



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

# **CROFTING COMMISSION POLICY PLAN**

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## **CROFTING**

### **Historical background**

Lean gu dlùth ri cliù do shinnsre ('follow closely the legacy of your forefathers')

1. Crofting began as a form of statutorily regulated and protected tenancies unique to the Highlands & Islands of Scotland. The traditional model combines individual tenancy of a croft, alongside a share in the common grazing.
2. Up until the Second World War, crofting was primarily a subsistence form of agriculture. Crofts were often grouped together in townships, with the average size of crofts approximately five acres of inbye or arable land, on which the croft house and agricultural buildings were situated, and with a share in the township common grazing, jointly managed along with the other crofter shareholders, for livestock.
3. A succession of Crofting Acts has added rights and responsibilities to the system. From the Crofters Holdings (Scotland) Act 1886 ("the 1886 Act") to the Crofters (Scotland) Act 1993 ("the 1993 Act") the principles of security of tenure, the right to a fair rent, and a crofter's right to compensation for permanent improvements have not changed materially. However, the Crofting Reform (Scotland) Act 1976 ("the 1976 Act") gave crofters an absolute right to purchase their croft house site and a qualified right to negotiate with their landlord to obtain a title deed to their croft. The 1976 Act was also notable for extending decrofting, and enabling crofters to share in the value of any land taken from them by resumption by the Scottish Land Court for development. Finally, although old-style 'owner-occupiers' as landlords of vacant crofts were created by the 1976 Act, owner-occupier crofters were not defined until the Crofting Reform (Scotland) Act 2010 ("the 2010 Act"). The legal definitions of crofters now include both tenants and owner-occupier crofters.
4. The pattern of owner-occupier crofters is now geographically very different over the crofting counties, with a much greater concentration of owner-occupier crofters in the Northern Isles, while in the Western Isles, a very large percentage of crofters have remained tenants.

### **Recent Legislation**

5. The 2010 Act places new duties on crofters and owner-occupier crofters:
  - To reside on or within 32 kilometres of their croft
  - Not to misuse and neglect the land
  - To cultivate or put their crofts to another purposeful use (with any necessary consent).
6. The 2010 Act places a duty on the Commission to investigate suspected breaches of duty by crofters and owner-occupier crofters, and a duty to take action where a breach is suspected. The Act also introduces a requirement that, in exercising its functions, the Commission have regard to the desirability of population retention, and the impact of changes in the totality of land held in crofting tenure on the sustainability of crofting.

## **The Commission**

7. The Crofting Reform (Scotland) Act 2010 created the Crofting Commission, which came into being on 1 April 2012, taking over from the Crofters Commission. It is a Non-Departmental Public Body (NDPB) which operates on a day-to-day basis independently of the government, but for which Scottish Ministers are ultimately responsible. The Commission may consist of up to six elected Commissioners, and three Commissioners appointed by the Scottish Government. The Commission is supported by a staff of some 54, led by a Chief Executive (who is appointed by Scottish Ministers in consultation with the Convener of the Commission). The Commission's Headquarters is based in Great Glen House, Inverness.
  
8. Since the implementation of the 2010 Act, the Crofting Commission's principal function is regulating crofting, re-organising crofting, promoting the interests of crofting and keeping under review matters relating to crofting. The Act also, inter alia, places a duty on the Commission to investigate reports of breaches of duty by tenants and owner-occupier crofters. It can advise the Minister on matters relating to crofting and it can also collaborate with other bodies for the economic development and social improvement of the crofting counties. However, it cannot act as a lobbying body. As a public body, the Commission is subject to, and has duties under, a range of other legislation, but this Plan focuses on the Commission's duties and powers under the Crofting Acts.

# A CROFTING STRATEGY FOR SCOTLAND

## Introduction

9. This Plan sets out our strategic policy and is supplementary to, and is not a substitution for, legislation. More detail on regulatory process will be made available on the Commission's website.

## Consultation on the Plan

10. The 2010 Act requires the Commission to consult Local Authorities in the crofting counties and Highlands & Islands Enterprise on its draft Plan before submitting to Ministers, and allows for wider consultation. The Commission is also from time to time permitted to vary the Plan and, in doing so, must consult with the same bodies, before once again submitting the Plan to Ministers.

## Purpose of the Plan

11. The Plan explains to tenants and owner-occupier crofters, landlords, organisations and agencies **how** the Crofting Commission will make decisions in line with legislation. It also explains **why** crofting must be consistently and firmly regulated, in line with crofting legislation (and case law as it develops) by identifying the many benefits that effective regulation of crofting can bring to the crofting community.
12. The Commission recognises that regulation of crofting will be considerably more effective if its regulatory decisions are understood and supported by the actions and decisions of other agencies. It is hoped that this Plan will:
  - Guide council planning authorities when considering developments on land under crofting tenure and when writing their development plans.
  - Enable Highlands & Islands Enterprise (HIE) and Scottish Government to develop or deliver support in such a way as to reinforce the regulatory decisions being taken by the Commission, by enabling crofting and community activity which is in line with crofting legislation
  - Help to explain to the Scottish Land Court the reasons for regulatory decisions by the Commission – the 2010 Act provides that the Scottish Land Court may have regard to the Plan when considering appeals
  - Support the work of organisations who work with tenants and owner-occupier crofters and crofting communities, such as the Scottish Crofting Federation and its members, Community Land Scotland and the social enterprise movement, National Farmers Union Scotland and Scottish Land and Estates.

## Structure of the Plan

13. Part 1 of this Plan outlines the Commission's main policies and ambitions for crofting over its first term of office (until April 2017). Part 2 gives more detailed explanations of the policies the Commission will apply to its main regulatory functions to help achieve its objectives. Therefore, to supplement this Plan, the Commission will, once the Plan has been agreed and adopted, be making available on its website full details of the statutory requirements, processes and procedures for each type of application or regulation.

## Definitions

14. Crofting is full of unique terms, some of which are defined within the 1993 Act as amended. However, it will help with the reading of this Plan to define the following at the beginning:

**Croft:** A unit of land subject to the Crofting Acts and recorded in the Commission's Register of Crofts. It will also be recorded in the Crofting Register held by the Keeper of Registers of Scotland on certain trigger events, such as regulatory applications.

**Crofter:** The registered tenant of a croft.

**Owner-occupier crofter:** A person will be recognised as an owner-occupier crofter if: they are owner of a croft and they were either the tenant crofter who exercised the right to buy the croft or a crofter's nominee or an individual who purchased the croft from the constituting landlord (or a successor in title to these persons). In addition, the croft must not have been let to any person as a croft since it was acquired from the landlord or constituted as a croft.

**Crofting Community:** All the persons who (either or both):- (a) occupy crofts within a township which consists of two or more crofts registered with the Commission; (b) hold shares in a common grazing associated with that township. (Section 61 of the Crofters (Scotland) Act 1993)<sup>1</sup>

15. The 2010 Act introduced the principle of owner-occupier crofters, and the Commission is aware that it was Parliament's intention that owner-occupier crofters should have the same duties and responsibilities as crofters. By the same token, the Commission regard an owner-occupier crofter who is meeting those duties as a croft holder and their holding(s) will be regulated accordingly.

