

## **Division of a Tenanted Croft**

***Division allows for a croft to be divided into two or more parts which then become separate individual crofts.***

### **LAW**

Crofters (Scotland) Act 1993, sections 9 and 58A

*A crofter shall not divide his croft unless he obtains the consent of the Commission.*

#### **Section 9(1)**

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

*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)*
  - (a) the interests of the estate which comprises the land to which the application relates;*
  - (b) the interests of the crofting community in the locality of that land;*
  - (c) the sustainable development of that crofting community;*

- (d) *the interests of the public at large;*
- (e) *any objections received under subsection (4) or (5A);*
- (f) *any plan of the Commission approved and published under section 2C;*
- (g) *any other matter which the Commission considers relevant. **Section 58A(7)***

## **POLICY**

### Commission Policy Plan on Division

*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.*

Where the Commission considers it necessary to divide a croft as part of the Enforcement of Duties process, these guidelines will not apply. This facility is available for a particular purpose, such as to enable a crofter in breach of their duties to retain their croft house.

## PROCEDURE

(1) An application by a tenant crofter<sup>1</sup> for the Commission's consent to divide:

- (i) a croft; or
- (ii) a grazing right or land deemed by section 3(5) to be a croft;

into two or more new crofts shall be made 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 notification<sup>2</sup> 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)).

If the application is invalid or is not complete, it will be returned and reason(s) provided for doing so. If the croft is **unregistered**, the Commission will also advise the tenant crofter 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.

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<sup>1</sup> Where the tenant crofter is deceased, refer to separate Rules of Procedure *Division of Croft by Executor of Deceased Crofter*

<sup>2</sup> For information on public notification, refer to separate Rules of Procedure on *Public Notification*

- (i) If 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 consent was made, will result in the application being returned.
  - (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 objections<sup>1</sup> 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 use.
- (6) The Commission shall consider all the information available, taking particular account of its specific policy on division. If it is satisfied that there is sufficient information available to allow it to decide on the application and:

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<sup>1</sup> 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*

- (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 deemed 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 or 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 a copy of all of the available information (in the form of a case paper) on the applicant and other interested parties, to allow them sight of the evidence that the Commission will consider when reaching its decision. The Commission will allow the applicant and other parties the opportunity to submit further information within 21 days from the date of service of the case paper. However, this will be limited to correcting factual inaccuracies in the case paper;
    - (ii) copies of any further information received and accepted by the Commission, following the serving of the case paper, shall be served on all involved parties for their information only, prior to the Commission 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 Instrument 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 information received following serving the case paper or at a public meeting. It 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 Commission** must, as soon as is reasonably practicable after consenting to the division, notify the Keeper of the Registers of Scotland of the change.
- (ii) The division takes effect on the date the Keeper receives the notification from the Commission.

(11) If the application is granted and relates to a **registered croft** (other than a first registered croft) –

- (i) Any consent of the Commission to the division of the croft expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the division is submitted by **the applicant** to the Commission for forwarding to the Keeper of the Registers of Scotland before the expiry of this period.
- (ii) The division takes effect on the date of registration.

- (12) After division, the rent payable for the new crofts is for agreement between the landlord and the tenant. In the event no agreement can be reached, either party can make an application to the Scottish Land Court to determine a fair rent.<sup>1</sup>

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<sup>1</sup> The application form asks for details of the name(s) of the proposed new crofts and the rents for the original croft and the new croft(s) to be provided and signed by both the applicant and the landlord. The omission of this information does not prevent the Commission from processing and deciding on the application.