

Decrofting of Croft House Site & Garden Ground

Enables the removal of the croft house site and garden ground from the control of crofting legislation

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”) Sections 24(3), 24A, 24B and 25(1)(b).

*Where a croft is vacant, the Commission may, on the application of the landlord, direct that the croft shall cease to be a croft or refuse to grant the application. **Section 24(3)***

*The Commission shall give a direction under section 24(3) of this Act that a croft shall cease to be a croft if the application is made in respect of a part of a croft, which consists only of the site of the dwelling house on or pertaining to the croft and in respect of which a crofter is entitled at the time of the application, or has been entitled by virtue of section 12(2)¹ of this Act, and they are satisfied that the extent of the garden ground included in that part is appropriate for the reasonable enjoyment of the dwellinghouse as a residence; **Section 25(1)(b)***

¹ Section 12(2) A Crofter shall be entitled to a conveyance of the site of the dwellinghouse on or pertaining to the croft tenanted by him, and a cottar shall be entitled to a conveyance of the site of the dwelling-house on or pertaining to his subject, and the crofter or cottar may, failing agreement with the landlord, apply to the Land Court for an order requiring him to grant such a conveyance

*.. the Commission may on the application of a crofter who is proposing to acquire croft land or the site of the dwellinghouse on or pertaining to his croft, give a direction under the said section 24(3) as if the land were a vacant croft and the application were made by the landlord, that in the event of such acquisition of the land it shall cease to be a croft or refuse the application; but such a direction shall not have effect until the land to which it relates has been acquired by the crofter or his nominee and unless the acquisition is made within 5 years of the date of the giving of the direction. **Section 25(4)***

*An owner-occupier crofter may apply to the Commission for a decrofting direction. **Section 24A(1)***

*The Commission may, on an application under section 24A(1) give a decrofting direction. **Section 24B(1)***

*The Commission shall give a direction under section 24(B) of this Act that a croft shall cease to be a croft if – **Section 25(1)***

- (i) the application is made in respect of part of a croft, which consists only of the site of the dwelling-house on or pertaining to the croft, and*
- (ii) they have not previously given a direction under 24B(1) to the applicant in relation to such a site on or pertaining to that croft,*

*They are satisfied that the extent of the garden ground included in that part is appropriate for the reasonable enjoyment of the dwellinghouse as a residence. **Section 25(1)(b)***

*The provisions of this section and sections 24, 24A to 24D and 25 of this Act shall have effect in relation to a part of a croft as they have effect in relation to a croft. **Section 23(11)***

POLICY

Crofting Commission Policy Plan 2022

Policy on Decrofting and retaining land within crofting tenure (Paragraphs 25 to 27)

The legislation and a body of case law developed by the Scottish Land Court sets out the basis on which the Crofting Commission can consider granting a decrofting direction. The Commission is required to assess each reasonable purpose application against the following legislative factors: the good of the croft, the crofting community, the estate (where relevant) and the public interest, and must be satisfied that the extent applied for is not excessive. The legislation also sets out additional factors to which the Commission may have regard, including the sustainability of crofting and the crofting community in the locality, the landscape and environment of the locality and the social and cultural benefits associated with crofting. The Commission cannot adopt any policies with regard to decrofting that are inconsistent with the legislation and case law. There are statutory factors to which the Commission must have regard in each and every application for decrofting. The Commission is also required to carry out a careful balancing exercise and assess the individual facts of the case in relation to the various factors set out in the legislation.

The Commission's approach to decrofting is that its decisions with regard to decrofting applications are determined by the legislation having regard to the individual facts of the case, but will be informed by the Commission's policy position that there is value in retaining croft land within crofting tenure. The Commission's policy position in this regard is informed by the importance of providing opportunities for both existing crofters and future generations of crofters to continue crofting croft land. It is also likely that actively used croft land will continue to attract financial assistance in future years for the various social, economic and environmental benefits associated with crofting, and such assistance will be important for the future of crofting.

