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

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.

(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

I1 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)

Duties of owner-occupier crofters

34 Duties of certain owner-occupiers of crofts

After section 19A of the 1993 Act insert—

"Owner-occupied crofts: duties of certain owners

19B Meaning of "owner-occupier crofter" etc.

(1) In this Act, a person is an "owner-occupier crofter" if all the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that the person is the owner of a croft.

(3) The second condition is that the person—

(a) was the crofter of the croft at the time of acquiring it (or is such a crofter's successor in title);

(b) acquired title to the croft as the nominee of a crofter (or is such a nominee's successor in title); or

(c) purchased the croft from the constituting landlord (or is such a purchaser's successor in title).

(4) The third condition is that the croft has not been let to any person as a crofter either by virtue of section 26J or otherwise—

(a) at any time since it was acquired as mentioned in subsection (3)(a) or (b); or

(b) at any time since it was constituted as mentioned in subsection (6)(a).

(5) In this Act, an "owner-occupied croft" means a croft owned by an owner-occupier crofter; and "owner-occupier's croft" is to be construed accordingly.

(6) For the purposes of subsection (3)(c), the "constituting landlord" is—

(a) the owner of the land at the time the land was constituted as a croft under section 3A; or

(b) such an owner's successor in title immediately before the croft is sold to the purchaser mentioned in subsection (3)(c).

19C Duties of owner-occupier crofters

(1) An owner-occupier crofter must comply with each of the duties set out in subsection (2).

(2) Those duties are that the owner-occupier crofter—

(a) must be ordinarily resident on, or within 32 kilometres of, the owner-occupier's croft;

(b) must not misuse or neglect the croft;

(c) 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;

(d) 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) For the purposes of subsection (2)(b), an owner-occupier crofter misuses an owner-occupied croft where the owner-occupier crofter—

(a) wilfully and knowingly uses it otherwise than for the purpose of its being cultivated or put to another purposeful use;

(b) fails to use the croft for the purpose of its being cultivated; or

(c) fails to put the croft to any such purposeful use.

(4) For the purposes of subsection (2)(b), an owner-occupier crofter neglects an owner-occupied croft where the croft is not managed so as to meet the standards of good agricultural and environmental condition referred to in regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).

(5) Without prejudice to the generality of paragraph (d) 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.

(6) But where the owner-occupier 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 owner-occupied croft; or

(b) the flora and fauna of that locality,

the owner-occupier crofter's so engaging or refraining is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

(7) If, immediately before the coming into force of section 34 of the Crofting Reform (Scotland) Act 2010 (asp 14), the owner-occupied 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 applied immediately before the coming into force of section 7 of the Crofting Reform etc. Act 2007 (asp 7)), any continuation of use for that occupation is not, for the purposes of subsection (2)(b), to be treated as misuse or neglect as respects the croft.

(8) The Scottish Ministers may, by order, amend the meaning of neglect in subsection (4) so as to substitute different standards for those for the time being mentioned in that subsection.

19D Division of owner-occupied crofts

(1) An owner-occupier crofter may not transfer (whether or not for valuable consideration) ownership of any part of the owner-occupier's croft without first dividing the croft into the part which the owner-occupier crofter proposes to transfer and the part which the owner-occupier crofter proposes to retain.

(2) The owner-occupier crofter may so divide that owner-occupier's croft only if the owner-occupier crofter first obtains the consent of the Commission to that division.

(3) Where consent is applied for under subsection (2) in relation to an unregistered owner-occupied croft, the Commission—

(a) must not grant that consent unless an application for first registration of the owner-occupied croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;

(b) need not, during that 6 month period, consider the application for consent until an application for first registration of the owner-occupied croft is submitted.

(4) In relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft)—

(a) any consent of the Commission given by virtue of subsection (2) to a division of the owner-occupied croft expires at the end of the period of 3 months beginning with the date on which such consent was given unless an application for registration of the division is submitted by virtue of section 5 of the 2010 Act before the expiry of that period;

(b) the division takes effect on the date of registration.

(5) 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.

(6) Any transfer of ownership of any part of an owner-occupied croft which is not a new croft created by a division under this section, and any deed purporting to transfer ownership of that part, is null and void.

(7) Where the transfer of ownership of a part of an owner-occupied croft is null and void under subsection (6), the Commission may declare the original croft vacant.

