



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

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Exchange of Tenanted Croft Land Application Guidance Notes



Exchange is the term used to describe the transfer, with Commission consent, of all or part of a croft tenancy from a tenant crofter to another tenant crofter.

The croft land being exchanged **MUST** have the same landlord. The landlord **MUST** also be the owner of any common grazing in which the applicants share.

Both crofters must individually complete the section in the form for Residency and Land Use and Access, and jointly complete the section for Wider Interests.

If a sublet of your tenancy commenced on or after June 2007, you must give your subtenant 6 months written notice of your intention to exchange 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

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 contains information on the tenant, 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 should be 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 either croft is **unregistered**, the Commission will be unable to make a decision on your exchange application until both crofts have been registered with the Keeper of the Registers of Scotland. To avoid delays therefore, we recommend that your exchange application should be accompanied by your application to register the crofts on the Crofting Register. This must be accompanied by a map showing the boundaries of the crofts 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. If an application to register is not submitted within 6 months of the date of receipt of this application, the application to exchange will be withdrawn from our records and returned to you.

If either or both crofts are **already registered** with the Keeper of the Registers of Scotland, an application for Registration of a Subsequent Event will be required should your exchange application be approved.

2. IMPORTANT INFORMATION

To avoid delays, please ensure you answer all relevant questions and provide all documents requested to the Crofting Commission. Failure to do so may mean we have to return your application.

Please note that 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.

3. APPLICATION DETAILS

Section 4A of the Crofters (Scotland) Act 1993

A crofter can only exchange their croft, or part of their croft, if they obtain the consent of **both** the landlord and the Crofting Commission. The landlord must sign the declaration on the application form to confirm that consent has been given.

3.1 Mapping Information

Your exchange application must be accompanied by a map of the proposed exchange in relation to the whole croft boundary of each croft. Please refer to the example plan at the end of the guidance notes for further details of requirements.

All maps must be clear, legible, and in colour. We recommend a map size of A3, with additional pages if necessary. Annotation can be added to some or all of boundaries to ensure that they are mapped correctly, such as: 'boundary follows post and wire fence'. If the croft is already registered in the Registers of Scotland Crofting Register then this boundary must be used. Maps that do not meet our required standard will result in your application being returned with notes highlighting issues that need addressed.

3.2 Grazing Share(s)

We strongly advise you to confirm your share/souming entitlement with your local Grazings Clerk or with the Commission before answering this question. If our records do not match the information you provide, the application may be returned to you.

Any Crofter Forestry rights will be divided in proportion to the exchange of the share/souming.

4. Residency and Land Use

Each crofter should complete the questions on the application form relating to residency and land use.

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

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

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

4.1 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 to 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.¹

¹ 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 have consented to the use if the landlord has withheld their consent.

5. WIDER INTERESTS

Section 58A(7)(b)-(e) or 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

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.

*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.

5.1 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.

5.2 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.

6. ACCESS

The Commission will give priority to the provision of appropriate access to all parts of the crofts and, where appropriate, the common grazing. The provision should allow unrestricted access at all times including access for agricultural machinery. Failure to meet this provision is likely to result in the application being refused.

Your location and/or site map(s) must show all existing access routes to the crofts as well as any proposed access provision.

7. POLICY PLAN

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 routes or areas 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.

8. PUBLIC NOTIFICATION

You must advertise your application to exchange croft/part of the crofts 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 Failure to follow the guidelines may result in you having to re-advertise your application in an accepted newspaper, at your own expense.

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

Sample Newspaper Advert

Exchange of Croft Land

(Both names)

