

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Crofters’ duties relating to residency, use, misuse and neglect of crofts

Section 33: Duties relating to residency, use, misuse and neglect of crofts

65. This section amends the 1993 Act to clearly set out a tenant crofter’s duties in relation to residing within a certain distance of the croft and putting the croft to some form of productive use. It replaces sections 5B and 22 of the 1993 Act with a clear set of duties on the tenant crofter in respect of residency on, and the misuse and neglect of, crofts.
66. There is currently a power in section 22 of the 1993 Act for the Commission to terminate the tenancy of the crofter where they are not currently resident on, or within 16 kilometres of, the croft, where it is in the general interest of the crofting community. Section 22 is repealed by paragraph 3(13) of Schedule 4 to the Act. Subsection (2) of section 33 inserts a new section 5AA into the 1993 Act, clearly setting out the duty of tenant crofters to be ordinarily resident on, or within 32 kilometres of, the croft they tenant.
67. Section 5B of the 1993 Act currently allows for a landlord, or the Commission with the consent of the landlord, to apply to the Land Court for an order terminating the tenancy of a crofter in cases of misuse or neglect. Subsection (3) of section 33 of the Act replaces section 5B of the 1993 Act and places a clear duty on tenant crofters not to misuse or neglect the crofts they tenant. It also inserts a new section 5C into the 1993 Act placing a duty on tenant crofters to cultivate and maintain the croft.
68. Subsection (2) of new section 5B sets out the statutory definitions of “misuse” that the Commission must use to determine whether misuse takes place. These are that the tenant crofter wilfully and knowingly uses the croft other than to cultivate it or put it to an approved purposeful use; fails to cultivate it; or fails to put it to any such purposeful use. Subsection (3) sets out the statutory definition of “neglect” that the Commission must use to determine whether neglect is taking place and identifies the regulations containing the relevant standards. This definition is that the tenant crofter is not keeping the croft in good agricultural and environmental condition.
69. Subsection (4) of new section 5B does, however, permit tenant crofters to act in a way that would otherwise constitute misuse or neglect without that being treated as a breach of the duty, provided such actions are planned and managed and are taken to conserve the natural beauty, or the flora and fauna, of the locality. Subsection (5) of new section 5B also allows tenant crofters to continue using the croft for a subsidiary or auxiliary occupation, if that use was permitted immediately prior to 28 January 2008 (the date section 7 of the Crofting Reform etc. Act 2007 came into force), without that being treated as misuse or neglect.

*These notes relate to the Crofting Reform (Scotland) Act
2010 (asp 14) which received Royal Assent on 6 August 2010*

70. Subsection (6) provides the Scottish Ministers with power to amend, by order, the meaning of neglect so as to substitute different standards.
71. New section 5C places a duty on tenant crofters to cultivate and maintain the croft. Subsection (2) defines the duties as cultivating the croft or putting it to another purposeful use so that every part of the croft which is capable of being so used meets these criteria, and keeping the croft in a fit state for cultivation. Subsection (3) requires the Commission to take into account, in determining if these duties have been complied with, whether appropriate measures have been taken to control or eradicate the items detailed.
72. Subsection (4) requires a crofter to receive the consent of the landlord and the Commission before putting the croft to another purposeful use. Subsection (5) prevents a crofter from applying for such consent from the Commission until the landlord has refused to give consent or has granted it subject to conditions which are unacceptable to the crofter, or 28 days have expired since the crofter sought the landlord's consent, whichever occurs first.
73. Subsection (6) requires the Commission to consult the landlord and members of the crofting community relating to the croft to be put to another purposeful use on the application. The Commission must also be satisfied that, where planning consent, or any other formal approval, is required to deliver the purposeful use, that such approval has been granted.
74. Subsection (7) places a time limit of 28 days for the Commission to decide the application and allows them to place conditions if consenting. Subsection (8) defines "cultivate" and "purposeful use" for the purposes of the whole of the 1993 Act.