



**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. By the 1950s crofting was viewed as a system in decline and in need of specific consideration. The Crofters Commission was established in 1955 with a remit to regulate and develop crofting. The process of croft amalgamation that the Commission encouraged into the 1970s was subsequently abandoned as the value of a smaller-scale land holding system became increasingly recognised in terms of wider rural development and the benefits it could deliver. In order to reflect the greater focus on its regulatory and duties functions, the Crofters Commission was subsequently renamed the Crofting Commission in 2010.
4. 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 'owner-occupiers' 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.
5. 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.

The Commission

6. 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 56, 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.
7. 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.

THE PLAN AND ITS PURPOSE

Introduction

8. The Crofting Reform (Scotland) Act 2010 introduced a requirement for the Crofting Commission to submit a Plan to the Scottish Ministers within six months of the first elections to the Crofting Commission and after each subsequent election. The Plan must set out the Commission policy on how we propose to exercise our functions.
9. This Plan sets out our strategic policy and is supplementary to, and is not a substitute for, legislation. More detail on regulatory process will be made available on the Commission's website.

Consultation on the Plan

10. The Act¹ requires the Commission to consult with Local Authorities in areas in which there are crofts, and Highlands & Islands Enterprise, before submitting the Plan 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.

¹ Unless indicated otherwise references to "the Act" relates to the Crofters (Scotland) Act 1993

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, National Farmers Union Scotland, Community Land Scotland and the social enterprise movement, 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 term of office. Part 2 gives more detailed explanations of the policies the Commission will apply to its main regulatory functions to help achieve its objectives. 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 Act. A glossary of terms is included as Part 3 of this Plan. However, it may help with the reading of this Plan to define the following at the beginning:

Croft: A land holding subject to the Crofting Acts, more fully defined in section 3 of the Crofters (Scotland) Act 1993. It will be recorded in the Commission's Register of Crofts and also, on certain trigger events, in the Crofting Register held by the Keeper of the Registers of Scotland.

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.

“Owner-Occupier”: A person who has purchased his or her croft (or is their successor in title) but is not within the definition of an owner-occupier crofter. The reasons for this could be that:

- the person did not purchase the whole of the croft
- different people own various parts of the croft
- the person acquired title to the croft other than through the crofter or the crofter's successor in title (for instance, the party obtained title to the croft directly from the landlord on renunciation of the croft tenancy by the croft tenant)
- the person acquired title from a constituting landlord other than through a purchase
- the land was acquired as a small landholder's holding prior to the 1955 Act coming into force.

Owner-occupiers are now a residual category of those pre-2010 Act owner-occupiers who did not become owner-occupier crofters. As such, the law applying to such owner-occupiers is the law as it stood prior to the 2010 Act. The Commission retains the power to require an owner-occupier to let an owner-occupied holding/croft. We will use our discretion to decide when it is appropriate to require an owner-occupier to let his or her croft.

Deemed Croft: When a crofter purchases his/her **croft** land and the grazings shares pertaining to that **croft** remain held in tenancy, the right to graze and any associated rights are “**deemed**” to be a separate and distinct **croft** in their own right. As such these “**deemed crofts**” are given an individual entry in the Commission's Register of Crofts (ROC).

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)¹

KEY THEMES

15. It is a legislative requirement that this Policy Plan follows on from the elections to the Commission in March 2017. The Commission has had opportunity to reflect upon and consider the experience of the previous five years. Various themes have emerged as being of particular importance to crofting, and these have been considered in the consultation that preceded the preparation of this Plan. Central to this is the importance of croft land itself, which by its very nature is fundamental to the crofting system.

Croft Land: Its availability and use

16. In the Commission's view it is important to ensure that croft land is available for croft residence, cultivation or another purposeful use. This is an essential prerequisite for the effective operation of the crofting system. The crofting duties of residence on, or within 32 kilometres of, a croft, cultivation and maintenance of a croft, and not neglecting or misusing a croft are imposed to ensure that crofts are occupied and worked. In turn the Commission accepts that it also has a responsibility to take appropriate action with regard to the enforcement of these duties, but to do so in a manner that is consistent with legislation and the Commission's resources.

¹ 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.

