

Assignment

Assignment enables a tenant crofter to transfer the tenancy of a croft or the tenancy of a grazing share to another individual.

LAW

Crofters (Scotland) Act 1993, section 8 and section 58A

A crofter shall not assign his croft unless he obtains the consent of the Commission.

Section 8(1)

...the crofter must (a) notify the Commission as to where the proposed assignee would intend, following any such assignment, ordinarily to reside; and (b) provide the Commission with any other information it requests in connection with the application.

Section 8(1A)

In considering their decision on the application, the Commission must have regard to the following-

(a) In the case of an application relating to a croft -

- (i) Whether any person is or will be ordinarily resident on, or within 32 kilometres of the croft*
- (ii) Whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4)*

(b) the interests of the estate which comprises the land to which the application relates

- (c) *the interests of the crofting community in the locality of that land*
- (d) *the sustainable development of that crofting community*
- (e) *the interests of the public at large*
- (f) *any objections received under subsection (4) or (5A)*
- (g) *any plan of the Commission approved and published under section 2C*
- (h) *any other matter which the Commission consider relevant. **Section 58A(7)***

POLICY

Crofting Commission Policy Plan on Assignment

When considering applications to assign, the Commission will apply section 58A of the 1993 Act as amended and its policies on residency, land use and shared management. The application should show that the proposed assignee is both able to and intends to comply with all the statutory duties and in particular that he or she intends to be ordinarily resident on or within 32 kilometres of the croft and to cultivate and maintain the croft or put it to a purposeful use which has section 5C(4) consent.

The proposed assignee may live elsewhere pending the assignment, but the Commission will need to be satisfied that the assignee intends to fulfil the residency duty within a reasonable time, and may include as a condition that this duty is met within a specified period. The Commission will not generally approve an assignment where it has reason to believe that the proposed assignee will be absent from the croft or will otherwise fail to comply with a crofter's duties.

In considering applications to assign, the Commission may take into account the number of crofts which the proposed assignee already holds (as tenant or as owner-occupier crofter). The Commission's policy of promoting population retention and increased residency of crofts will not preclude multiple tenancies/occupation provided that the Commission is satisfied that this is in the wider interests of crofting and the crofting community.

PROCEDURE

- (1) An application by a tenant crofter for the Commission's consent to assign:
- (i) a croft;
 - (ii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft;
 - (iii) a grazing right or land deemed by section 3(5) to be a croft;

shall be made in the appropriate form provided by the Commission.

The application should show that the proposed assignee is both able to and intends to comply with all the statutory duties and in particular that he or she intends to be ordinarily resident on or within 32 kilometres of the croft and to cultivate and maintain the croft.

- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include checks the applicant has:
- (i) given public notification¹ of the application (as required by section 58A(3)(a));
 - (ii) given written notification of the application to the landlord and/or (where the land to which the application relates is, or is part of, a common grazings) the owner of the common grazings (as required by section 58A(3)(b)).

¹ For information on public notification refer to separate section on *Public Notification*

In addition:

- (a) Where the intention is for the croft to be put to another purposeful use¹, the Commission will require the applicant to seek the written consent of the landlord to the purposeful use. If the landlord's consent is not obtained, refer to paragraph 6c of this procedure.

If the application is invalid or not complete, it will be returned and reason(s) provided for doing so. If the croft is **unregistered** the Commission will also advise the crofter of the requirement to submit an application for first registration of the croft.

- (3) If the application is valid and complete, the Commission will check whether it relates to a registered croft.
 - (i) If for an **unregistered** croft, the Commission will check whether an application for first registration of the croft has been received. If not, the Commission will inform the applicant in writing that unless an application for first registration is submitted, it will not consider the application at the end of the 28 day public notification period. The applicant will be further advised that failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the application for consent was made, will result in the application being returned.
 - (ii) If the croft is **registered** or where an application for first registration is received, at the end of the 28 day public notification period the Commission will review the information contained in the application form and any objections received.
- (4) Where any objections² to the application are received by the Commission – refer to separate section on objections.