<sup>1</sup> Section 71(5) of the Land Reform (Scotland) 2003 provides a wider definition of a crofting community for the purposes of the Crofting Community Right to Buy. The Crofting Commission must operate according to the definition provided by the Crofting Act.

## **PART 1: STRATEGIC OBJECTIVES**

### **Introduction**

16. The policies we will follow while performing our regulatory duties seek to deliver a balance between the interests of wider communities, crofting communities, the interests of crofting and those of individual tenants and owner-occupier crofters and landlords. The Commission will exercise its discretion in balancing these interests.
17. In all of its decision-making, the Crofting Commission will be guided by the understanding that crofts and the crofting system are a precious and finite resource that must be both protected and nurtured for future generations. The Commission's aim is to secure a long term future for crofting and for communities in the crofting areas.
18. The Commission is fully aware that there are regional variations in crofting, and indeed that within any given area the size, nature and use of crofts can vary widely. The Commission is determined that it will take decisions consistently and fairly, whilst always taking into account the circumstances of each case. It has therefore not sought to introduce different policies for different areas.

### **Our Vision for Crofting**

19. Crofting is an integral part of life in the Highlands & Islands and can deliver a wealth of benefits to crofters and the crofting community in the Highlands and Islands and other designated parts of Scotland.
20. A well-regulated crofting system will encourage these wider benefits:
  - Population retention through occupation of crofts, with associated economic and cultural benefits, including the use of the Gaelic language in Gaelic-speaking communities
  - Affordable housing solutions - an incoming crofter of a bareland croft will normally be eligible to apply for support through the Croft House Grant Scheme and apply for reasonable decrofting of land
  - Various environmental benefits through the sustainable use and management of crofts and common grazing
  - Increased production of livestock and food from crofts
  - The strengthening of shared management practices and development of common grazing schemes
  - Fairness to individual crofters and owner-occupier crofters.

### **Why is Effective Regulation of Crofting Important?**

21. The desired outcomes of the Scottish Government are clearly outlined in the 'Scotland Performs' Framework [www.scotlandperforms.com](http://www.scotlandperforms.com). Crofting has a key role to play and the Scottish Government has asked the Commission to promote regulatory policies and decisions which:
  - Deliver continuous improvement and efficiency to Commission processes and are responsive to crofters and the needs of crofting communities
  - Contribute to realisation of economic potential and the development of employment opportunities in crofting areas
  - Contribute to strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others



- Encourage the enjoyment of our natural environment and cultural landscapes alongside protecting and enhancing them for future generations
  - Contribute to Scotland's targets for reducing its carbon footprint
  - Contribute to preserving and promoting the unique identity, traditional languages, culture and knowledge associated with crofting.
22. The Crofting Commission is now required, as part of its Annual Report, not only to report on the exercise of its functions but also on:
- The issues affecting crofting communities
  - The contribution crofting has made to sustainable development.
23. Before making its report, the Commission must consult each Local Authority in the areas where there are crofts and with Highlands & Islands Enterprise.

### **REGULATION ON OCCUPANCY | CROFTERS' RESIDENCY DUTY**

24. The Crofting Acts place duties on crofters and owner-occupier crofters to reside on or within 32 kilometres of their crofts.
25. Through effective regulation to ensure residency of crofts, the Commission can help to contribute towards:
- Increasing the potential for shared management of common grazing and communal croft work practices
  - Helping to increase the housing stock in crofting communities, through the building of croft houses , many of which may be eligible for support through the Croft House Grant Scheme
  - Encouraging, where appropriate, the potential for economic activity in remote rural areas, with population growth increasing the turnover for local businesses and trades-people
  - Increasing the likelihood of retaining or growing community services and amenities such as schools, shops, community facilities, through population retention
  - Increasing the number of people able to live in rural areas
  - Increasing confidence in crofting as a way of life.

### **REGULATION ON ACTIVE LAND USE**

26. The Crofting Acts require all croft tenants and owner-occupier crofters to cultivate and maintain their crofts and not to neglect or misuse them.
27. Through effective regulation to ensure that crofts are cultivated and maintained, and not misused or neglected, the Commission can help to:
- Ensure that croft land is kept in good condition for present and future generations
  - Encourage tenants and owner-occupier-crofters to develop crofting resources and share communal crofting activities, machinery and skills.
  - Increase the amount of croft-grown local produce
  - Retain and, where appropriate, enhance biodiversity through the careful management of the natural environment by tenants and owner-occupier crofters.
  - To have regard, where required, to the Nature Conservation (Scotland) Act 2004 and other environmental legislation, regulations and directives.

## **REGULATION ON COMMON GRAZING – COMMUNITY COHESION THROUGH SHARED ASSETS**

28. Crofting provides a unique opportunity through common grazing land to take advantage of the benefits derived from shared management of the common grazing. Reciprocal help between crofters with crofting tasks was also once commonplace and continues today in some places.
29. Through effective regulation of common grazing and support for common grazing committees, the Commission will help:
  - Increase self-regulation by grazing committees – grazing committees often carry unrivalled knowledge about crofting in their township
  - Increase, where appropriate, stocking levels, crofting activity on common grazing and related activity on crofts
  - Strengthen crofting townships and connections between crofters, and encourage best practice on common grazings
  - Where appropriate, improve biodiversity by effective management of the natural resources on common grazing land
  - Increase the opportunities of management schemes on common grazing
  - Increase the opportunities of renewable energy and forestry schemes on common grazing, with associated carbon reductions and associated economic benefits to crofters and crofting communities
  - Encourage management of communal assets
  - To protect better quality inbye land by encouraging use of common grazing land for affordable housing or community facilities in liaison with planning authorities, as appropriate
  - Increase the opportunities for crofting communities to consider community land purchase.

## **WORKING WITH OTHER PARTNERS**

30. The 2010 Act gives the Crofting Commission the functions of promoting the interests of crofting and keeping under review matters relating to crofting.
31. The Scottish Government removed the development and grant-giving functions previously carried out by the Crofters Commission in order to allow the Crofting Commission to concentrate on the regulation of crofting. The development function was taken over by HIE, while the Croft House Grant Scheme, Crofting Counties Agricultural Grant Schemes and the Crofting Cattle Improvement Scheme are now administered by The Scottish Government Rural Payments & Inspections Directorate. The Crofters Commission also worked with a range of partners on certain projects, such as the former Crofting Communities Development Scheme and the 'Planting to Plate' schools project.
32. The Commission recognises that by working with partners, such as HIE, local authorities and others involved with the sustainable development of crofting, it can:
  - Strengthen its regulatory effectiveness
  - Promote the interests of crofting
  - Raise public awareness about the wider community benefits of the crofting system
  - Promote the concept that, to deliver the widest range of benefits, crofting must be both properly regulated, as well as supported and developed
  - Promote successful working relationships between crofters and landlords.

33. Landlords – whether private landlords or community landlords – have important roles to play in many aspects of crofting, and the Commission will seek to work with them, where appropriate, to promote the interests of crofting. The 2010 Act enables the appointment of a Commissioner to represent the interests of landlords of crofts.

