

Scottish Crofting Federation Response to Registers of Scotland Crofting Register Application Forms Consultation

First Registration

General Comments

- A. Conjoining the two processes of (a) application and (b) registration is likely to cause confusion. The best approach would be for the First Registration of a croft to be seen as a standalone process. It is unrelated to any other activity, even the taking of a “step” that requires that first registration to take place. Whilst the need of registration (or the need for a registration application) might prevent other activities proceeding, the lack of a step or trigger does not prevent or delay the possibility of registration (i.e. voluntary first registration).
- B. It is not clear why voluntary first registration is not identified on Form A or why some trigger events (decrofting, resumption and apportionment) are mentioned on Form A and others are not.
- C. The Creation of a new croft will result in a croft being entered in the Register of Crofts maintained by the Crofting Commission. The information about land neighbouring a new croft will have to be verified by the Crofting Commission. This will have the effect of announcing to neighbours that a croft is being created.
- D. The information about land neighbouring an owner-occupied croft, the ownership of which is about to be transferred, will have to be verified by the Crofting Commission. This will have the effect of announcing to neighbours that an owner-occupied croft is being first registered.
- E. All crofts are already entered (or in the case of a new croft about to be entered) in the Register of Crofts maintained by the Crofting Commission. The starting point for all crofts at first registration must be that entry in the Register of Crofts. Form A – Part 2 (Information required for the Crofting Commission to process the Application) is properly a form for the Commission. It is for the Commission to satisfy themselves that the boundaries are verified.
- F. *“Incomplete forms cannot be considered and will be returned.”* It would be wholly unreasonable for the application for first registration to be refused or blocked by the Crofting Commission because the Applicant has no access to the information about neighbouring land.

1. Are we asking appropriate questions on the application forms?

FORM A

Application for First Registration of Croft

Part 1 – Information required for the Crofting Register

An indication of any “Trigger Event” would be more logically placed at the beginning of Part 1.

If the Application is for voluntary First Registration this should be identified at the beginning of Part 1 or on a separate form (e.g. new Form H – multiple application for members of communities to apply together to register a crofting community plan voluntarily, attracting community discount).

1. The Croft Description

Croft Name, Township: Parish.

This makes no reference to the fact that the croft is already entered (or about to be entered) in the Register of Crofts maintained by the Crofting Commission.[1993 Act, s.41]

Unless there is good reason for a change of name, it is the name of the croft as registered with the Crofting Commission that should be inserted here. (If it is intended that the name so entered should be used for the croft description then the form should say so.)

The present requirement for the information in the Register of Crofts is the name and the location of the croft.[s.41(2)(a)] "Parish" is not used in the statute nor does it appear to be used as such in the Register of Crofts, although it appears on some forms and is indeed now understood to be used by the Crofting Commission in all cases.

There is also a registered number for each croft (and there was formerly a croft file number) allocated by the Crofters Commission to each croft in the Register of Crofts. Are either of these numbers to be used (or ignored)?

Extent of Croft

Plan of Croft – This is referred to in Note 1 but where is this referred to in Form A? Only Part 2 Q6.

If the plan is to be checked against records held by the Crofting Commission, this suggests that the Commission has satisfactory records of boundaries. It does not. This should be clarified in Note 1.

A separate Guidance Note should be provided explaining how to obtain an extract ordnance map from the Keeper.

The croft will consist of croft land and may include the site of the dwellinghouse on or pertaining to the croft. It should be made clear that (unless or until decrofted) the croft includes both.

There is a problem that, when they were introduced in 1976, the purchase provisions had been changed from the original intention of crofter-ownership to permitting (or even encouraging) part purchase. There should be no presumption that where a croft purchase has taken place, the whole croft was included. (Sometimes crofts were purchased to existing fences only and not to historical boundaries.) Therefore there should be clear warning to everyone about this in Note 1 and that care should be taken when marking the boundaries of the (whole) croft for first registration.

2. Name & Address of Tenant

The box "Street name and Town/City" is inappropriate for the majority of croft tenants who reside in rural locations. This should be changed.

The response should be singular or it may encourage tenant crofter applicants to believe they can extend their tenancy to include their spouse or partner. One space for the tenant will suffice (with note re additional information regarding joint tenancies).

