

Decrofting Whole or Part of a Croft

Decrofting allows for land to be removed from crofting and outwith the control of the Crofting Acts.

LAW

Crofters (Scotland) Act 1993 sections 24, 24A-24D, 25, & 23(11)

In respect of a landlord - *Where a croft is vacant, the Commission may, on the application of the landlord, direct that the croft shall cease to be a croft or refuse to grant the application. **Section 24(3)***

In respect of an owner-occupier crofter – *An owner-occupier crofter may apply to the Commission for a decrofting direction. In this section and in sections 24B to 24D, a “decrofting direction” is a direction that the owner-occupier’s croft is to cease to be a croft. **Section 24A***

In respect of a crofter – ... *the Commission may, on the application of a crofter who is proposing to acquire croft land or the site of the dwellinghouse on or pertaining to his croft, give a direction under the said section 24(3) as if the land were a vacant croft and the application were made by the landlord, that in the event of such acquisition of the land it shall cease to be a croft, or refuse the application, but such a direction shall not have effect until the land to which it relates has been acquired by the crofter or his nominee and unless the acquisition is made within 5 years of the date of the giving of the direction.* **Section 25(4)**

An application for a decrofting direction may apply to a part of a croft: *The provisions of this section and sections 24, 24A to 24D and 25 of this Act shall have effect in relation to a part of a croft as they have effect in relation to a croft.* **Section 23(11)**

The Commission shall give a direction that a croft shall cease to be a croft if –

... satisfied that the applicant has applied for the direction in order that the croft may be used in connection with some reasonable purpose (within the meaning of section 20 of this Act) having relation to the good of the croft or of the estate or to the public interest or to the interests of the crofting community in the locality of the croft and that the extent of the land to which the application relates is not excessive in relation to that purpose. **Section 25(1)(a).**

In determining whether satisfied in relation to the considerations stated in section 25(1)(a) and, in particular whether the reasonable purpose mentioned there relates to the public interest, the Commission may take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on the following:

(a) *the sustainability of –*

- (i) *crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Commission to be relevant;*
- (ii) *the crofting community in that locality or the communities in such an area;*
- (iii) *the landscape of that locality or such an area;*
- (iv) *the environment of that locality or such an area;*

(b) *the social and cultural benefits associated with crofting; **Section 25(1B)** and*

*Where the purpose is, or is connected with, the development of the croft in respect of which planning permission subsists, may take into account the effect such development would have on the croft, the estate, and the crofting community in the locality of the croft. **Section 25(1A)(b)***

*Without prejudice to subsection (1)(b) or (c)¹ above, the Commission, in determining whether or not to give such a direction, shall have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for a tenancy of a croft from persons who might reasonably be expected to obtain the tenancy if the croft were let offered for letting on the open market on the date when they are considering the application. **Section 25(2)***

¹ (1)(b) refers to applications for the site of the dwelling house on or pertaining to the croft.

(1)(c) refers to applications for which the conveyance of a feu was granted under section 17 or 18 of the 1955 Act. Separate procedures are provided for these.

POLICY

Commission Plan on Decrofting

All decrofting applications – other than applications under section 17 or 18 of the Crofters (Scotland) Act 1955) (Section 17 or 18 feus”) or in respect of the statutory house site and garden ground – are subject to the Commission’s discretion. The Crofters (Scotland) Act 1993, which was substantially amended by the Crofting Reform (Scotland) Act 2010, sets out the complicated rules which govern decrofting applications and the various factors that the Commission will take into account when determining applications. In all applications, other than the particular types of decrofting application set out above, the Commission will use its discretion to balance the legitimate interests of the applicant with the legislative factors to which it must have regard, including the general interest of the crofting community in the district and in particular the demand, if any, for a tenancy of the croft from persons who might reasonably be expected to obtain such a tenancy of the croft from persons who might reasonably be expected to obtain such a tenancy if the croft were offered for letting on the open market on the date when the Commission is considering the application.

The Commission will apply the legislation but will also consider the facts and circumstances of every individual application when exercising its discretion. The factors that must, in terms of crofting legislation, be considered by the Commission in exercising its regulatory functions include having regard to the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting and the desirability of supporting population retention in the crofting counties. The Commission will take account, as appropriate, of any objections received in response to public advertisement of the application when determining the application.