## **DUTY TO REPORT**

34. The 2010 Act places new duties on the Crofting Commission to provide an annual report to Ministers on the state of crofting in the crofting counties; on grazing committees to produce a report every five years on the state of crofts, common grazing and crofting in their township; and on crofters to report annually on whether they are complying with their duties. It is vital to crofting that accurate reporting contributes to developing Government policies on crofting.

The Commission will aim to:

- Promote general awareness of a crofter or owner-occupier crofter's duties
  - Encourage crofters to ensure they comply with their duties
  - Encourage grazing committees to make their own assessments of the state of crofting in their community and think carefully about the impacts it has
  - Stimulate increased self-regulation of crofting by grazing committees and crofting communities for the betterment of their own community
  - Present a clear picture of the state of crofting to Ministers and the Scottish Parliament
  - Raise the status of crofting
  - Increase the value placed on the contribution that crofting makes to life in Scotland.
35. It is vital to the sustainability of crofting that accurate reporting contributes to developing future Government policies on crofting. The Commission would encourage all crofters and grazing committees to view these reporting duties as an opportunity to shape the future of crofting through completion of these reports.

## PART 2: SPECIFIC POLICIES

### Introduction

36. The Crofting Commission seeks to support crofting and crofting communities through fair, transparent and consistent regulation. Its functions, powers and duties are defined primarily in the Crofting Acts and from time to time clarified through determinations by the Scottish Land Court. The legislation also sets out the responsibilities of crofters and owner-occupier crofters, and Commission powers to regulate in the interests of crofting and the wider crofting community. The Commission's purpose in publishing its policies and procedures is to show how it reaches decisions. The Plan and policies of the Commission may be subject to revision following decisions made in the Scottish Land Court or other courts. The Plan may also be changed through further consultation and with the agreement of Scottish Ministers.
37. The Commission's view is that good regulation is essential to protect the future of crofting and for the achievement of the aims set out in Part 1 of this Plan. The specific aims that good regulation support are:
  - The promotion of croft residency
  - The cultivation and maintenance of crofts
  - Shared management of common land
  - Prevention of loss of crofts and common grazing land
  - The maintenance of accurate, up-to-date and accessible information on crofts through the Register of Crofts.
38. In carrying out its duties, the Commission will give clear reasons and explanations for its decisions, particularly where discretion has been used.
39. This Part describes in summary how the Commission will apply policies (within the framework of legislation) to its decision-making, in those functions which are most able to contribute to our aims. It is not a comprehensive list of all functions, and it does not seek to explain in detail the procedures and processes associated with each function. That level of information is available on the Commission's website ([www.crofting.scotland.gov.uk](http://www.crofting.scotland.gov.uk)) and as notes to any application form.
40. There are a number of general policies that the Commission views as germane to most of its functions. Therefore it will be the norm for the Commission to apply its policies on access to all relevant applications and processes.
41. **ACCESS:** When considering applications, the Commission will wish to ensure that suitable access arrangements are provided for any croft land or, where appropriate, common grazing. Such access must be suitable for agricultural or other machinery required for the cultivation and maintenance of the croft. Applications should ensure that access is clearly and unambiguously shown and, where appropriate, provide evidence that reflects such arrangements. Failure to meet such conditions is likely to result in an application being refused.

## CROFTERS' DUTIES

42. All crofters are required to comply with a number of statutory duties relating to residency of and management of their crofts. Each year all crofters have to provide the Commission with information on how they are meeting these duties. The Commission itself is obliged to investigate any reports of non-compliance with a duty and ensure, unless there is good reason not to, adherence to the duties. The Commission will encourage crofters to be pro-active in addressing any breaches of duties. Where a crofter is unable to comply with a duty, there are a number of options available to the crofter such as to apply for a sublet or a 'short lease' and, if consented to, ensure that the duty is complied with for the duration of the sublet or 'short lease'.

## RESIDENCY DUTY

43. **The Law:** The Acts require that a crofter must be ordinarily resident on, or within 32 kilometres of, that crofter's croft.
44. **Policy:** If the Commission establishes that a crofter is not ordinarily resident, it will give notice of the breach of duty, unless there is good reason not to. It will take individual and other relevant factors into account. Legislation requires that an undertaking be given to comply with the duty within a period of time which the Commission considers reasonable. Where the Commission gives consent to a sublet or 'short lease' and the subtenant or short lease holder meets the residency requirement, the duty is complied with for the duration of that period, but the responsibility to ensure duties are complied with remains with the crofter. Where the Commission approves an application for consent to be absent, the crofter complies with the residency duty.
45. The Commission will also consider the residency status of anyone making an application to the Commission. The residency duty applies equally to tenants and to owner-occupier crofters. Crofters are required by law to submit an annual return to the Commission advising whether they are meeting their residency and other crofting duties.
46. Where it is assessing non-compliance with the residency duty, there are a number of practical requirements on which the Commission must be satisfied:
- For the purpose of determining whether a crofter is ordinarily resident in a crofting context, the Commission requires that the crofter must show some degree of continuity and settled purpose – notwithstanding some accidental or temporary absence – at their abode. It is expected that a house on or within 32 kilometres of the croft will normally be the main residence of the crofter.
  - In situations where a number of people share the ownership of the whole croft and have the status of owner-occupier-crofters the duty will be complied with as long as one of the owner-occupier-crofters is ordinarily resident.

The Commission will also take into account the circumstances for non-residency and may consider 'good reasons' not to take action to include, for example, where there are medical reasons or family obligations that prevent current residency at the croft for a limited period, or there are other individual circumstances that merit consideration.

## CONSENT TO BE ABSENT

47. The Commission will consider applications for consent to be absent and it recognises that there may be legitimate reasons why a crofter is unable to take up residency on a croft for a reasonable period of time. However, the Commission must be satisfied that there is good reason to be absent and the period of time approved for any absence will depend upon the specific circumstances in each case. Any extension will require a further application. Consent to be absent, if granted, will be subject to conditions and the applicant may be requested to provide evidence that the croft will be cultivated or put to purposeful use during their absence. For example, good reasons for absence that the Commission may consider include:

- Where there are medical reasons which prevent ordinary residence on or within 32 kilometres of the croft
- Where the crofter is undertaking training or an educational course that requires residency away from the croft for extended periods of time
- Where the crofter may be working away for a contracted period of time
- Where the croft has recently been assigned or purchased and the crofter is unable to take up immediate residence.

Where someone decides to leave the area, they can choose to retain their family croft house by applying for a decrofting direction for the statutory house site.

48. The Commission recognises that there may be reasons why a croft is without a resident crofter. There are a number of options open to tenants or owner-occupier crofters who are unable to meet their residency duty for the time being. The Commission wishes to avoid, if at all possible, terminating croft tenancies or requiring letting proposals. This will always be a last resort after the crofter has had opportunity to resolve the breach of duty.

## DUTY TO CULTIVATE AND MAINTAIN

49. Failure to cultivate and maintain land in the climatic conditions that prevail in the Highlands & Islands can rapidly lead to loss of fertility, water-logging and reversion to scrub land. The Commission considers the duty to cultivate and maintain land or put it to purposeful use to be a priority, reflected in its policy.

