

Division of a tenanted croft by the executor of a deceased crofter following a bequest

Division allows for a croft to be divided into two or more parts which then become separate individual crofts.

LAW

(Crofters (Scotland) Act 1993 (“the 1993 Act”) – sections 9, 10(4A) and 58A.

Where:

- (a) a crofter bequeaths the tenancy of a croft to two or more natural persons, and
- (b) each legatee (or the executor of the deceased crofter) gives notice of his acceptance to the landlord (and sends a copy of that notice to the Commission

the deceased crofter’s executor must apply to the Commission for consent under section 9 to divide the croft accordingly (section 10(4A)).

POLICY

Crofting Commission Policy Plan 2022

Policy on Division (Paragraph 66)

It is the Commission's policy not generally to allow the fragmentation of croft holdings into smaller units where such fragmentation would result in a holding of a size that would be unlikely to attract financial assistance, grant or subsidy (where the original holding would be of a size that it could attract such support). Reference should be made to the relevant rules on eligibility for financial assistance and the minimum amount of land required for a crofter or farmer to be eligible to apply for subsidy. The Commission recognises that fragmentation of crofts can result in holdings that are of insufficient size to afford any incoming croft tenant with a range of realistic options as to how to use the land. It is the Commission's policy to prevent this from happening.

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

- (1) An application by the executor of a deceased crofter¹ for the Commission's consent to divide:
 - (i) a croft; or
 - (ii) a grazing right or land deemed by section 3(5) to be a croft

into two or more new crofts shall be made on the appropriate form provided by the Commission.

- (2) On receipt of an application on the said form, the Commission will check if the application is valid.

The applicant will require to demonstrate that he is the executor of the deceased crofter either by:

- a provision in the will, or
- through a grant of confirmation by the Sheriff Court.

- (3) If the application is invalid or not complete, it will be returned and reason(s) provided for doing so. If the croft is **unregistered**, the Commission will also advise the executor of the deceased crofter of the requirement to submit an application for first registration of the croft.
- (4) If the application is valid and complete, the Commission will check whether it relates to a registered croft.
 - (i) If it is for an **unregistered** croft, the Commission will check whether an application for first registration of the croft has been received. If not, the Commission will inform the applicant in writing that unless an application for first registration is submitted, it will not consider the application. The applicant will be

¹ Where a crofter has bequeathed the tenancy of the whole croft to two or more natural persons and notice of acceptance of the bequest has been given as required by section 10(2) or 10(2A), the executor must apply for consent to divide the croft accordingly in terms of section 10(4A)

further advised that failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the application for consent was made, will result in the application being returned.

- (ii) If the croft is **registered** or where an application for first registration is received, the Commission will review the information contained in the application form.
- (5) Where the application relates to the bequest of the tenancy of the part of the croft comprising the site of the dwellinghouse on or pertaining to the croft to one natural person and the tenancy of the remaining part to another natural person, the Commission **must** grant the application (whether or not subject to conditions)¹. However, if it is deemed that the area applied for cannot be justified in terms of being appropriate for the reasonable enjoyment of a dwellinghouse, the case will be dealt with under the general division of croft by executor following a bequest provision, where the Commission are required to have regard to all the factors set out at section 58A(7)(a)-(h) when determining the application.
- (6) In all other cases, 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 will be cultivated or put to another purposeful use

and may involve a report being 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.

¹ As required at section 58A(6A) of the Crofters (Scotland) Act 1993

- (7) The Commission shall consider all the information available, taking particular account of its specific policies on “division” and “access to croft land”. If it is satisfied there is sufficient information available to allow it to decide on the application and:
- (a) if the Commission is satisfied the application should be granted, it may grant the application
 - (b) where the Commission is not satisfied that the application should be granted, prior to deciding the application –
 - (i) The Commission 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.
 - (ii) Any comments received and accepted by the Commission will be taken into consideration by the Commission when deciding on the application.
 - (iii) 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.
- (8) The decision on the application will be taken at the appropriate level as set out in the Commission’s Scheme 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 comments received following the serving of the case paper and/or information obtained at a public meeting. It must decide the application by –
- (i) granting it,
 - (ii) granting it subject to conditions, or
 - (iii) refusing it

- (9) The Commission will give notice of its decision to the applicant and the other parties listed at section 58A(12A)(c) as appropriate, within 21 days of the decision being taken, specifying the reasons for its decision.
- (10) 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.
- (11) If the application is granted and relates to a **first registered croft** –
- (i) **the Commission** must, as soon as is reasonably practicable after consenting to the division, notify the Keeper of the Registers of Scotland of the change.
 - (ii) the division takes effect on the date the Keeper receives the notification from the Commission.
- (12) If the application is granted and relates to a **registered croft** (other than a first registered croft) –
- (i) any consent of the Commission to the division of the croft expires at the end of 3 months beginning with the date on which consent was given unless an application for registration of the division is submitted by **the applicant** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.
 - (ii) the division takes effect on the date of registration.
- (13) After division, the rent payable for the new crofts is for agreement between the landlord and the tenant. Where no agreement can be reached, either party can make an application to the Scottish Land Court to determine a fair rent.¹

¹ The application form asks for details of the name(s) of the proposed new crofts and the rents for the original croft and the new croft(s) to be provided and signed by both the applicant and the landlord. The omission of this information does not prevent the Commission from processing and deciding on the application.