



# Crofting Reform (Scotland) Act 2010

## 2010 asp 14

### PART 3

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

##### *Enforcement of duties of crofters and owner-occupier crofters*

#### **37 Enforcement of duties of crofters and certain owner-occupiers**

After section 26 of the 1993 Act insert—

##### *“Investigation of suspected breach of duty*

#### **26A Commission's duty to investigate suspected breach of duty**

- (1) This section applies where the Commission receive—
  - (a) a report from a grazings committee under section 49A(1) which includes information on a matter mentioned in subsection (2); or
  - (b) information in writing from a person mentioned in subsection (3) relating to such a matter.
- (2) The matter referred to in subsection (1) is that—
  - (a) a crofter is not complying with a duty mentioned in section 5AA, 5B or 5C; or
  - (b) an owner-occupier crofter is not complying with a duty mentioned in section 19C(2).
- (3) The person referred to in subsection (1)(b) is—
  - (a) a grazings committee;
  - (b) a grazings constable;
  - (c) an assessor appointed under paragraph 16 of schedule 1;
  - (d) a member of the crofting community within which the croft to which the matter mentioned in subsection (2) relates is situated.

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- (4) The Commission must investigate whether or not the duty to which the report or, as the case may be, information relates is being complied with.
- (5) But the Commission need not do so where they consider the information included in the report or, as the case may be, received as mentioned in subsection (1)(b) is frivolous or vexatious.

### *Enforcement of duties*

#### **26B Enforcement of duties of crofters and owner-occupier crofters: general**

- (1) This section and section 26C apply where the Commission consider (whether following an investigation under section 26A(4) or otherwise) that—
  - (a) a crofter is not complying with any of the duties mentioned in section 5AA, 5B or 5C;
  - (b) an owner-occupier crofter is not complying with any of the duties mentioned in section 19C(2).
- (2) For the purposes of subsection (1)(a)—
  - (a) where a crofter has sublet the croft by virtue of a lease to which section 27 applies, the crofter is deemed to comply with the duties mentioned in that subsection (other than the duty not to misuse the croft) if the crofter's subtenant complies with the duties;
  - (b) where the Commission have granted consent under section 21B, the crofter is deemed to comply with the duty mentioned in section 5AA.
- (3) For the purposes of subsection (1)(b)—
  - (a) where an owner-occupier crofter has let the croft by virtue of a short lease to which section 29A applies, the owner-occupier crofter is deemed to comply with the duties mentioned in that subsection (other than the duty not to misuse the croft) if the owner-occupier crofter's tenant complies with the duties;
  - (b) where the Commission have granted consent under section 21B, the owner-occupier crofter is deemed to comply with the duty mentioned in section 19C(2)(a).
- (4) In sections 26C, 26D and 26K, the “relevant person” means the crofter (in the case of a croft) or the owner-occupier crofter (in the case of an owner-occupied croft).

#### **26C Notice of suspected breach of duty**

- (1) The Commission must, unless they consider that there is a good reason not to, give the relevant person a written notice informing the person that the Commission consider that the duty is not being complied with.
- (2) The notice must—
  - (a) explain the reasons why the Commission consider that the duty is not being complied with;
  - (b) indicate that the relevant person may make representations to the Commission before the expiry of the period of 28 days beginning with

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- the day on which notice is given to the person (the “representation period”); and
- (c) where given to a crofter, be copied to the landlord of the croft.
- (3) The Commission must have regard to any representations received within the representation period.
- (4) The Commission may also have regard to any representations received after the end of the representation period.
- (5) The Commission must, before the expiry of the period of 14 days beginning with the day on which the representation period ends, decide whether the duty is being complied with.

### **26D Undertakings: general**

- (1) If the Commission decide that a duty is not being complied with, they must, before taking any action under section 26H or 26J, give the relevant person a written notice giving the person an opportunity to give an undertaking to comply with the duty before the expiry of such period as the Commission consider reasonable.
- (2) The notice must—
- (a) explain that the relevant person must give the undertaking before the expiry of the period of 28 days beginning with the day on which the notice is given;
- (b) explain that the giving of the undertaking by the person constitutes acceptance by the person that the duty is not being complied with;
- (c) set out what the person must do to comply with the undertaking;
- (d) explain that if the person complies with the undertaking, no further action will be taken against the person in respect of the failure to comply with that duty; and
- (e) where given to a crofter, be copied to the landlord of the croft.
- (3) The Commission may accept an undertaking subject to such conditions as they consider appropriate.
- (4) The Commission must decide whether to accept an undertaking before the expiry of the period of 28 days beginning with the day on which the relevant person offers to give the undertaking.

