

Letting of owner-occupied crofts – ‘short lease’

An owner-occupier crofter can apply to lease his croft to another individual for a period not exceeding 10 years

LAW

Crofters (Scotland) Act 1993, sections 29A, 29B and 58A

*The Commission may, in giving their consent to a proposed lease of an owner-occupied croft for a period not exceeding 10 years (a ‘short lease’), impose such conditions (other than any relating to rent) as they consider appropriate. **Section 29A(4)***

A lease is void if it is granted –

- (a) without the Commission’s consent;*
- (b) in the case of a short lease, otherwise than in accordance with such conditions as the Commission may impose. **Section 29A(5)***

The Commission may terminate a short lease granted under this section if –

- (a) a condition imposed under subsection (4) is breached; or*
- (b) the tenant fails to comply with a condition of let (other than any relating to rent). **Section 29A(6)***

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, on a short lease shall be made by the owner-occupier crofter on the appropriate form provided by the Commission. An application should also state the length of time required and the reasons for that period of time.
- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include checks the applicant has:
 - (i) given public notification¹ 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 to the 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.

- (3) If the application is valid and complete the Commission will, at the end of the 28 day public notification period, review the information contained in the application form and any objections received.
- (4) Where any objections² to the application 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 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.
- (6) Where the application is submitted in respect of a croft which is the subject of an ongoing investigation by the Commission of a suspected breach of duty under the investigation and enforcement of duties provisions at sections 26A-26K of the Crofters (Scotland) Act 1993, a decision to refuse or approve the short lease will take place prior to any issue of a notice under section 26C. Where an application is approved such a notice will not be required.
- (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. The Commission 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 granting the application, the Commission will prepare a standard lease for completion and return by the owner-occupier crofter and the proposed tenant. The lease will include the condition that the tenant will fulfil the duties set out in the Crofters (Scotland) Act 1993 relating to residence and land use¹.
- (12) The Commission may terminate a short lease if:
- (i) a condition imposed on the Commission's consent is breached.
 - (ii) the tenant fails to comply with a condition of let (other than any relating to rent).
- (13) A tenant under a short lease will be treated neither as a tenant crofter nor a tenant under the Agricultural Holdings (Scotland) Act 2003. Consequently they will not have the same legal rights as those types of tenants. The consenting to the short lease does not change the status of the owner-occupier crofter.

¹ See separate Rules of Procedure relating to *Duties*