



Crofting Reform (Scotland) Act 2010

2010 asp 14

PART 3

DUTIES OF CROFTERS AND OWNER-OCCUPIER CROFTERS

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

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

- (1) The 1993 Act is amended as follows.
- (2) After section 5A insert—

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

5AA Crofters: residency duty

A crofter must be ordinarily resident on, or within 32 kilometres of, that crofter's croft.”.

- (3) For section 5B substitute—

“5B Crofters: duty not to misuse or neglect croft

- (1) A crofter must not misuse or neglect the crofter's croft.
- (2) A crofter misuses a croft where the crofter—
 - (a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to such other purposeful use as is consented to under section 5C(4);
 - (b) fails to use the croft for the purposes of its being cultivated; or
 - (c) fails to put the croft to any such purposeful use.
- (3) A crofter neglects a croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in

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regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).

- (4) But where the 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 croft; or
 - (b) the flora and fauna of that locality,
- the crofter's so engaging or refraining is not to be treated as misuse or neglect as respects the croft.
- (5) If, immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7), 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 misuse or neglect as respects the croft.
- (6) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (3) so as to substitute different standards for those for the time being mentioned in that subsection.

5C Crofters: duty to cultivate and maintain

- (1) A crofter must comply with each of the duties set out in subsection (2).
- (2) Those duties are that the crofter—
- (a) 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;
 - (b) 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) Without prejudice to the generality of paragraph (b) 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.
- (4) A crofter may only put the croft to a use mentioned in subsection (2)(a)(ii) if—
- (a) the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or
 - (b) the Commission have consented to the use.
- (5) But a crofter may not apply to the Commission for consent under subsection (4)(b) until—
- (a) the landlord has refused consent (or granted consent subject to conditions unacceptable to the crofter); or
 - (b) the period of 28 days, commencing with the date on which the request for the consent of the landlord was made, has expired,
- whichever occurs first.

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- (6) The Commission must, on receipt of such an application for consent—
- (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.
- (7) The Commission must decide the application within 28 days after receiving it; and if they give their consent may impose such conditions as they think fit.
- (8) In this Act—
- “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;
- “purposeful use” means any planned and managed use which does not adversely affect—
- (a) the croft;
 - (b) the public interest;
 - (c) the interests of the landlord or (if different) the owner; or
 - (d) the use of adjacent land.”

Commencement Information

II S. 33 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), Sch. Pt. 1 (with art. 4)

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