

## **New Crofts**

***Enables the Commission to constitute land or a holding as a croft under certain conditions.***

### **LAW**

Crofters (Scotland) Act 1993 (“the 1993 Act”), section 3A.

*The Commission shall have power, on the application of the owner of any land situated –*

- (a) in the crofting counties; or*
- (b) in an area outwith the crofting counties which is, by order made by statutory instrument, designated for the purposes of this paragraph by the Scottish Ministers,*

*to constitute land as a croft. **Section 3A(1)***

*The Commission shall have power –*

- (a) on the application of the tenant of any holding situated as is mentioned in subsection (1)(b) above; and*
- (b) provided that subsection (3) below is complied with and that the conditions set out in subsection (12) below are met,<sup>1</sup>*

*to constitute the holding as a croft. **Section 3A(2)***

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<sup>1</sup> Subsection (3) entails that an application must be accompanied by certificate of the Land Court, certifying that the tenancy is held under section 32 of the Small Landholders (Scotland) Act 1911 (c.49) or is one to which any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 apply. Subsection (12) entails that the tenant must be a natural person and that any fixed equipment necessary for cultivation of the croft has not been provided by the landlord.

*In so determining, the Commission shall have regard to –*

- (a) such comments, if any, as are duly made by virtue of subsection (6)<sup>1</sup> above;*
- (b) the public interest and as the case may be, the interests of the crofting community in the locality of the land; and*
- (c) whether social or economic benefits might be expected as a consequence of so constituting it. **Section 3A(8)***

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<sup>1</sup> Subsection (6) relates to the period for public notification and any comments received from this.

## **POLICY**

Crofting Commission Policy Plan 2022:

### **Crofting Development and New Crofts (Paragraph 53)**

*The Commission has no statutory power to create new crofts in the absence of an application from the owner of land. The Commission will, where appropriate, work with landowners and others who might wish to create new crofts and promote the creation of suitable new crofts. Where the creation of a new croft is in the public interest and the interests of the local crofting community and where the creation of a new croft could bring social and economic benefits, the Commission will look favourably on such applications. Although a matter for the Scottish Ministers, the Commission would in principle support the extension of the designated areas in order that crofts could be created more widely across Scotland.*

*It is also the Commission's policy to collaborate with other agencies and bodies and crofters, so far as its resources permit, to encourage sustainable land uses which enhance biodiversity and increase carbon sequestration (for instance, through restoration of peat land). Crofting affects approximately three-quarters of a million hectares of land across the Scottish Highlands & Islands.*

### **Policy on access to croft land (Paragraph 65)**

*When considering applications that could result in croft land becoming separated from the nearest adopted public road from which access can reasonably be taken, the Commission will wish to ensure that the croft land or, as the case may be, common grazings can be accessed directly from the public road by agricultural vehicles or other machinery required for the cultivation and maintenance of the croft or in connection with the common grazings. The Commission will scrutinise applications where it is proposed that an existing access from the public road will no longer be available to croft land or common grazings or where a new access is proposed from a public road that may not be suitable. Applications should ensure that any consent or approval sought would not result in croft land or common grazings being cut off from a public road. Failure to do so is likely to result in an application being refused.*

## PROCEDURE – APPLICATION BY OWNER OF NON-CROFT LAND

### Subsection 3A(1) & Section 3AA

- (1) An application to the Commission by the owner of any non-croft land situated either:
- (a) in the crofting counties; or
  - (b) within the new areas designated by Scottish Ministers where crofts can be created<sup>1</sup>,
- to constitute the land as a croft, must be submitted on the form provided by the Commission.
- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include ensuring that the application to the Commission to constitute the land as a croft is accompanied by an application for **first registration** of the land with the Keeper of the Registers of Scotland.

In addition, if an application is in respect of an agricultural holding occupied by a tenant where –

- (a) a tenancy is:
  - (i) a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003; or
  - (ii) a short limited duration or limited duration tenancy within the meaning of that Act); or

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<sup>1</sup> The Crofting (Designation of Areas) (Scotland) Order 2010 designated the following areas for the purposes of applying to the Commission to constitute land as a croft:

- That part of the local government area of Highland that is outwith the existing crofting counties
- The local government area of Moray
- In the local government area of Argyll and Bute, the parishes of Kingarth, North Bute and Rothesay
- In the local government area of North Ayrshire, the islands of Arran (including Holy Island and Pladda), Great & Little Cumbrae.

(b) it is competent for the tenant to make an application under subsection 3A(2),  
the written agreement of the tenant must also be submitted with the application.

- (3) If the application is invalid or not complete, or if it has not been accompanied by an application to register the croft, it will be returned and reason(s) provided for doing so.
- (4) If the application is valid and complete and it has been submitted with an application to register the new croft, the Commission will give public notification<sup>1</sup> of the application by advertising the proposal to constitute land as a croft in one or more newspapers circulating in the district in which the croft is situated, allowing 28 days for comments.

