



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

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# **Assignment Application Guidance Notes**



Assignment is the term used to describe the transfer, with Crofting Commission consent, of a croft tenancy from you as the crofter, referred to as the 'assignor' or 'current crofter', to a person of your choice referred to as the 'assignee' or 'proposed new crofter'.

This application form is for the assignment of the whole of your tenancy, if you wish to assign just the grazing share(s) please complete the Assignment – Grazings Share(s) application form. If you wish to retain part of your croft that has not been decrofted and/or purchased, you should first apply to divide the tenancy.

If the croft is currently sublet, you must give your subtenant 6 months written notice of your intention to assign the tenancy before submitting this application. (Refer to the Missive of Sublet).

If the application is being submitted by anyone other than you or your Solicitor, the form should be accompanied by written confirmation from you that you have authorised the signatory to act as your agent.

## 1. REQUIREMENT TO REGISTER YOUR CROFT LAND

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The final element of the Crofting Reform (Scotland) Act 2010 relating to the registration of croft land came into effect on 30 November 2013.

The Crofting Register is map based and provides a definitive record of the extent of, and interest in, land within crofting tenure in Scotland. In addition to showing the boundaries of land, the register also contains information on the crofter, owner-occupier crofter and/or the landlord of the registered croft. The Crofting Register is maintained by the Keeper of the Registers of Scotland, although the application for registration is made in the first instance to the Crofting Commission who will check the information contained in or accompanying the registration application against the information contained in the Commission's Register of Crofts.

If your croft is unregistered, the Commission will be unable to make a decision on your assignment application until the croft has been registered with the Keeper of the Registers of Scotland. To avoid delays therefore, we recommend that your assignment application should be accompanied by your application to register the croft on the Crofting Register. This must be accompanied by a map showing the boundaries of the croft along with the registration fee.

A copy of the registration form and accompanying guidance notes can be found at [www.ros.gov.uk/services/registration/crofting-register](http://www.ros.gov.uk/services/registration/crofting-register) If an application to register is not submitted within 6 months of the date of receipt of this application, the application to assign will be withdrawn from our records and returned to you.

If your croft is already registered with the Keeper of the Registers of Scotland, an application for Registration of a Subsequent Event will be required should your assignment application be approved.

## 2. IMPORTANT INFORMATION

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

All questions must be answered as fully as possible, otherwise the form may be returned. To enable the Commission to give full consideration to your application, we would appreciate if you would provide us with as much information as possible to help us to arrive at a fully informed decision.

## **2.1 LANDLORD NOTIFICATION**

You are legally required to notify your landlord (and if your application includes grazings share(s), the owners of the common grazings) of this application. In order to confirm you have done this could you please provide one of the following:

1. Arrange for the signed notification form at Appendix 2A of the application form to be completed and signed by the landlord (and any owners of the common grazing)
2. A letter confirming receipt of notification from your landlord (and any owners of the common grazing)  
OR
3. Evidence of notification having been sent by registered post or recorded delivery to your landlord (and any owners of the common grazing)

## **2.2 PUBLIC NOTIFICATION**

You must advertise your application to assign the tenancy of the croft in a newspaper. You are responsible for paying for the advert. Please refer to our guidelines on advertising applications on our website at **[www.crofting.scotland.gov.uk/forms-and-guidance](http://www.crofting.scotland.gov.uk/forms-and-guidance)**

Failure to follow the guidelines may result in you having to re-advertise your application in an accepted newspaper.

**It is important that this application is sent to us before the advert appears in a newspaper.**

A standard advert for your use is provided on page 4.

We would encourage you to contact the local Grazings Clerk/Constable to make them aware of your proposals, as experience has shown this can help establish good community relationships.

## Sample Newspaper Advert:

### Proposed Assignment of a Croft

(Your name)

is applying to assign the tenancy of the croft at

(croft name and parish)

to

(proposed new Crofter Name)

of

(address)

Written comments from those with a relevant interest (which may be made public) to: Crofting Commission, Leachkin Road, Inverness IV3 8NW, [info@crofting.scotland.gov.uk](mailto:info@crofting.scotland.gov.uk) by DD/MM/YY\*.

