

## **Q&A Guide for Breach of Duty Procedure**

The Crofting Commission has a duty to investigate reports from those listed below of suspected breaches of duties by tenant and owner-occupier crofters, as stipulated in Section 26 of the Crofters Scotland Act 1993 (as amended). In this information note the term 'crofter' refers to both the tenant and owner occupier of a croft.

### **What are the Duties a crofter may be in breach of?**

- Residency Duty
- Duty not to misuse or neglect the croft
- Duty to cultivate and maintain the croft

(See definitions page)

### **How does the Crofting Commission become involved in a Breach of Duty investigation?**

The Commission may initiate investigations itself arising from policy decisions or ministerial directives.

The Commission will also carry out investigations in response to reports submitted by specified people or groups.

### **Who can submit a report to the Crofting Commission of a suspected Breach of Duty?**

The Commission can receive notification of a suspected breach of duty from:

- A grazings committee
- A grazings constable
- An assessor
- A member of the crofting community (see definition page)

### **I am not listed above, can I still notify the Commission of a suspected breach of duty?**

You can submit notification of a suspected breach of duty but we are not obliged to investigate. If resources allow the Commission may investigate.

### **How can I notify the Commission of a suspected Breach of Duty?**

It would be advisable to complete a 'Suspected Breach of Duty' form which is available from the Commission's website [www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk). Alternatively, if you do not have access to the internet you can contact the office at Great Glen House, Leachkin Road, Inverness IV3 8NW (☎01463 663439) and we will arrange for a form to be sent out to you.

We will also accept notification in the form of a letter as long as it contains sufficient information to enable us to proceed.

### **What information should be in a notification?**

We need to be able to identify the croft and crofter concerned.

The details of the suspected breach of duty need to be clearly described.

If the notification contains any information that may be deemed frivolous or vexatious (see definitions page) it will be returned and no further action will be taken.

If there is not enough detail provided we will request further information.

### **What happens with a valid notification?**

We will acknowledge the notification of the suspected breach of duty.

We will contact the crofter named in the letter or form to advise them of the notification.

This is also the point where a Crofting Commission initiated investigation would begin.

We will give the crofter the opportunity to comment on their situation and provide them with a form to complete highlighting key elements of information required to assist with the investigation.

Any information provided is part of an open process and may be made available to other parties involved. Your information can also be released under a Freedom of Information enquiry, subject to any disclosure exemptions under the Data Protection Act 1998.

### **Is there anyone else who may be involved in the investigations?**

If it is relevant, we may ask for a report from the Scottish Government Rural Payment and Inspections Directorate (SGRPID). As part of the process we may request that they contact other relevant parties and organisations.

### **What happens once investigations have been completed?**

The information gathered will be considered and a decision taken as to whether there is a suspected breach of duty on the croft. If there is a suspected breach of duty the Commission, unless it has good reason not to, will provide the crofter with a formal notice explaining this and give 28 days for representation to be made.

### **What happens after the 28 day representation period?**

The Commission will decide within 14 days from the period for representations whether there is a breach of duty. Where the Commission decides that there is a breach of duty, the crofter will be formally notified and given the opportunity to give an undertaking to comply with the duty. The crofter may appeal to the Scottish Land Court against the decision that the duty is not being complied with.

### **What happens next?**

The crofter will be required to give an undertaking to resolve the identified breach of duties within 28 days.

The giving of an undertaking by the crofter means it is accepted by them that the duty is not being complied with.

This undertaking by the crofter may be accepted, accepted with conditions or rejected by the Commission.

### **What happens if the undertaking is accepted or accepted with conditions?**

If it is accepted, the situation will be monitored to ensure that the undertaking is carried out.

If it is accepted with conditions, the crofter will be advised of the conditions and the situation will be monitored to ensure that the undertaking is carried out. The crofter has 42 days to appeal to the Scottish Land Court against any conditions imposed by the Commission.

The crofter should keep the Commission updated on progress or completion of the undertaking prior to the agreed date.