Where the stated purpose for decrofting is to use the land as amenity land to a dwellinghouse formerly on the croft, the Commission will not usually approve any applications in respect of which the amenity land and the decrofted statutory house site and garden ground (or, where relevant, the resumed area of the original dwellinghouse) exceed 0.15 hectares in total.

The Commission aims to protect land from being lost to crofting. A decrofting direction irrevocably removes the land subject to the application from crofting tenure. The Commission takes a long-term view when determining applications and will exercise its discretion to consider, amongst other factors, the advantages of retaining the croft (or part thereof) as part of the pool of croft land in the locality. Applications that are made only for the reason of taking the croft, or part of the croft, out of crofting tenure are unlikely to be approved.

The Commission may place conditions on any decrofting direction, including conditions that relate to the use of the land to be decrofted.

The Commission may modify any application in relation to which a decrofting direction is given as it considers appropriate.

The Commission will not normally decroft any grazing share which an applicant has Title to and has included within a decrofting application. This is because the grazing right is regarded as part of a communal resource and no obvious purpose is served by its removal from crofting control. Applicants who purchased the right to share in the common grazing as well as the croft land are advised to restrict any decrofting application to croft land only, and not grazing or any other rights (such as peat rights) associated with the croft. Where a crofter purchases his or her croft but not the right to graze in the common grazing, the Commission regards any such right as a separate and distinct deemed croft, and the right comprising the deemed croft shall be deemed to be held in tenancy until held otherwise.

PROCEDURE

- (1) An application by:
 - (i) a landlord of a vacant croft – section 24(3);
 - (ii) an owner-occupier crofter¹ – section 24A-D;
 - (iii) a tenant crofter proposing to acquire their tenanted land – sections 24(3) and 25(4),

for a direction that a croft or a part of a croft shall cease to be a croft or part of a croft shall be made on the appropriate form provided by the Commission.

- (2) On receipt of an application on the said form, the Commission will check that the application is valid.

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 applicant 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 advertise nor consider the application for the direction. Failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the decrofting application was made, will result in the form being returned to the applicant.

¹ As defined at section 19B of the Crofters (Scotland) Act 1993

- (ii) If the croft is **registered** or where an application for first registration is received, the Commission shall advertise the proposed decrofting in one or more newspapers circulating in the district in which the croft is situated allowing 28 days for comments.
- (4) Where any objections¹ to the application are received by the Commission – refer to separate section on objections.
- (5) Where an objection includes a request for a hearing² – refer to separate section on hearings.
- (6) The Commission shall make such further enquiry and carry out such inspection as it deems necessary.
- (a) to ascertain whether the purpose of the application is a reasonable one within the meaning of section 20, having relation to the good of the croft, or the estate, or to the public interest, or the interests of the crofting community in the locality of the croft; and that the extent of the land to which the application relates is not excessive in relation to that purpose.
- (b) to inform itself about the purpose of the application and any other matter on which it requires information.
- (7) The Commission shall have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for the tenancy of the croft (or part croft) were it offered for letting on the open market on the date when it is considering the application.

¹ 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*

² Further information on hearings, who can request a hearing and how the Commission treat such a request, is contained in the separate Rules of Procedure on *Hearings and the Opportunity to be Heard Following Representations*

- (8) The Commission may further take into account the effect that purpose (whether alone or in conjunction with other considerations) would have on –
- (a) The sustainability of:
 - (i) crofting in the locality of the croft or such other area in which crofting is carried on as appears to the Commission to be relevant;
 - (ii) the crofting community in that locality or the communities in such an area;
 - (iii) the landscape of that locality or such an area;
 - (iv) the environment of that locality or such an area.
 - (b) The social and cultural benefits associated with crofting.
- (9) In the case of those applications relating to a reasonable purpose which is, or is connected with, the development of the croft in respect of which planning permission subsists, notwithstanding the existence of planning permission, the Commission may further take into account the effect such development would have on:
- (i) the croft;
 - (ii) the estate;
 - (iii) the crofting community in the locality of the croft.
- (10) In every application the Commission will give priority to the provision of access to **all** remaining parts of the croft or other croft land. The Commission will check to ensure that the access requirements are clearly and unambiguously shown on any application and that this reflects actual arrangements. Failure to meet this requirement is likely to result in the application being modified¹ or refused.

