



# Crofting Reform (Scotland) Act 2010

## 2010 asp 14

### PART 3

#### DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS

##### *Duties of owner-occupier crofters*

#### **34 Duties of certain owner-occupiers of crofts**

After section 19A of the 1993 Act insert—

##### *“Owner-occupied crofts: duties of certain owners*

#### **19B Meaning of “owner-occupier crofter” etc.**

- (1) In this Act, a person is an “owner-occupier crofter” if all the conditions in subsections (2) to (4) are satisfied.
- (2) The first condition is that the person is the owner of a croft.
- (3) The second condition is that the person—
  - (a) was the crofter of the croft at the time of acquiring it (or is such a crofter’s successor in title);
  - (b) acquired title to the croft as the nominee of a crofter (or is such a nominee’s successor in title); or
  - (c) purchased the croft from the constituting landlord (or is such a purchaser’s successor in title).
- (4) The third condition is that the croft has not been let to any person as a crofter either by virtue of section 26J or otherwise—
  - (a) at any time since it was acquired as mentioned in subsection (3)(a) or (b); or
  - (b) at any time since it was constituted as mentioned in subsection (6)(a).
- (5) In this Act, an “owner-occupied croft” means a croft owned by an owner-occupier crofter; and “owner-occupier’s croft” is to be construed accordingly.

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*Status: This is the original version (as it was originally enacted).*

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- (6) For the purposes of subsection (3)(c), the “constituting landlord” is—
- (a) the owner of the land at the time the land was constituted as a croft under section 3A; or
  - (b) such an owner’s successor in title immediately before the croft is sold to the purchaser mentioned in subsection (3)(c).

### **19C Duties of owner-occupier crofters**

- (1) An owner-occupier crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the owner-occupier crofter—
  - (a) must be ordinarily resident on, or within 32 kilometres of, the owner-occupier’s croft;
  - (b) must not misuse or neglect the croft;
  - (c) must—
    - (i) cultivate the croft; or
    - (ii) put it to another purposeful use,
 so that every part of the croft which is capable of being cultivated or put to another purposeful use either is cultivated or is put to such use;
  - (d) must keep the croft in a fit state for cultivation (except in so far as the use of the croft for another purposeful use is incompatible with the croft being kept in such a state).
- (3) For the purposes of subsection (2)(b), an owner-occupier crofter misuses an owner-occupied croft where the owner-occupier crofter—
  - (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use;
  - (b) fails to use the croft for the purpose of its being cultivated; or
  - (c) fails to put the croft to any such purposeful use.
- (4) For the purposes of subsection (2)(b), an owner-occupier crofter neglects an owner-occupied 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](#)).
- (5) Without prejudice to the generality of paragraph (d) of subsection (2), in determining whether that paragraph is complied with, regard is to 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 and harmful weeds.
- (6) But where the owner-occupier crofter, in a planned and managed manner, engages in, or refrains from, an activity for the purpose of conserving—
  - (a) the natural beauty of the locality of the owner-occupied croft; or
  - (b) the flora and fauna of that locality,
 the owner-occupier crofter’s so engaging or refraining is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

- (7) If, immediately before the coming into force of section 34 of the Crofting Reform (Scotland) Act 2010 (asp 14), the owner-occupied 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 applied immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7)), any continuation of use for that occupation is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.
- (8) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (4) so as to substitute different standards for those for the time being mentioned in that subsection.

### **19D Division of owner-occupied crofts**

- (1) An owner-occupier crofter may not transfer (whether or not for valuable consideration) ownership of any part of the owner-occupier's croft without first dividing the croft into the part which the owner-occupier crofter proposes to transfer and the part which the owner-occupier crofter proposes to retain.
- (2) The owner-occupier crofter may so divide that owner-occupier's croft only if the owner-occupier crofter first obtains the consent of the Commission to that division.
- (3) Where consent is applied for under subsection (2) in relation to an unregistered owner-occupied croft, the Commission—
  - (a) must not grant that consent unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
  - (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the owner-occupied croft is submitted.
- (4) In relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft)—
  - (a) any consent of the Commission given by virtue of subsection (2) to a division of the owner-occupied croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the division takes effect on the date of registration.
- (5) The Keeper must make up and maintain a registration schedule in accordance with section 11 of the 2010 Act in respect of a new croft created by a division under this section.
- (6) Any transfer of ownership of any part of an owner-occupied croft which is not a new croft created by a division under this section, and any deed purporting to transfer ownership of that part, is null and void.
- (7) Where the transfer of ownership of a part of an owner-occupied croft is null and void under subsection (6), the Commission may declare the original croft vacant.

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

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(8) In this section—

“division” means the division of an owner-occupied croft into two or more new crofts; and cognate expressions are to be construed accordingly;

“original croft” means the owner-occupier’s croft mentioned in subsection (1); and

“new crofts” mean each of the crofts created by the division of the original croft.”.