

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Enforcement of duties of crofters and owner-occupier crofters

Section 37: Enforcement of duties of crofters and certain owner-occupiers

91. This section inserts 10 new sections into the 1993 Act (sections 26A to 26H, 26J and 26K) setting out the arrangements for the enforcement of duties placed on tenant and owner-occupier crofters.
92. New section 26A places a duty on the Commission to investigate certain reports of alleged breaches of duty by tenant and owner-occupier crofters. This section applies to a report from a grazings committee including information that a tenant or owner-occupier crofter is not complying with their duties or any such information in writing from a grazings committee or grazings constable, an appointed Commission assessor or a member of the crofting community within which the croft is situated.
93. Subsection (4) requires the Commission to investigate a suspected breach of duty reported in this way, although they need not investigate where they consider that the information provided is frivolous or vexatious (subsection (5)).
94. New section 26B provides that it and new section 26C (which requires the Commission to serve notice of a suspected breach of duty) apply where the Commission consider that tenant crofters or owner-occupier crofters are not fulfilling their duties to reside on, or within 32 km of, the croft, not to misuse or neglect the croft, and to cultivate and maintain the croft. Subsections 26B(2) and (3) provide that a crofter or owner-occupier crofter is deemed to be complying with those duties (other than the duty not to misuse the croft) where a crofter's subtenant, or an owner-occupier's tenant under a "short lease", is complying with those duties or where consent to be absent from the croft has been granted. Subsection (4) defines "relevant person" for the purposes of sections 26C, 26D and 26K. The expression "short lease" is defined in section 29A(4) of the 1993 Act (as inserted by section 39 of the Act).
95. New section 26C requires the Commission to give written notice to those they consider are not fulfilling their duties, unless they consider there is good reason not to. Subsection (2) requires the written notice to explain why the Commission considers duties are not being complied with and to give notification that a person subject to the notice may make representations to the Commission within a "representation period" of 28 days of issue of the written notice. Where notice is given to a tenant crofter, a copy must be sent to the landlord. Section 26B(3) requires the Commission to consider all representations made within the representation period, although they may also consider representations made later (subsection (4)). Subsection (5) requires the Commission to decide whether or not the duties are being complied with no later than 14 days after the representation period ends.

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96. New section 26D sets out the steps that the Commission must take if they decide, under section 26B(5), that a duty is not being complied with, prior to proceeding with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must give written notice to the person in breach providing an opportunity for them to give an undertaking to remedy the breach and comply with the duty that has been breached within a period considered by the Commission to be reasonable. New section 26C(2) details the information a written notice must contain and requires that, where notice is given to a tenant crofter, a copy must be sent to the landlord. Subsection (3) permits the Commission to place conditions upon an undertaking given and subsection (4) requires the Commission to decide whether or not to accept an undertaking within 28 days of it being offered.
97. New section 26E sets out the circumstances in which the Commission may not proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may not proceed or take further enforcement action if the period for giving or complying with an undertaking has not expired or if an undertaking has been complied with. The Commission may also not take further enforcement action where it has consented to, or a tenant crofter has applied for consent (where that has not been decided upon) to, the subletting of the croft or, in the case of an owner-occupier crofter, the Commission has consented to the letting of the croft on a “short lease” (within the meaning of new section 29A), or an application has been made by the owner-occupier crofter to let the croft (whether on a short lease or to a tenant crofter) and that application has not yet been determined. Nor may the Commission take further enforcement action in respect of a failure to comply with the residency duty where they have either consented to the absence or are still in the process of considering an application for consent for absence, extending a period of absence or varying an absence condition.
98. New section 26F places a duty on the Commission to proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission must take action, unless they consider there is a good reason not to, if they decide under section 26C(5) that a tenant crofter or owner-occupier crofter is not complying with any duty under this part of the Act and none of the circumstances mentioned in new section 26E apply. Subsection (2) requires the Commission to proceed with tenancy termination in respect of tenant crofters, and letting procedures in respect of owner-occupier crofters.
99. New section 26G enables the Commission to divide a croft before they proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J. The Commission may take such action where it considers it fair to divide the croft, but only after having given due consideration to the factors stipulated by subsection (2) of section 26G. Subsection (2) states that the Commission must consider the use and occupation of the croft, the interests of the estate on which the (tenanted) croft is located, the sustainable development of the crofting community, and such other matters as the Commission deems appropriate. Subsection (3) provides for a division of a croft, or an owner-occupied croft, under this section to take effect on the date of registration of the division in the Crofting Register. Subsection (4) requires the Keeper to make up and maintain a new title sheet in respect of the new croft created by the division. Subsection (5) provides that, where a croft has been divided for failure to comply with the duties placed on the tenant crofter or owner-occupier crofter, the Commission may proceed with the tenancy termination and letting procedures introduced by new sections 26H and 26J in respect of either the whole of the original croft or any part of the croft. Subsection (6) requires the Commission, where they decide to divide a tenanted croft under this section, to give written notice to the landlord of the division and the effective date of that division. Subsection (7) defines “division” and “new crofts” for the purposes of this section.
100. New section 26H sets out the procedures that the Commission must follow when terminating a croft tenancy. The Commission must, unless they consider there is a good

