



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

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# **Application for Commission Consent to Divide by an Owner-Occupier Crofter Guidance Notes**

## **Notaichean Stiùiridh a thaobh Tagradh airson Cead a' Choimisein gu Roinn le Croitear Seilbhe**

Division is the term used when a croft is separated, with Commission consent, into two or more units.

There has to be a clear indication on the part of the current owner to transfer the croft to enable the Commission to consider the application.

If an owner-occupier crofter wishes to sell or otherwise transfer part of their croft, they must first obtain the Commission's consent to divide the croft in to the respective parts they wish to transfer and to retain. If the croft is not divided before any transfer of ownership, the transfer of ownership and any deed purporting to transfer the land is null and void.

## **1. REQUIREMENT TO REGISTER YOUR CROFT LAND**

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The final element of the Crofting Reform (Scotland) Act 2010 relating to the registration of croft land came into effect on 30 November 2013.

The Crofting Register is map based and provides a definitive record of the extent of, and interest in, land within crofting tenure in Scotland. In addition to showing the boundaries of land, the register also contains information on the crofter, owner-occupier crofter and/or the landlord of the registered croft. The Crofting Register is maintained by the Keeper of the Registers of Scotland, although the application for registration is made in the first instance to the Crofting Commission who will check the information contained in or accompanying the registration application against the information contained in the Commission's Register of Crofts.

If your croft is unregistered, the Commission will be unable to make a decision on your division application until the croft has been registered with the Keeper of the Registers of Scotland. To avoid delays therefore, we recommend that your division application should be accompanied by your application to register the croft on the Crofting Register. This must be accompanied by a map showing the boundaries of the croft along with the registration fee.

A copy of the registration form and accompanying guidance notes can be found at [www.ros.gov.uk/services/registration/crofting-register](http://www.ros.gov.uk/services/registration/crofting-register). If an application to register is not submitted within 6 months of the date of receipt of this application, the application to divide will be withdrawn from our records and returned to you.

If your croft is already registered with the Keeper of the Registers of Scotland, an application for Registration of a Subsequent Event will be required should your division application be approved.

## **2. IMPORTANT INFORMATION**

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If the application is being submitted by anyone other than you or your Solicitor, the form should be accompanied by written confirmation from you that you have authorised the signatory to act as your agent.

All questions must be answered as fully as possible, otherwise the form may be returned. To enable the Commission to give full consideration to your application, we would appreciate if you would provide us with as much information as possible to help us to arrive at a fully informed decision.

Prior to 1st October 2011 'owner-occupiers' were, in effect, landlords of vacant crofts. From 1st October 2011, The Crofters (Scotland) Act 1993 (as amended) defines an owner-occupier as a crofter if they are the owner of a croft; and they were either the tenant of the croft when the croft land was acquired or a crofter's nominee or an individual who purchased the croft from the constituting landlord\* (or a successor in title to any of those persons). In addition, the croft must not have been let to any person as a crofter since it was acquired or constituted as a croft.

### **3. OWNER(S) OF COMMON GRAZING(S) NOTIFICATION**

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If your application includes any grazings shares you are legally required to give written notice to the owner(s) of the common grazing of this application. In order to confirm you have done this, could you please provide one of the following:

1. Arrange for the signed notification form at Appendix 2A of the application form to be completed and signed by the owner(s)
2. A letter confirming receipt of notification from the owner(s) OR
3. A copy of your posting receipt as evidence of notification having been sent by registered post or recorded delivery to the owner(s)

### **4. APPLICATION DETAILS**

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#### **4.1 MAPPING INFORMATION**

Your division application must be accompanied by a map of the proposed division in relation to the whole croft boundary. Please refer to the example plan at the end of the guidance notes for further details of requirements.