The Commission will also notify the local Council, Highlands & Islands Enterprise and (if the land is situated within a National Park) the National Park Authority, of the application and allow them the opportunity to make comments on the proposal within 21 days<sup>2</sup>.

- (5) After the 28-day period for submitting comments has expired, the Commission shall have regard to:
  - (i) any comments received in response to the public notification of the application<sup>3</sup>; and
  - (ii) the public interest and, as the case may be, the interests of the crofting community in the locality of the land; and
  - (ii) whether social or economic benefits might be expected as a consequence of so constituting it.

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<sup>1</sup> For information on public notification refer to separate Rules of Procedure on *Public Notification*

<sup>2</sup> To assist the Commission in establishing whether social or economic benefits might be expected as a consequence of constituting the land as a croft as required by section 3A(8)(c) of the Crofters (Scotland) Act 1993

<sup>3</sup> Details of the persons who can submit comments 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*

- (6) The Commission shall consider all the information available, taking particular account of its policies on “*Croft Development and New Crofts*” and on “...*access to croft land*”.

If satisfied that 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 comments have been submitted, it may grant the application
  - (b) where the Commission is not satisfied that the application should be granted, or where comments have been submitted to the Commission and not withdrawn, then prior to deciding the application, the Commission:
    - (i) may request that a report be prepared by the Scottish Government Rural Payments and Inspections Directorate (SGRPID) office situated in the locality of the croft which is the subject of the application
    - (ii) shall serve copies of any additional information or further evidence obtained by the Commission including, where applicable, the SGRPID report (along with the application form) on the applicant and other interested parties, and will allow them the opportunity to comment on this additional information or further evidence within 21 days. This is not, however, an opportunity for parties to submit new objections or to raise substantive new issues.
    - (iii) Any comments received and accepted by the Commission will be taken into consideration by the Commission when deciding on the application.
    - (iv) 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.
- (7) The decision on the application will be taken at the appropriate level as set out in the Commission’s Scheme of Delegation. When deciding on the application, the Commission will consider all of the available information, including any information received following the serving of the case paper or at a public meeting.
- (8) The Commission must determine the application by either approving the application to constitute the land as a croft, or by refusing to grant the application to do so.

(9) The Commission will give both notice of its determination in writing to the applicant and give public notification of its decision, specifying the nature of and the reasons for the decision.

(10) The **applicant** or **any person with an interest in the application** may appeal the Commission's determination of the application to the Scottish Land Court within 42 days after notification of the Commission's decision.

(11) If the application has been approved and either:

- (i) the 42-day appeal period has expired without an appeal being made; or
- (ii) where an appeal is made, the appeal has been abandoned, or the Court confirms the Commission's determination,

the Commission must forward the application for registration of the land in the Crofting Register to the Keeper of the Registers of Scotland.

(12) On the land being constituted as a croft, the owner will be entered in the Register of Crofts as the **constituting landlord** of the croft. The owner does not meet the conditions for becoming an owner-occupier crofter<sup>1</sup>.

(13) Where the application is in respect of an agricultural holding occupied by a tenant where:

(a) the tenancy was:

- (i) a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003; or
- (ii) a short limited duration or limited duration tenancy under that Act; or

(b) it was competent for the tenant to make an application under subsection 3A(2) to the Commission to constitute the holding as a croft,

then the tenant shall be entitled (unless not a natural person<sup>2</sup>) to be registered as tenant of the croft.

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<sup>1</sup> As defined at section 19B of the Crofters (Scotland) Act 1993

<sup>2</sup> Legal persons (i.e. a company, limited liability partnership or firm) are precluded from being tenant crofters on the basis that there are references throughout the Act to members of a crofter's or deceased crofter's family

- (14) As there is an opportunity to challenge an application for the establishment of a new croft under section 52A of the Crofters (Scotland) Act 1993 Act, there is therefore no right to challenge the registration of a new croft under section 14 of the Crofting Reform (Scotland) Act 2010.

## PROCEDURE – APPLICATION BY TENANT OF NON-CROFT HOLDING

### Subsection 3A(2) & Section 3AA

- (1) An application to the Commission by the tenant of any holding situated in an area out with the crofting counties which is designated by Scottish Ministers as an area where crofts can be created<sup>1</sup> to constitute the holding as a croft, must be submitted on the form provided by the Commission.
- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include ensuring that the application to the Commission to constitute the land as a croft is accompanied by an application for **first registration** of the land with the Keeper of the Registers of Scotland.

