

Assignment

Assignment enables a tenant crofter to transfer the tenancy of a croft or the tenancy of a grazing share to another individual.

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”), section 8 and section 58A.

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

Section 8(1).

*...the crofter must (a) notify the Commission as to where the proposed assignee would intend, following any such assignment, ordinarily to reside; and (b) provide the Commission with any other information it requests in connection with the application. **Section 8(1A)***

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 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 by a tenant crofter for the Commission's consent to assign:
 - (i) a croft,
 - (ii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft,
 - (iii) a grazing right or land deemed by section 3(5) to be a croft,

shall be made in the appropriate form provided by the Commission.

The application should show that the proposed assignee is both able to and intends to comply with all the statutory duties and in particular that he or she intends to be ordinarily resident on or within 32 kilometres of the croft and to cultivate and maintain the croft.

- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include checks 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)).

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 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.

¹ For information on public notification refer to separate section 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 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 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.

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*

- (6) The Commission shall consider all the information available, taking particular account of its specific policy on assignation. 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, part 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 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 serving the case paper and/or information obtained 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 assignation will take effect on such date as specified by the Commission (being a date not less than 2 months after the Commission intimated its decision to the crofter), unless before that date the crofter (or his executor) and the assignee jointly give notice in writing to the Commission that they do not intend to proceed with the assignation;

(ii) **the applicant** must within 3 months of the granting of the application, notify the Commission that the change has taken effect. As soon as reasonably practicable after this, **the Commission** must notify the Keeper of the Registers of Scotland of the change. If the Commission is not notified that the change has taken effect within the 3-month period then the assignation is deemed not to have taken effect.

- (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 assignation expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the assignation is submitted by **the assignee** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period;
 - (ii) the assignation takes effect on the date of its registration.
- (12) Where the application granted is to assign:
- (i) a croft – this is assigned as a unit whether or not the assignee is an existing tenant crofter,
 - (ii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft and the assignee is an existing tenant crofter – this is assigned as an enlargement to the crofter’s existing tenanted croft,
 - (iii) part of a croft consisting of any right in pasture or grazing land deemed by section 3(4) to form part of a croft and the assignee is not an existing tenant crofter – this is assigned as a unit,
 - (iv) a grazings right or land deemed by section 3(5) to be a croft – this is assigned as a unit and continues to be deemed to be a croft by section 3(5) whether or not the assignee is an existing tenant crofter.