50. **The Law:** The 2010 Act states that crofters must cultivate and maintain their croft or put it to another purposeful use. Crofters must submit an annual return to the Commission confirming whether they are fulfilling their duties to use and maintain their crofts.

51. **Policy:** Competent reports of failure to cultivate and maintain crofts will be investigated and, where proven, the Commission will enforce the requirement to cultivate and maintain crofts, unless there is good reason not to. The Commission will determine whether the croft is being cultivated and maintained, as defined in the Act, or put to another purposeful use, taking appropriate specialist advice when necessary. A crofter using a croft for conservation or woodland purposes in a planned and managed manner – including that of natural regeneration – will be compliant with the duty to cultivate and manage the croft.

52. The Commission may also take evidence from grazing committees and others as necessary in determining whether crofts are cultivated and maintained. The Commission will allow realistic time for uncultivated or poorly maintained crofts to be brought back into good condition. It will also allow crofters who are unable fully to work their croft, reasonable time to seek assistance.
53. Any crofter who has consent to be absent from the croft is not released from the duties to cultivate and maintain the croft. In such cases, it is likely that the consent to be absent will include conditions to ensure proper management of the croft during the consented absence. A crofter is also entitled to apply to sublet or, in the case of an owner-occupier-crofter, short lease the croft for a period of time. This may ensure that the residency duty and the duty to cultivate and maintain the croft are complied with.

## **DUTY NOT TO MISUSE OR NEGLECT**

54. **The Law:** A crofter must not misuse or neglect the crofter's croft. A crofter misuses the croft when wilfully and knowingly using it for a purpose other than cultivation or for a purpose that has not received proper consent. A crofter neglects a croft where the croft is not managed to meet the standards of good agricultural and environmental condition.
55. **Policy:** The Commission will investigate competent reports of misuse or neglect and, where these are proven, will require that the situation is rectified within reasonable time. Due recognition will be given to any authenticated planned and managed conservation of crofts and, as indicated in the legislation, this will not be treated as misuse or neglect.
56. Recognition will be given to individual crofters' circumstances, and these will be considered in any requirement to rectify misuse or neglect of the croft.

## **REGISTER OF CROFTS**

57. **The Law:** Crofters have a duty to provide the Crofting Commission with information on request on the extent, the rent and the tenure of the holding, the ownership or occupation thereof and such other information as the Commission may reasonably require. Failure to submit such information may be a criminal offence. Such information is required by the Commission as part of its duty to compile and maintain the Register of Crofts.
58. **Policy:** The Register of Crofts must contain an accurate and up-to-date record of a particular holding before the Commission will consider applications. In cases where the record is not accurate or up-to-date, the Commission will require the register to be updated and will seek available information and, if necessary, further evidence from the applicant or others (usually by means of the relevant annual returns).

## **CROFTING REGISTER**

59. The Commission's Register of Crofts should not be confused with the Crofting Register, held by the Registers of Scotland (RoS). The Crofting Register will be map-based and provide a definitive record of the extent of, and interest in land, within crofting tenure.

From 30 November 2013, most applications to the Crofting Commission require the applicant to register any changes to the holding on the RoS Crofting Register. Failure to do so will render the change null and void.

## DECROFTING

60. All decrofting applications – other than applications under section 17 or 18 of the Crofters (Scotland) Act 1955 (“Section 17 or 18 feus”) or in respect of the statutory house site and garden ground – are subject to the Commission’s discretion. The Crofters (Scotland) Act 1993, which was substantially amended by the Crofting Reform (Scotland) Act 2010, sets out the complicated rules which govern decrofting applications and the various factors that the Commission will take into account when determining applications. In all applications, other than the particular types of decrofting application set out above, the Commission will use its discretion to balance the legitimate interests of the applicant with the legislative factors to which it must have regard, including the general interest of the crofting community in the district and in particular the demand, if any, for a tenancy of the croft from persons who might reasonably be expected to obtain such a tenancy if the croft were offered for letting on the open market on the date when the Commission is considering the application.
61. The Commission will apply the legislation but will also consider the facts and circumstances of every individual application when exercising its discretion. The factors that must, in terms of crofting legislation, be considered by the Commission in exercising its regulatory functions include having regard to the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting and the desirability of supporting population retention in the crofting counties. The Commission will take account, as appropriate, of any objections received in response to public advertisement of the application when determining the application.
62. Where the stated purpose for decrofting is to use the land as **amenity land** to a dwellinghouse on or formerly on the croft, the Commission will not usually approve any applications in respect of which the amenity land and the decrofted statutory house site and garden ground (or, where relevant, the resumed area of the original dwellinghouse) exceed 0.15 hectares in total.
63. 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 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. Applications that are made only for the reason of taking the croft, or part of the croft, out of crofting tenure are unlikely to be approved.

The Commission may place conditions on any decrofting direction, including conditions that relate to the use of the land to be decrofted.

The Commission may modify any application in relation to which a decrofting direction is given as it considers appropriate.

64. The Commission will not normally decroft any grazing share which an applicant has title to and has included within a decrofting application. This is because the grazing right is regarded as part of a communal resource and no obvious purpose is served by its removal from crofting control. Applicants who have purchased the right to share in the common grazing as well as the croft land are advised to restrict any decrofting application to croft land only, and not grazing rights or any other rights (such as peat cutting rights) associated with the croft. When a crofter purchases his or her croft but not the right to graze in the common grazing, the Commission regards any such right as a separate and distinct deemed croft, and the right comprising the deemed croft shall be deemed to be held in tenancy until held otherwise.



## Decrofting – Croft House Site and Garden Grounds

65. The Act requires the Commission to make a decrofting direction where the application relates to the croft house site and it is satisfied that the extent of any garden ground within the site is appropriate for the reasonable enjoyment of the dwellinghouse as a residence. A site can only be a statutory house site and garden ground where there is an existing wind and watertight dwellinghouse on the croft. Sites on which houses are going to be built can only be decrofted under an application made under sections 24(3) and 25(1)(a).
66. **Policy:** The Commission will only approve applications where it is satisfied that the size of the area is acceptable (having regard, where appropriate, to the average size of house sites in the locality) and that adequate access to the croft remains. Account will also be taken of the size of the croft, the quality of the proposed area of land and its location within the croft.

## ASSIGNATION

67. **The Law:** A crofter must obtain the consent of the Commission to assign their croft, must notify the Commission as to where the proposed assignee would intend ordinarily to reside and must provide any other information requested by the Commission.
68. **Policy:** When considering applications to assign, the Commission will apply section 58A of the 1993 Act as amended and its policies on residency, land use and shared management. 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 or put it to a purposeful use which has section 5C(4) consent. The proposed assignee may live elsewhere pending the assignment, but the Commission will need to be satisfied that the assignee intends to fulfil the residency duty within a reasonable time, and may include as a condition that this duty is met within a specified period. The Commission will not generally approve an assignment where it has reason to believe that the proposed assignee will be absent from the croft or will otherwise fail to comply with a crofter's duties.
69. In considering applications to assign, the Commission may take into account the number of crofts which the proposed assignee already holds (as tenant or as owner-occupier crofter). The Commission's policy of promoting population retention and increased residency of crofts will not preclude multiple tenancies/occupation provided that the Commission is satisfied that this is in the wider interests of crofting and the crofting community.

