivolous, vexatious or unreasonable.”.

(2) In section 53 of the 1993 Act (jurisdictional provisions)—

(a) in subsection (1), after paragraph (d) there is added—
“(e) the question—

(i) whether any of the grounds mentioned in subsection (2A) of section 50 of this Act as grounds for refusing consent applied for under subsection (1) of that section is made out, or

(ii) whether conditions subject to which any such consent is given are reasonable”;

(b) in the proviso to subsection (1), for paragraph (ii) (and the word “or” immediately preceding that paragraph) there is substituted—

“(ii) any question arising by virtue of an application to the Commission under this Act; or

(iii) any other question (other than a question of law), if it is a question decided by the Scottish Ministers or the Commission in the discharge of any of their respective functions under this Act.”; and

(c) in subsection (2), for the words “this Act” there is substituted “subsection (1) above”.

38 Further amendments in relation to the Land Court

(1) Schedule 1 to the Scottish Land Court Act 1993 (c.45) (incorporation etc. of the Scottish Land Court) is amended as follows.

(2) In paragraph 5 (quorum), for the words “three members of the Land Court shall be a quorum” there is substituted “a quorum of the Land Court shall be—

(a) three of its members if none of the three is the Chairman; or

(b) the Chairman and one other of its members”.

(3) In paragraph 6 (delegation)—

(a) in sub-paragraph (2), for the words from “shall” to the end there is substituted “, other than a delegation to one member where that member is the Chairman, shall be subject to review upon appeal by three or more members, or nominated former members, of the Land Court sitting together; and one of the members so sitting shall be the Chairman.”; and

(b) sub-paragraph (3) is repealed.

(4) After paragraph 6 there is inserted—

“6A On any question being determined by the Land Court, whether or not by virtue of paragraph 6 of this Schedule, the Chairman shall have a casting vote.”.

(5) After paragraph 7 there is inserted—

“7A The reference in paragraph 6(2) of this Schedule to nominated former members is to such members as have vacated office, whether or not under paragraph 2 of this Schedule, and in relation to the particular review have been nominated under this paragraph by the principal clerk.”.

(6) In paragraph 18 (payments to persons appointed etc.), for the words “or employed under paragraph 7” there is substituted “, employed or as the case may be nominated under paragraph 7, 7A”.
39 **Public notification**

After section 55 of the 1993 Act, there is inserted—

"**55A Public notification**

(1) For the purposes of this Act, public notification shall be given by publishing or causing to be published a notice in appropriate form in one or more newspapers circulating in the district in which the croft or, as the case may be, common grazing to which the application relates (or in the case of public notification under section 50B(4)(a)(ii) the regulations relate) is situated.

(2) A notice is in appropriate form if—

(a) its form and content comply, or do so as far as is reasonably practicable, with the form and content specified by the Commission for an application of that type (or as the case may be for regulations under section 49(2)(g) of this Act); and

(b) it specifies—

(i) the purpose of the application to which it relates (or in the case of regulations the matters which are required to be set out in it by virtue of section 50B(4)(a)(i) of this Act);

(ii) a description of the croft land or, as the case may be, common grazing to which the application relates (or regulations relate); and

(iii) in the case of an application, the period during which, and manner in which, objections may be made.

(3) Where, in accordance with the provisions of this Act, a person giving public notification is also required to serve notice on a landlord, tenant or occupier of croft land to which the application relates or, if applicable, on the owner of, or a crofter sharing in, the common grazing, such notice shall be in the form required by subsection (2) above."

40 **“Members of a family”**

In section 61 of the 1993 Act (interpretation)—

(a) in subsection (2), for the words from “the wife” to the end, there is substituted “the individual in question’s—

(a) spouse or civil partner (or cohabitant provided that the individual has no spouse or civil partner and that the cohabitation has included cohabitation for at least two years in a dwelling-house on or pertaining to the croft);

(b) sibling;

(c) sibling’s spouse or civil partner;

(d) spouse’s or civil partner’s sibling;

(e) father;

(f) mother;

(g) son;

(h) daughter;
(i) son’s or daughter’s spouse or civil partner;
(j) grandchild;
(k) grandchild’s spouse or civil partner;
(l) aunt;
(m) uncle;
(n) nephew; or
(o) niece.”; and

(b) after that subsection there is added—

“(3) In subsection (2)(a) above, and in the definition of “son” or “daughter” in
subsection (4) below, the reference to an individual’s cohabitant is to a person,
whether or not of the same sex as the individual, who lives with the individual
as if—

(a) in a married relationship; or
(b) in civil partnership.