### **26E Circumstances where the Commission may not take action under section 26H or 26J**

The Commission may not take any action under section 26H or 26J if—

- (a) the period for giving an undertaking under section 26D has not expired;
- (b) an undertaking has been given under section 26D and the period for complying with the undertaking has not expired;
- (c) an undertaking given under section 26D has been complied with;
- (d) in the case of a crofter—
- (i) the Commission have consented to the sublet of the croft under section 27;

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- (ii) an application for consent to sublet has been made under section 27 and has not been determined;
- (e) in the case of an owner-occupier crofter—
  - (i) the Commission have consented to the let of the owner-occupier's croft on a short lease (within the meaning of section 29A(4));
  - (ii) an application for consent to a lease has been made under section 29A and has not been determined;
- (f) in the case of failure to comply with a duty mentioned in section 5AA or 19C(2)(a)—
  - (i) the Commission have consented to the absence under section 21B;
  - (ii) an application for consent for absence, to extend a period of absence or to vary a condition imposed in respect of such absence has been made under section 21B, 21C or, as the case may be, 21D and has not been determined.

#### **26F Commission duty to take action under section 26H or 26J**

- (1) If—
  - (a) the Commission decide that a duty is not being complied with; and
  - (b) none of the circumstances mentioned in section 26E apply,
 the Commission must take one of the actions mentioned in subsection (2) unless they consider that there is a good reason not to.
- (2) Those actions are—
  - (a) in the case of a crofter, the tenancy termination procedure under section 26H;
  - (b) in the case of an owner-occupier crofter, the letting procedure under section 26J.

#### **26G Division of croft before taking action**

- (1) Before taking action under section 26H or 26J, the Commission may, if they are satisfied that it is fair to do so, divide a croft or, as the case may be, an owner-occupied croft.
- (2) In satisfying themselves as mentioned in subsection (1), the Commission must have regard to—
  - (a) the use and occupation of the croft or owner-occupied croft;
  - (b) in the case of a croft, the interests of the estate in which the croft is located;
  - (c) the sustainable development of the crofting community in the locality of the croft or owner-occupied croft;
  - (d) such other matters as the Commission consider appropriate.
- (3) Any division of a croft or an owner-occupied croft under subsection (1) takes effect—
  - (a) as respects an application for first registration of the croft, or owner-occupied croft, submitted by virtue of section 4 of the 2010 Act, on the date of registration;

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- (b) as respects an application for registration of the division of the croft, or owner-occupied croft, submitted by virtue of section 5 of that Act, on the date of registration.
- (4) 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.
- (5) Where a croft or owner-occupied croft has been divided under subsection (1), the Commission may take action under section 26H or 26J in respect of any or all of the new crofts created by the division.
- (6) Where a croft, other than an owner-occupied croft, is divided under subsection (1), the Commission must give written notice of the division to the landlord of the croft, specifying the date on which the division took effect.
- (7) In this section—
  - “division” means the division of a croft or an owner-occupied croft into two or more new crofts; and “divide” is to be construed accordingly; and
  - “new crofts” mean each of the crofts created by a division under subsection (1).

#### **26H Crofters: tenancy termination procedure**

- (1) If the Commission are satisfied that it is in the general interest of the crofting community in the locality of the croft, the Commission must make an order terminating the tenancy of the crofter unless they consider that there is a good reason not to.
- (2) An order under subsection (1) must be notified to—
  - (a) the crofter; and
  - (b) the landlord of the croft.
- (3) An order under subsection (1) must specify the date on which it takes effect.
- (4) An order under subsection (1) may not take effect before the expiry of the period of 28 days beginning with the later notification under subsection (2).
- (5) If the crofter fails to give up occupation of the croft on or before the day on which the order takes effect, the Commission may apply to the sheriff for warrant for ejection of the crofter.
- (6) The sheriff must grant the warrant for ejection, except on cause shown by the crofter.
- (7) The Commission may recover from the crofter the expenses incurred by them—
  - (a) in making any application under subsection (5);
  - (b) in executing any warrant granted under subsection (6).
- (8) A crofter whose tenancy is terminated by an order under subsection (1) has the same rights and liabilities relating to compensation as if the crofter had renounced the tenancy at the date on which the order under subsection (1) takes effect.