## LETTING OR SUBLETTING OF A CROFT

70. **The Law:** An owner-occupier crofter must not let the croft, or a crofter sublet the croft, without the consent of the Commission. A tenant crofter may apply to sublet a croft for up to 10 years, and an owner-occupier crofter may apply for a short lease for the same period of time. Where a croft is subject to such a lease, responsibility to ensure duties are complied with remains with the crofter.
71. **Policy:** In considering applications, the Commission will apply its policies on residency, land use and shared management and it will take into account the demand for crofts in the area.
72. To ensure that all relevant information is considered in its decision making, where a proposed tenant, subtenant or short lease holder has other croft or agricultural land available, the Commission may take account of how that land is cultivated and maintained.

## DIVISION

73. **The Law:** Division of a croft requires the consent of the Commission. Division must result in the original croft forming two or more new crofts.
74. **Policy:** The Commission recognises that, in some circumstances, the division of crofts can further the aim of population retention and provide opportunities for new entrants to crofting.
75. The Crofting Commission will exercise its discretion to decide every application for division on its merits. It will consider the following factors, amongst others, in assessing the matters to which the Commission must have regard in terms of section 58A(7) of the 1993 Act:-
- the size of the new crofts to be created through division
  - the quality of the land of the new crofts to be created
  - the use(s) to which the new crofts will be put
  - the impact, where relevant, on the use of any associated share(s) in a common grazing.

Where a grazing share forms part of the croft, an application will not be considered competent unless it details what is intended for the share.

The Commission will apply its standard policy on access, to ensure that all new crofts have the required standard of access available.

The Commission will also, where appropriate, apply its policies on sustainability and sustainable development.

76. Where the Commission considers it necessary to divide a croft as part of the Enforcement of Duties process, these guidelines will not apply. This facility is available for a particular purpose, such as to enable a crofter in breach of their duties to retain their croft house.

## VACANT CROFTS

77. **The Law:** A landlord of a croft requires the approval of the Commission to let a croft or any part of it. Where a croft has been vacant for over a month, the Commission may give notice to the landlord requiring him to submit, within 2 months, proposals for re-letting the croft. A maximum of three proposed tenants may be submitted.
78. **Policy:** The Crofting Commission will work with crofting landlords and landowners and encourage them to re-let vacant crofts and to take action, where appropriate, to re-let crofts that are vacant as a result of a failure of succession. Where the Crofting Commission exercises its statutory powers to declare a croft to be vacant, it will work closely with the relevant landlord/landowner to encourage the landlord to re-let the croft.
79. The Commission recognises that previous purchases of crofts or parts of crofts may have led to different individuals owning different parts of the same croft. As a result, a number of croft owners or part croft owners do not have owner-occupier crofter status. To be an owner-occupier crofter it is necessary to own the whole of the croft. The croft itself remains a single unit despite there being a number of separate owners. The Commission's responsibility is towards maintaining the integrity of the croft and, as such, an application to let a part of a croft will not normally be approved unless there will be demonstrable benefit to crofting in that locality from doing so.
80. The Commission may also take into account how a proposed tenant's land is currently cultivated and maintained in situations where such individuals already have access to other croft or agricultural land. In such circumstances, the Commission will also consider the sustainable development of that crofting community.
81. Where the landlord fails to re-let the croft and the Commission takes over the letting process, it will adopt its own letting requirements. In so doing, the Commission will seek to ensure that any tenant has the requisite skills and attributes to manage a croft. It is also important that the tenant will normally reside within the specific crofting community and contribute to the management of its resources and to the sustainability of that crofting community. The Commission will endeavour to introduce suitable new entrants to crofting and, in doing so, help to retain and sustain populations in crofting areas.

## NEW CROFTS

82. **The Law:** Following the application of an owner, the Commission can constitute land in the crofting counties or another specifically designated area as croft land. The Commission can also accept applications from a tenant of a small landholding in an area designated for crofting tenure.
83. **Policy:** The Commission will give particular consideration to the creation of crofting opportunities through the creation of new crofts. The Commission will seek to ensure that the creation of new crofts leads to the retention or development of population and the effective use of land for recognised crofting purposes. Account will be taken as to whether new common grazing will also be required and become available. Consideration will also be given to the creation of woodland crofts in appropriate locations.
84. The Commission will take account of the public interest and the interests of any crofting community in the locality of the land when assessing applications. It will also consider any likely social or economic benefits which may result from creating new crofts.

85. Confirmation of unrestricted access at all times to any proposed new croft will need to be provided. Such access must allow for any agricultural or other machinery necessary for the cultivation and maintenance of a croft.

### **ENLARGEMENT OF CROFTS**

86. **Law:** The owner of land which is neither a croft nor forms part of a croft can agree to grant a tenancy of that land to a crofter. An application must be made to the Commission for a direction that the land will form part of that crofter's croft. The Commission may give its consent if satisfied that it will benefit the croft or the crofter and that any enlarged croft will not substantially exceed 30 hectares. There is also a separate provision by which a croft may be enlarged by existing croft land or other crofting rights being let as enlargement to a croft.
87. **Policy:** The Commission will give favourable consideration to the enlargement of crofts with non-croft land which will assist and sustain croft enterprises. In doing so, the Commission will take account of the sustainability of the crofting community and the interests of the public at large. Any applications that may result in the enlarged croft exceeding 30 hectares will be considered in the context of the individual circumstances and any implications for crofting in that locality. The Commission will also apply its general policies on access and compliance with crofters' duties.

### **EXCHANGE OF CROFTS OR PARTS OF CROFTS**

88. **Law:** A crofter may not exchange his croft or part of it without the consent of the landlord and the Commission. Any such application will be determined in accordance with section 58A of the 1993 Act as amended and the Policy Plan.
89. **Policy:** The Commission will wish to ensure that any exchanges of croft land serve the interest of crofting and do not unnecessarily restrict a croft's capacity to be cultivated and maintained or put to another purposeful use. Any exchange of croft land must ensure that access to the respective crofts remains uncompromised. Applicants should ensure that access routes or areas are clearly and unambiguously shown on any application, and provide evidence that this reflects the actual arrangements. Responsibility for issues such as fairness of amounts of land exchanged and transfer values are for the individual parties involved and not for the Commission as crofting regulator. However, in consenting to the exchange of croft land, the Commission will need to be satisfied that any exchange of land does not compromise the integrity of any of the crofts involved.

### **COMMON GRAZING**

90. The Commission regards the shared management and productive use of the common grazing to be essential for the sustainability of crofting. To that end it will promote the establishment of effective and active grazing committees for all common grazing. Properly constituted grazing committees with appropriate regulations are, in the Commission's view, the most effective way of ensuring purposeful use of the common grazing and they are the most effective safeguard against misuse.