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reason not to, make an order terminating the tenancy of a tenant crofter if they are satisfied that it is in the general interest of the local crofting community. Subsections (2) to (4) require the order to be notified to both tenant crofter and landlord and to specify the date on which it takes effect (which must not be earlier than 28 days after the later notification of the action (whether that is to the tenant crofter or the landlord)). Subsections (5) and (6) provide for the ejection of the crofter if he or she fails to give up occupation of the croft. The sheriff may refuse to issue a warrant for eviction only where the crofter can show cause. Subsection (7) permits the Commission to recover the expenses of applying for a warrant for eviction, and executing that warrant, from the crofter. Subsection (8) gives a crofter whose tenancy has been terminated for failure to comply with duties under the Act the same rights (e.g. compensation for permanent improvements made to the croft) and liabilities (e.g. rent due) as if the crofter had voluntarily renounced their tenancy on the date on which the order terminating the tenancy takes effect. This provides all crofters with the same rights and liabilities irrespective of how tenancies are ended.

101. New section 26J sets out the procedures that the Commission must follow when requiring an owner-occupier crofter to submit letting proposals. Subsection (1) requires the Commission, unless they consider there is a good reason not to, to direct the owner-occupier crofter who has failed to comply with a duty under section 19C(2) to submit a proposal, within 28 days of the Commission's direction, for letting the croft. Subsection (2) limits these letting proposals to a maximum of 3 potential tenants. Subsection (3) requires the Commission to approve or reject a proposal submitted in response to such a direction within 8 weeks of the date of the direction. Subsection (4) requires the Commission to take action under subsections (7) and (8) where the owner-occupier crofter has not submitted a letting proposal within 28 days or has not had a letting proposal approved within 8 weeks of the direction having been given. Subsections (5) provides that when the Commission direct an owner-occupier crofter to submit proposals to let an unregistered owner-occupied croft, the let of that croft is void unless an application for first registration of the croft is submitted within 3 months beginning with the date of the letting. Subsection (6) provides that when the Commission direct an owner-occupier crofter to let a registered owner-occupied croft, any approval to a letting expires at the end of 3 months beginning with the date of letting approval unless an application to amend the registration details of the croft is submitted within that period; and the let takes effect on the date of registration.
102. Subsections (7) and (8) require the Commission to invite applications, by public notification, for letting and to set a time period within which applications may be received. When the time period set in the public notification has ended, the Commission must decide to whom (if anyone) the croft should be let and, in consultation with the owner-occupier crofter, the conditions under which the croft is to be let. Where no applications are received, the Commission may choose not to let the croft, thereby rendering it a vacant croft. Subsection (9) provides that the letting of an unregistered owner-occupied croft to an applicant is void unless an application for first registration of the croft is submitted before the expiry of the period of 3 months beginning with the date of the letting. Subsection (10) requires an application for registration of the letting of a registered owner-occupied croft to be submitted within 3 months of the decision to let the croft being made and provides that the letting takes effect on the date of registration.
103. Subsection (11) allows the owner-occupier crofter to apply to the Scottish Land Court within 28 days of the letting date to vary the conditions set by the Commission. Any variation determined by the Scottish Land Court will take effect from the letting date (subsection (12)). This is similar to the existing procedures for requiring letting proposals under the vacant croft provisions in section 23 of the 1993 Act.
104. New section 26K sets out the rights of appeal to the Scottish Land Court in relation to the new enforcement provisions. Subsections (1) to (4) set out the issues which may be appealed. These are: a decision of the Commission that a duty is not being

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complied with (section 26C(5)); not to accept an undertaking or to impose conditions on an undertaking (section 26D); an appeal against the division of a croft (section 26G); the making of an order by the Commission terminating a croft tenancy (section 26H); and a direction from the Commission for an owner-occupier to present letting proposals (section 26J). Subsection (5) provides that any appeal under subsection (2) or (3) must be made within 42 days of the decision, order or direction appealed against and subsection (6) defines the grounds on which an appeal may be made. Subsection (7) sets out the actions the Land Court may take in respect of an appeal and subsection (8) requires the Commission to give effect to the decision of the Land Court on an appeal under this section. Subsection (9) provides a power for the Land Court, following a decision on an appeal under this section, to order the Keeper to rectify the Crofting Register.