¹ The modification may be requested by the applicant during the processing of the application or deemed appropriate by the Commission. If the latter, the Commission will arrange for a map of the modified area to be prepared and the applicant (and any other parties to the application) will have sight of this prior to any decision being taken on the application.

- (11) The Commission shall consider all the information available, taking particular account of its specific policy on decrofting.

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 (with or without imposing conditions) and no valid objections or expressions of demand for the tenancy of the croft or part 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, then 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 it sight of the evidence 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. The Commission will also allow the applicant the opportunity to request a hearing¹ and any such request must be made to the Commission in writing (or some other permanent form);
 - (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;

¹ Before deciding on a decrofting application, if a hearing is requested by the applicant, the Commission is required by section 25(6) of the Crofters (Scotland) Act 1993 to afford a hearing to the applicant and to such other person as the Commission think fit

- (iii) where the applicant has not requested a hearing, the Commission may direct that a hearing is held before deciding on the application and shall consider any new information obtained at the hearing.

- (12) The decision on the application will be taken at the appropriate level as set out in the Commission's Instrument of Delegation. When deciding on the application, the Commission will consider all of the available information, including any information received following serving the case paper or at a hearing. It must decide the application by –
 - (a) giving a direction;
 - (b) giving a direction subject to conditions or modifications; or
 - (c) refusing it.

- (13) The Commission will give both notice of its decision in writing to the applicant (and landlord where the applicant is the tenant croft) and give public notification¹ of its decision, specifying the nature of and the reasons for the decision, and as the case may be, for any conditions imposed in the direction.

- (14) In the case of every application the Commission may also consider whether in granting a direction, to impose such conditions² (including provision as to timescale) as appear to it requisite for securing the land to which the direction relates is used for the proposed use.

- (15) In the case of an application by a crofter proposing to acquire land tenanted by him, a direction shall not have effect until the land it relates to has been purchased by the crofter or his nominee and unless the acquisition is made within 5 years of the date of the giving of the direction. It will also be necessary to fulfil the registration requirements following purchase.

¹ For information on public notification refer to separate Rules of Procedure on *Public Notification*

² As permitted by section 25(3) of the Crofters (Scotland) Act 1993. Section 25(3A) allows the Commission to modify any conditions imposed in a direction from time to time. In certain circumstances, if the Commission is satisfied there has been a breach of any imposed condition, it can make a further direction to return the land in respect of which there has been a breach, to crofting tenure. For further information refer to separate Rules of Procedure on *Breach of Decrofting Conditions*

(16) In all applications, the **applicant** or **any member of the crofting community in the locality of the land** may appeal

- (i) the Commission's decision to grant a direction; or
- (ii) the imposition of a condition or modification; or
- (iii) the refusal of the application,

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

(17) If the application is **granted** and the direction is –

(a) Given in **advance of purchase** and relates to a **first registered croft** – where

- (i) the land is acquired by the tenant or a nominee of the tenant within 5 years of the date of the giving of the direction; and
- (ii) the crofter has notified the Commission within 3 months of acquisition,

the direction takes effect on the date notification of the direction and acquisition is given **by the Commission** to the Keeper of the Registers of Scotland.

(b) Given in **advance of purchase** and relates to a **registered croft** (other than a first registered croft) – where

- (i) the land is acquired by the tenant or a nominee of the tenant within 5 years of the date of the giving of the direction; and
- (ii) an application for registration of the effecting of the direction is submitted by **the applicant** to the Commission for forwarding to the Keeper of the Registers of Scotland, within the 5 year period,

the direction takes effect on the date of registration of the direction and acquisition.

- (c) In respect of an **owned subject** and relates to a **first registered croft** –

Notification **by the Commission** will be given to the Keeper of the Registers of Scotland as soon as reasonably practicable after the direction is made.

The direction takes effect on the date of receipt by the Keeper of the Registers of Scotland of notification from the Commission of the making of the direction.

- (d) In respect of an **owned subject** and relates to a **registered croft** (other than a first registered croft) –

the direction expires at the end of the period of 3 months, beginning with the date on which the direction was made, **unless** an application for registration of the making of the direction is submitted **by the owner** to the Commission for forwarding to the Keeper of the Registers of Scotland, before the expiry of that period.

The direction takes effect on the date of registration of the direction.

In all cases, the direction will not have effect unless the respective registration requirements detailed above are fulfilled.