(4) In subsection (2) above—

“sibling” includes a sibling by virtue only of adoption, marriage or civil
partnership and a sibling of the half blood;

“son”, “daughter” or “grandchild” includes a person so related by virtue
only of adoption, marriage or civil partnership; and

“son” or “daughter” includes a son, or as the case may be a daughter, of
the individual’s cohabitant provided that such son or daughter resides
with the individual and that such residence has included residence for at
least two years in a dwelling-house on or pertaining to the croft.”.

“Crofting community”

In section 61(1) of the 1993 Act (interpretation), at the appropriate place there is
inserted—

““crofting community” means all the persons who (either or both)—

(a) occupy crofts within a township which consists of two or more
crofts and is registered with the Crofters Commission;

(b) hold shares in a common grazing associated with that township;”.

“The 1993 Act”

In this Act “the 1993 Act” means the Crofters (Scotland) Act 1993 (c.44).

Miscellaneous

Minor and consequential amendments

Schedule 2 to this Act, which contains minor amendments and amendments
consequential on the provisions of this Act, has effect.
44  **Savings**

(1) Nothing in this Act affects an application made, a loan provided, or proceedings commenced, before this section comes into force.

(2) Nothing in this Act affects any provision of the 1993 Act amended or repealed by this Act in that provision’s operation in relation to an offence committed before the amendment is made or, as the case may be, the provision is repealed.

45  **Transitional provision etc.**

(1) The Scottish Ministers may, by order made by statutory instrument, make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, this Act.

(2) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) An order under subsection (1) may make different provision for different cases or for different classes of case.

(4) An order under subsection (1) may amend or repeal any enactment; and if it does is not made unless a draft of the statutory instrument containing the order has been—

   (a) laid before; and

   (b) approved by a resolution of,

the Scottish Parliament.

46  **Repeals**

The enactments mentioned in schedule 3 to this Act are repealed to the extent mentioned in the second column of that schedule.

47  **Short title, Crown application and commencement**

(1) This Act may be cited as the Crofting Reform etc. Act 2006.

(2) This Act binds the Crown.

(3) The provisions of this Act, except this section and sections 42, 44 and 45, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(4) Different days may be so appointed for different provisions and for different purposes.
SCHEDULE 1
(introduced by section 1)

THE CROFTERS COMMISSION

For Schedule 1 to the 1993 Act, there is substituted—

“SCHEDULE 1
(introduced by section 1)

THE CROFTERS COMMISSION

Status

1 The Commission shall be a body corporate.

2 The Commission shall not be regarded as a servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor shall their members or their employees appointed under paragraph 11 be regarded as civil servants, nor their property as property of, or held on behalf of, the Crown.

General powers

3 (1) The Commission may do anything which appears to them to be necessary or expedient for the purposes of, or in connection with the discharge of, their functions; and without prejudice to that generality they may in particular—

(a) co-operate with other persons in matters relevant to the discharge of their functions;

(b) acquire and dispose of land and other property;

(c) enter into contracts;

(d) charge—

(i) in respect of regulatory activities, such amounts as may be prescribed by the Scottish Ministers; and

(ii) in respect of any other service provided by them, such amounts as appear to them to be reasonable.

(2) In head (i) of sub-paragraph (1)(d) above, “regulatory activities” means such activities, or descriptions of activities, as may be prescribed by the Scottish Ministers; but neither such activities nor such other service as is mentioned in head (ii) of that sub-paragraph shall include things for which a fee is chargeable under, or by virtue of, section 41B of this Act.

Membership

4 The Commission shall consist of the following members, appointed by the Scottish Ministers—

(a) a person to chair the Commission;

(b) such number of other members as the Scottish Ministers may from time to time determine.
5 The members appointed shall include—
   (a) persons with knowledge of crofting; and
   (b) at least one person who can speak the Gaelic language.