91. **The Law:** The Act provides for the establishment of grazing committees to manage the common grazing and the committees have an obligation to produce regulations which the Commission must approve. The Commission has powers to remove a committee or member(s) thereof from office if they fail to carry out their duties properly. Likewise the Commission may suspend and ultimately terminate an individual's share if in breach of the grazing regulations. Each committee must also submit a report every 5 years to the Commission on the condition of the grazing and crofting (including crofts) in their area.
92. **Policy:** The Commission will work with crofting communities to promote the establishment of effective grazing committees and will actively support established committees. The Commission may, in the event that a grazing committee is not appointed, move to appoint a committee or a grazing constable to ensure the proper management of the common grazing. If a committee fails to submit regulations for approval, the Commission may set regulations that will be binding on the users of the common grazing. The Commission recognises the disquiet among grazing committees over the 5-year reporting duty, and will seek ways of ensuring that this requirement is neither onerous nor unfair, but can be used as a tool to support common grazing and to inform policy. The Commission considers the reporting duty to be an opportunity for crofters, through their grazing committee, to contribute positively to safeguarding crofting for future generations.

#### **USE OF COMMON GRAZING FOR OTHER PURPOSES**

93. **The Law:** Where crofters sharing in a common grazing vote in favour of using part of the common grazing for a purpose other than grazing, woodland or other statutory rights, the grazing committee or constable shall apply to the Commission for its approval.
94. Where a grazing committee seeks the approval of the Crofting Commission for a proposal to the use the common grazing for other purposes under section 50B, the grazing committee will have to supply evidence that the proposed use must not be detrimental to the use(s) being made of other parts of the common grazing or the interests of the owner. Where the Commission provides such approval, it will also issue a disclaimer that the Commission approval extends only to compliance by the grazing committee with the terms of section 50B(2) of the 1993 Act. The disclaimer will further provide that the Commission, in giving its approval under section 50B, is **not** approving the particular use(s) to which the common grazing will be put, nor is the Commission in any way confirming or warranting that crofter(s) and/or the grazing committee are legally entitled to use the common grazing for the proposed other purpose(s).

#### **APPORTIONMENT**

95. **The Law:** Following application from a crofter who holds a right in a common grazing, and following consultation with the grazing committee, the Commission may apportion a part of a common grazing for the exclusive use of that crofter.
96. **Policy:**
- Every apportionment application will be decided on its individual merits
  - The Commission will take fully into account any comments made by the applicant
  - The Commission has no discretion as to whether it consults with the grazing committee – it must and will do so

- In the absence of any comment(s) in response to the public advertisement, the Commission will assume that it will have no adverse impact on other crofters
- The Commission will usually have to be satisfied that the applicant will cultivate the apportionment or use it for a purposeful use (subject to obtaining any consent)
- The Commission will consider any evidence that the apportionment will adversely affect either (i) the interests of the other sharing crofters or (ii) that part of the common grazing remaining unapportioned
- The Commission will usually exercise its discretion to reduce, as appropriate, the applicant's souming in the common grazing if the application is granted
- The Commission will usually specify conditions particularly in relation to fencing, unless there is good reason not to impose such a condition
- The Commission may apportion an area of land to an individual crofter for a fixed period of time or provide that the apportionment will be subject to review consistent with any planning permission that has been granted for any particular development on the land to be apportioned
- The Commission may use its discretion where the area applied for has development value to ensure that the interests of other crofters sharing in the grazing are not adversely affected.

In affording the committee and/or the crofters sharing (in the absence of a committee) the opportunity to make comments, the Commission will usually assume that in the absence of any reasonable adverse comments from the committee and/or the crofters, the apportionment will not adversely affect the interests of the other crofters. Even in the absence of such comment, however, the Commission may find that the apportionment applied for will adversely affect the common grazing where there are good reasons for such a finding.

## **CROFTER FORESTRY**

97. **Law:** A grazing committee may apply for the approval of the Commission and the consent of the owner to plant trees on any part of the common grazing. Any such application will be determined in accordance with section 58A of the 1993 Act and the Policy Plan.
98. Prior to approving any application, the Commission will consult with the owner, the crofters who share in the common grazing and any other person that the Commission considers has an interest in the proposal.
99. **Policy:** The Commission recognises that crofter forestry may provide an alternative opportunity and enterprise for shareholders in common grazing. The Commission may approve applications that are compatible with ongoing livestock management and the sustainability of crofting in the locality. The Commission will wish to ensure that access to other parts of the common grazing is maintained.

## COMPLAINTS OF BREACH OF STATUTORY CONDITIONS

100. **The Law:** A landlord or any member of the crofting community may raise a complaint about a breach of statutory conditions with the Commission, other than a failure to pay the croft rent.
101. **Policy:** The Commission may investigate valid complaints. In deciding whether to proceed, the Commission will consider the nature of the complaint and its impact on the specific croft and the wider crofting community. Landlords also have the opportunity to apply directly to the Land Court where a crofter may have broken a statutory condition or may not be complying with a crofter's duty.

## RESUMPTION OF CROFT OR PART OF CROFT OR OF COMMON GRAZING

102. **Law:** A landlord must notify the Commission when applying to resume a croft or part of a croft for a reasonable purpose. **Responsibility for resumption of croft land or common grazing land lies with the Scottish Land Court and not with the Crofting Commission.** The Commission may support or oppose the application to the **Scottish Land Court** as it considers appropriate.
103. **Policy:** The Commission considers that it has an important role to play in assisting the Scottish Land Court, where appropriate, with the determination of resumption applications in respect of which the Commission has concerns about the size, extent and/or stated purpose of the proposed resumption. It will employ the same principles as guides its approach to decrofting and, in particular, give specific consideration where applications for a house site and amenity land extends to more than 0.15 hectare.

## RE-ORGANISATION

104. Re-organising crofting is one of the general functions of the Commission. While it is a function that has proven problematic in the past and has been seldom used in recent times, it may still be used where appropriate for the benefit of crofting townships.
105. **Law:** The Commission may prepare a re-organisation scheme for the preservation or the better development of a crofting township. The Commission may do this of its own accord or following representation from, and consultation with, the tenant of a croft, the landlord of a croft in the township or the grazing committee.
106. **Policy:** The Crofting Commission is constrained by its resources in the extent to which it is able to re-organise crofting townships. Where there is support from the crofting community and the landlord/owner, where there are good reasons for a re-organisation, and where resources allow, the Commission will assist such crofting communities in the re-organisation of a township. The Commission recognises that the complexity of the current legislation is also a constraint to re-organisation, and will work with stakeholders and partners for the simplification of the relevant legislation.

