

## Letting of an owner-occupied croft (other than on a short lease)

*An owner-occupier crofter can apply to let the owner-occupied croft or part of it. The owner-occupier crofter will then become the landlord of any tenant.*

### LAW

Crofters (Scotland) Act 1993, sections 29A & 58A

*An owner-occupier crofter may not let the owner-occupier's croft (or any part of it) without the consent of the Commission. **Section 29A (1)***

*In considering their decision on the application, the Commission must have regard to the following-*

- (a) In the case of an application relating to a croft-*
  - 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 such other purposeful use as is consented to under section 5C(4)*
  
- (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;*
- (f) *any objections received under subsection (4) or (5A);*
- (g) *any plan of the Commission approved and published under section 2C;*
- (h) *any other matter which the Commission consider relevant. **Section 58A(7)***

## **POLICY**

### Crofting Commission Policy Plan on Letting or Subletting of a Croft

*In considering applications, the Commission will apply its policies on residency, land use and shared management and it will take into account the demand for crofts in the area.*

*To ensure that all relevant information is considered in its decision making, where a proposed tenant, subtenant or short lease holder has other croft or agricultural land available, the Commission may take account of how that land is cultivated and maintained.*

## **PROCEDURE**

- (1) An application for the Commission's approval to let a croft, or part of a croft, shall be made by the owner-occupier crofter 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. This will include checks that the applicant has:

- (i) given public notification<sup>1</sup> of the application (as required by section 58A(3)(a));
- (ii) where the land to which the application relates is, or is part of, a common grazings which is owned separately given written notification of the application owner of the common grazings (as required by section 58A(3)(b))

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 owner-occupier crofter 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 consider the application at the end of the 28 day public notification period. The applicant will be further advised that failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the application for approval was made, will result in the application being returned.
  - (ii) If the croft is **registered** or where an application 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 form and any objections received.
- (4) Where any objections<sup>2</sup> to the application are received by the Commission – refer to separate section on objections.

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<sup>1</sup> For information on public notification refer to separate Rules of Procedure on *Public Notification*

<sup>2</sup> 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 application 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 an application relating to a croft:
- (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.
- (7) The Commission shall consider all the information available, taking particular account of its specific policy on letting. 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, 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, 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 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 application and shall consider any new information obtained at the public meeting.
  
- (8) The decision on the application 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
  
- (9) The Commission will give notice of its decision to the applicant 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.
  
- (10) 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.

(11) If the application is granted and relates to a **first registered croft**:

- (i) the **owner-occupier crofter** must within 3 months of the granting of the application, notify the Commission that the let of the croft has taken effect; and
- (ii) the **Commission** must as soon as is reasonably practicable after the notification from the owner-occupier crofter is received, notify the Keeper of the Registers of the Scotland of the change.

The let takes effect on the date provided by the owner-occupier crofter in the notification form to the Commission.

(12) If the application is approved and relates to a **registered croft** (other than a first registered croft):

- (i) any approval of the Commission expires at the end of 3 months beginning with the date on which approval was given, unless an application for registration of the letting of the croft (or part of the croft) is submitted by the **new tenant of the croft** to the Commission for forwarding to the Keeper of the Registers of Scotland, before the expiry of the 3 month period;
- (ii) the letting of the croft (or part of the croft) takes effect on the date of registration.

In either case the let will be deemed not to have taken effect if the respective registration requirements are not met (notwithstanding any provision to the contrary).

(13) A tenant of an owner-occupied croft on a lease (other than a short lease) will be a tenant crofter. As a result the owner-occupier becomes the landlord of the croft and the provisions relating to owner-occupier crofters will cease to apply.