6 (1) The Scottish Ministers shall satisfy themselves—
   (a) before they appoint a person to be a member, that the person will have
       no such financial or other interest as is likely to affect prejudicially the
       performance of the person’s functions as a member; and
   (b) from time to time, that each person so appointed continues, and has
       continued, to have no such interest.

10 (2) For the purposes of sub-paragraph (1), the fact that a person is a crofter, a
       landlord or owner-occupier of a croft or a member of the family of any such
       person shall not of itself constitute an interest mentioned in that sub-
       paragraph.

7 A person in respect of whom the Scottish Ministers require to be satisfied as is
   mentioned in paragraph 6(1) shall, whenever requested by the Scottish
   Ministers to do so, furnish them with such information as they may consider
   necessary for the purposes of fulfilling that requirement.

Terms of office etc.

8 (1) Subject to the provisions of this Schedule, the appointment of a member under
   paragraph 4 shall be on such terms and conditions as the Scottish Ministers
   may determine.

   (2) A person holds and vacates office as member in accordance with the person’s
        terms of appointment.

   (3) A person may resign office as member at any time by notice in writing to the
        Scottish Ministers.

Eligibility for re-appointment

9 A person who ceases to be a member of the Commission is eligible for re-
   appointment.

Remuneration, allowances, pensions etc. of members

10 The Commission shall—
    (a) pay to their members such remuneration and allowances as the Scottish
        Ministers may determine;

    (b) in respect of such of their members or former members as the Scottish
        Ministers may determine, pay, or make payments towards the provision
        of, such pensions, allowances or gratuities as the Ministers may
        determine.
Chief executive and other employees

11 (1) The Scottish Ministers shall, after consultation with the member appointed for the time being to chair the Commission, make the first appointment of the chief executive of the Commission on such terms and conditions as the Ministers may determine.

(2) The Commission may, with the approval of the Scottish Ministers, make subsequent appointments to the post of chief executive on such terms and conditions as they may, with the approval of the Scottish Ministers, determine.

(3) The Commission may, with the approval of the Scottish Ministers as to numbers, terms and conditions, appoint such other employees as they consider appropriate.

(4) The Commission may, with the approval of the Scottish Ministers—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances and gratuities to or in respect of such of their employees, or former employees, as they may with such approval determine.

(5) The reference in sub-paragraph (4) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Committees

12 (1) The Commission—

(a) shall establish an audit committee for the purpose of—

(i) approving the Commission’s audit plans and reports, reviewing the operation of the plans and making recommendations as to their modification;

(ii) co-ordinating any response the Commission may make to recommendations contained in audit reports produced by others;

(iii) securing that the Commission have procedures which will facilitate financial probity and ensure that considerations of quality and effectiveness are given due regard when decisions are taken by them; and

(b) may establish such other committees for such purposes as they think fit.

(2) The Commission may appoint as members of any of their committees persons who are not members of the Commission; but no such committee shall consist entirely of such persons.

(3) The Commission shall pay to a person so appointed such remuneration and allowances as the Scottish Ministers may determine.

(4) A committee of the Commission shall comply with any directions given to it by the Commission.
Procedure

13 (1) The Commission shall have an office in at least one of the crofting counties for the purpose of receiving communications and notices.

(2) The quorum of the Commission shall be 3 or such larger number as the Commission may from time to time determine.

(3) Subject to the provisions of this Schedule, the Commission may regulate their own procedure and that of any of their committees (including the appointment of a person to chair a meeting where the member appointed under paragraph 4(a) to chair the Commission is unavailable to chair a meeting or is otherwise unable to do so and any quorum of any of their committees).

(4) The Commission shall maintain a record of their meetings and decisions and of the meetings and decisions of their committees.

(5) The validity of any proceedings of the Commission, or of any of their committees, shall not be affected by any vacancy in membership nor by any defect in the appointment of a member.

Delegation of functions

14 (1) Anything authorised or required by any enactment to be done by the Commission may be done by any of their members or staff authorised (generally or specifically) for the purpose by the Commission.

(2) Nothing in sub-paragraph (1) shall prevent the Commission from doing anything which any of their members or staff has been so authorised to do.