### **What happens if the undertaking is rejected by the Commission?**

If the undertaking is not satisfactory or if we do not receive an undertaking from the crofter, the Commission must continue with further action as required by Section 26F of the Crofters (Scotland) Act 1993 as amended.

If the crofter is a tenant, the Commission may terminate the tenancy of the crofter unless we consider there is good reason not to do so.

If the crofter is an owner occupier, the Commission may seek letting proposals from the owner occupier, unless we consider there is good reason not to do so.

If an undertaking is rejected the crofter may appeal that decision to the Scottish Land Court within 42 days.

### **What happens if the duty remains unresolved?**

The Commission must be satisfied that the crofter has been given the opportunity to resolve the breach of duty.

Where the duty remains unresolved the Commission may place a notice to this effect in a local newspaper, and indicate that the tenancy could be terminated. This also provides an opportunity for those with an interest in that community to make any relevant representation.

## **Can the Commission divide the croft prior to taking action?**

The Commission has the option under the Breach of Duty process to divide the croft before terminating the tenancy or seeking letting proposals, if it is considered fair to do so.

For instance, the Commission may choose to divide the croft if there is a house on it which has not been decrofted. The Commission can divide the house site from the remainder of the croft.

The crofter has the opportunity to appeal to the Scottish Land Court against the decision to divide the croft within 42 days.

## **What happens if the Commission decides to terminate the tenancy of the croft?**

If satisfied that it is in the general interest of the local crofting community, and if there is no good reason not to, the Commission must make an order terminating the tenancy. The order will specify the date on which the termination takes effect which must be at least 28 days after the date of notification. Both the crofter and the landlord of the croft will be notified

The crofter can appeal to the Scottish Land Court against the decision to terminate the tenancy within 42 days of the decision.

## **What happens if the Commission requires letting proposals from an owner-occupier crofter?**

The crofter will be given 28 days to submit proposals to the Commission for letting the croft. No more than three proposals can be submitted to the Commission. The Commission has 4 weeks from the end of the initial 28 day period to decide whether to accept or reject any proposal.

If the proposal is rejected the Commission will proceed to let the croft by advertising the tenancy and inviting applications.

## **Definitions**

### **Crofting Community**

*Means all the persons who (either or both):*

- *occupy crofts within a township which consists of two or more crofts registered with the Crofting Commission*
- *hold shares in a common grazing associated with that township*

### **Residency Duty**

*A crofter must be ordinarily resident on, or within 32 kilometers of, that crofters croft.*

### **Duty not to misuse the croft**

This refers to a croft being used for something which is not considered as cultivation. Tenants require the consent of their landlord or, failing that, the Crofting Commission if they wish to put their croft to another purposeful use.  
See Guidance note on 'Consent for another purposeful use'

### **Duty not to neglect the croft**

This refers to the management of the croft which should meet the standards of Good Agricultural and Environmental Condition (GAEC). Further information on these conditions can be found from the Scottish Government Rural Payments and Inspections Directorate (SGRPID) website. [www.scotland.gov.uk](http://www.scotland.gov.uk) for guidance notes on GAEC go to [www.scotland.gov.uk/Publications/2005/12/0990918/09207](http://www.scotland.gov.uk/Publications/2005/12/0990918/09207)

### **Duty to cultivate the croft**

This refers that the croft is used for cultivation or put to another purposeful use. All parts of the croft capable of being cultivated or put to another purposeful use must be included.  
Cultivation includes horticulture, keeping livestock including poultry and bees, growing of crops and the planting of trees.

### **Duty to maintain the croft**

This refers to the maintenance of the croft; to enable the croft to be cultivated it must be maintained in a fit state except where another purposeful use is incompatible with the croft being kept in such state.

### **Frivolous:**

*Insubstantial and unworthy of serious consideration*

### **Vexatious:**

*Deliberately provocative or offensive or made with the intention merely of causing trouble or annoyance for the crofter and/any other party to the proposed transaction.*

### **Undertaking:**

A formal pledge or promise to do something.

Additional information on the definitions of the duties can be found in section 5AA to C for tenants and section 19C for owner occupiers of the Crofters (Scotland) Act 1993 as amended.