All maps must be clear, legible, and in colour. We recommend a map size of A3, with additional pages if necessary. Annotation can be added to some or all of boundaries to ensure that they are mapped correctly, such as: 'boundary follows post and wire fence'. If the croft is already registered in the Registers of Scotland Crofting Register then this boundary must be used. Maps that do not meet our required standard will result in your application being returned with notes highlighting issues that need addressed.

### **5. GRAZING SHARE(S)**

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If you are applying to divide any owned grazings shares, we strongly advise you to confirm your share/souming entitlement with your local Grazings Clerk or with the Commission before answering question 7. If our records do not match the information you provide, the application may be returned to you.

Any Crofter Forestry rights will be divided in proportion to the division of the share/souming.

Where the grazings rights are tenanted, and you wish to divide the grazings rights, a separate application to divide the tenancy of the grazings rights will also have to be completed and submitted to the Crofting Commission for their consent.

## 6. RESIDENCY & LAND USE

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### Section 58A(7)(a) of the Crofters (Scotland) Act 1993

In considering its decision on this application, the Commission must have regard to:

- (i) whether any person is or will be ordinarily resident on, or within 32 kilometres (20 miles) of, the croft;
- (ii) whether the croft is being or will be cultivated or put to such other purposeful use

All crofters are required to comply with a number of statutory duties relating to residency and management of their crofts.

### 6.1 WHAT ARE CROFTER'S DUTIES?

#### CROFTERS DUTIES

Both tenant and owner-occupier crofters have a duty to:

- **Be resident on, or within 32 kilometres (20 miles) of their croft**
- **Not to misuse or neglect the croft**

**Misuse** – This refers to a croft being used for something which is not considered as cultivation. Crofters require the consent of their landlord or, failing that, the Crofting Commission if they wish to put their croft to another purposeful use.

**Neglect** – This refers to the management of the croft which should meet the standards of Good Agricultural and Environmental Condition (GAEC).

- **Cultivate and maintain the croft**

**Cultivate** – This refers to the croft being used for cultivation or put to another purposeful use. This includes horticulture, keeping livestock including poultry and bees, growing of crops and the planting of trees.

**Maintain** – This refers to the maintenance of the croft; to enable the croft to be cultivated it must be maintained in a fit state except where another purposeful use is incompatible with the croft being kept in such a state.

**Purposeful use** – This means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner, or the use of adjacent land.<sup>1</sup>

<sup>1</sup> A crofter may only put the croft to a purposeful use if the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or the Commission have consented to the use if the landlord has withheld their consent.

## 7. WIDER INTERESTS

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### Section 58A(7)(a)-(d) of the Crofters (Scotland) Act 1993

In considering its decision on this application, the Commission must have regard to:

- (a) the interests of the crofting community\* in the locality of that land;
- (b) the sustainable development of that crofting community;
- (c) the interests of the public at large

*\*Crofting community' means all the persons who (either or both) occupy crofts within a township which consists of two or more crofts registered with the Crofting Commission; hold shares in a common grazing associated with that township.*

In this section you are provided with the opportunity to make any comments on these matters which you consider the Commission should take into account when considering your application.

### 7.1 SUSTAINABLE DEVELOPMENT

Sustainable development of a crofting community will normally include the economic social and environmental well-being of the community but meeting the sustainable development criteria need not require meeting all these strands. For instance, the agricultural aspect of crofting is not always necessarily financially sustainable, but this does not preclude it from adding value to the well-being of the individual and the surrounding community. Consideration of applications should take account of the maintenance and possible increase in populations, good management practices, the protection and enhancement of environmental assets, economic demand and employment opportunities, the protection and encouragement of biodiversity, the production of renewable energy reduction in carbon emissions, resource efficiency and the avoidance of dereliction of land. There are many criteria available when considering sustainable development although not all will be applicable to each circumstance.

### 7.2 PUBLIC INTEREST

Crofting legislation does not define 'public interest', although it contains various references to it. It is therefore for the Commission to be satisfied that, where required on a case-by-case basis, the public interest test is met.

