

WOODLAND CROFTS: INFORMATION PAPER

IMPACT OF CROFTING STATUTORY CONDITIONS

1 Statutory conditions of let and agreement not to buy, assign, claim a share in the value of land resumed by landlord or compulsorily purchased

The statutory conditions of let for crofts are set out in schedule 2 to the Crofters (Scotland) Act 1993 (as amended) and are attached as an annex to this paper.

The tenant of a new croft may enter into an agreement with their landlord not to exercise the options available under the Crofters (Scotland) Act 1993 to acquire any part of the croft, including the site of the dwelling house, or the whole of the croft. That agreement would be binding on successors to the croft tenancy. The tenant may also agree with the landlord that they will not seek to assign the tenancy of the croft or seek compensation for land resumed or compulsorily purchased. Any such agreements must be lodged in the Crofters Commission's Register of Crofts.

The effect is to enable a landowner to create new crofts without the risk of these being acquired by the incoming tenant or his successors in tenancy, or being assigned without the agreement of the landlord.

2 Variation of statutory conditions of let other than those mentioned above

In addition to those noted in paragraph 1 above, the other tenant rights under the Act may be surrendered where approved by the Scottish Land Court.

3 Additional conditions

It would be possible for a landlord and tenant to agree additional conditions of let which are not given or guaranteed by the Act, but if challenged these would require the approval of the Scottish Land Court.

4 Existing trees

Where crofts are created in woodland, the right to extract and manage these trees would continue to rest with the landlord. However, the landlord could allow the tenant to extract and manage if wished, or he could simply sell the trees to the tenant.

5 Renouncing a croft tenancy

A reason that some people have for assigning their croft tenancy for a financial consideration is to recoup any financial outlay or investment in

improving the croft. In the event of a crofter renouncing or giving up their croft tenancy to their landlord it is possible for the crofter to claim compensation for the permanent improvements. Agreeing the value of this compensation is initially a matter for the outgoing crofter and the landlord. However, if they cannot reach agreement the Scottish Land Court can be asked to set the level of compensation to be paid.

6 Use of the Croft as Woodland

The existing statutory conditions includes in the definition of “cultivate”.

“planting of trees and use of the land as woodlands.”

Which provides all the authority required for a forest crofter to use all or part of his croft as woodland.

**CROFTERS COMMISSION
MAY 2008**

SCHEDULE 2¹

(introduced by section 5)

THE STATUTORY CONDITIONS

1

The crofter shall pay his rent at the terms at which it is due and payable.

2

The crofter shall not, except in accordance with the provisions of this Act, execute any deed purporting to assign his tenancy.

3

The crofter shall, by himself or his family, with or without hired labour, 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.²

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.

4

The crofter shall provide such fixed equipment on his croft as may be necessary to enable

¹ Schedule 2 is amended by section 7(2) of the Crofting Reform Act 2007.

² Section 7(3) of the CRA provides that: -- "The amendment made by subsection (2)(a) [of Section 7] 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)."

him to cultivate the croft.

5

The crofter shall not, to the prejudice of the interest of the landlord, 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 acting prejudicial to that use being acting carried out after relevant notice.

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).

6

The crofter shall not sublet his croft or any part thereof otherwise than with the consent in writing of the Commission and in accordance with such conditions (which shall not include conditions relating to rent) as the Commission in giving their consent may impose:

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

6A

The crofter shall be responsible for ensuring, where the croft is sublet, that the subtenant adheres to the statutory conditions.³

7

The crofter shall not, except in accordance with the provisions of this Act, **divide** his croft.⁴

8

The crofter shall not, without the consent in writing of the landlord, erect or suffer to be erected on the croft any dwelling-house otherwise than in substitution for a dwelling-house which at the commencement of this Act was already on the croft:

³ This provision is effective from 25 June 2007.

⁴ The substitution of "divide" for "subdivide" is effective from 25 June 2007.

⁵ The word "persistently", which formerly appeared here, is repealed with effect from 25 June 2007.

⁶ The new paragraph 11A is effective from 25 June 2007.

Provided that, if at the commencement of this Act there was no dwelling-house on the croft, the crofter may erect one dwelling-house thereon.

9

The crofter shall not ...⁵ violate any written condition signed by him for the protection of the interest of the landlord or of neighbouring crofters which is legally applicable to the croft and which the Land Court shall find to be reasonable.

10

The crofter shall not do any act whereby he becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985.

11

The crofter shall permit the landlord or any person authorised by the landlord in that behalf to enter upon the croft for the purpose of exercising (subject always to the payment of such compensation as in case of dispute the Land Court may find to be reasonable in respect of any damage done or occasioned thereby) any of the following rights, and shall not obstruct the landlord or any person authorised as aforesaid in the exercise of any of such rights, that is to say—

- (a) mining or taking minerals, or digging or searching for minerals;
- (b) quarrying or taking stone, marble, gravel, sand, clay, slate or other workable mineral;
- (c) using for any estate purpose any springs of water rising on the croft and not required for the use thereof;
- (d) cutting or taking timber or peats, excepting timber and other trees planted by the crofter or any of his predecessors in the tenancy, or which may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the croft;
- (e) opening or making roads, fences, drains and water courses;
- (f) passing and re-passing to and from the shore of the sea or any loch with or without vehicles for the purpose of exercising any right of property or other right belonging to the landlord;
- (g) viewing or examining at reasonable times the state of the croft and all buildings or improvements thereon;
- (h) hunting, shooting, fishing or taking game or fish, wild birds or vermin;

but nothing in this paragraph shall be held to preclude the crofter from recovering any compensation for damage by game which is recoverable under section 52 of the Agricultural Holdings (Scotland) Act 1991, or by virtue of section 53(3) of the Agricultural Holdings (Scotland) Act 2003 (asp 11) by a tenant.

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.⁶

12

The crofter shall not on his croft, without the consent in writing of the landlord, open any house for the sale of intoxicating liquors.

13

In this Schedule—

"cultivate" includes the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands;

"game" means deer, hares, rabbits, pheasants, partridges, grouse, blackgame, capercailzie, ptarmigan, woodcock, snipe, wild duck, widgeon and teal;

"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.