

Subletting of Croft

A sublet provides a formal basis for a croft tenant to allow another individual to cultivate and maintain the croft for a period of up to 10 years.

LAW

Crofters (Scotland) Act 1993, Sections 27, 29 & 58A

Notwithstanding any enactment or rule of law, a crofter shall be entitled to sublet his croft, for a period not exceeding 10 years, without the consent of the landlord of the croft.
Section 27(1)

A crofter shall not let his croft otherwise than with the consent in writing of the Commission and in accordance with such conditions (which shall not include conditions relating to rent) as the Commission in giving their consent may impose; and any sublease of his croft granted by a crofter otherwise than as aforesaid shall be null and void. **Section 27(2)**

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 Controlling Speculation and Preventing the Loss of Crofts and on Letting or Subletting of a Croft

The Commission considers crofts to be a valuable resource that should be available both now and in the future, for existing crofters and new entrants to crofting to use productively. Maintaining the integrity of crofts is also essential for the effective use of common grazings, which can benefit crofting communities and the wider rural community. Consequently, the Commission will take account of the impact on the local crofting community, its sustainable development and the public interest when considering applications to decroft, assign, let, sublet or divide crofts.

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. Unless there is evidence to the contrary, the Commission holds the view that there will generally be a demand for crofts.

The Commission may consider a let to a tenant under a short lease or sublet as a condition of a consent to be absent but such leases will be restricted to the duration of the consent, which will depend upon the specific circumstances.

An application from a crofter in breach of statutory duties, including the residency duty and in the latter case, who does not have consent to be absent, will need to demonstrate how the proposed letting or subletting will help to resolve the breach of duty. It will be for the crofter to justify the length of time requested within the application.

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 will take account of how that land is cultivated and maintained.

PROCEDURE

- (1) An application by a tenant crofter for the Commission's consent to sublet a croft, or part of a croft, shall be made 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.

An application from a crofter in breach of any of the statutory duties, including the residency duty where consent to be absent has not been obtained, will need to demonstrate how the proposed sublet will help to resolve the breach.

- (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 notification¹ of the application (as required by section 58A(3)(a));
 - (ii) given written notification of the application to the landlord and/or (where the land to which the application relates is, or is part of, a common grazings) the owner of the common grazings (as required by section 58A(3)(b));
 - (iii) where the application is in respect of an **unregistered croft**, that a map showing the croft boundaries has been provided.

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

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, 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 objections¹ to the application are received by the Commission – refer to separate section on objections.
- (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 subletting 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 subletting. 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;

¹ 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*

- (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 hearing¹ is held before deciding on the application and shall consider any new information obtained at the hearing.
- (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 the serving of the case paper or at a hearing. The Commission must decide the application by –
 - (i) granting it;
 - (ii) granting it subject to conditions; or
 - (iii) refusing it.
- (9) Any granting of the application will include the condition that the duties set out in the Act relating to residence and land use² will be fulfilled for the duration of the sublet.
- (10) 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.
- (11) 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.

¹ For information on hearings refer to separate Rules of Procedure *Hearings and the Opportunity To Be Heard Following Representations*

² For further information on the residency and land use duties refer to separate Rules of Procedure relating to *Duties*