Returns etc. to Scottish Ministers

15 The Commission shall—

(a) furnish the Scottish Ministers with such returns, accounts and other information with respect to the discharge of the Commission’s functions, and the Commission’s property and activities or proposed activities, as the Scottish Ministers may from time to time require;

(b) afford to the Scottish Ministers facilities for the verification of information so furnished; and

(c) for the purpose of such verification, permit any person authorised in that behalf by the Scottish Ministers to inspect and make copies of the accounts, books, documents or papers of the Commission and to give that person such explanation of anything the person is entitled to inspect as the person may reasonably require.

Annual accounts etc.

16 (1) The Commission shall—

(a) keep accounts; and

(b) prepare annual accounts in respect of each financial year,
in accordance with such directions as the Scottish Ministers may give them.

(2) Without prejudice to paragraph 15, the Commission shall submit their annual accounts in respect of each financial year to the Scottish Ministers by such date as the Scottish Ministers may direct.

(3) The Scottish Ministers shall send the Commission’s annual accounts to the Auditor General for Scotland for auditing.

(4) If requested by any person, the Commission shall make available at any reasonable time, without charge, in printed or in electronic form, their audited accounts, so that they may be inspected by that person.

Annual report

17 (1) Without prejudice to paragraph 15, as soon as practicable after the end of each financial year, the Commission shall submit to the Scottish Ministers a report on the discharge of the Commission’s functions during that year.

(2) The Scottish Ministers shall lay before the Parliament a copy of each report submitted to them under sub-paragraph (1).

Transfer of property, rights and liabilities

18 (1) Where the Scottish Ministers consider it necessary or expedient in order to facilitate the exercise of functions by the Commission, they may transfer to the Commission any property, rights and liabilities to which the Scottish Ministers are entitled or subject.

(2) Property, rights and liabilities may be transferred by virtue of sub-paragraph (1) whether or not otherwise capable of being transferred by the Scottish Ministers.”.

SCHEDULE 2
(introduced by section 43)

MINOR AND CONSEQUENTIAL AMENDMENTS

Crofters Holdings (Scotland) Act 1886 (c.29)

1 In section 1(4) of the Crofters Holdings (Scotland) Act 1886 (crofter not to be removed except for breach of statutory conditions), for the words “subdivide his holding or sublet the same” there is substituted “sublet his holding”.

Crofters (Scotland) Act 1993 (c.44)

2 (1) The 1993 Act is amended in accordance with this paragraph.

(2) In section 4 (enlargement where owner and crofter are in agreement), after subsection (2) there is inserted—

“(2A) The crofter shall pay to the landlord such rent as they shall agree for the croft as enlarged under subsection (1) above (section 6 of, and paragraph 1 of Schedule 2 to, this Act being construed accordingly).”.
(3) In section 6 (rent)—

(a) in subsection (3)—

(i) after the words “landlord for the croft” there is inserted “or for any part of the croft”;

(ii) in paragraph (a) of the proviso, after the word “croft” there is inserted “or for any part of the croft”; and

(iii) in paragraph (b) of the proviso, after the word “rent” there is inserted “for it or for any part of it”;

(b) after subsection (3) there is inserted—

“(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.”;

and

(c) in subsection (4), after the words “a croft” there is inserted “or for any part of a croft”.

(4) In section 13 (authorisation by Land Court of acquisition of croft land), at the end there is added—

“(6) The Land Court, in making an order under subsection (1)(a) above, may determine that any of the expenses of the conveyance of the land and other expenses necessarily incurred by the landlord in relation to that conveyance shall be borne by the crofter.

(7) Failing agreement between the landlord and the crofter as to the amount of such expenses, the auditor of the Land Court may, on the application of either of them—

(a) determine that amount; and

(b) determine that the expenses of taxing those expenses are to be borne by them in such proportion as the auditor thinks fit.”.

(5) In section 24(1) (decrofting in case of resumption of croft), at the end there is added “and to sections 3A and 21A of this Act”.

(6) In section 25(6) (decrofting: supplementary provision), after the words “pertaining to the croft” there is inserted “or only of land the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act”.

