

## Letting of owner-occupied crofts – ‘short lease’

***An owner-occupier crofter can apply to the Commission for consent to lease his croft to another individual for a period not exceeding 10 years***

### LAW

Crofters (Scotland) Act 1993, sections 29A, 29B and 58A

*The Commission may, in giving their consent to a proposed lease of an owner-occupied croft for a period not exceeding 10 years (a ‘short lease’), impose such conditions (other than any relating to rent) as they consider appropriate. **Section 29A(4)***

*A lease is void if it is granted –*

- (a) without the Commission’s consent*
- (b) in the case of a short lease, otherwise than in accordance with such conditions as the Commission may impose. **Section 29A(5)***

*The Commission may terminate a short lease granted under this section if –*

- (a) a condition imposed under subsection (4) is breached; or*
- (b) the tenant fails to comply with a condition of let (other than any relating to rent).*

**Section 29A(6)**

*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 subletting and short-term leases (Paragraph 58)**

*Although the Commission will consider every subletting or short lease application on its merits, the Commission generally sees subletting or short-term leases as a shorter-term and interim measure rather than a longer-term solution to a situation where a crofter or owner-occupier crofter is unable for an indeterminate period of time to be ordinarily resident and/or cultivate the croft or put it to a purposeful use. Crofters and owner-occupier crofters should not see subletting or short leases as a long-term solution to non-residency or a failure to use their crofts.*

### **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 sub-tenant, 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 sub-tenant, assignee or tenant will be accepted, even if the proposed sub-tenant, assignee, or tenant would appear to meet the residency and land use duties.*

## PROCEDURE

- (1) An application for the Commission's approval to let a croft, or part of a croft, on a short lease shall be made by the owner-occupier crofter on the appropriate form provided by the Commission. An application should also state the length of time required and the reasons for that period of time.
- (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 notification<sup>1</sup> of the application (as required by section 58A(3)(a))
  - (ii) where the land to which the application relates is, or is part of, a common grazings which is owned separately, given written notification of the application to the owner of the common grazings (as required by section 58A(3)(b))
  - (iii) where the application is in respect of an **unregistered croft**, that a map showing the croft boundaries has been provided.

If the application is invalid or not complete, it will be returned and reason(s) provided for doing so.

- (3) If the application is valid and complete the Commission will, at the end of the 28 day public notification period, review the information contained in the application form and any objections received.
- (4) Where any objections<sup>2</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 –

---

<sup>1</sup> For information on public notification, refer to separate Rules of Procedure on *Public Notification*

<sup>2</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*

- (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.

- (6) Where the application is submitted in respect of a croft which is the subject of an ongoing investigation by the Commission of a suspected breach of duty under the investigation and enforcement of duties provisions at sections 26A- 26K of the Crofters (Scotland) Act 1993, a decision to refuse or approve the short lease will take place prior to any issue of a notice under section 26C. Where an application is approved such a notice will not be required.
- (7) The Commission shall consider all the information available, taking particular account of its specific policy on “short term leases” and on “letting”. 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 or part 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.
- (8) 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. The Commission must decide the application by –
  - (i) granting it
  - (ii) granting it subject to conditions, or
  - (iii) refusing it.
- (9) 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.
- (10) 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.
- (11) If granting the application, the Commission will prepare a standard lease for completion and return by the owner-occupier crofter and the proposed tenant. The lease will include the condition that the tenant will fulfil the duties set out in the Crofters (Scotland) Act 1993 relating to residence and land use<sup>1</sup>.

---

<sup>1</sup> See separate Rules of Procedure relating to *Duties*

- (12) The Commission may terminate a short lease if:
- (i) a condition imposed on the Commission's consent is breached
  - (ii) the tenant fails to comply with a condition of let (other than any relating to rent).
- (13) A tenant under a short lease will be treated neither as a tenant crofter nor a tenant under the Agricultural Holdings (Scotland) Act 2003. Consequently, they will not have the same legal rights as those types of tenants. The consenting to the short lease does not change the status of the owner-occupier crofter.