The Commission aims to protect land from being lost to crofting. A decrofting direction irrevocably removes the land subject to the application from crofting tenure. The Commission takes a long-term view when determining decrofting applications and will exercise its discretion to consider, amongst other factors, the advantages of retaining the croft (or part thereof) as part of the pool of croft land in the locality. It is also the Commission's policy that it will not normally decroft any grazings share held by an applicant as part of his or her tenancy or which the applicant has included in a disposition.

PROCEDURE

- (1) An application by:
 - (i) a landlord of a vacant croft – section 24(3)
 - (ii) an owner-occupier crofter¹ – section 24A-D
 - (iii) a tenant crofter proposing to acquire land tenanted by him – sections 24(3) & 25(4)

for a direction that part of a croft, which consists only of the site of the dwellinghouse on or pertaining to the croft², shall cease to be a croft or part of a croft, 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. Where the application is made by a tenant crofter, this will include checks that the applicant has provided written notice³ to the landlord.

If the form 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 applicant 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 As defined at section 19B of the Crofters (Scotland) Act 1993

² Where there is more than one dwellinghouse situated on the croft, only one can qualify as the site of the dwellinghouse as defined at section 25(1)(b). Any subsequent application by that applicant will require to be processed as a reasonable purpose application under section 25(1)(a)

³ Section 25(4A) requires the applicant to give the landlord written notice of the application and the Commission shall not give a direction unless they are satisfied this has been done.

- (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 for the direction. Failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the decrofting application was made, will result in the form being returned to the applicant.
 - (ii) If the croft is **registered** or where an application for first registration is received, the Commission will proceed to consider the decrofting application.
- (4) Where any objection¹ to the application is received by the Commission from the croft landlord – refer to separate section on objections.
- (5) Where an objection includes a request for a hearing²– refer to separate section on hearings.
- (6) The Commission shall make such further enquiry and carry out such inspection as it deems necessary, to ascertain whether the extent of garden ground included in that part is appropriate for the reasonable enjoyment of the dwellinghouse as a residence.

This 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*

² Further information on hearings, who can request a hearing and how the Commission treat such a request, is contained in the separate Rules of Procedure on *Hearings and the Opportunity To Be Heard Following Representations*

- (7) The Commission will give priority to the provision of access to **all** remaining parts of the croft or other croft land. The Commission will check to ensure that the access requirements are clearly and unambiguously shown on any application and that this reflects actual arrangements. Failure to meet this requirement is likely to result in the application being modified¹, approved subject to conditions², or refused.
- (8) The Commission shall consider all the information available, taking particular account of its specific policy on decrofting.

If satisfied that there is sufficient information available to allow it to decide on the application and:

- (a) If the Commission is satisfied that the extent of garden ground is appropriate for the reasonable enjoyment of the dwellinghouse as a residence and no valid objections have been submitted, it may grant the application, with or without imposing conditions.
- (b) If the Commission is not satisfied that the extent of garden ground is appropriate for the reasonable enjoyment of the dwellinghouse as a residence, or where valid objections have been submitted to the Commission and not withdrawn, then prior to deciding the application –
- (i) The Commission shall serve a copy of the available information in the form of a case paper (comprising copies of the application form and any additional information or evidence obtained by the Commission including, where applicable, the SGRPID report) on the applicant and other interested parties, to allow them sight of the evidence that the Commission will consider when reaching its decision. The case paper will **not** include any valid objections received by the Commission or the responses to these – refer to separate section on objections.

¹ The modification may be requested by the applicant during the processing of the application or deemed appropriate by the Commission. If the latter, the Commission may arrange for a map of the modified area to be prepared and the applicant (and any other parties to the application) will have sight of this prior to any decision being taken on the application.