(7) In section 26 (provisions as to removal of crofter)—

(a) in subsection (1), for the words “for the removal of the crofter” there is substituted “—

(i) terminating the tenancy;

(ii) declaring the croft to be vacant; and

(iii) for the removal of the tenant from the croft”; and

(b) in subsection (3), after the words “his croft” there is inserted “(whether by virtue of this section or by virtue of section 5A or 5B of this Act)”.
(8) In section 41 (Register of Crofts)—

(a) in subsection (1), for the words from “a” to “Crofts”)” there is substituted “the register known as the Register of Crofts”; and

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

“(2A) Subsection (2) above applies in relation to land constituted as a common grazing under section 51A of this Act, the owner of that land and the persons sharing in the common grazing as it applies in relation to a croft and its landlord and tenant; and an entry made by virtue of this subsection must contain the information that the common grazing is so constituted.”.

(9) In section 42 (financial assistance to crofters)—

(a) in subsection (1)—

(i) for the words “aiding and developing agricultural production on” there is substituted “supporting any reasonable use which promotes the sustainable development of”; and

(ii) the words “and with the approval of the Treasury” and “and loans” are repealed;

(b) after that subsection there is inserted—

“(1A) Such schemes shall specify criteria for determining who shall be eligible for grants payable under those schemes (as for example, the occupier’s income, or the rental or agricultural value or extent of his croft); and different schemes may specify different criteria.”;

(c) in subsection (2)—

(i) in paragraph (a), the words “and loans” are repealed;

(ii) in paragraph (b), for the words “Secretary of State” there is substituted “Scottish Ministers, or the Commission on behalf of the Ministers,” and the words “or loan” are repealed; and

(iii) in paragraph (c), the words “or loan” are repealed in both places where they occur;

(d) in subsection (4)—

(i) at the beginning there is inserted “Without prejudice to subsection (1) above,”; and

(ii) the words “with the approval of the Treasury” and “or loans or by the supply for payment in cash of building or other materials” are repealed;

(e) subsection (5) is repealed;

(f) in subsection (6)—

(i) in paragraph (b), for the words “Secretary of State” there is substituted “Scottish Ministers, or the Commission on behalf of the Ministers,;”;

(ii) in paragraph (c), for the words “Secretary of State” there is substituted “Scottish Ministers, or to the Commission on behalf of the Ministers,”; and

(iii) in paragraph (d), the words “to the Secretary of State” are repealed;
(g) in subsection (8), for the words from “assistance by” to “supplies” there is substituted “grant under subsection (1) above, nor assistance under subsection (4) above, shall be given towards carrying out any works”;

(h) in subsection (9), after the word “receiving” there is inserted “a grant under subsection (1) above nor”;

(i) after that subsection, there is inserted—

“(9A) Any scheme under subsection (1) above or arrangements under subsection (4) above may provide that a person’s economic status is a criterion for eligibility for grants payable under that scheme or those arrangements.”; and

(j) in subsection (10)—

(i) the words “or loan” are repealed; and

(ii) after the words “or under”, there is inserted “arrangements made under”.

(10) In section 44 (cottars), for the words from “loan” to “materials” there is substituted “grant”.

(11) In section 45 (former crofters and cottars who have acquired site of the dwelling-house)—

(a) subsection (2) is repealed; and

(b) in subsection (4), the words “or loan” are repealed.

(12) In section 46 (financial assistance to owners and owner-occupiers of crofts and other holdings)—

(a) in subsection (1), for the words from “loan” to “materials” there is substituted “grant”;

(b) in subsection (2)(c), for the words “is of substantially the same economic status as a crofter” there is substituted “uses his holding in a way which is substantially the same as that of a crofter”;

(c) subsection (3) is repealed;

(d) in subsection (4)—

(i) in paragraph (a), for the words “are of substantially the same economic status as a crofter” there is substituted “use their crofts in a way which is substantially the same as that of a crofter”; and

(ii) in each of paragraphs (b) and (c), for the words “are of substantially the same economic status as a crofter” there is substituted “use their holdings in a way which is substantially the same as that of a crofter”; and

(e) in subsection (5), the words “or loan” are repealed.

(13) In section 47 (appointment etc. of grazings committee or grazings constable)—

(a) in subsection (1), for the words “called in accordance with subsection (2) below” there is substituted “of which public notification has been given”; 

(b) subsection (2) is repealed;

(c) after subsection (6) there is inserted—

“(6A) A person so appointed (or appointed under subsection (8) below to be the clerk of the committee) is in this Act referred to as the “grazings clerk”.”;
(d) in subsection (8)—
   (i) the words “or the clerk” are repealed;
   (ii) after the word “them” there is inserted “(or that the grazings clerk is not properly carrying out the duties imposed on him)”; and

(e) in subsection (9)—
   (i) for the words “clerk appointed under subsection (6) or (8) above” there is substituted “grazings clerk”; and
   (ii) for the word “grazings”, in the final place where it occurs, there is substituted “grazing”.