## WORKING WITH OTHERS

107. Whilst the primary function of the Commission is to regulate crofting, we recognise that regulation is only one tool to help support, promote and underpin crofting.
108. **The Law:** As well as regulating and re-organising crofting, the Crofting Acts charge the Commission with the general functions of promoting the interests of crofting and keeping under review matters relating to crofting.
109. In exercising these functions, the Commission has a duty to collaborate, so far as its powers and duties allow, with any body or person in carrying out any measures for the economic development and social improvement of the crofting counties. We also have the duty to advise Scottish Ministers on any matter relating to crofts and crofting conditions which Ministers refer to us or on which we think it is fit to submit advice.
110. The 2010 Act requires the Commission's Annual Report to include an assessment of the issues affecting crofting communities and the contribution crofting has made to sustainable development, and to consult Highlands & Islands Enterprise and the Local Authorities in crofting areas before making the report.
111. **Policy:** The Commission will seek to work closely with key agencies and organisations to promote a joined-up approach to the support and promotion of crofting. In particular we will want to align, as far as possible, our regulatory actions with developments and initiatives by Highlands & Islands Enterprise, Local Authorities and others in crofting areas.
112. The Commission is a non-departmental public body and will therefore conduct its business in an open, fair and reasonable manner while remaining objective in its decision-making process.

## GEOGRAPHIC INITIATIVES (GEO-PILOTS)

113. The Commission will also focus its work in particular geographic areas in co-operation with communities, estates and partner agencies to deliver a range of benefits to selected areas. In doing so, the Commission seeks to make effective use of its resources and also ensure that its full range of regulatory powers are used to best effect. In this way, the Commission considers it can demonstrate the value of crofting regulation when administered in conjunction with the support of other agencies. This collaborative public sector approach is aimed at facilitating the better use of public sector capacity and resource and assisting communities to achieve heightened resilience. It is intended that this will better realise real positive and lasting change for those areas.
114. In working with others, the Crofting Commission will seek to develop good examples of regulatory practice that can be replicated, over time, in other crofting areas. In particular, the Commission considers that there is opportunity to work closely with crofting estates in public ownership to provide such a model of good regulatory practice. To this effect, the Crofting Commission will engage with Scottish Government estates (and, where appropriate, Forestry Commission estates) in order to focus the discharge of its regulatory functions within these estates.

The Crofting Commission recognises that developing strong working relationships with landowners and landlords will assist with the proper regulation, re-organising and promoting of crofting.



## INTESTATE SUCCESSION

115. The Crofting Commission will work initially with Scottish Government estates to seek a resolution to failures of succession due to intestacy. **The Commission encourages crofters to make suitable provision for croft succession (and succession to any grazing shares(s)) by means of a Will.** Where resources allow, the Commission will work with other landlords/landowners to resolve such failures of succession.

## PLANNING

116. The Crofting Commission will engage with planning authorities within the Crofting Counties when development plans are being developed. The Commission recognises that it has crofting expertise that can make an important contribution to development plans. The Commission will also work with planning authorities to ensure that it, as a statutory consultee, it is notified of all planning applications on croft land. The Commission, as a statutory consultee in a planning application concerning croft land, will respond to individual planning applications where it is appropriate to do so and where it has concerns or specific concerns have been raised by the planning authority regarding (among other issues) the:-

- location of any development site within a croft
- impact of proposed development on the croft
- impact of any proposed access to the proposed development on the croft.

In most cases, the Commission's comments will be that any proposed development uses the least possible amount of productive croft land. The Commission will also provide general guidance to planning authorities in respect of any development on croft land.

## PUBLIC INTEREST

117. Where, during the course of processing a regulatory application, evidence or information emerges that the decision may impact (either positively or negatively) upon the interest of the public in any material way, the Commission will take such impact into account and will balance any such impact with the other factors it must consider in terms of section 58A(7) of the 1993 Act. Where no evidence of information emerges as to a possible impact upon the interest of the public, the Commission will normally assume that there is no material impact. Where the planning authority has provided planning permission for any use of the land which is the subject of the application, the Commission will generally assume that the planning authority has taken the interest of the public into account unless there is good reason not to make such an assumption. Nevertheless, the Commission has discretion to refuse a decrofting application in terms of section 25(1A) of the 1993 Act even where planning permission has been granted for a development on the area that is the subject of the decrofting application.

## SUSTAINABILITY

118. The Crofting Commission will take a long-term view of crofting and the crofting community when discharging its regulatory and executive functions. The Crofting Commission recognises that it has limited powers to deliver sustainable development, even within crofting communities, but will work with other stakeholders and partners in order to assist with Scottish Government sustainable development objectives.

119. A long-term view is a key concept in the sustainability of crofting and sustainable development of the crofting community. In discharging its functions, the Commission will consider the impact of changes on future generations. The Crofting Commission will exercise its discretion to balance the interests of individuals (and enterprises which will support and sustain them) and the interests of the crofting community. The Crofting Commission will use this discretion in the discharge of its regulatory functions to assist crofters and crofting communities, where appropriate, in diversification activities.
120. The Commission will also work, insofar as it falls within its statutory remit, with partners and stakeholders to develop land use strategies and encourage biodiversity on croft land that is protected and/or subject to nature conservation designations.

## PART 3: POLICY ON INTERPRETATION OF KEY WORDS

### Introduction

When making decisions, the Commission has regard to the legislation and to its own policies covered in Parts 1 and 2 of this Plan. In addition, there are a number of words and phrases referred to in legislation and policies which the Commission uses on a daily basis and, in doing so, applies the following interpretations:

Term or Phrase	Definition	Source
Constituting Landlord	A constituting landlord is the owner of the land at the time it was constituted as a croft under the provisions to create new crofts; or such an owner's successor in title.	Sections 3A and 19B (6) of the Crofters (Scotland) Act 1993 etc
Croft	A unit of land subject to the Crofting Acts and recorded in the Commission's Register of Crofts.	Section 3 of the Crofters (Scotland) Act 1993 Crofting Commission
Crofting Community	All the persons who (either or both): (a) occupy crofts within a township which consists of two or more crofts registered with the Commission; (b) hold shares in a common grazing associated with that township.	Section 61 of the Crofters (Scotland) Act 1993
Frivolous	Comments and/or information which is insubstantial and unworthy of serious consideration.	Section 26A (5) of the Crofters (Scotland) Act 1993 Definition from the 'Guidance Note on the consideration of Objections' by the Casework Group: December 2010
Good reason	A good reason is what the Commission requires to identify in order to consent to a crofter being ordinarily resident more than 32 kilometres from the croft or for not enforcing a required crofting duty. A variety of possible 'good reasons' are indicated within the respective individual policies. These are not necessarily exhaustive and will be dependent upon individual circumstances in the context of individual policies. It is for the Commission to decide if any reason submitted is a 'good reason'.	Crofting Commission
Hearing	A meeting organised by the Commission as part of the decision making process on a regulatory application. The purpose of the hearing, which may be held in public, is to allow 'involved parties' who have notified the Commission in advance, to present evidence and allow that evidence to be tested by the Chair of the meeting. Hearings are heard by either a single Commissioner or by a Quorum of Commissioners. <b>The Commission is only obliged to hold a hearing in very limited circumstances, namely certain decrofting applications and contraventions of grazing regulations.</b>	General

