

Commission Letting of a Vacant Croft

The Commission takes on the letting of a vacant croft where the landlord has failed to submit proposals following the serving of a notice to do so, or any submitted proposals have not been accepted.

LAW

Crofters (Scotland) Act 1993 (“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 5. **Section 23(5ZA)***

The Commission must (as soon as is reasonably practicable) proceed in accordance with subsection (5B) and (5C) if –

- (a) no proposals for letting the croft are submitted by the landlord before the expiry of the period of 2 months mentioned in subsection (5)*
- (b) the landlord has submitted one or two proposals for letting the croft within the period of 2 months mentioned in subsection (5) and –*
 - (i) all such proposals are rejected by the Commission; and*
 - (ii) the period of 2 months mentioned in subsection (5) has expired; or*

- (c) *the landlord has submitted three proposals for letting the croft (within the period of 2 months mentioned in subsection (5)) and the Commission have rejected all three. **Section 23 (5ZC)***

*The Commission shall by public notification, invite applications for tenancy of the croft within such period as shall be specified in the notification. **Section 23(5B)***

When that period has elapsed, the Commission shall determine –

- (a) *to which of the applicants (if any,) to let the croft; and*
- (b) *in consultation with the landlord, on what terms and conditions. **Section 23(5C)***

POLICY

Crofting Commission Policy Plan 2022

Policy on croft residency and use of crofts (Paragraph 31)

The Commission will also work with landlords to ensure that vacant crofts are let to individuals who will comply with the statutory duties relating to residence and land use. Where the landlord of a vacant croft fails to submit a letting application or a proposal to let the croft, the Commission will take on the process of advertising and letting the vacant croft.

Policy on new entrants, tenancy termination and compulsory letting (Paragraphs 35 & 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 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 croft, within 2 months of the date of the notice.
- (2) However if either:
 - (i) no proposals are submitted; or
 - (ii) the landlord has submitted proposals¹ which the Commission has rejected. then the Commission shall take over the letting process.
- (3) The Commission shall, by public notification², invite applications for the tenancy of the croft within 28 days of the date of the notice (or any alternative time period set out in the notification).³
- (4) When the 28 day period (or any alternative) set out in the public notification has elapsed, the Commission will consider all the information available, taking particular account of its specific policies on “croft residency and use of crofts” and “new tenants, terminations and compulsory lettings”.

N.B. *If no applications are received or none are considered suitable, after an initial sift, wider advertising may be considered appropriate. A report prepared on the croft will form the basis for assessing the terms and conditions on which the croft will be let and also for assessing the suitability of applicants' proposals.*

- (5) Where there are applicants, the Commission shall determine:
 - (i) to which of the applicants it will let the croft to, if any are suitable, and
 - (ii) in consultation with the landlord, the terms and conditions of let.⁴

¹ No more than three proposals may be submitted to the Commission in response to a notice.

² For information on public notification refer to separate Rules of Procedure on *Public Notification*

³ Section 23(5B) of the Crofters (Scotland) Act 1993 refers

⁴ The Commission will let the croft subject to the standard conditions contained in Schedule 2 and will consult the landlord in terms of fixing the rent.

- (6) Where the croft has been let on terms and conditions fixed by the Commission, the **landlord** may within 28 days from the date of the letting apply to the Land Court for a variation of the terms and conditions so fixed, and any variation made by the Court shall have effect from the date of the letting.
- (7) If the letting relates to an **unregistered croft**, the letting will take effect on a date agreed by the Commission and the new tenant. However, the 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 letting.
- (8) If the letting relates to a **registered croft** –
- (i) any approval of the Commission expires at the end of 3 months beginning with the date on which approval was given, unless an application for registration of the letting of the croft (or part of the croft) is submitted by the **new tenant** to the Commission for forwarding to the Keeper of the Registers of Scotland before the expiry of that period.
 - (ii) the letting of the croft (or part of the croft) takes effect on the date of registration.