

Enlargement of Crofts

Background:

This procedure covers the enlargement of crofts by a direction issued by the Crofting Commission under section 4 of the Crofters (Scotland) Act 1993. There is a separate provision for a croft to be enlarged by croft land or other crofting rights by **letting** as an enlargement¹.

In addition, where a landlord holds non croft shares in a common grazings subject to section 47(10), it is competent for the landlord to make over all or part of that share to a crofter so as to enlarge the grazing shares attached to the croft and thus bring that part of the share under the Act. However this takes place under **common law**, not under the enlargement provisions within the Crofters Acts (Please refer to a Commission Board Paper titled 'Review of Instrument of Delegation' 6 February 2013)

LAW

Crofters (Scotland) Act 1993, section 4

This section applies where an owner of land –

- (a) which is not a croft; and*
- (b) which does not form part of a croft,*

*agrees to grant a tenancy of that land to a crofter. **Section 4(1)***

*The owner and the crofter may apply jointly to the Commission for a direction that that the land is to form part of a croft of which the crofter is a tenant. **Section 4(2)***

POLICY

Crofting Commission Policy Plan on Enlargement of Crofts

The Commission will give favourable consideration to the enlargement of crofts which will assist and sustain croft enterprises. In doing so, the Commission will take account of the sustainability of the crofting community and the interests of the public at large. Any applications that may result in the enlarged croft exceeding 30 hectares will be considered in the context of the individual circumstances and the implications for crofting in that locality. The Commission will also apply its general policies on access and compliance with crofters' duties.

¹ Please refer to separate Rules of Procedure on the *Letting of a vacant croft*

PROCEDURE

(1) This section applies where an owner of land –

- (a) which is not a croft; and
- (b) which does not form part of a croft,

agrees to grant a tenancy of that land to a crofter.

(2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant on the appropriate form provided by the Commission.

An application from a crofter in breach of any of the statutory duties, including the residency duty where consent to be absent has not been obtained, will need to demonstrate how the proposed enlargement will help to resolve the breach.

(3) 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 crofter of the requirement to submit an application for first registration of the croft.

(4) If the application is valid and complete, the Commission will check whether it relates to a **registered croft**.

(i) If the croft is **unregistered**, the Commission will check whether an application for first registration of the croft(s) has been received. If not, the Commission will inform the applicants in writing that unless an application for first registration is submitted by the crofter, it will not consider the application. The applicants will be further advised that failure to submit an application for first registration of the croft(s) within 6 months, beginning with the date on which the application for a direction was made, will result in the application being returned.

(ii) If the croft is **registered** or where an application(s) for first registration is received, the Commission will proceed to consider the application.

(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.

(6) The Commission shall consider all the information available, taking particular account of its specific policy on enlargement of crofts.

(7) The Commission may make a direction if it is satisfied that the enlargement of the croft –

- (i) would be of benefit to the croft or the crofter; and
- (ii) would not result in the area of the enlarged croft substantially exceeding 30 hectares.

(8) The decision on the application will be taken at the appropriate level as set out in the Commission's Instrument of Delegation. The Commission may either grant or refuse to grant the direction.

- (9) The Commission will give notice of its decision to the applicants within 21 days of the decision being taken, specifying the reasons for its decision.
- (10) The applicants may appeal the Commission's decision to the Scottish Land Court within 42 days after notification of the Commission's decision.
- (11) If the application is granted and relates to a **first registered** croft -
- (i) The land forms part of the croft with effect from the later of:
 - (a) the date of the Commission's direction; or
 - (b) the date of entry under the tenancy.
 - (ii) **The crofter** must within 3 months of the granting of the direction, 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.

The enlargement takes effect on the date provided by the crofter on the notification form to the Commission.

- (12) If the application is granted and relates to a **registered croft** (other than a first registered croft) –
- (i) the direction expires at the end of 3 months, beginning with the date on which the direction is made, unless an application for registration of the enlargement is submitted by **the crofter** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period;
 - (ii) the enlargement takes effect on the date of its registration.

In either case the enlargement will not have effect unless the respective registration requirements detailed above are fulfilled.

- (13) The rent payable for the enlarged croft is the rent agreed by the landlord and the crofter.