

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 3 – Duties of Crofters and Owner-Occupier Crofters

Letting of owner-occupied crofts

Section 39: Letting of owner-occupied crofts

107. This section inserts 2 new sections into the 1993 Act (sections 29A and 29B) setting out the arrangements for the letting of owner-occupied crofts.
108. Section 29A requires the owner-occupier crofter to obtain the written consent of the Commission prior to any letting of an owner-occupied croft. That might be a letting to a tenant as a crofter or it might be a letting to a tenant under a short lease who, because of section 29B, does not have that status. Subsection (2) requires that, with the exception of short leases, the Commission must not grant the consent if the owner-occupied croft is unregistered unless an application for first registration of the croft is submitted by the applicant within 6 months of the application for consent being made. The Commission need not consider the application until the registration application is submitted. Subsection (3) requires, with the exception of short leases, registration to take place within 3 months of the consent to the letting being granted, and provides that the letting takes effect on the date of registration. Subsection (4) permits the Commission to impose conditions, other than in respect of rent, in giving their consent to a letting proposal where the letting is for a period of 10 years or less (a “short lease”). Subsection (5) makes void any lease granted without the Commission’s consent, and, where the lease is a short lease, any lease not granted in accordance with any conditions imposed by the Commission under subsection (4). Subsection (6) empowers the Commission to terminate a short lease if a condition they have attached to their consent has been breached or if the tenant fails to comply with a condition of let, other than in respect of rent. Subsections (7) and (8) disapply subsections (2) and (3) to short leases, as short leases do not require to be registered under sections 4 or 5 of the Act. Subsection (9) provides that, where a lease under this section includes a lease of the common grazing shares, the owner-occupier crofter’s rights to, and any regulations relating to, the grazings apply to the tenant for the duration of the lease. Subsection (10) clarifies that the conditions imposed under this section will not apply to the letting of the croft house, or other buildings on the croft, to holiday visitors.
109. Section 29B clarifies the status of a tenant under a short lease. Such tenants will be treated as neither a crofter nor a tenant under a tenancy under the Agricultural Holdings (Scotland) Act 2003. Consequently, they will not have the same legal rights as those types of tenants. A tenant of an owner-occupier’s croft on a lease other than a short lease or a holiday let will be a tenant crofter. As a result, the owner-occupier crofter becomes a landlord of a croft and the provisions relating to owner-occupier crofters will cease to apply.