

Enlargement of Crofts

Background

This procedure covers the enlargement of crofts by a direction issued by the Crofting Commission under section 4 of the Crofters (Scotland) Act 1993. There is a separate provision for a croft to be enlarged by croft land or other crofting rights by **letting** as an enlargement¹.

In addition, where a landlord holds non croft shares in a common grazings subject to section 47(10), the Land Court had advised that it is competent for the landlord to make over all or part of that share to a crofter so as to enlarge the grazing shares attached to the croft and thus bring that part of the share under the Act. However, this takes place under **common law**, not under the enlargement provisions within the Crofters Acts.

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”) section 4

This section applies where an owner of land –

- (a) which is not a croft; and*
- (b) which does not form part of a croft,*

*agrees to grant a tenancy of that land to a crofter. **Section 4(1)***

*The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is a tenant. **Section 4(2)***

¹ Please refer to separate Rules of Procedure on the *Letting of a Vacant Croft*

POLICY

Crofting Commission Policy Plan 2022

Policy on croft residency and use of crofts (Paragraph 28)

The Crofting Commission will work by both statutory and non-statutory means to increase croft residency and to increase the amount of croft land that is cultivated or put to a purposeful use. The Commission's policies on residency and land use apply equally to tenant crofters and owner-occupier crofters. It is the Commission's view that a healthy crofting system consists of crofters who are resident within their crofting communities and are actively using and managing their crofts and common grazings. It is the Commission's view that resident crofters within the crofting community will make these communities more resilient and better able to retain rural population as well as create and generate economic activity within rural, and sometimes remote, populations.

Policy on access to croft land (Paragraph 65)

When considering applications that could result in croft land becoming separated from the nearest adopted public road from which access can reasonably be taken, the Commission will wish to ensure that the croft land or, as the case may be, common grazings can be accessed directly from the public road by agricultural vehicles or other machinery required for the cultivation and maintenance of the croft or in connection with the common grazings. The Commission will scrutinise applications where it is proposed that an existing access from the public road will no longer be available to croft land or common grazings or where a new access is proposed from a public road that may not be suitable. Applications should ensure that any consent or approval sought would not result in croft land or common grazings being cut off from a public road. Failure to do so is likely to result in an application being refused.

PROCEDURE

(1) This section applies where an owner of land –

- (a) which is not a croft; and
- (b) which does not form part of a croft,

agrees to grant a tenancy of that land to a crofter.

(2) The owner and the crofter may apply jointly to the Commission for a direction that the land is to form part of a croft of which the crofter is tenant on the appropriate form provided by the Commission.

(3) On receipt of an application on the said form, the Commission will check that the application is valid.

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.

(4) If the application is valid and complete, the Commission will check whether it relates to a **registered croft**.

(i) If the croft is **unregistered**, the Commission will check whether an application for first registration of the croft(s) has been received. If not, the Commission will inform the applicants in writing that unless an application for first registration is submitted by the crofter, it will not consider the application. The applicants will be further advised that failure to submit an application for first registration of the croft(s) within 6 months, beginning with the date on which the application for a direction was made, will result in the application being returned.

- (ii) If the croft is **registered** or where an application(s) for first registration is received, the Commission will proceed to consider the application.
- (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. 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.
- (6) The Commission shall consider all the information available, taking particular account of its specific policies on “croft residency and use of crofts” and “access to croft land.”
- (7) The Commission may make a direction if it is satisfied that the enlargement of the croft –
 - (i) would be of benefit to the croft or the crofter; and
 - (ii) would not result in the area of the enlarged croft substantially exceeding 30 hectares.
- (8) The decision on the application will be taken at the appropriate level as set out in the Commission’s Scheme of Delegation. The Commission may either grant or refuse to grant the direction.
- (9) The Commission will give notice of its decision to the applicants within 21 days of the decision being taken, specifying the reasons for its decision.
- (10) The applicants may appeal the Commission’s decision to the Scottish Land Court within 42 days after notification of the Commission’s decision.

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

(i) The land forms part of the croft with effect from the later of:

(a) the date of the Commission's direction; or

(b) the date of entry under the tenancy.

(ii) **The crofter** must, within 3 months of the granting of the direction, 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.

The enlargement takes effect on the date provided by the crofter on the notification form to the Commission.

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

(i) the direction expires at the end of 3 months, beginning with the date on which the direction is made, unless an application for registration of the enlargement is submitted by **the crofter** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.

(ii) the enlargement takes effect on the date of its registration.

In either case the enlargement will not have effect unless the respective registration requirements detailed above are fulfilled.

(13) The rent payable for the enlarged croft is the rent agreed by the landlord and the crofter.