

Letting of a vacant croft

A landlord can apply to let a croft that is vacant either as a separate croft or as an enlargement of a tenanted croft.

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”), sections 23 & 58A.

*The landlord of a croft shall not, without the approval of the Commission, let the croft or any part of it to any person; and any letting of the croft otherwise than with such approval shall be null and void. **Section 23(3)***

In considering their decision on the application, the Commission must have regard to the following-

- (a) *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 is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4)*
- (b) *the interests of the estate which comprises the land to which the application relates*
- (c) *the interests of the crofting community in the locality of that land*
- (d) *the sustainable development of that crofting community*
- (e) *the interests of the public at large*
- (f) *any objections received under subsection (4) or (5A)*
- (g) *any plan of the Commission approved and published under section 2C*
- (h) *any other matter which the Commission consider relevant. **Section 58A(7)***

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 applications for consent or approval – subletting, assignation and letting (Paragraph 59)

Where an application is made for consent to sublet, assign, or let a croft, the Commission will not consider only the suitability of the proposed subtenant, assignee or tenant as the case may be. The Commission will give full consideration to the bigger picture and must apply subparagraphs (b) to (e) of section 58A(7) of the 1993 Act. This includes, but is not limited to, the interests of the crofting community and its sustainable development and could include an assessment of what else might be done with the crofts and who else could be the tenant of the croft. The Commission will also consider any such application on its individual merits. Whilst it has no power to direct any tenant or landlord to apply for consent to sublet, assign or let a croft to any particular individual, an applicant tenant cannot assume that his or her choice of subtenant, assignee or tenant will be accepted, even if the proposed subtenant, assignee or tenant would appear to meet the residency and land use duties.

PROCEDURE

- (1) An application for the Commission's approval to let a croft, or part of a croft, shall be made by the landlord on the appropriate 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 checks that the applicant has:
 - (i) given public notification¹ of the application (as required by section 58A(3)(a))
 - (ii) where the land to which the application relates is, or is part of, a common grazings which is owned separately, given written notification of the application to the owner of the common grazings (as required by section 58A(3)(b)).

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 landlord of the requirement to submit an application for first registration of the croft.

- (3) 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 at the end of the 28-day public notification period. The applicant will be 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 approval was made, will result in the application being returned. If the application is to enlarge a tenanted croft, both crofts must be registered.

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

- (ii) If the croft is **registered** or where an application 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.
- (4) Where any objections¹ to the application are received by the Commission – refer to separate section on objections.
- (5) 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 is being or will be cultivated or put to another purposeful useand 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.
- (6) The Commission shall consider all the information available, taking particular account of its specific policies on “*letting*” and “*croft residency and use of crofts*”. 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 or part croft) have been submitted, it may grant the application.

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*

- (b) Where the Commission is not satisfied that the application should be granted, or where valid objections and expressions of demand for the tenancy have been submitted to the Commission and not withdrawn, 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.

- (7) 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. The Commission must decide the application by –
 - (i) granting it,
 - (ii) granting it subject to conditions, or
 - (iii) refusing it

- (8) The Commission will give notice of its decision to the applicant 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.

(9) 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.

(10) If the application is granted and relates to a **first registered croft**:

- (i) the **landlord** must, within 3 months of the granting of the application, notify the Commission that the let of the croft has taken effect,
and
- (ii) the **Commission** must as soon as is reasonably practicable after the notification from the landlord is received, notify the Keeper of the Registers of the Scotland of the change.

The let takes effect on the date provided by the landlord on the notification form to the Commission.

(11) If the application is approved and relates to a **registered croft** (other than a first 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 landlord** to the Commission for forwarding to the Keeper of the Registers of Scotland, before the expiry of the 3-month period;
- (ii) the letting of the croft (or part of the croft) takes effect on the date of registration.

In either case the let will be deemed not to have taken effect if the respective registration requirements are not met (notwithstanding any provision to the contrary).