

Exchange of crofts or parts of crofts

Enables the exchange of whole crofts or parts of crofts

LAW

Crofters (Scotland) Act 1993 (“the 1993 Act”), section 4A.

A crofter may not exchange his croft (or any part of his croft) for another croft (or part of another croft) unless —

(a) *he obtains the consent of –*

- (i) *the landlord of his croft; and*
- (ii) *the Commission*

(b) *the exchanging crofters have the same landlord; and*

(c) *the landlord is the owner of any common grazing in which the crofters share.*

Section 4A(1)

*A new croft is not created by virtue only of such exchange. **Section 4A(4)***

PROCEDURE

- (1) Applications by a tenant crofter(s) for the Commission's consent to exchange their crofts (or any part of their crofts) shall be made on the appropriate form provided by the Commission.

An application for consent to an exchange can only be considered where:

- (i) the exchanging crofter(s) have the same landlord,
 - (ii) the landlord is the owner of any common grazings in which the crofter(s) share, and
 - (iii) the exchanging crofter(s) have obtained the consent of the landlord to the proposal.
- (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(s) have:
 - (i) obtained the written consent of the landlord of the crofts
 - (ii) given public notification¹ of the application (as required by section 58A(3)(a)).

If the application is invalid or is not complete, it will be returned, and reason(s) provided for doing so. If either of the crofts is **unregistered** the Commission will also advise the crofter(s) of the requirement to submit an application for first registration of the croft(s).

- (3) There must be an exchange of croft land from croft A to croft B, and from croft B to croft A, in order for the exchange application to be valid.

If land is not being exchanged i.e. if land from croft A is being used to enlarge croft B, but there is no reciprocal exchange of land from croft B to croft A, the application is invalid.

¹ For information on public notification refer to separate Law, Policy and Procedure on *Public Notification*

There is no requirement that the extent of the areas to be exchanged should be the same or similar.

- (4) If the application is valid and complete, the Commission will check whether it relates to registered crofts.
 - (i) If either or both of the crofts are **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, it will not consider the application at the end of the 28-day public notification period. 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 consent was made, will result in the application being returned.
 - (ii) If both crofts are **registered** or where an application(s) 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.
- (5) Where any objections¹ to the application are received by the Commission – refer to separate section on objections.

¹ Details of the persons who can submit objections and information on how the Commission treat objections received, is contained in the separate Law, Policy and Procedure on *Objections etc. received following the public advertising of regulatory applications*

(6) 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 applications relating to crofts:

- (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 crofts which are the subject of the application.

(7) The Commission shall consider all the information available, taking particular account of its specific policy on “croft residency and use of crofts” and “...access to croft land.” 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(s), part croft(s) or deemed croft(s)) have been submitted, it may grant the application.
- (b) where the Commission is not satisfied that the application should be granted, and where valid objections or expressions of demand for the tenancies 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 applications 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 obtained at a public meeting. It 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 applicants 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 applicants 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 the application is granted and relates to a **first registered** croft(s) –
 - (i) **The applicants** must, within 3 months of the granting of consent, 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.

- (ii) The exchange takes effect on the date provided by the applicants on the notification form to the Commission.
- (12) If the application is granted and relates to a **registered croft(s)** (other than a first registered croft) –
- (i) Any consent of the Commission to the exchange expires at the end of 3 months, beginning with the date on which consent was given, unless an application for registration of the exchange is submitted by **the applicants** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.
 - (ii) The exchange takes effect on the date of its registration.

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

Please see table overleaf detailing scenarios for effecting the exchange of croft land.

Scenario	At the beginning of the process: Is a Form A required?	What is the Method of Notification to the Commission following Approval?	What forms are the Commission required to Forward to RoS? (Both forms to be forwarded at the same time)	What date does the Exchange takes effect?
Croft A: Already registered Croft B: Already registered	No No	RoS Form B RoS Form B	RoS Form B RoS Form B	The date of the registration of the exchange on the Crofting Register.
Croft A: First registered Croft B: First registered	Yes Yes	CC Notification Form that the exchange has been effected CC Notification Form that the exchange has been effected	RoS Form G RoS Form G	The date the Commission are notified that the exchange has taken effect.
Croft A: Already registered Croft B: First registered	No Yes	RoS Form B and CC Notification Form confirming that the exchange is to proceed CC Notification Form confirming that the exchange is to proceed	RoS Form B RoS Form G	The date of the registration of the exchange on the Crofting Register.
Croft A: First registered Croft B: Already registered	Yes No	CC Notification Form confirming that the exchange is to proceed RoS Form B and CC Notification Form confirming that the exchange is to proceed	RoS Form G RoS Form B	The date of the registration of the exchange on the Crofting Register.