

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Duties of owner-occupier crofters

Section 34: Duties of certain owner-occupiers of crofts

75. **Section 34** inserts new sections 19B to 19D into the 1993 Act covering owner-occupier crofters. Section 19B(1) provides that a person is an “owner-occupier crofter” if the conditions in subsections (2)-(4) are satisfied. Those conditions are: the person is the owner of a croft; the person was the tenant crofter who exercised the right to buy the croft, a crofter’s nominee or an individual who purchased the croft from the landlord who created the croft (or a successor in title to these persons); and the croft has not been let to any person as a crofter since it was acquired from the landlord or constituted as a croft. Section 19B(5) defines “owner-occupied croft” and “owner-occupier’s croft”, and subsection (6) defines “constituting landlord”.
76. New section 19C sets out the same duties for owner-occupier crofters as those placed on tenant crofters. Subsection (2) of new section 19C requires owner-occupiers to be ordinarily resident on, or within 32 kilometres of, the croft; not to misuse or neglect the croft; to cultivate every part of the croft which is capable of being cultivated or otherwise put it to purposeful use; and to keep the croft in a fit state for cultivation.
77. Subsection (3) and subsection (4) of new section 19C respectively set out the statutory definitions of “misuse” and “neglect” for owner-occupied crofts, in the same terms as apply to tenanted crofts. Subsection (5) 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 a range of items. Subsection (6) provides that owner-occupier crofters may act in a way that would otherwise constitute misuse or neglect, if such actions are planned and managed and are taken to conserve the natural beauty, or the flora and fauna, of the locality.
78. Subsection (7) of new section 19C provides that owner-occupier crofters may continue using the croft for a subsidiary or auxiliary occupation, if permitted immediately prior to the date on which section 21 of this Act comes into force, without that being treated as misuse or neglect. Subsection (8) provides the Scottish Ministers with power to amend, by order, the meaning of neglect.
78. **Section 21** also inserts new section 19D which prevents an owner-occupier from transferring any part of an owner-occupied croft, whether or not for value, without first dividing the croft with the consent of the Commission. This matches the position for tenant crofters who must obtain the consent of the Commission before they may divide their crofts.
79. Subsection (3) provides that the Commission must not determine an application for consent to divide an unregistered owner-occupier croft, unless an application for first

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

registration of the owner-occupier croft is made within 6 months. The Commission does not need to consider the application for consent until an application for first registration is submitted.

80. Subsection (4) ensures that the division of a registered owner-occupied croft is registered by requiring registration to take place within 3 months of the granting of the consent to the division by the Commission or the consent will expire, and providing that the division takes effect on the date of registration. Subsection (5) requires the Keeper to make up and maintain a new registration schedule in respect of the new croft created by the division.
81. Subsection (6) provides that any transfer of ownership of part of an owner-occupied croft which is not a new croft created through division approved by the Commission is null and void; and subsection (7) allows the Commission to declare the original croft vacant. Subsection (8) provides definitions of “division”, “original croft” and “new crofts” for the purposes of this section.