It should be recognised that the number of cases where there is more than one tenant of a croft (i.e. joint tenancies) is insignificant (and that no new joint tenancies can be created).

Note 2 should say: In the few cases where there are joint tenants there should be inserted both names and addresses (using Section 6 for additional information).

3. Name & Address of Owner-occupier(s)

It is believed that the majority of owner occupiers are individuals. The provision of five spaces is excessive. Two will suffice (with note re additional information).

4. Name & Address of Landlord(s)

It is believed that the majority of landlords are also individuals. The provision of five spaces is excessive. Two will suffice (with note re additional information).

The following will cause difficulties to some tenants:

'Note 4: A landlord is a person who owns and collects rent for the croft. If no person collects rent then insert "None".'

Crofters (Scotland) Act 1993, s.61(1) defines "landlord" as meaning—

(a) in relation to a croft other than one registered in the Crofting Register, any person for the time being entitled to receive the rents and profits, or to take possession of, the croft.

The actual collection of rent is therefore not crucial. Croft rents are often small and not everyone entitled to collect a rent does so. Some landlords remain hidden for years. But they do not avoid the definition.

We are concerned that a tenant might in every case be expected to know the details of his landlord(s) when this information is not always available to a tenant. There has been little or no control over recording landownership (or landlordship) in the Register of Crofts. Land can be sold without reference to croft boundaries. It would be unreasonable to expect a crofter tenant to search the records.

5. Name & Address of Owner(s)

The definition in Note 5 will cause difficulties.

Crofters(Scotland) Act 1993, s.61(1) defines "landlord" as above.

An "owner of the land on which the croft is situated" [2010 Act, s.4(3)(a)] has long been understood to be the owner of croft land without a tenant, i.e. the landlord of a vacant croft.

The truth would appear to be that an "owner" is a person who owns the croft land and does not meet the definition of an owner-occupier crofter but is not prepared to accept he is the landlord of a vacant croft or is excluded by the terms of his title.

Whilst it is acknowledged there is a the possibility of an unregistered croft being registered on a voluntary basis by the owner(s) of the land, it should be made clear whether this person/these persons intend(s) to become (a) the owner-occupier or (b) the landlord of a vacant croft. There does not appear to be a third alternative of "owner of the land on which the croft is situated". This alternative needs to be explained.

Although the point is taken that the position described in Note 5 can occur, it is unusual. A situation which results in multiple owners being entered on the form and applying for first registration together seems remote.

Another situation will occur when the site of the dwellinghouse has been purchased, the title taken in the joint names of the crofter and spouse, but the site has not been decrofted.

6. Additional Information

No comment

7. Common Grazing/Runrig (This should read Common Grazing/ Land held Runrig)

“Runrig” should be replaced by Land held Runrig (as in the Act). This also applies to Note 7. Also any reference to the Common Grazing/Runrig Number can only apply if the Common Grazing/ Land held Runrig is already known to be registered.

8. Is the Croft being registered subject to: Decrofting, Resumption or Apportionment?

The question does not directly identify an application that is being made voluntarily. The indication of any “Trigger Event” would be better placed at the beginning of Form A Part 1.

This question has caused some concern for it appears to seek to make the form serve a dual function: (1) to identify the extent of the croft prior to any change and (2) to take account of any change which may occur in that extent. The real function of Form A is to identify the croft as a “first registered croft”. This means a croft mentioned in section 5(2) of the 2010 Act. The Guidance states that the fee referred to on the form covers first registration and the subsequent updating of the Crofting Register, that is where the Crofting Commission goes on to give consent or approval to one of the events. There is a lengthy list of possible events

The purpose of this question appears to be to identify whether there is an initial taking of a step or “trigger” event which requires the application to be made. However it only asks about decrofting, resumption or apportionment. It does not ask about taking other “steps” or other triggers. Why?

