

Exchange of crofts or parts of crofts

Enables the exchange of whole crofts or parts of crofts

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”), section 4A.

A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless —

(a) *he obtains the consent of –*

- (i) *the landlord of his croft; and*
- (ii) *the Commission*

(b) *the exchanging crofters have the same landlord; and*

(c) *the landlord is the owner of any common grazing in which the crofters share.*

Section 4A(1)

*A new croft is not created by virtue only of such exchange. **Section 4A(4)***

POLICY

Crofting Commission Policy Plan 2022

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.

Policy on croft residency and use of crofts (Paragraph 28)

The Crofting Commission will work by both statutory and non-statutory means to increase croft residency and to increase the amount of croft land that is cultivated or put to a purposeful use. The Commission's policies on residency and land use apply equally to tenant crofters and owner-occupier crofters. It is the Commission's view that a healthy crofting system consists of crofters who are resident within their crofting communities and are actively using and managing their crofts and common grazings. It is the Commission's view that resident crofters within the crofting community will make these communities more resilient and better able to retain rural population as well as create and generate economic activity within rural, and sometimes remote, populations.

PROCEDURE

- (1) Applications by a tenant crofter(s) for the Commission's consent to exchange their crofts (or any part of their crofts) shall be made on the appropriate form provided by the Commission.

An application for consent to an exchange can only be considered where:

- (i) the exchanging crofter(s) have the same landlord,
 - (ii) the landlord is the owner of any common grazings in which the crofter(s) share, and
 - (iii) the exchanging crofter(s) have obtained the consent of the landlord to the proposal.
- (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(s) have:
 - (i) obtained the written consent of the landlord of the crofts
 - (ii) given public notification¹ of the application (as required by section 58A(3)(a)).

If the application is invalid or is not complete, it will be returned, and reason(s) provided for doing so. If either of the crofts is **unregistered** the Commission will also advise the crofter(s) of the requirement to submit an application for first registration of the croft(s).

- (3) There must be an exchange of croft land from croft A to croft B, and from croft B to Croft A, in order for the exchange application to be valid.

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

If land is not being exchanged i.e. if land from Croft A is being used to enlarge Croft B , but there is no reciprocal exchange of land from Croft B to Croft A, the application is invalid.

There is no requirement that the extent of the areas to be exchanged should be the same or similar.

- (4) If the application is valid and complete, the Commission will check whether it relates to registered crofts.
 - (i) If either or both of the crofts are **unregistered**, the Commission will check whether an application for first registration of the croft(s) has been received. If not, the Commission will inform the applicants in writing that unless an application for first registration is submitted, it will not consider the application at the end of the 28-day public notification period. The applicants will be further advised that failure to submit an application for first registration of the croft(s) within 6 months, beginning with the date on which the application for consent was made, will result in the application being returned.
 - (ii) If both crofts are **registered** or where an application(s) for first registration is received, 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.
- (5) Where any objections¹ to the application are received by the Commission – refer to separate section on objections.

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*

(6) 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 applications relating to crofts:

- (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.

and may involve a report being prepared by the Scottish Government Rural Payments and Inspections Directorate (SGRPID) office situated in the locality of the crofts which are the subject of the application.

(7) The Commission shall consider all the information available, taking particular account of its specific policy on “croft residency and use of crofts” 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 that the application should be granted, and no valid objections or expressions of demand for the tenancy (of the croft(s), part croft(s) or deemed croft(s)) have been submitted, it may grant the application.
- (b) where the Commission is not satisfied that the application should be granted, and where valid objections or expressions of demand for the tenancies have been submitted to the Commission and not withdrawn, prior to deciding the application –
 - (i) The Commission shall serve a copy of the available information in the form of a case paper (comprising copies of the application form and any additional information or evidence obtained by the Commission including, where applicable, the SGRPID report) on the applicants and other interested parties, to allow them sight of the evidence that the Commission will consider when reaching its decision.

The case paper will **not** include any valid objections or submissions in support of the application received by the Commission following public notification of the applications or the responses to these – refer to separate section on objections. The Commission will allow the applicants and other parties the opportunity to submit comments within 21 days from the date of serving of the case paper.

- (ii) Copies of any comments received and accepted by the Commission following the serving of the case paper, shall be served on all involved parties for comment, prior to the Commission 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 applications 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 serving the case paper and/or 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 applicants 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.

(10) The applicants 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(s) –
- (i) **The applicants** must, within 3 months of the granting of consent, notify the Commission that the change has taken effect. As soon as reasonably practicable after this, **the Commission** must notify the Keeper of the Registers of Scotland of the change.
 - (ii) The exchange takes effect on the date provided by the applicants on the notification form to the Commission.
- (12) If the application is granted and relates to a **registered croft(s)** (other than a first registered croft) –
- (i) Any consent of the Commission to the exchange expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the exchange is submitted by **the applicants** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.
 - (ii) The exchange takes effect on the date of its registration.

In either case, the exchange will not have effect unless the respective registration requirements detailed above are fulfilled.