(14) In section 48 (powers and duties of grazings committees)—

(a) in subsection (1)—
   (i) in paragraph (a), for the word “grazings” there is substituted “grazing” and for the word “therewith” there is substituted “with such maintenance and with the implementation of any proposal approved under section 50B(9) of this Act”;
   (ii) after paragraph (b) there is inserted—
         “(bb) to carry out works in implementation of any such proposal as is mentioned in paragraph (a) above;”;
   (iii) in paragraph (c), for “grazings”, in the second place it occurs, there is substituted “grazing”; and
   (iv) in the proviso to paragraph (c), for “grazings”, in the second place it occurs, there is substituted “grazing”;

(b) in subsection (2)—
   (i) for the word “grazings”, in the second place it occurs, there is substituted “grazing”; and
   (ii) after the words “(1)(b)” there is inserted “or (bb)”;

(c) after subsection (4) there is inserted—
   “(4A) Where the grazings committee have obtained the approval referred to in subsection (6) of section 50B of this Act, they may, subject to any conditions imposed under subsection (9) of that section and for the time being in force (and to the approval not having been revoked), use any part of the common grazing in accordance with the proposal.”;

(d) in subsection (5), for the word “interested” there is substituted “who holds a right”; and

(e) after subsection (6) there is inserted—
   “(6A) The powers of the grazings committee include the power to raise money (whether by borrowing or otherwise) for the purpose of implementing any proposal approved under section 50B(9) of this Act; but on any occasion they shall only exercise that power if a majority of the grazings committee vote to do so.”.
(15) In section 49 (common grazings regulations)—

(a) in subsection (2)—

(i) in paragraph (a), for the word “grazings”, in the second and third places it occurs, there is substituted “grazing” and for the word “therewith” there is substituted “with such maintenance or with the implementation of any proposal approved under section 50B(9) of this Act”;

(ii) in paragraph (b), after the words “(1)(b)” there is inserted “or (bb)”;

(iii) in paragraph (c), for the words “and (b) respectively” there is substituted “to (bb)”; and

(iv) in each of paragraphs (d) and (e), for the word “grazings” there is substituted “grazing”;

(b) in subsection (3)—

(i) in paragraph (a), for the word “grazings”; and

(ii) in paragraph (b), for the word “grazings”, in both places it occurs, there is substituted “grazing”; and

(c) in subsection (7)—

(i) for the word “landlord”, in both places it occurs, there is substituted “owner”; and

(ii) for the word “grazings”, in the first place it occurs, there is substituted “grazing”.

(16) In section 52(2) (application for consent for exclusion of stock from croft in certain circumstances), for the word “grazings”, in the second, third and fourth places it occurs, there is substituted “grazing”;

(17) In section 55 (service of notices), after subsection (1) there is inserted—

“(1A) A notice or other document is sent by post under this section if—

(a) in the case of an individual, it is sent by registered post or the recorded delivery service, addressed to that person at that person’s usual or last known address or, where the person has given an address for service, at the address so given;

(b) in any other case, by sending it by registered post or the recorded delivery service, addressed to that person at the person’s registered or principal office.”.

(18) In section 61(1) (interpretation) at the appropriate places there are added—

““enactment” includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament;”;

““public notification” has the meaning given by section 55A of this Act;”;

““woodlands” includes woodlands created by planned natural regeneration (as defined by section 50A(8) of this Act)”.

(19) In Part 1 of Schedule 7, in the table, in the entry relating to the Crofters (Scotland) Act 1886, after the word “Crofters” there is inserted “Holdings”.