In addition, the application must be accompanied by a certificate of the Land Court to the effect that the Court is satisfied that, as at the date of the certificate –

- (a) The tenancy of the holding is one to which –
- (i) section 32 of the Small Landholders (Scotland) Act 1911 applies; or
  - (ii) any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies; and
- (b) no part of the holding is leased other than as a tenancy mentioned in paragraph (a) above.

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<sup>1</sup> The Crofting (Designation of Areas) (Scotland) Order 2010 designated the following areas for the purposes of applying to the Commission to constitute land as a croft:

- That part of the local government area of Highland that is outwith the existing crofting counties
- The local government area of Moray
- In the local government area of Argyll & Bute, the parishes of Kingarth, North Bute and Rothesay
- In the local government area of North Ayrshire, the islands of Arran (including Holy Island and Pladda), Great & Little Cumbrae.



- (3) If the application is invalid or not complete, or if it is not accompanied by an application to register the croft, or a certificate from the Land Court, it will be returned and reason(s) provided for doing so.
- (4) If the application is valid and complete and it has been submitted with an application to register the new croft and a certificate from the Land Court, the Commission will give public notification<sup>1</sup> of the application by advertising the proposal to constitute the holding as a croft in one or more newspapers circulating in the district in which the croft is situated, allowing 28 days for comments.

The Commission will also notify the local Council, Highlands & Islands Enterprise and (if the land is situated within a National Park) the National Park Authority, of the application and allow them the opportunity to make comments on the proposal within 21 days<sup>2</sup>.

- (5) After the 28-day period for submitting comments has expired the Commission shall have regard to:
  - (i) any comments received in response to the public notification of the application<sup>3</sup>; and
  - (ii) the public interest and as the case may be the interests of the crofting community in the locality of the land; and
  - (iii) whether social or economic benefits might be expected as a consequence of so constituting it.
- (6) The Commission shall consider all the information available, taking particular account of its policies on “*Croft Development and New Crofts*” and on “...*access to croft land*”.

If it is satisfied that there is sufficient information available to allow it to decide on the application and –

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<sup>1</sup> For information on public notification refer to separate Rules of Procedure on *Public Notification*

<sup>2</sup> To assist the Commission in establishing whether social or economic benefits might be expected as a consequence of constituting the land as a croft as required by section 3A(8)(c) of the Crofters (Scotland) Act 1993

<sup>3</sup> Details of the persons who can submit comments 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*

- (a) if the Commission is satisfied that the application should be granted and no comments have been submitted, it may grant the application.
  - (b) where the Commission is not satisfied that the application should be granted, or where comments have been submitted to the Commission and not withdrawn, then prior to deciding the application, the Commission:
    - (i) may request that a report be prepared by the Scottish Government Rural Payments and Inspections Directorate (SGRPID) office situated in the locality of the croft which is the subject of the application
    - (ii) 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 14 days from the date of service of the case paper
    - (iii) 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 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
    - (iv) copies of any further information or comments received following the serving of the case paper shall be served on all involved parties for their information and/or comment and shall be considered by the Commission prior to the application being decided
    - (v) 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.
- (7) The decision on the application will be taken at the appropriate level as set out in the Commission's Scheme of Delegation. When deciding on the application, the Commission will consider all of the available information, including any information received following the serving of the case paper or at a public meeting.

- (8) The Commission must determine the application by either approving the application to constitute the land as a croft, or by refusing to grant the application to do so.
- (9) The Commission will give both notice of their determination in writing to the applicant and give public notification of their decision, specifying the nature of and the reasons for the decision.
- (10) The **applicant or any person with an interest in the application** may appeal the Commission's determination of the application to the Scottish Land Court within 42 days after notification of the Commission's decision.
- (11) **The Commission** must forward the application for registration of the holding in the Crofting Register to the Keeper of the Registers of Scotland if:
- (a) The application has been approved and either
- (i) the 42 day appeal period has expired without an appeal being made; or
  - (ii) where an appeal is made, the appeal has been abandoned or the Court confirms the Commission's determination.

**and**

- (b) the Commission is satisfied –
- (i) that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for the holding being constituted as a croft and that the amount has been duly paid
  - (ii) that the applicant and the owner have agreed that no amount in compensation is to be so payable; or
  - (iii) that any such amount found to be payable under Section 3B<sup>1</sup> of the Crofters (Scotland) Act 1993 has been duly paid.

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<sup>1</sup> This section relates to the valuations carried out to calculate "Compensation for constituting holding outwith crofting counties as croft on application of tenant" when no agreement with the landlord has been reached.

- (12) On the land being constituted as a croft, the owner will be entered in the Register of Crofts as the landlord of the croft and the applicant will be entered as the tenant of the croft.
  
- (13) As there is an opportunity to challenge an application for the establishment of a new croft under section 52A of the Crofters (Scotland) Act 1993, there is therefore no right to challenge the registration of a new croft under section 14 of the Crofting Reform Act 2010.