In exercising its functions, the Commission must have regard to (a) the desirability of supporting population retention in the crofting counties and in any other designated area where crofts have been created, and (b) the impact of changes to the overall area of land held in crofting tenure to the sustainability of crofting.

In determining if, for example, approving an application is in the public interest, the Commission may consider any evidence of the benefits and disbenefits to other crofters, crofting communities, the wider community and others the Commission considers as having an interest in the application. The Commission will also take into account the Scottish Government's crofting policies and will normally favour the wider public interest particularly where individual private interest will disadvantage the sections detailed above.

## 8. ACCESS

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Your location and/or site map must show all existing access routes to the croft **as well as** any proposed access provision. Please provide as much information as possible of the current or proposed access provision at question 15 including details such as width, gates, condition and any consents obtained or that may be required together with supporting evidence.

## 9 POLICY PLAN ON DIVISION

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The Commission recognises that, in some circumstances, the division of crofts can further the aim of population retention and provide opportunities for new entrants to crofting.

The Crofting Commission will exercise its discretion to decide every application for division on its merits. It will consider the following factors, amongst others, in assessing the matters to which the Commission must have regard in terms of section 58A(7) of the 1993 Act:-

- the size of the new crofts to be created through division
- the quality of the land of the new crofts to be created
- the use(s) to which the new crofts will be put
- the impact, where relevant, on the use of any associated share(s) in a common grazing.

Where a grazing share forms part of the croft, an application will not be considered competent unless it details what is intended for the share.

The Commission will apply its standard policy on access, to ensure that all new crofts have the required standard of access available.

The Commission will also, where appropriate, apply its policies on sustainability and sustainable development.

## 10. PUBLIC NOTIFICATION

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You must advertise your application to divide the croft in a newspaper. You are responsible for paying for the advert. Please refer to our guidelines on advertising applications on our website at [www.crofting.scotland.gov.uk/forms-and-guidance](http://www.crofting.scotland.gov.uk/forms-and-guidance)

Failure to follow the guidelines may result in you having to re-advertise your application in an accepted newspaper.

**It is important that this application is sent to us before the advert appears in a newspaper.**

*Sample Newspaper Advert:*

### **Proposed Division of a Croft by Owner-occupier Crofter**

(Your name)

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is applying to divide the owner-occupied croft at

(Croft name & Parish)

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into (insert number of crofts including the original croft) new crofts.

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Written comments from those with a relevant interest (which may be made public) to:

Crofting Commission, Leachkin Road, Inverness IV3 8NW, [info@crofting.gov.scot](mailto:info@crofting.gov.scot) within 28 days from the date of the advert.

10. An up to date Ordnance Survey map should provide sufficient surrounding detail (e.g. fences, rivers, buildings).

1. Whole croft boundary.

2. References to apportionments.

9. Access: Vehicle access should be shown where appropriate. It should be made clear whether this is part of the croft or not.

Proposed Croft 2  
(croft name, 0.94 ha)

Proposed Croft 1  
(croft name, 1.48 ha)

29/06/2013

4. Areas to be divided: Should be clearly shown and labelled as Croft 1, Croft 2, Croft 3 etc. so we can match up the crofts marked on the map with the application form. The proposed croft name and area should also be labelled where appropriate.

-  Croft 1 (croft name, 1.48 ha)
-  Croft 2 (croft name, 0.94 ha)