\*The date is to be 28 days from the date of publication of the advert

### 3. RESIDENCY AND LAND USE

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#### Section 58A(7)(a) of the Crofters (Scotland) Act 1993

In considering its decision on this application, the Commission must have regard to:

- (i) whether any person is or will be ordinarily resident on, or within 32 kilometres (20 miles) of, the croft;
- (ii) whether the croft is being or will be cultivated or put to such other purposeful use.

All crofters are required to comply with a number of statutory duties relating to residency and management of their crofts.

#### 3.1 WHAT ARE CROFTER'S DUTIES?

##### Crofters Duties

Both tenant and owner-occupier crofters have a duty to:

- **Be resident on, or within 32 kilometres (20 miles) of their croft**
- **Not misuse or neglect the croft**

**Misuse** – This refers to a croft being used for something which is not considered as cultivation.

Crofters require the consent of their landlord or, failing that, the Crofting Commission if they wish to put their croft to another purposeful use.

**Neglect** – This refers to the management of the croft which should meet the standards of Good Agricultural and Environmental Condition (GAEC).

- **Cultivate and maintain the croft**

**Cultivate** – This refers to the croft being used for cultivation or put to another purposeful use. This includes horticulture, keeping livestock including poultry and bees, growing of crops and the planting of trees.

**Maintain** – 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 a state.

**Purposeful use** – This 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.<sup>1</sup>

#### 3.2 FIXED EQUIPMENT AND PERMANENT IMPROVEMENTS

Any fixed equipment or permanent improvements e.g. agricultural or domestic buildings which form part of the tenancy will be assigned with the tenancy. If the croft house and garden ground is part of the tenancy of the croft and you wish to retain it, you must decroft and purchase the site prior to submitting the assignation application.

If an advance of purchase decrofting direction has been granted in respect of the croft house site and garden ground or part of the croft, this area will be included in the assignation of the croft tenancy unless it has been purchased from the landlord.

<sup>1</sup> A crofter may only put the croft to a purposeful use if the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or the Commission has consented to the use if the landlord has withheld their consent.

## 4. WIDER INTERESTS

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In this section you are provided with the opportunity to make any comments on these matters which you consider the Commission should take into account when considering your application.

### Section 58A(7)(b)-(e) of the Crofters (Scotland) Act 1993

In considering its decision on this application, the Commission must have regard to:

- (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

\*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.

### 4.1 SUSTAINABLE DEVELOPMENT

Sustainable development of a crofting community will normally include the economic social and environmental well-being of the community but meeting the sustainable development criteria need not require meeting all these strands. For instance, the agricultural aspect of crofting is not always necessarily financially sustainable, but this does not preclude it from adding value to the well-being of the individual and the surrounding community. Consideration of applications should take account of the maintenance and possible increase in populations, good management practices, the protection and enhancement of environmental assets, economic demand and employment opportunities, the protection and encouragement of biodiversity, the production of renewable energy reduction in carbon emissions, resource efficiency and the avoidance of dereliction of land. There are many criteria available when considering sustainable development although not all will be applicable to each circumstance.

### 4.2 PUBLIC INTEREST

Crofting legislation does not define 'public interest', although it contains various references to it. It is therefore for the Commission to be satisfied that, where required on a case-by-case basis, the public interest test is met.

In exercising its functions, the Commission must have regard to (a) the desirability of supporting population retention in the crofting counties and in any other designated area where crofts have been created, and (b) the impact of changes to the overall area of land held in crofting tenure to the sustainability of crofting.

In determining if, for example, approving an application is in the public interest, the Commission may consider any evidence of the benefits and disbenefits to other crofters, crofting communities, the wider community and others the Commission considers as having an interest in the application. The Commission will also take into account the Scottish Government's crofting policies and will normally favour the wider public interest particularly where individual private interest will disadvantage the sections detailed above.

## 5. PROPOSED NEW CROFTER DETAILS

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Please note a croft tenancy cannot be assigned to more than one person. A croft tenancy cannot be assigned to anyone who has an interest in the ownership of the land (e.g. is the landlord). Guardian details need to be provided where the proposed new crofter is aged under 16.

## 6. POLICY PLAN ON ASSIGNATION

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### **Section 58A(7)(g), (h) of the Crofters (Scotland) Act 1993**

In considering its decision on this application, the Commission must have regard to the Commission's policies included within its Policy Plan approved by the Scottish Ministers and any other matter which the Commission considers relevant.

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 assignation, 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 assignation 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.



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