(8) In this section—

"division" means the division of an owner-occupied croft into two or more new crofts; and cognate expressions are to be construed accordingly;

"original croft" means the owner-occupier's croft mentioned in subsection (1); and

"new crofts" mean each of the crofts created by the division of the original croft.".

Commencement Information

I2 S. 34 in force at 22.12.2010 for specified purposes by S.S.I. 2010/437, art. 3, **Sch.** (with art. 4)

I3 S. 34 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(2), 5(3))

I4 S. 34 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. 1(q)4(2))

I5 S. 34 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. 4(1))

Commission consent for absence from croft

35 Consent for absence from croft

After section 21A of the 1993 Act insert—

"Consent for absence from croft

21B Commission consent for absence from croft

(1) A crofter or an owner-occupier crofter may apply to the Commission for consent to be ordinarily resident other than on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft.

(2) Where an application under subsection (1) is made by a crofter, the crofter must send a copy of the application to the landlord of the croft.

(3) The Commission may grant consent only if they consider that there is a good reason for the person not to be ordinarily resident on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft.

(4) The Commission may grant consent subject to such conditions as they consider it appropriate to impose which may, in particular, relate to the duration of absence.

(5) The Commission must make their decision on an application under subsection (1) before the expiry of the period of 28 days beginning with the date on which the application is made.

(6) The Commission must notify—
   (a) the applicant; and
   (b) if the applicant is a crofter, the landlord of the croft,

of their decision and the reasons for making it.

21C Extension of consent for absence

(1) Where the Commission have granted consent under section 21B subject to a condition as to the duration of absence, the applicant may, before the expiry of the period for which consent has been granted, apply to the Commission to extend the duration of the consent.

(2) Subsections (2) to (6) of section 21B apply to an application under subsection (1) of this section as they apply to an application under section 21B(1).

21D Variation of condition in consent for absence

(1) Where the Commission have granted consent under section 21B subject to a condition (other than a condition as to the duration of absence), the applicant may, before the expiry of the period for which consent has been granted, apply to the Commission to vary the condition.

(2) Subsections (2) to (6) of section 21B apply to an application under subsection (1) of this section as they apply to an application under section 21B(1).”.

Commencement Information
I6 S. 35 in force at 1.10.2011 by S.S.I. 2011/334, art. 3(1)(a)(2), **Sch. Pt. 1** (with art. 4)

Enforcement of duties of crofters and owner-occupier crofters

36 Information as to compliance with duties: annual notices

After section 40 of the 1993 Act insert—

“**40A Annual notices**

(1) The Commission must—
   (a) by notice given to each crofter, require the crofter to provide the Commission with the information mentioned in subsection (2);

(b) by notice given to each owner-occupier crofter, require the crofter to provide the Commission with the information mentioned in subsection (3).

(2) The information referred to in subsection (1)(a) is—

(a) whether or not the crofter is complying with the duties mentioned in sections 5AA, 5B and 5C;

(b) where the crofter is not complying with one or more of those duties—

(i) in the case of the duty mentioned in section 5AA, whether the Commission have granted consent under section 21B;

(ii) in any case (other than the duty not to misuse the croft), whether a subtenant of the crofter by virtue of a lease to which section 27 applies is complying with the duty; and

(c) information relating to any other matter the Commission may require.

(3) The information referred to in subsection (1)(b) is—

(a) whether or not the owner-occupier crofter is complying with the duties mentioned in section 19C(2);

(b) where the owner-occupier crofter is not complying with one or more of those duties—

(i) in the case of the duty mentioned in section 19C(2)(a), whether the Commission have granted consent under section 21B;

(ii) in any case (other than the duty not to misuse the croft), whether a tenant of the crofter by virtue of a short lease (within the meaning of section 29A) is complying with the duty; and

(c) information relating to any other matter the Commission may require.

(4) The first notices under subsection (1) must be given as soon as reasonably practicable after the end of the period of 1 year beginning with the day section 36 of the 2010 Act comes into force.

(5) Subsequent notices must be given as soon as reasonably practicable after the end of each successive 1 year period.

(6) Subsection (2) of section 40 applies to a notice given under subsection (1) of this section as it applies to a notice served under subsection (1) of that section.

(7) Section 55(1A) does not apply to a notice given under subsection (1).”.

Commencement Information

I7 S. 36 in force at 1.4.2012 by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**

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.

(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 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;

(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;

(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.

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 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;
- (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

I8 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))

I9 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))

I10 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))

Grazings committees: duty to report misuse etc.

