



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

Great Glen House, Leachkin Road,
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Subletting Application Guidance Notes



Subletting is the term used to describe the arrangement whereby a croft tenant with the consent of the Commission allows another person (known as the subtenant) to work all (or any part of the croft) and/or 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 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.

1. IMPORTANT INFORMATION

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 LANDLORD NOTIFICATION

You are legally required to notify your landlord (and if your application includes grazings share(s), 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 the landlord (and any owners of the common grazings)
- 2.** A letter confirming receipt of notification from your landlord (and any owners of the common grazings)
OR
- 3.** Evidence of notification having been sent by registered post or recorded delivery to your landlord (and any owners of the common grazings)

1.2 PUBLIC NOTIFICATION

You must advertise your application to assign 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

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 Croft/*Part of a Croft by Tenant

(Your name) _____ is applying to sublet the whole croft/*part of 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@croftingscotland.gov.uk by DD/MM/YY*.

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

2 APPLICATION DETAILS

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

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.¹

¹ 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 WIDER INTERESTS

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

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

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.

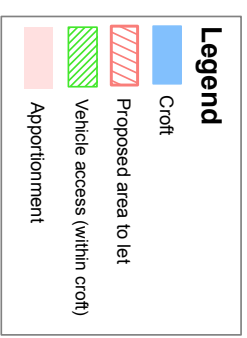
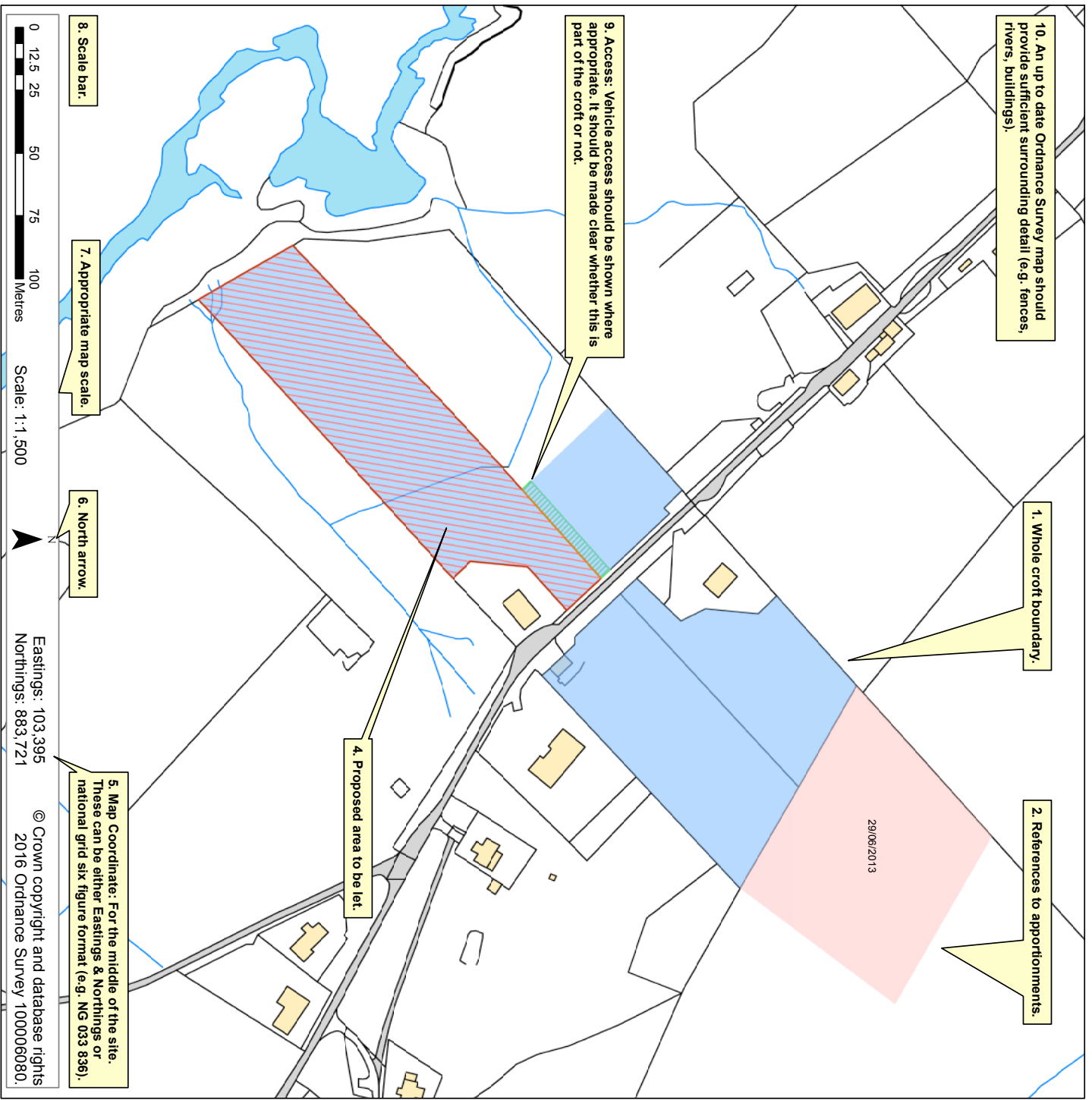
To ensure that all relevant information is considered in its decision making, where a proposed tenant, subtenant or short lease holder has other croft or agricultural land available, the Commission may take account of how that land is cultivated and maintained.

7. MAPPING INFORMATION

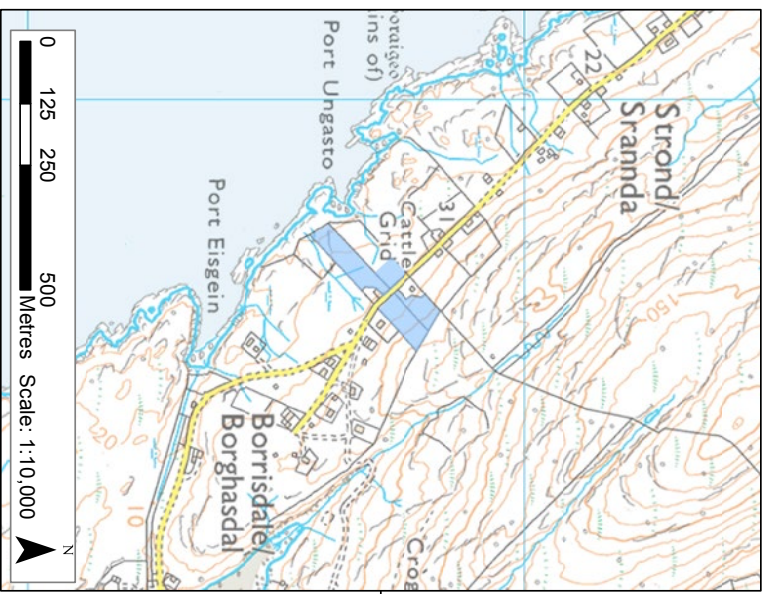
Your subletting application must be accompanied by a map of the area being applied to sublet in relation to the whole croft boundary. Please refer to the example plan at the end of the guidance notes for further details of requirements.

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.

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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