(20) That Schedule is to be deemed always to have had effect subject to the amendment specified in sub-paragraph (19).
Deer (Scotland) Act 1996 (c.58)

3 In section 26 of the Deer (Scotland) Act 1996 (right of occupier in respect of deer causing serious damage to crops etc.)—

(a) in subsection (2), at the end there is added “and in relation to enclosed land (other than moorland) which is part of a common grazing, the subsection also applies to a person who for the purposes of the subsection is both duly authorised in writing by the grazings committee (provided the grazings committee have such reasonable ground as is mentioned in that subsection) and approved as is mentioned in paragraph (d) above”; and

(b) in subsection (4), in each of paragraphs (a) and (d), after the word “occupier” there is inserted “, or as the case may be the committee,”.

Land Reform (Scotland) Act 2003 (asp 2)

4 (1) The Land Reform (Scotland) Act 2003 is amended in accordance with this paragraph.

(2) In section 73 (application by crofting community for consent to buy croft land etc.)—

(a) in subsection (3)—

(i) after the word “interests” there is inserted “or more than one tenancy”; and

(ii) after the words “such holding” there is inserted “or tenancy”;

(b) after subsection (5) there is inserted—

“(5A) Paragraphs (b) to (g) of subsection (5) above do not apply as respects an application made by virtue of section 69A(2) of this Act.”; and

(c) in subsection (8)(a) after sub-paragraph (i) there is inserted—

“(ia) in the case of an application made by virtue of section 69A(2) above, the tenant;”.

(3) In section 75 (ballot to indicate approval for purposes of section 74(1)(m))—

(a) in subsection (1)—

(i) after the words “buy land” there is inserted “, the real right of a tenant over land”; and

(ii) in paragraph (a), after the word “land” there is inserted “, real right”; and

(iii) in paragraph (b)(ii), at the end there is added “or within the land over which the real right of the tenant subsists”;

(b) in subsection (3), after the word “land” there is inserted “, real right”; and

(c) in subsection (4)(c), at the end there is added “or as the case may be within the land over which the real right of the tenant subsists”; and

(d) in subsection (5)—

(i) in paragraph (a), at the end there is added “or within the land over which the real right of the tenant subsists”; and

(ii) at the end there is added “or within the land over which the real right of the tenant subsists”.

---

**Schedule 2—Minor and consequential amendments**
(4) In section 82(1)(b) (notification of Ministers’ decision on application), after the word “or” there is inserted “as the case may be the tenant to whose real right the application relates or the”.

(5) In section 85 (confirmation of intention to proceed with purchase and withdrawal)—

(a) in subsection (1)—

(i) after the words “buy land” there is inserted “, the real right of a tenant over land”;  
(ii) after the words “buy the land” there is inserted “, real right”; and 
(iii) after the words “of the land or” there is inserted “, as the case may be, the tenant or the”; and

(b) in subsection (3), after the words “land or” there is inserted “, as the case may be, the tenant or the”.

(6) In section 86 (completion of purchase), at the end there is added—

“(7) In relation to an application made by virtue of section 69A(2) above, the owner of the land and the tenant are obliged to make available to the crofting community body such deeds and other documents as are sufficient to enable the body to complete its acquisition of the real right of the tenant; and if, within 6 weeks of the date on which Ministers consent to the application the owner or tenant refuses or fails to make those deeds and other documents available, or they cannot be found, the Land Court may, on the application of the crofting community body, order the owner or tenant or any other person appearing to the Court to have those deeds and documents to produce them.”.

(7) In section 87 (completion of transfer)—

(a) in subsection (1), after the word “land” there is inserted “, real right of the tenant”; 
(b) in subsection (2), after the word “land” there is inserted “, real right”; 
(c) in subsection (3)—

(i) in paragraph (a), after the words “owner or” there is inserted “, as the case may be, the tenant or the”; 
(ii) in paragraph (b), after the word “land” there is inserted “, real right”; 
(d) in subsection (5), after the word “or” there is inserted “, as the case may be, the real right of the tenant or the”.