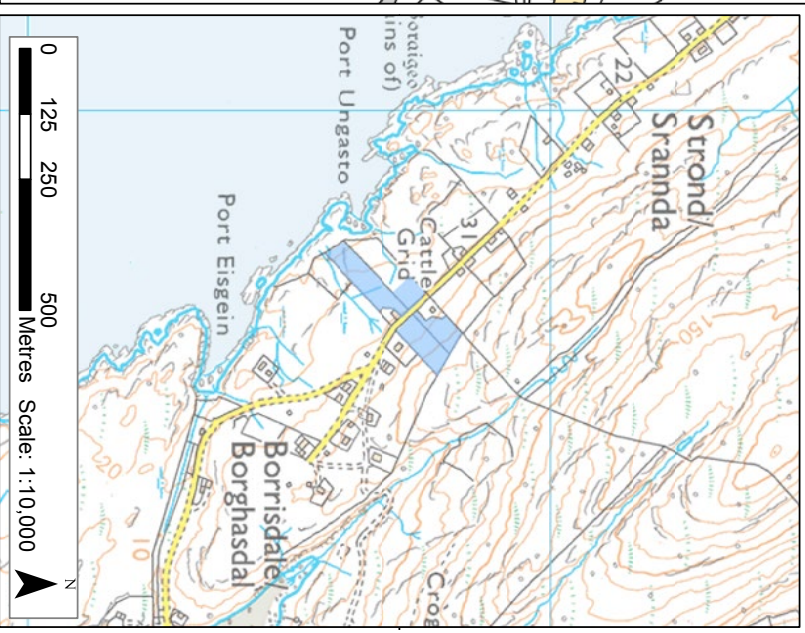
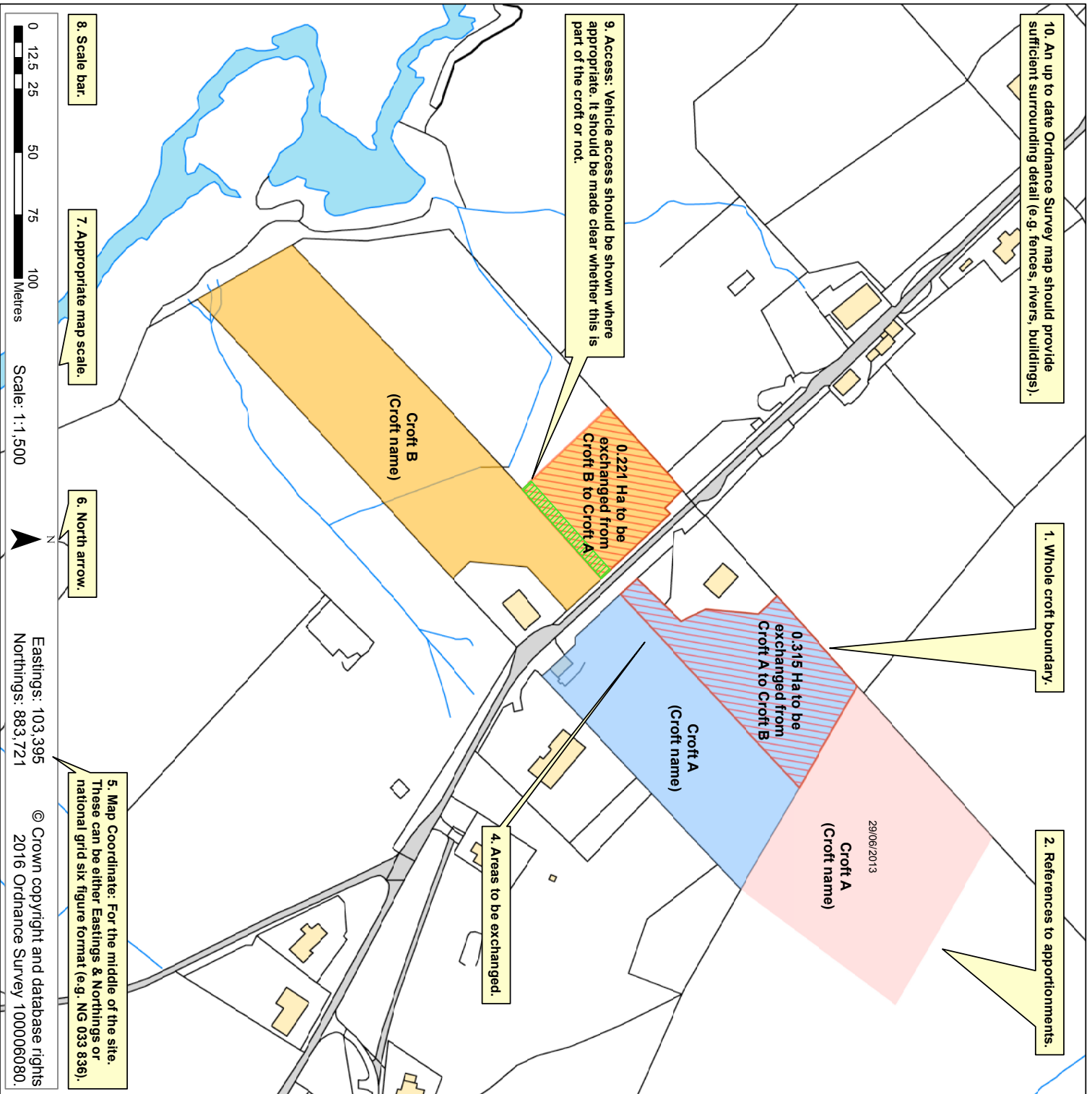
are applying to exchange *land (delete if whole croft exchange)

at the crofts known as (name and parish).

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 by DD/MM/YY*.

* Please enter date 28 days from the date of publication of the advert.

MAP FOR EXAMPLE PURPOSES ONLY





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