8. Scale bar.



7. Appropriate map scale.

6. North arrow.



Eastings: 103,395  
Northings: 883,721

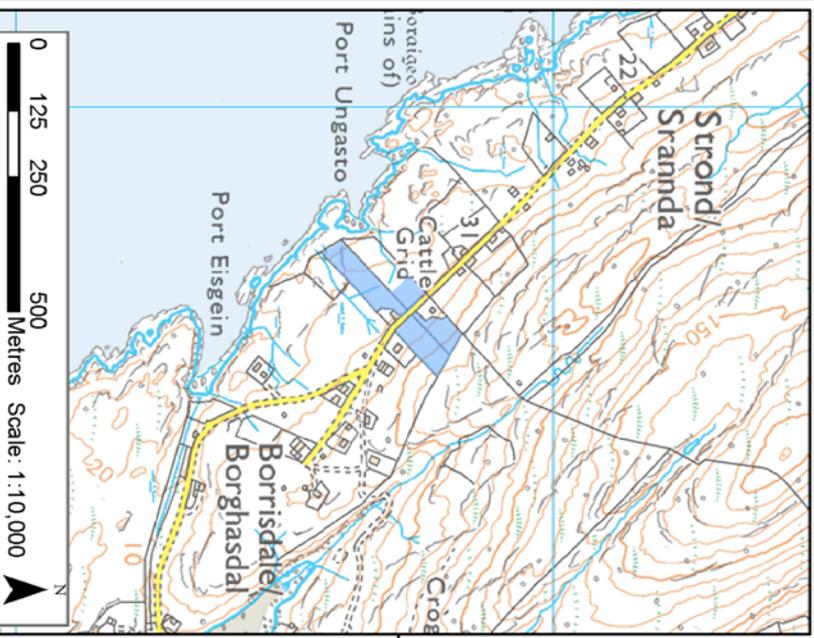
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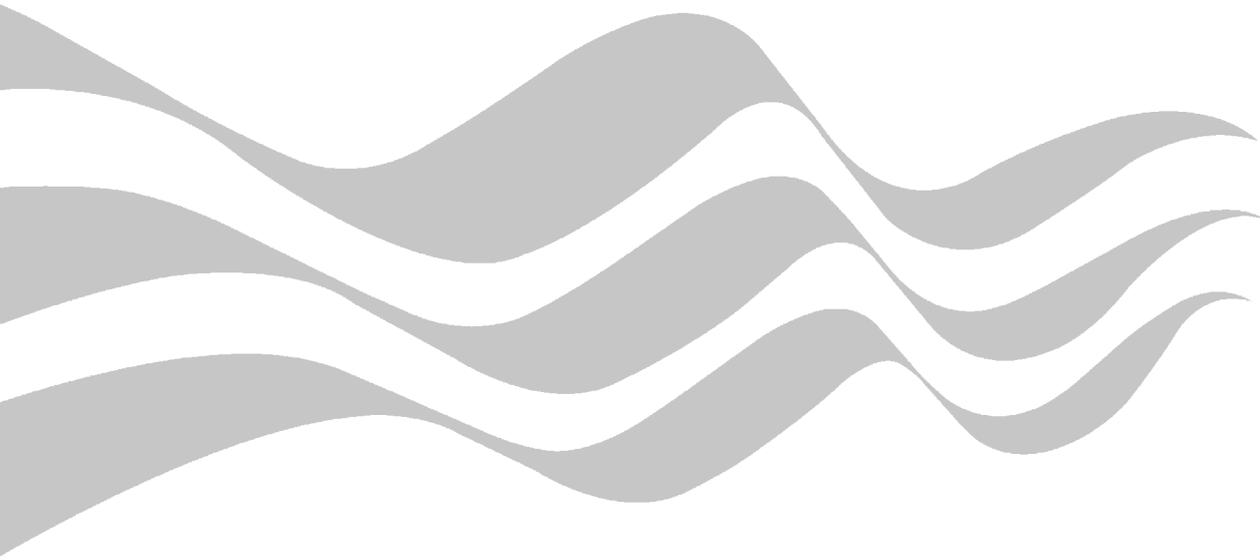
MAP FOR EXAMPLE PURPOSES ONLY

**Legend**

-  Proposed Croft 1
-  Proposed Croft 2
-  Original Croft before division
-  Vehicle access (within croft)
-  Apportionment

3. A location plan of the croft boundary should be provided if map coordinates cannot be given.





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