17. The complexity of the duties legislation provided by the 2010 Act, and the difficulty of its implementation, have been duly recognised by those considering the need for further reform of crofting law.¹ In the circumstances, the Commission policy from 2014 onwards to encourage self-compliance, or self-regulation, with crofting duties is understandable. However, as is made clear in consultation responses, encouraging such compliance is admirable but, by itself, does not obviate the need for enforcement where this approach does not deliver the desired results. The Commission accepts that view and, as indicated elsewhere in this Plan, will address the need for the enforcement of crofting duties, as far as it is able. In light of the scale of the issue, and having regard to the requirements of complex legislative procedures set out in the 1993 Act, this does have an impact upon finite resources and we will need to prioritise and focus on areas of particular concern in the first instance. The information derived from annual notice returns, or possibly non-returns, will also assist in this process.
18. The Commission's capability of ensuring higher levels of residency on, and use of, crofts is not limited to duties' enforcement. We can require the letting of vacant crofts. Such responsibility rests primarily with landlords, but where action is not forthcoming, the Commission can require letting proposals and ultimately take on the letting of crofts itself.
19. Another category of croft vacancy can also result in requiring letting proposals. The definition of owner-occupier crofters in the 2010 Act excludes certain croft owners from having owner-occupier crofter status. As such, these crofts are held by owner occupiers and not by owner-occupier crofters. Owner-occupiers are not subject to the crofting duties. Where there is evidence that an owner-occupier has not resided there for a considerable period and/or the croft is neglected, the Commission may exercise its discretion in appropriate cases to require the owner-occupier to let the croft to a tenant. Again consultation respondents support such action.
20. There has been a long standing recognition of the need to create opportunities for new entrants to crofting.² As well as potentially providing possibilities for new entrants, as indicated, from within the current pool of croft land, since 2007 it has been possible to create new crofts. The Commission has to either approve or reject applications to create new crofts, and in recent years it has confined itself to this regulatory role. However, respondents to our consultation have indicated that the Commission should do more to actively encourage and promote the creation of new crofts. We have taken cognisance of this desire, and will assess how this can be done without detracting from any impartial consideration of applications to create new crofts.

Retaining Land in Crofting Tenure

21. Crofting continues to have a regulated system because the system in itself is considered important and provides a range of public goods. As a system of regulated smallholdings and common grazing land, crofting contributes to the retention of rural populations and helps to sustain the rural economy and environment. The crofting land holding system provides an important base for housing, community settlement, along with individual and communal land management. Accordingly, croft land is central to this whole system. For that reason the Act requires that the Commission must have regard to the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting, when exercising our functions.

¹ Scottish Parliament Rural Economy & Connectivity Committee, Review of Priorities for Crofting Law Reform, 9th March 2017, page 17.

² These crofts are vacant in terms of Section 23 (10) of The Crofters (Scotland) Act 1993

22. Land can be removed from crofting tenure by the processes of de-crofting or resumption, and the Commission has specific policies relating to these processes. Difficulties regarding the acquisition of, and speculation on, croft land were raised in the lead up to the 2007 Act and were major considerations in the Committee of Inquiry into Crofting and part of the policy objectives addressed in the 2010 Act. Consequently, the removal of land from crofting tenure remains contentious, but individual crofters are entitled to make decrofting applications to the Commission (which will be determined according to the relevant law and policy). The Commission, therefore, has to undertake an important balancing act. We take the view that where the sole purpose of a decrofting application is simply to remove land from crofting tenure, we are unlikely to grant a decrofting direction. Supported by the respondents to our consultation, we do not consider it appropriate to provide separate policies for different areas. The legislative requirements are uniform and not tailored to particular areas, although the specific circumstances of each case will always be accounted for.
23. Case law is particularly important in decrofting applications, as such applications have been more regularly appealed to the Land Court. The Land Court itself has indicated, relatively recently, some of the reasons for which decrofting may be refused: *Good reasons for refusing decrofting would include cases involving very large areas of land relative to the rest of the croft or relative to the extent of land locally available, or where the use to which the land is to be put is in some way inimical to local crofting interests, or where the sustainability of the croft is fatally compromised by the granting of the application or where local crofting demand for a tenancy will be thwarted by the granting of the application.*¹
24. Whilst the Commission applies the relevant legislation relating to decrofting applications, it does not accept the contention that if a croft is purchased under the right to buy provisions that it should then be removed from crofting tenure. Indeed it appears contradictory on the one hand to advocate the creation of new crofts but on the other to automatically remove a croft from crofting tenure where a croft has been purchased. In fact, the legislation enabling the crofters' qualified right to purchase their holdings in 1976 also recognised that these new owners, like landlords, could be asked for letting proposals and provided that owner-occupied crofts were an important and integral part of the crofting system as a whole. We have already indicated where it might be appropriate to consider such action. Previous Land Court decisions have also indicated that these purchased crofts remain part of the crofting system and infrastructure. It is clearly not the Commission's role to assist in the dismantling of that system and infrastructure, but to promote its continuity and future sustainability for the long-term benefit of the crofting community (and its importance to the sustainability of rural populations and the rural economy).