38 Grazings committees: duty to report breaches of crofters' and owner-occupier crofters' duties etc.

After section 49 of the 1993 Act insert—

"**49 AGrazings committees: duty to report**

(1) Each grazings committee must report to the Commission on—
- (a) the condition of the common grazing;
- (b) the condition of every croft of a crofter sharing in the grazing;
- (c) the condition of every owner-occupied croft of an owner-occupier crofter sharing in the grazing;
- (d) any other matter the Commission may require.

(2) Where the committee consider that—
- (a) a crofter sharing in the grazing is not complying with a duty mentioned in section 5AA, 5B or 5C;
- (b) an owner-occupier crofter sharing in the grazing is not complying with a duty mentioned in section 19C(2),

the report under subsection (1) must also include information on that matter.

(3) A report under subsection (1) may also include information on any other matter affecting—
- (a) the common grazing;
- (b) crofting in any township associated with the grazing,

as the committee consider appropriate.

(4) The first report under subsection (1) must be submitted as soon as reasonably practicable after the end of the period of 1 year beginning with the day section 38 of the 2010 Act comes into force.

(5) Each subsequent report must be submitted as soon as reasonably practicable after the end of each successive period of 5 years.".

Commencement Information

I11 S. 38 in force at 1.4.2012 by S.S.I. 2011/334, art. 3(1)(b)(2), **Sch. Pt. 2**

Letting of owner-occupied crofts

39 Letting of owner-occupied crofts

After section 29 of the 1993 Act insert—

"Letting of owner-occupied crofts

29A Letting of owner-occupied crofts

(1) An owner-occupier crofter may not let the owner-occupier's croft (or any part of it) without the consent of the Commission.

(2) Subject to subsection (7), where consent is applied for under subsection (1) in relation to an unregistered owner-occupied croft (or any part of such an owner-occupied croft), the Commission—
   (a) may not grant that consent unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for consent was made;
   (b) need not, during that 6 month period, consider the application for consent until an application for first registration of the croft is submitted.

(3) Subject to subsection (8), in relation to a registered owner-occupied croft (other than an owner-occupied croft which is a first registered croft), or any part of such a croft—
   (a) any consent under subsection (1) expires at the end of the period of 3 months beginning with the date on which such consent was granted unless an application for registration of the letting of the croft (or part of the croft) is made by virtue of section 5 of the 2010 Act before the expiry of that period;
   (b) the letting of the croft (or part of the croft) takes effect on the date of registration.

(4) The Commission may, in giving their consent to a proposed lease of an owner-occupied croft for a period not exceeding 10 years (a "short lease"), impose such conditions (other than any relating to rent) as they consider appropriate.

(5) A lease is void if it is granted—
   (a) without the Commission's consent;
   (b) in the case of a short lease, otherwise than in accordance with such conditions as the Commission may impose.

(6) The Commission may terminate a short lease granted under this section if—
   (a) a condition imposed under subsection (4) is breached; or
   (b) the tenant fails to comply with a condition of let (other than any relating to rent).

(7) Subsection (2) does not apply to an application for consent to a proposed lease which is a short lease.

(8) Subsection (3) does not apply to—
   (a) consent under subsection (1) to a short lease; or
   (b) the letting of the croft (or part of the croft) on a short lease.

(9) Where, by virtue of a lease granted under this section, a right in a common grazing is let to the tenant under the lease—

(a) that tenant comes into the place of the owner-occupier crofter in relation to any matter which concerns the right; and

(b) any grazings regulations applicable to the grazing apply to the tenant accordingly.

(10) Subsections (1) to (6) do not apply to the letting of any dwelling-house or other building forming part of the owner-occupied croft to holiday visitors.

29B Status of tenant under a short lease

The tenant under a short lease of an owner-occupied croft is not to be treated as—

(a) a crofter; or

(b) the tenant under a lease constituting—

(i) a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11);

(ii) a short limited duration tenancy within the meaning of that Act; or

(iii) a limited duration tenancy within the meaning of that Act.”.

Commencement Information

I12 S. 39 in force at 22.12.2010 for specified purposes by S.S.I. 2010/437, art. 3, **Sch.** (with art. 4)

I13 S. 39 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))

I14 S. 39 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. 1(v))

I15 S. 39 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. 6)

Changes to legislation:
There are currently no known outstanding effects for the Crofting Reform (Scotland) Act 2010, PART 3.