

Re-letting of a vacant croft (proposals)

Occurs when the Commission gives notice to the landlord of a vacant croft to submit proposals for re-letting the croft

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”), section 23.

*...where a croft is vacant the Commission may, at any time after the expiry of one month from the occurrence of the vacancy, give notice to the landlord requiring him to submit to them, before the expiry of the period of 2 months beginning with the day on which the notice is given, his proposals for re-letting the croft, whether as a separate croft or as an enlargement of another croft. **Section 23(5)***

*No more than three proposals may be submitted to the Commission in response to a notice given under subsection 23(5). **Section 23(5ZA)***

POLICY

Crofting Commission Policy Plan 2022

Policy on new entrants, tenancy termination and compulsory letting (Paragraphs 35 and 36)

Aligned to the Commission's work on crofting duties is the Commission's policy that crofting and the crofting system should create new opportunities for people who wish to become crofters or owner-occupier crofters for the first time. The Commission's view is that crofting should be an open system. It is the policy of the Commission that crofting should be an inclusive system that includes people regardless of their background, sex, disability, sexual orientation, age or ethnicity. The Commission's policy in this area will be similar to its policy on crofting duties, and it will encourage voluntary action whilst also not hesitating to use its statutory powers. The Commission's development team will work to encourage non-resident and/or non-active crofters to assign or sell their crofts to someone who will be resident and will use the croft.

At the same time, the Commission's crofting duties enforcement team will take targeted action (as set out above) to work with non-resident and/or non-active crofters and require them, in cases of non-compliance, to take steps to ensure that they are compliant with crofting duties. If the crofter is unable to take steps to ensure compliance with the relevant crofting duty or duties, the Commission will proceed to terminate the crofter's tenancy or require the owner-occupier crofter to let the croft, unless there is a good reason not to. Such action will result in new croft tenancies becoming available for letting to new entrants to crofting as well as to existing crofters. Such action also results in the owner-occupier crofter losing his or her owner-occupier status and his or her crofting rights.

PROCEDURE

- (1) Where a croft (or part of a croft) is vacant the Commission may, at any time after the expiry of one month from the occurrence of the vacancy, give written notice to the landlord requiring him to submit proposals to the Commission for re-letting the croft (or part of a croft), whether as a separate croft or an enlargement of another tenanted croft, within 2 months of the date of the notice. The landlord is entitled to submit up to three proposals, and the Commission must approve or reject proposals within three months of the date of notice being given. A notice will normally be sent by recorded delivery postal service.

***N.B.** A proposal to let the croft entails proposing to let it to a specific individual person in a form that is capable of being approved or rejected by the Commission. To this end the Commission will provide a form which will contain a number of questions. The landlord's answers to these questions will provide the basis for the proposal. This will assist the Commission when deciding whether to approve or reject a proposal.*

- (2) If, within the stipulated two month period – either:
 - (i) no proposals are submitted by the landlord; or
 - (ii) the landlord has submitted up to three proposals which the Commission has rejected

then the Commission shall take over the letting process by inviting applications for the tenancy of the croft by public notification¹.

- (3) A proposal must be submitted on the form provided by the Commission. Where a proposal has been submitted, the Commission shall decide whether to approve or reject a proposal.

¹ Please refer to separate Rules of Procedure on *Commission letting of a vacant croft* (section 23(5C))

- (4) When considering a proposal, the Commission will decide whether to approve or reject it taking not account the Commission’s policy on “...new entrants, tenancy terminations and compulsory letting” In particular the Commission would anticipate the proposed tenant:
- being ordinarily resident on, or within, 32 kilometres of the croft either currently or within an acceptable period of time
 - having, or acquiring, the relevant skills to cultivate and maintain the croft or put it to some other purposeful use
 - being capable of undertaking any commitments necessary for the communal working and management of the crofting community within which the croft is located.
- (5) Where a proposal is approved and it relates to an **unregistered croft**, the re-let takes effect upon the date agreed by the landlord and new tenant and notified to the Commission (this cannot be before the date of the Commission’s approval of the proposal). However, the re-letting is null and void unless an application by **the new tenant** for first registration is submitted to the Commission for forwarding to the Keeper of the Registers of Scotland within 3 months of the date of the re-letting.
- (6) Where a proposal is approved, and it relates to a **registered croft –**
- (i) such approval expires at the end of 3 months, beginning with the date on which approval was given, unless an application for the registration of the re-letting of the croft is submitted by **the landlord** to the Commission for forwarding to the Keeper of the Registers of Scotland before the expiry of that period
 - (ii) the re-letting of the croft takes effect on the date of registration.

There is no clearly stated right to appeal the Commission decision to approve or reject the proposal(s), however this may be tested by an application being made to the Scottish Land Court.