The application for first registration will be the same whether or not there is any contemporaneous decrofting, resumption or apportionment application. It is for the Commission or the Land Court, when entertaining an application for taking a step, to satisfy themselves (or be satisfied) that an application for first registration of the croft is submitted timeously. All that is required is an appropriate receipt proving the application for first registration of the croft has been submitted. It does not seem necessary that the Crofting Register knows that a contemporaneous application has been made or to whom. If the taking of a step result in a trigger event, the Land Court of the Crofting Commission must inform the Crofting Register.

We suspect that it will be true in every case where there is a croft, it is intended to register the croft in the Crofting Register showing the extent as it is before any application for decrofting, resumption or apportionment (or taking another step) proceeds. If that is the case, the question (if required) should read, “8. Which trigger requires this application for the Croft to be registered?”

Where it is decrofting, resumption or apportionment (or taking another step), in each case the application will require to be submitted before the proposed process can proceed. Therefore the date of the application for first registration will have to be the date of the identification of the boundaries and that will be before any decrofting, resumption or apportionment or other change is decided

It is therefore confusing that Note 8 refers only to decrofting, resumption or apportionment.

Decrofting of a whole vacant croft under s.24(2) cannot be carried out [see s.24(2ZA)] (a) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which notice under that subsection is given; and (b) until such an application is submitted. (This notice is where a landlord wishes to decroft a whole croft where the tenancy has been terminated.)

Decrofting of a whole vacant croft or part thereof under s.24(3) cannot be carried out [see s.24(3B)] (a) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application for the direction is made; and (b) need not, during that 6 month period, be considered until an application for first registration of the croft is submitted.

[s.25(1)] This might be (a) for or in connection with some reasonable purpose; or (b) in respect of a part of a croft, which consists only of the site of the dwelling-house on or pertaining to the croft after or prior to purchase; or (c) in respect of a croft the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act.

Decrofting of the site of the dwellinghouse (prior to purchase) under s.25(4) requires the same procedure as s.24(3) above. But such decrofting only takes effect after the title is acquired (and only if such acquisition takes place within five years). How is this to be dealt with when the trigger event is delayed by such subsequent acquisition?

Resumption of a croft or part thereof when tenanted under s. 20(1) cannot be carried out by the Land Court [see s.20(1ZA)] (a) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application to resume the croft was made; and (b) need not, during that 6 month period, be considered until an application for first registration of the croft is submitted.

[s.20(1)] This must be for a reasonable purpose.

Apportionment of a part of a common grazing for the exclusive use of a crofter holding a right in a common grazing under s.52(4) cannot be carried out (a) unless an application for first registration of the croft is submitted before the expiry of the period of 6 months beginning with the date on which the application was made; (b) need not, during that 6 month period, be considered until an application for first registration of the croft is submitted.

It is not clear what happens when the applicant does not hold a croft but only a share in the common grazing and applies for an apportionment for his individual use.

Other “taking of steps” possibly resulting in “Trigger Events” related to the need for first registration are:

Enlargement of croft (see s.4(3) of 199 Act)

Exchange of crofts or parts of crofts (see s.4A(2A))

Assignment (see s.8(1B))

Division of croft (see s.9(1A))

Division of owner-occupier croft (see s.19D(3))

Vacant croft (see s.23(3ZA))

Reletting croft (see s.23(5ZD) & (5D))

Division of croft before taking action (see s.26G(3))

Owner-occupier crofters; letting procedure (see s.26J(5) & (9))

Letting of owner-occupied croft (see s.29A(2))
Apportionment of common grazings (see s.52(5A))

9. Authorisation

No comment

FORM A – Part 2

Application for First Registration of Croft

Part 2 – Information required for the Crofting Commission to process the Application

In fact the need for this information is in respect only of common boundaries but a Note might help to put the Applicant (and the Crofting Commission) on guard regarding land which might be excluded from crofting in future if not recorded (see whole croft concerns in Form A Part 1 above).

1. Application Details

This has a better configuration of address details

2. Agent Details

An agent's reference would be useful.

3. Name and Address of Crofters/Non Crofters who share a common boundary

The information sought relates to the identification of the boundaries of the croft and to the owners or occupiers of neighbouring land. It does not identify which of the shared boundaries is involved in each case. Is this intentional? Should there be a Note about this?

This presumes that an Applicant knows or can identify the person who controls neighbouring land (together with their postal address). The Note should explain that it is understood that such information may not be available. It is not reasonable to expect every Applicant to be able to provide this information.