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## **26J Owner-occupier crofters: letting procedure**

- (1) The Commission must, unless they consider that there is a good reason not to, direct the owner-occupier crofter to submit to them, before the expiry of the period of 28 days beginning with the day on which the direction is given, a proposal for letting the owner-occupier's croft.
- (2) No more than three proposals for letting the croft may be submitted in response to a direction given under subsection (1).
- (3) Where a proposal for letting the croft is submitted to the Commission in response to a direction given under subsection (1), they must approve or reject the proposal within the period of 8 weeks beginning with the day on which the direction was given.
- (4) The Commission must (as soon as is reasonably practicable) proceed in accordance with subsections (7) and (8) if—
  - (a) no proposals for letting the croft are submitted by the owner-occupier crofter before the expiry of the period mentioned in subsection (1);
  - (b) the owner-occupier crofter has submitted one or two proposals for letting the croft within the period mentioned in subsection (1) and—
    - (i) all such proposals are rejected by the Commission; and
    - (ii) the period mentioned in subsection (1) has expired; or
  - (c) the owner-occupier crofter has submitted three proposals for letting the croft (within the period mentioned in subsection (1)) and the Commission have rejected all three.
- (5) Any letting of an unregistered owner-occupied croft in accordance with proposals submitted under subsection (1) is void unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.
- (6) In relation to a registered owner-occupied croft—
  - (a) any approval under subsection (3) of a proposal for letting the owner-occupied croft under subsection (1) expires at the end of the period of 3 months beginning with the date on which the approval was given unless an application for registration of the letting of the owner-occupied croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the letting of the owner-occupied croft takes effect on the date of registration.
- (7) The Commission must, by public notification, invite applications for letting the owner-occupied croft before the expiry of the period specified in the notification.
- (8) When the period of notification has ended, the Commission must decide—
  - (a) to which of the applicants (if any) to let the owner-occupied croft; and
  - (b) after consulting the owner-occupier crofter, on what conditions to let the croft.
- (9) Any letting of an unregistered owner-occupied croft pursuant to a decision under subsection (8) is void unless an application for first registration of the

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owner-occupied croft is submitted before the expiry of the period of 3 months beginning with the date of the letting.

- (10) In relation to a registered owner-occupied croft—
- (a) any decision under subsection (8) to let the owner-occupied croft to an applicant is, at the end of the period of 3 months beginning with the date on which the decision was made, to be treated as if it had not been made unless an application for registration of the croft is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;
  - (b) the letting of the owner-occupied croft takes effect on the date of registration.
- (11) Where an owner-occupied croft has been let on conditions set by the Commission under subsection (8)(b), the owner-occupier crofter may, before the expiry of the period of 28 days beginning with the day of the letting, apply to the Land Court for a variation of the conditions so set.
- (12) If the Land Court, on an application under subsection (11), varies the conditions of let, any variation takes effect as from the date of the letting.

### **26K Appeals**

- (1) A relevant person may appeal to the Land Court against a decision of the Commission under section 26C(5) that a duty is not being complied with.
- (2) A relevant person may appeal to the Land Court against a decision of the Commission under section 26D—
- (a) not to accept an undertaking;
  - (b) to impose conditions on such an undertaking.
- (3) A relevant person may appeal to the Land Court against—
- (a) the making by the Commission of an order under section 26H; or
  - (b) the giving by the Commission of a direction under section 26J.
- (4) An appeal under subsection (3) may include an appeal against a division under section 26G of (as the case may be)—
- (a) the croft; or
  - (b) the owner-occupied croft.
- (5) An appeal under subsection (2) or (3) must be made before the expiry of the period of 42 days beginning with the day on which the decision, order or direction is made.
- (6) An appeal under subsection (2) or (3) may be made only on one or more of the following grounds—
- (a) that the Commission erred in law;
  - (b) that the Commission made a finding as to a fact material to the decision, order or direction but did not have sufficient evidence on which to base that finding;
  - (c) that the Commission acted contrary to natural justice;
  - (d) that the Commission took into account certain irrelevant or immaterial considerations;

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- (e) that the Commission failed to take into account certain relevant or material considerations;
  - (f) that the Commission exercised their discretion in an unreasonable manner.
- (7) In an appeal under this section, the Land Court may—
- (a) confirm or revoke the decision, order or direction;
  - (b) direct the Commission to make a different decision, order or direction;
  - (c) remit the case to the Commission without so directing them.
- (8) The Commission must give effect to the decision of the Land Court on an appeal under this section.
- (9) The Land Court may, if it considers it appropriate in consequence of any decision on an appeal under subsection (3), order the Keeper to rectify the Crofting Register.”.

#### **Commencement Information**

- I1** S. 37 in force at 1.10.2011 for specified purposes by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with arts. 4, 5(3))
- I2** S. 37 in force at 30.11.2012 for specified purposes by S.S.I. 2012/288, art. 3(1)(b)(2), **Sch. 1 Pt. 2** (with Sch. 2 para. 5(1)(2))
- I3** S. 37 in force at 30.11.2013 in so far as not already in force by S.S.I. 2012/288, **art. 3(1)(c)** (with Sch. 2 para. 5(3)(4))



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