



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

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# **Short Term Let Application Owner-Occupier Crofter Guidance Notes**



Short term letting is the term used to describe the arrangement whereby an owner-occupier crofter with the consent of the Commission allows another person (known as the short lease tenant) to work all (or any part of the croft) for a fixed period of time, not exceeding 10 years. Short term letting does not affect an owner-occupier crofter's security of tenure. The long term use of a croft by another person requires the consent in writing of the Commission.

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.

This application can only be submitted by an Owner-Occupier Crofter as defined in section 19B of the Crofters (Scotland) Act 1993 (see also 1.1 Owner-Occupier Crofter below).

## **1. IMPORTANT INFORMATION**

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

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.

If you are the tenant of the grazing share(s) associated with the croft, they cannot be included in this application. If you would like the proposed short lease tenant to become subtenant of the grazing share(s) for the same period, you must apply to the Commission for our consent to sublet the share to him/her. This will allow the short lease tenant the use of the share.

### **1.1 OWNER-OCCUPIER CROFTER**

A person will be recognised as an owner-occupier crofter if they are owner of a croft; and they were either the tenant crofter who exercised the right to buy the croft, or a crofter's nominee or an individual who purchased the croft from the constituting landlord (or a successor in title to these persons). In addition, the croft must not have been let to any person as a croft since it was acquired from the landlord or constituted as a croft.

The first of those conditions provides that an owner-occupier crofter must be the owner of a croft. The croft can be owned by more than one person, but those persons must own the entire croft jointly and their title deed must be in their joint names.

Those persons who own only part of a croft are therefore not considered by the Commission to be owner-occupier crofters because they cannot satisfy all three conditions. Accordingly, they are considered by the Commission to be landlords of part of a vacant croft. It is open to the Commission to regulate that person's use of the croft under sections 23-25 of the 1993 Act (rather than sections 26A-26K, which apply to owner-occupier crofters).

Furthermore, landlords of part of a vacant croft cannot submit an application for division under section 19D because such an application must be made by an owner-occupier crofter. Similarly, they cannot submit an application to let their part croft on a short term lease under section 29A as this option is only available to owner-occupier crofters.

Situations like this may have arisen due to the transfer of ownership of parts of a croft on the (mistaken) assumption that the croft would be automatically divided. Any division of a croft (whether by a tenant crofter or owner-occupier crofter) can only be effected by the Commission, following an application and subsequent affirmative decision of the Commission.

## **2 APPLICATION DETAILS**

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### **2.1 MAPPING INFORMATION**

Your short term let application must be accompanied by a map of the area being applied to let in relation to the whole croft boundary.

If the croft has multiple owners, an ownership map should be provided clearly showing the boundaries of land that each person owns. Please refer to the example plans 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.

### **2.2 SHORT TERM LEASE**

This lease will be subject to the conditions set out in the 'Style Short Term Lease' produced at Appendix 1 of the application.

All Short Term Leases approved by the Commission under section 29A of the Crofters (Scotland) Act 1993 will be subject to the conditions set out in the 'Style Short Term LeaseW' at Appendix 1 of the application form and you should note that the Commission can only consent to these conditions. If you wish to agree further terms and conditions, a separate document must be produced for that purpose. Please do not send any such separate document to the Commission.

## **3. RESIDENCY AND LAND USE**

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

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

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

All crofters are required to comply with a number of statutory duties relating to residency and management of their crofts.

### 3.1 WHAT ARE CROFTER'S DUTIES?

#### **Crofter's Duties**

Both tenant and owner-occupier crofters have a duty to:

- **Be resident on, or within 32 kilometres (20 miles) of their croft**
- **Not 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.<sup>1</sup>

## 4 WIDER INTERESTS

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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.

#### **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

\*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.

<sup>1</sup> 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 has consented to the use if the landlord has withheld their consent.

## **4.1 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.

## **4.2 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 in the application form.

## 5 PUBLIC NOTIFICATION

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You must advertise your application to let the tenancy of the croft 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](http://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.

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

We would encourage you to contact the local Grazings Clerk/Constable to make them aware of your proposals, as experience has shown this can help establish good community relationships.

### ***Sample Newspaper Advert***

#### **Proposed Short Lease of an Owner-Occupied Croft/\*Part of an Owner-Occupied Croft**

(Your name) \_\_\_\_\_ is applying to let the whole croft/\*part of the croft  
at (croft name and parish) \_\_\_\_\_  
on a short-term lease to (proposed tenant name) \_\_\_\_\_  
of (address) \_\_\_\_\_  
for \_\_\_\_\_ years.

Written comments from those with a relevant interest (which may be made public) to: Crofting Commission, Leachkin Road, Inverness IV3 8NW, [info@croftingscotland.gov.uk](mailto:info@croftingscotland.gov.uk) by DD/MM/YY\*.

