

Subletting of Croft

A sublet provides a formal basis for a croft tenant to allow another individual to cultivate and maintain the croft for a period of up to 10 years.

LAW

Crofters (Scotland) Act 1993, Sections 27, 29 & 58A

Notwithstanding any enactment or rule of law, a crofter shall be entitled to sublet his croft, for a period not exceeding 10 years, without the consent of the landlord of the croft.

Section 27(1)

*A crofter shall not let his croft otherwise than with the consent in writing of the Commission and in accordance with such conditions (which shall not include conditions relating to rent) as the Commission in giving their consent may impose; and any sublease of his croft granted by a crofter otherwise than as aforesaid shall be null and void. **Section 27(2)***

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 subletting and short-term leases (Paragraph 58)

Although the Commission will consider every subletting or short lease application on its merits, the Commission generally sees subletting or short-term leases as a shorter-term and interim measure rather than a longer-term solution to a situation where a crofter or owner-occupier crofter is unable for an indeterminate period of time to be ordinarily resident and/or cultivate the croft or put it to a purposeful use. Crofters and owner-occupier crofters should not see subletting or short leases as a long-term solution to non-residency or a failure to use their crofts.

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 sub-tenant, 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 sub-tenant, assignee or tenant will be accepted, even if the proposed sub-tenant, assignee, or tenant would appear to meet the residency and land use duties.

PROCEDURE

- (1) An application by a tenant crofter for the Commission's consent to sublet a croft, or part of a croft, shall be made on the appropriate form provided by the Commission. An application should also state the length of time required and the reasons for that period of time.
- (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) given written notification of the application to the landlord and/or (where the land to which the application relates is, or is part of, a common grazings) the owner of the common grazings (as required by section 58A(3)(b))
 - (iii) where the application is in respect of an **unregistered croft**, that a map showing the croft boundaries has been provided.

If the application is invalid or not complete, it will be returned and reason(s) provided for doing so.

- (3) If the application is valid and complete, 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 objections² 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:

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

² 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*

- (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 croft which is the subject of the application.

- (6) Where the application is submitted in respect of a croft which is the subject of an ongoing investigation by the Commission of a suspected breach of duty under the investigation and enforcement of duties provisions at sections 26A-26K of the Crofters (Scotland) Act 1993, a decision to refuse or approve the subletting will take place prior to any issue of a notice under section 26C. Where an application is approved such a notice will not be required.
- (7) The Commission shall consider all the information available, taking particular account of its specific policy on subletting. 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.
 - (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.

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

- (9) Any granting of the application will include the condition that the duties set out in the Act relating to residence and land use¹ will be fulfilled for the duration of the sublet.

- (10) 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.

- (11) 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.

¹ For further information on the residency and land use duties refer to separate Rules of Procedure relating to *Duties*