Who is responsible for providing this information when it is not available to the Applicant? How is it to be discovered? And why is this information included in the Registration form? Is an Applicant to be penalised if he cannot identify the ownership of non-crofting neighbouring ground? It would appear that this is a matter for the Crofting Commission (and not the Crofting Register). Guidance is required.

4. Additional Information

No comment

5. Fee

This seems that this can only refer to the Application for First Registration. At Annex A, the General Notes (p.8) state that the fee referred to on the form covers first registration and the subsequent updating of the Crofting Register if the Crofting Commission has given consent or approval to one of the events. There is a lengthy list of possible steps, but these steps are all different and will have to have their fees fixed separately, some for the Land Court and some for the Crofting Commission. Different steps will have different application forms and distances the taking of steps from the first registration process.

There is no need for a subsequent application following consent or approval by the Commission. Is there any need for a subsequent application where there has been a resumption order by the Land Court?

6. Information Submitted in Support of the Application

This should only refer to the Application for First Registration and should not include reference to the separate evidence regarding the application for decrofting, resumption or apportionment.

7. Authorisation

No comment

8. Direct Debit/Credit Card Mandate Form if required

No comment

FORM B

Application for Registration of a subsequent event to a registered Croft

Form B Part 1 – Information required for the Crofting Register

1. Croft Description

- a) Crofting Register Croft Number is clear.
- b) “Croft Name or Number” does not match “Croft Name” on Form A Part 1;
- c) Township: Parish – see comments re Form A;
- d) Postcode now required (if applicable) – when does it become applicable?

2-5. Is there a change of tenant/in the Owner-Occupiers/in the Landlord(s)/of Owner(s)?

See comments re (1) singularity of tenant and landlord and (2) inappropriateness of “Street name and Town/City” (3) Owner(s) in Form A. The multitude of boxes is unnecessary.

6. Additional information

No comment

7. Is there any change to the Common Grazing/Runrig?

See comments in Form A.

8. 9. 10. 11. 12.

These questions appear to cover all possibilities affecting boundaries or extent of the croft.

13. Authorisation

The indication of “Trigger Event” would more logically be placed at the beginning of Form B.

Form B Part 2 – Information required for the Crofting Commission to process the Application

No comment except for Q 4. *Information submitted in support of the Application:*

Only in the case of Resumption by the Land Court will the Crofting Commission not have the detail of the event. It seems wrong that the Applicant should have to provide evidence of an event to the Crofting Commission when the event is one that has been determined by the Commission itself.

Form C

This form is to be completed by the Crofting Commission who should be on guard regarding land which might be excluded from crofting in future if not recorded; such as land held by crofting

communities to be common grazing or shared between crofts although not identified as principal common grazings. This is a matter for the Crofting Commission.

The information about the size of each shareholding is held by the Crofting Commission. It should be recorded in the Crofting Register.

Note 4: A share can be held by a non-crofter in which case the share is deemed to be a croft in tenancy.

Form D

The information about the size of each shareholding will be known by the Crofting Commission. It should be recorded in the Crofting Register.

Note 4: A share can be held by a non-crofter in which case the share is deemed to be a croft in tenancy.

Form E

No comment

Form F

No comment

Form G

This form points to there being unnecessary duplication of activity. It seems wrong that the Applicant should have to provide evidence of an event to the Crofting Commission when the event is one that has been determined and notified by the Commission itself on this form.

We suggest that a **Form H** be devised to enable members of communities to apply together to register a crofting community plan voluntarily, attracting community discount. This would involve first registrations only, i.e. those crofts where no other steps are being taken or trigger events expected.

Individuals in communities would be applying together and be encouraged by that fact. It is only on Form H that the community discount would apply.

2. Do the questions appear in logical sequence?

3. Are the questions clear and understandable?

4. Are the guidance notes comprehensive and easy to read?

Subject to the above comments, the questions and notes generally appear logical, understandable and comprehensive.

5. Should we provide for the possible future use of electronic documents and authentication?

It is important that parties who do not use or have access to IT should not be disadvantaged and that paper application forms will always be acceptable.