



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

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# **Subletting Application Grazing Share(s) Guidance Notes**

## **Notaichean Stiùiridh air Earrann(an) Ionaltraidh Tagradh Fo-leigeil**



Subletting is the term used to describe the arrangement whereby the tenant of a grazing share(s) with the consent of the Commission allows another person (known as the subtenant) to use the shares in a common grazing for a fixed period of time.

Subletting does not affect a tenant's security of tenure. The long term use of a grazing share(s) 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.

Subletting does not affect a tenant's security of tenure but the subtenant comes into the place of the tenant, for the period of the sublet, in relation to any matter which concerns the right in a common grazing

## **1. IMPORTANT INFORMATION**

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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.

### **1.1 OWNER OF COMMON GRAZING NOTIFICATION**

You are legally required to notify the owners of the common grazings of this application. In order to confirm you have done this could you please provide one of the following:

- 1.** Arrange for the signed notification form at Appendix 2A in the application form to be completed and signed by any owners of the common grazings
  - 2.** A letter confirming receipt of notification from the owners of the common grazings
- OR
- 3.** Evidence of notification having been sent by registered post or recorded delivery to the owners of the common grazings

## 1.2 PUBLIC NOTIFICATION

You must advertise your application to sublet the tenancy of the share 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.**

*Sample Newspaper Advert:*

### Proposed Sublet of a grazing share by Tenant

(Your name) \_\_\_\_\_ is applying to sublet the grazing share pertaining to the croft  
at \_\_\_\_\_ (croft name and parish)  
to \_\_\_\_\_ (proposed subtenant 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@crofting.scot.gov](mailto:info@crofting.scot.gov) within 28 days from the date of the advert.

## 2 APPLICATION DETAILS

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### 2.1 SUBLET INFORMATION

- A rent, however small, must be charged. (See Appendix 2 in the Application Form)
- A crofter is entitled to sublet his croft, for a period not exceeding 10 years, without the consent of the landlord of the croft. If the period of sublet applied for exceeds 10 years, please provide a copy of the landlord's consent.

## 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.

## 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) of 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.

### 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. PROPOSED SUBTENANT DETAILS**

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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. Guardian details need to be provided where the proposed new crofter is aged under 16.

## **6. POLICY PLAN ON SUBLETTING**

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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.

When considering applications to sublet, 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.

## PRIVACY NOTICE

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The Crofting Commission acts as the 'Controller' of the personal data you provide us with when you complete a Regulatory Application. Under the Crofters (Scotland) Act 1993 we are obliged to collect this information in order to facilitate the processing of your application. Please note that the Commission will be unable to process your application if you do not provide the information requested.

Any data provided by you is part of an open process and may be made available to other parties involved (unless told otherwise). These could include:

- The tenant / owner-occupier crofter / landlord of a vacant croft
- The proposed tenant/sub-tenant
- The landlord of the croft
- The owner of the common grazings
- The area assessor
- The grazings committee
- The owner of any adjacent non-croft land
- The occupier of any adjacent non-croft land
- Any member of the local crofting community
- Any other person with a significant interest
- Third Party Organisations – *RPID (Rural Payments & Inspections Directorate) and the Registers of Scotland.*

Your data will be used to update the Register of Crofts and it may also be released under a Freedom of Information enquiry, subject to any disclosure exemptions under Data Protection Laws.

Your information will be stored in the format received and electronically in the Commission's Crofting Information System (CIS). We will not keep your personal data for any longer than is necessary to complete the relevant processing and in line with our Retention Policy.

If at any point you believe the data we process on you is not accurate, you can request to see it and have it corrected or deleted. If you wish to raise a complaint about how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. Our Data Protection Officer can be contacted by e-mailing [DataProtection@crofting.gov.scot](mailto:DataProtection@crofting.gov.scot) addressing it – *For the Attention of the Data Protection Officer*. Further details on the Crofting Commission's Data Protection Policy can be found at [www.crofting.scotland.gov.uk/data-protection-act](http://www.crofting.scotland.gov.uk/data-protection-act).

For information on submitting a complaint to the Crofting Commission, please visit our website at [www.crofting.scotland.gov.uk/complaints](http://www.crofting.scotland.gov.uk/complaints). For details of how to complain to the Information Commissioner, please visit [www.ico.org.uk](http://www.ico.org.uk).



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