¹ Purposeful use means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner, or the use of adjacent land

² Details of the persons who can submit objections and information on how the Commission treat objections received, is contained in the separate Rules of Procedure on *Objections etc received following the public advertising of regulatory applications*

- (5) The Commission shall consider whether it is necessary to undertake any further investigation before deciding on the application and, if appropriate, shall make such enquiry and carry out such inspection as it deems necessary to allow it to have regard to the criteria listed at section 58A(7)(a)-(h). This includes in the case of an application relating to a croft -
- (i) whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft
 - (ii) whether the croft is being or will be cultivated or put to another purposeful use.
- (6) The Commission shall consider all the information available, taking particular account of its specific policy on assignation. If it is satisfied there is sufficient information available to allow it to decide on the application and:
- (a) if the Commission is satisfied that the application should be granted, and no valid objections or expressions of demand for the tenancy (of the croft, part croft or deemed croft) have been submitted, it may grant the application.
 - (b) where the Commission is not satisfied that the application should be granted, or where valid objections or expressions of demand for the tenancy have been submitted to the Commission and not withdrawn, prior to deciding the application -
 - (i) the Commission shall serve a copy of all of the available information (in the form of a case paper) on the applicant and other interested parties, to allow them sight of the evidence that the Commission will consider when reaching its decision. The Commission will allow the applicant and other parties the opportunity to submit further information within 21 days from the date of service of the case paper. However, this will be limited to correcting factual inaccuracies in the case paper

- (ii) copies of any further information received and accepted by the Commission following the serving of the case paper, shall be served on all involved parties for their information only, prior to the Commission deciding on the application
 - (iii) the Commission may direct that a public meeting is held before deciding on the application and shall consider any new information obtained at the public meeting.
 - (c) If the intention is for the croft to be put to another purposeful use for which the landlord has failed to provide or has refused to give consent, the Commission will write to the applicant to request that he apply to the Commission for consent¹ to the purposeful use. No decision will be taken on the assignation application until this is received by the Commission.
- (7) The decision on the application will be taken at the appropriate level as set out in the Commission's Instrument of Delegation. When considering its decision, the Commission shall have regard to the criteria listed at section 58A(7)(a)-(h) and will consider all of the available information, including any information received following serving the case paper or at a public meeting. It must decide the application by –
- (i) granting it;
 - (ii) granting it subject to conditions; or
 - (iii) refusing it.
- (8) The Commission will give notice of its decision to the applicant and the other parties listed at section 58A(12A) as appropriate, within 21 days of the decision being taken, specifying the reasons for its decision.

¹ The provisions relating to consent to purposeful use at Sections 5C(4) to (7) of the Crofters (Scotland) Act 1993 will apply. For further information on purposeful use, please refer to separate Rules of Procedure on *Consent to Another Purposeful Use*

(9) The applicant or any person with an interest in the application may appeal:

- (i) the Commission's decision; or
- (ii) the imposition of a condition by the Commission,

to the Scottish Land Court within 42 days after notification of the Commission's decision.

(10) If the application is granted and relates to a **first registered croft**:

(i) the assignation will take effect on such date as specified by the Commission (being a date not less than 2 months after the Commission intimated its decision to the crofter), unless before that date the crofter (or his executor) and the assignee jointly give notice in writing to the Commission that they do not intend to proceed with the assignation;

(ii) **the applicant** must within 3 months of the granting of the application, notify the Commission that the change has taken effect. As soon as reasonably practicable after this, **the Commission** must notify the Keeper of the Registers of Scotland of the change. If the Commission is not notified that the change has taken effect within the 3 month period then the assignation is deemed not to have taken effect.

(11) If the application is granted and relates to a **registered croft** (other than a first registered croft):

(i) any consent of the Commission to the assignation expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the assignation is submitted by **the assignee** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period;

(ii) the assignation takes effect on the date of its registration.

(12) Where the application granted is to assign:

- (i) a croft – this is assigned as a unit whether or not the assignee is an existing tenant crofter
- (ii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft and the assignee is an existing tenant crofter – this is assigned as an enlargement to the crofter's existing tenanted croft
- (iii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft and the assignee is not an existing tenant crofter – this is assigned as a unit
- (iv) a grazings right or land deemed by section 3(5) to be a croft – this is assigned as a unit and continues to be deemed to be a croft by section 3(5) whether or not the assignee is an existing tenant crofter