Term or Phrase	Definition	Source
Involved or Interested Party	Anyone or anybody with whom the Commission is <b>required</b> to consult in the course of making a regulatory decision. Any applicant or entitled objector to an application to the Commission. The Commission will generally <b>only</b> consult those who are defined in the legislation as involved or interested parties, but may consider consulting others it deems appropriate	Crofting Commission
Misuse	Where a crofter wilfully and knowingly uses the croft otherwise than to cultivate it or put it to an approved purposeful use; fails to cultivate it; or fails to put it to any such purposeful use. Misuse can therefore be by active management or omission.	Section 5B(2) of the Crofters (Scotland) Act 1993
Neglect	A crofter neglects a croft where it is not managed so as to meet the standards of Good Agricultural and Environmental Condition referred to in Regulation 4 of, and the schedule to, the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004 No. 518).	Section 5B(3) of the Crofters (Scotland) Act 1993
Opportunity to be Heard	This is different from a Hearing and occurs where there is specific mention in the Act to the opportunity to make representation. There are two specific instances where this occurs: (1) where the Commission proposes to terminate a tenancy in an Intestacy situation (section 11(4)); and (2) where the Commission notifies a crofter of a suspected breach of duty (section 26C). On both occasions the relevant party must have the opportunity to make representation in person.	Section 58 of the Crofters (Scotland) Act 1993
Residency	Crofters and owner-occupier crofters have an obligation to be ordinarily resident on or within 32 kilometres of their croft.	Crofting Commission

Term or Phrase	Definition	Source
Ordinarily Resident	<p>Ordinarily resident is the term used in the context of a crofter's residency duty. A crofter is required to be ordinarily resident on or within 32 kilometres of his or her croft. The house within this distance is expected to be the main residence, but it is accepted that it may be possible to have more than one place of ordinary residence. There is also a requirement to look at the term in the context of crofting legislation. In the absence of case law, the Commission may consider the following:-</p> <ul style="list-style-type: none"> <li>• Is there a degree of settled purpose?</li> <li>• Is there a degree of continuity?</li> <li>• Is the residence part of the usual order of the crofter's life?</li> <li>• Can absences from the croft be described as temporary or accidental?</li> </ul> <p>The Commission will interpret this from the starting point of 'settled purpose': that the person concerned has an established presence on the croft – which would normally be the main residence; able to work the croft properly and regularly by him/herself; and has a recognised and positive impact on the crofting community. Any long periods of absence would require consent to be absent and meeting the conditions of that consent.</p>	Crofting Commission
Owner-Occupier Crofter	A person will be recognised as an owner-occupier crofter if: they are owner of a croft and they were either the tenant crofter who exercised the right to buy the croft or a crofter's nominee or an individual who purchased the croft from the constituting landlord (or a successor in title to these persons). In addition, the croft must not have been let to any person as a croft since it was acquired from the landlord or constituted as a croft.	<p>Section 19B(2) to (4) of the Crofters (Scotland) Act 1993</p> <p>The Commission is aware that it was Parliament's intention that owner-occupier crofters should have the same duties and responsibilities as crofters and will be guided by that principle in all of its policies.</p>
Public interest	<p>Crofting legislation does not define 'public interest', although it contains various references to it. It is therefore for the Commission to be satisfied that, where required on a case-by-case basis, the public interest test is met.</p> <p>The Commission has out its policy consideration of public interest at paragraph 120 of this Plan.</p>	
Purposeful use	Purposeful use means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner; or the use of adjacent land. <b>For croft tenants, purposeful use requires consent.</b>	Sections 5(8) <b>B</b> and 5 <b>C</b> and 19 <b>C</b> of the Crofters (Scotland) Act 1993

Term or Phrase	Definition	Source
Reasonable purpose	Reasonable purpose must have relation to the good of the croft or of the estate or to the public interest or the interests of the crofting community in the locality of the croft <b>and that the extent of the land to which the application relates is not excessive in relation to that purpose.</b> Reasonable purpose includes <b>(but is not limited to):</b> the building of dwellings; small allotments; harbours, piers, boat shelters or other like buildings; churches or other places of worship; schools; halls or community centres; planting; roads practicable for vehicular traffic from the croft or township to the public road or to the seashore; the generation of energy; any other purpose likely to provide employment for crofters and others in the locality. Reasonable purpose also includes the protection of an ancient monument or other object of historical or archaeological interest from injury or destruction.	Section 20 of the Crofters (Scotland) Act 1993
Shared Management	Most land held under crofting tenure is managed in common, whether as part of a common grazing or as runrig. Over the years, arrangements for the shared management of these areas have deteriorated and the Commission will seek to promote better shared management of common land in the future. Good shared management of common land helps to foster stronger communities and delivers economic benefits through reducing the likelihood of these areas being abandoned or overgrown. This also delivers environmental benefits as some wildlife depends on certain levels of grazing.	Crofting Commission
Statutory Conditions	Every croft tenancy is subject to the statutory conditions set out in Schedule 2 of the Act. These include conditions on payment of rent; provision of fixed equipment; maintenance of buildings and croft; division and subletting of the croft; house building; access to the croft for the landlord for specified purposes; the sale of liquor; and becoming insolvent. <b>The landlord has a right to take action in the event that any of the statutory conditions are breached by the tenant.</b>	Section 5 and Schedule 2 of the Crofters (Scotland) Act 1993
Sustainable Development	Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their needs.	Our Common Future – Brundtland Report 1987
Use of crofts	Land is one of Scotland’s most valuable natural resources and it is important that it is fully utilised in order to ensure that it contributes fully to the Government’s goal of sustainable economic growth. The system of crofting requires that crofts are either cultivated or put to another purposeful use, which again makes it a useful vehicle for ensuring our land resource makes a full contribution to economic growth.	Crofting Commission

Term or Phrase	Definition	Source
Vacant Croft	<p>A croft which has no tenant or sub-tenant:</p> <p>“... a croft shall be taken to be vacant notwithstanding that it is occupied, if it is occupied otherwise than by:</p> <p>(a) the tenant of the croft;</p> <p>(b) the owner-occupier crofter of the croft;</p> <p>(c) the subtenant of a sublet to which section 27 applies; or</p> <p>(d) the tenant of a let to which section 29A applies”.</p>	Section 23(10) of the Crofters (Scotland) Act 1993
Valid objection	<p>An objection by a valid objector which complies with s.58A (16).</p> <p>Any timeously received objection from a valid objector, the substance of which must be material and worthy of consideration in reaching our decision.</p>	Section 58A (16) of the Crofters (Scotland) Act 1993
Valid objector	<p>A person entitled to object under s. 58A (4)</p> <p>Generally the Commission would consider those people falling within the definition of ‘crofting community’ at section 61(1) of the Act; the landlord of the croft; the owner of the common grazing (where apportionments are concerned) and in decrofting applications, those people who have expressed an interest in obtaining the tenancy of the land to be valid objectors. Any other person the Commission consider has a relevant interest in the application is also a category of valid objector. The Commission’s policy is to only accept objections from those who are explicitly defined in the legislation.</p>	Section 58A (4) of the Crofters (Scotland) Act 1993
Vexatious	<p>Comments and/or information which is deliberately provocative or offensive or made with the intention merely of causing trouble or annoyance for the applicant and/any other party to the proposed transaction.</p>	<p>Section 26A (5) of the Crofters (Scotland) Act 1993</p> <p>Definition from the ‘Guidance Note on the consideration of Objections’ by the Casework Group: December 2010</p>