(8) In section 88 (assessment of value of croft land etc.)—

(a) in subsection (1)—

(i) after the word “bought” there is inserted “or as the case may be is similar to the land over which the real right of the tenant subsists”; and 
(ii) after the words “value of the land” there is inserted “, real right”;  
(b) in subsection (4)—

(i) after the words “of land” there is inserted “, the real right of a tenant over land”;
(ii) in paragraph (a), for the words “or person entitled to the interests or of the crofting community body which is exercising its right to buy the land” there is substituted “, of the tenant who holds the real right, of the person entitled to the interests or of the crofting community body which is exercising its right to buy the land, real right”;

(c) in subsection (5), after the words “of the land” there is inserted “, real right”;

(d) in subsection (6)—

(i) after the word “land” where it first occurs there is inserted “, a real right”;

(ii) in paragraph (b), after the word “land” in the first three places where it occurs there is inserted “, real rights” and after it in the last place it occurs there is inserted “, the real right of the tenant over land”; and

(iii) in paragraph (c), after the word “land” there is inserted “, the real right of the tenant over land”;

(e) in subsection (7)—

(i) after the word “land” where it first occurs there is inserted “, real rights”;

(ii) in paragraph (a), after the word “land” in each place where it occurs there is inserted “, real right”; and

(iii) in paragraph (b)(iii), after the word “land” there is inserted “, the real right of the tenant over land”;

(f) in subsection (9)—

(i) after the words “owner of the land or” there is inserted “as the case may be the tenant or the”; and

(ii) after the words “buy the land” there is inserted “, real right of the tenant”; and

(iii) after the words “value of the land” there is inserted “, real right”;

(g) in subsection (10)—

(i) after the words “owner of the land or” there is inserted “as the case may be the tenant or the”; and

(ii) after the words “valuation of the land” there is inserted “, real right”; and

(h) in subsection (12)—

(i) after the words “owner of the land or” there is inserted “as the case may be the tenant or the”; and

(ii) after the words “buy the land” there is inserted “, real right of the tenant”; and

(iii) after the words “value of the land” there is inserted “, real right”;

(9) In section 89 (compensation)—

(a) in subsection (1), after the words “sporting interests” there is inserted “(and in the case of an application made by virtue of section 69A(2) above a tenant)”;

(b) in subsection (3), after the word “land” there is inserted “, the tenant”.

(10) In section 90(2)(a) (grants towards crofting community bodies’ liabilities to pay compensation), after the word “land” there is inserted “, a real right of a tenant over land”.
(11) In section 91 (appeals)—
   (a) in subsection (1), after the word “relates” there is inserted “(and in the case of an
       application made by virtue of section 69A(2) above the tenant)”; and
   (b) in subsection (2)(b), after the word “land” there is inserted “, real right”.

(12) In section 92 (appeals to Land Court: valuation)—
   (a) in subsection (1)—
      (i) after the words “sporting interests” there is inserted “or tenant who holds
           the real right”; and
      (ii) after the words “the land” there is inserted “, real right”; and
   (b) in subsection (3), after the word “land” there is inserted “, real right”.

(13) In section 95(1) (avoidance of disposal other than to crofting community)—
   (a) after the words “owner of the land” there is inserted “, tenant who holds the real
       right”; and
   (b) after the words “dispose of the land” there is inserted “, real right”.

(14) In section 96(b) (limitation on effect of Part 3 of Land Reform (Scotland) Act 2003),
    after the word “land” there is inserted “, a real right over land”.

SCHEDULE 3
(introduced by section 46)

REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
</table>
| Crofters (Scotland) Act 1993 (c.44)    | In section 4, in subsection (1)(b) the words “and the rent of the croft together
                                           with the rent under the said tenancy exceeds £100”; and in subsection (2)(b) the
                                           words “or capable of being let as a croft at an annual rent substantially in excess
                                           of £100”.                                                                       |
|                                       | In section 15(3), the proviso.                                                   |
|                                       | In section 30(2), in paragraph (a) the words from “and” to the end; and in the
                                           second sentence the word “either” and the words from “or to” to “to him”.        |
|                                       | In section 41(2), the proviso.                                                   |
|                                       | Section 43.                                                                     |
|                                       | Section 54.                                                                     |
|                                       | Section 59.                                                                     |
| Succession (Scotland) Act 1964 (c.41)  | In section 16(3)(b), sub-paragraph (ia); and in sub-paragraph (ib), the words “by
                                           the landlord to the legatee and the Crofter’s Commission”.                   |
Crofting Reform etc. Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make further provision as regards crofting and as regards the Scottish Land Court; and for connected purposes.

Introduced by: Ross Finnie
On: 2 March 2006
Supported by: Rhona Brankin
Bill type: Executive Bill


Applications for reproduction should be made in writing to the Licensing Division, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.