

Exchange of crofts or parts of crofts

Enables the exchange of whole crofts or parts of crofts

LAW

Crofters (Scotland) Act 1993, section 4A

A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless —

(a) *he obtains the consent of —*

(i) *the landlord of his croft; and*

(ii) *the Commission;*

(b) *the exchanging crofters have the same landlord; and*

(c) *the landlord is the owner of any common grazing in which the crofters share.*

Section 4A(1)

*A new croft is not created by virtue only of such exchange. **Section 4A(4)***

POLICY

Crofting Commission Policy Plan on Exchange of Crofts or Parts of Crofts

The Commission will wish to ensure that any exchanges of croft land serve the interest of crofting and do not unnecessarily restrict a croft's capacity to be cultivated and maintained or put to another purposeful use. Any exchange of croft land must ensure that access to the respective crofts remains uncompromised. Applicants should ensure that access provisions are clearly and unambiguously shown on any application, and provide evidence that this reflects the actual arrangements. Responsibility for issues such as fairness of amounts of land exchanged and transfer values are for the individual parties involved and not for the Commission as crofting regulator. However, in consenting to the exchange of croft land, the Commission will need to be satisfied that any exchange of land does not compromise the integrity of any of the crofts involved.

PROCEDURE

- (1) Applications by tenant crofters for the Commission's consent to exchange their crofts (or any part of their crofts) shall be made on the appropriate form provided by the Commission.

An application for consent to an exchange can only be considered where:

- (i) the exchanging crofters have the same landlord;
- (ii) the landlord is the owner of any common grazings in which the crofters share; and
- (iii) the exchanging crofters have obtained the consent of the landlord to the proposal.

- (2) On receipt of applications on the said form, the Commission will check that the applications are valid. This will include checks that the applicants have:
- (i) obtained the written consent of the landlord of the crofts;
 - (ii) given public notification¹ of the applications (as required by section 58A(3)(a)).

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

- (3) If the applications are valid and complete, the Commission will check whether they relate to **registered crofts**.
- (i) If either or both of the crofts are **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, it will not consider the applications at the end of the 28 day public notification period. 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 consent was made, will result in the applications being returned.
 - (ii) If both crofts are **registered** or where an application(s) 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 forms and any objections received.

- (4) Where any objections² to the applications are received by the Commission – refer to separate section on objections.

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

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 applications 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 applications relating to crofts:
- (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 exchange of crofts (or parts of crofts). If it is satisfied there is sufficient information available to allow it to decide on the applications and:
- (a) if the Commission is satisfied that the applications should be granted, and no valid objections or expressions of demand for the tenancy (of the croft(s), part croft(s) or deemed croft(s)) have been submitted, it may grant the applications.
 - (b) where the Commission is not satisfied that the applications 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 applications –
 - (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 applications and shall consider any new information obtained at the public meeting.

- (7) The decision on the applications 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 applicants 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.

- (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 applicants** must, within 3 months of the granting of consent, 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 exchange takes effect on the date provided by the applicants on the notification form to the Commission.

(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 exchange expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the exchange is submitted by **the applicants** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period;
- (ii) the exchange takes effect on the date of its registration.

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