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

## 6 POLICY PLAN ON SHORT TERM LETTING

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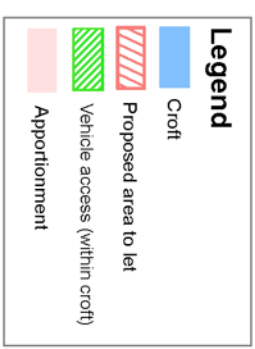
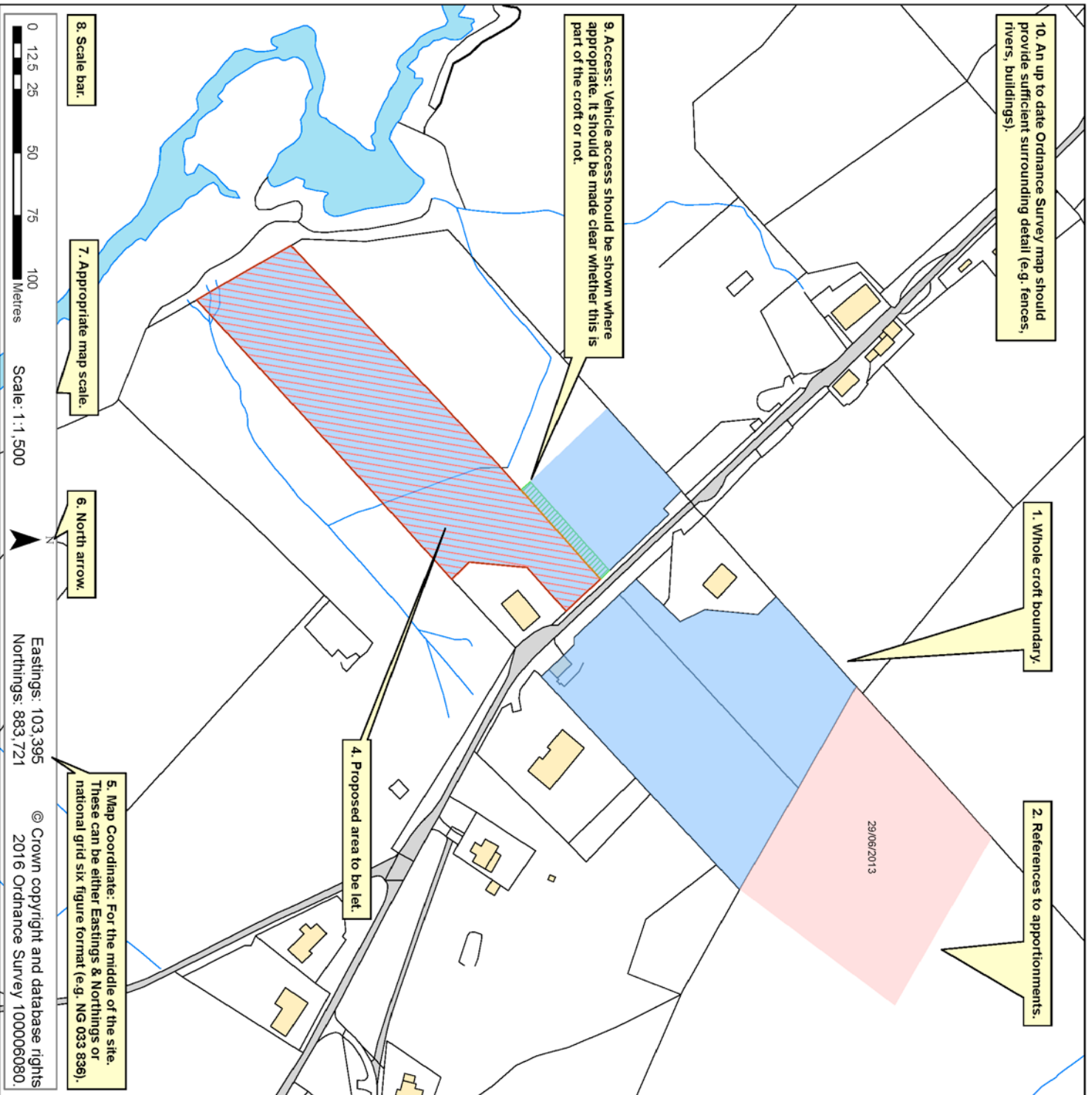
### **Section 58A(7), (g), (h) of the Crofters (Scotland) Act 1993**

In considering its decision on this application, the Commission must have regard to the Commission's policies included within its Plan approved by the Scottish Ministers and any other matter which the Commission considers relevant.

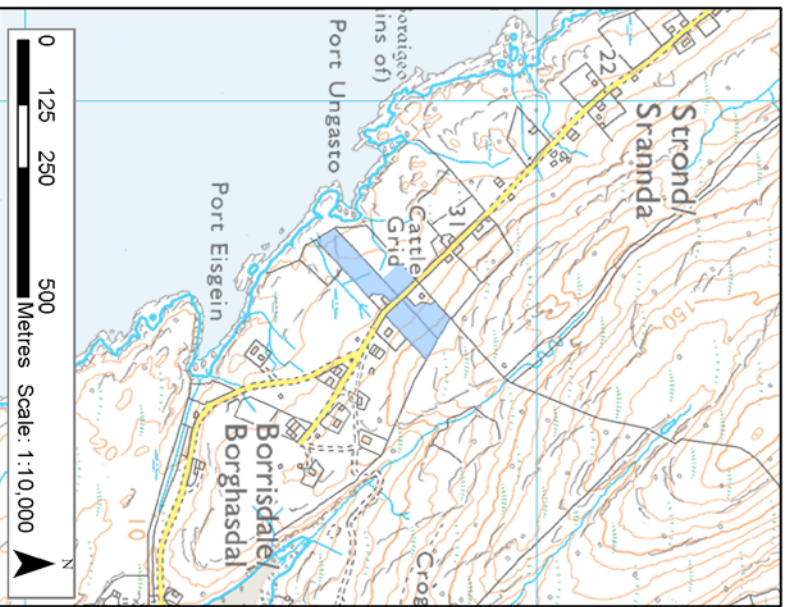
In considering applications, the Commission will apply its policies on residency, land use and shared management and it will take into account the demand for crofts in the area.

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.

**MAP FOR EXAMPLE PURPOSES ONLY**



**3. A location plan of the croft boundary should be provided if map coordinates cannot be given.**







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