² Where the application is by a tenant in advance of purchase, section 25(4A)(b) allows the Commission to include conditions in the direction to ensure access to another part of the croft or other croft land is not prevented or impeded by decrofting the site.

The Commission will allow the applicant and other parties the opportunity to comment within 21 days from the date of serving of the case paper. The Commission will also allow the applicant the opportunity to request a hearing¹ and any such request must be made to the Commission in writing (or some other permanent form).

- (ii) Copies of any comments received and accepted by the Commission following the serving of the case paper, shall be served on all involved parties for comment, prior to the Commission deciding on the application.
 - (iii) Where the applicant has not requested a hearing, the Commission may direct that a hearing is held before deciding on the application and shall consider any new information obtained at the hearing.
- (9) The decision on the application will be taken at the appropriate level as set out in the Commission's Scheme of Delegation. When deciding on the application, the Commission will consider all of the available information, including any comments received following serving the case paper and/or information obtained at a hearing. It must decide the application by –
- (a) giving a direction,
 - (b) giving a direction subject to conditions or modifications, or
 - (c) refusing it.
- (10) The Commission will give both notice of its decision in writing to the applicant (and landlord where the applicant is the tenant crofter) and public notification² of its decision, specifying the nature of and the reasons for the direction and of any conditions imposed in the direction.

¹ Before deciding on a decrofting application, if a hearing is requested by the applicant, the Commission is required by section 25(6) of the Crofters (Scotland) Act 1993 to afford a hearing to the applicant and to such other person as the Commission think fit

² For information on public notification refer to separate Rules of Procedure on *Public Notification*

(11) In the case of an application by a tenant crofter proposing to acquire land tenanted by him:

- (i) the Commission may include in any direction conditions for the purpose of ensuring that implementation of the proposal will not prevent or impede access to another part of the croft or to other croft land
- (ii) a direction shall not have effect until the land it relates to has been purchased by the tenant crofter or his nominee and unless the acquisition is made within 5 years of the date of the giving of the direction. It will also be necessary to fulfil the registration requirements following purchase.

(12) The **applicant** or the **owner of the land** may appeal:

- (i) the Commission's decision to grant a direction; or
- (ii) the imposition of a condition or modification; or
- (iii) the refusal of the application

to the Scottish Land Court within 42 days after notification of the Commission's decision.

(13) If the application is **granted** and the direction is:

- (a) Given in **advance of purchase** and relates to a **first registered croft** – where:
 - (i) the land is acquired by the tenant crofter or a nominee of the tenant within 5 years of the date of the giving of the direction,
and
 - (ii) the crofter has notified the Commission within 3 months of acquisition

the direction takes effect on the date notification of the direction and acquisition is given by **the Commission** to the Keeper of the Registers of Scotland.

(b) Given in **advance of purchase** and relates to a **registered croft** (other than a first registered croft) – where:

(i) the land is acquired by the tenant crofter or a nominee of the tenant within 5 years of the date of the giving of the direction;

and

(ii) an application for registration of the effecting of the direction is submitted by **the applicant** to the Commission for forwarding to the Keeper of the Registers of Scotland within the 5-year period;

the direction takes effect on the date of registration of the direction and acquisition.

(c) In respect of an **owned subject** and relates to a **first registered croft** –

notification **by the Commission** to the Keeper of the Registers of Scotland will be given as soon as reasonably practicable after the direction is made.

The direction takes effect on the date of receipt by the Keeper of the Registers of Scotland, of notification from the Commission of the making of the direction.

(d) In respect of an **owned subject** and relates to a **registered croft** (other than a first registered croft) –

the direction expires at the end of the period of 3 months, beginning with the date on which the direction was made, **unless** an application for registration of the making of the direction is submitted by **the applicant** to the Commission for forwarding to the Keeper of the Registers of Scotland before the expiry of that period.

The direction takes effect on the date of registration.

In all cases, the direction will not have effect unless the respective registration requirements detailed above are fulfilled.