Common Land

25. Generally a croft will have an associated share in a common grazing along with other crofts from a crofting township. Common grazings form an important part of the crofting land use system and, as a communal asset, their shared use and management requires some form of regulation. The Commission provides an overarching role in the management of this common resource, as required by legislation.

¹ MacDougall -v- The Crofting Commission, SLC 75/14, 26 May 2016

26. Following a period of some difficulties in our overseeing role, which to some degree challenged the extent of the Commission's powers, the Commission has both examined its role as regulator, and the regulation, of common grazings. Consequently, the Commission sees its role in the regulation of common grazings and of grazings committees, as confined to the requirements of the Act and, in particular, to what the Act states must be contained in grazings regulations.
27. To assist with this process the Commission has worked with other crofting stakeholders to provide a concise common grazings regulations template for grazings committees' use. Importantly, since this was an area of much contention, the Commission will not become involved in the financial affairs of grazings committees, other than what the Act requires in terms of levies for funding maintenance and improvement. This is not because these are not important matters for grazings committees, but more that the Commission is not the appropriate authority to deal with such matters, and legislation imposes no specific obligation on the Commission to regulate such matters.
28. The Commission is committed to ensuring that this focal element of the crofting system operates for the benefit of the crofters sharing the resource. To this extent, the Commission will provide support and advice to assist grazings committees with their responsibilities to ensure the effective management of common grazings. Common grazings are consistently viewed as a communal asset for crofting and the Commission has no desire to stifle opportunities for crofters. In fact, the opposite is the case; however, the Commission itself can only provide and regulate in terms permitted by the Act.

PART 1: STRATEGIC OBJECTIVES

Introduction

29. 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.
30. In all of its decision-making, the Crofting Commission will be guided by the understanding that crofts and the crofting system are a valuable 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.
31. 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. As has already been indicated, we have therefore not sought to introduce different policies for different areas.

Value of Crofting

32. 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 Scotland¹.
33. 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 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
 - Fairness to individual crofters and owner-occupier crofters.

¹ The Crofting (Designation of Areas) (Scotland) Order 2010 designated the following areas as areas in which new crofts could be created outwith the crofting counties: that part of the local government area of Highland that is outwith the crofting counties; the local government area of Moray; in the local government area of Argyll and Bute, the parishes of Kingarth, North Bute and Rothesay; and in the local government area of North Ayrshire, the islands of Arran (including Holy Island and Pladda), Great Cumbrae and Little Cumbrae.

Why is Effective Regulation of Crofting Important?

34. The desired outcomes of the Scottish Government are clearly outlined in the 'Scotland Performs' Framework. The Commission can play a role in this through the promotion of 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.
35. 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.
36. Before making its report, the Commission must consult each Local Authority in the areas where there are crofts and Highlands & Islands Enterprise.

Functions of the Commission

37. The Act requires that the Commission sets out its policies as to how we will exercise our functions. While exercising these functions we must have regard to the desirability of supporting population retention in the crofting counties and other designated areas where there are crofts. We must also have regard to the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting.
38. The primary function of the Commission is to regulate crofting, but each of our functions and their potential benefits are considered individually.

Regulating Crofting

39. Crofting's regulatory structure supports a small-scale land tenure system that retains a land-based population and supports the sustainable use of croft land. The importance of that role is exemplified by the contrast between crofting areas and that of comparative areas outwith the crofting system. For instance, 61% of landholdings in Upland Grampian were amalgamated from 1951 – 1971, whereas the total stock of crofts throughout all the crofting counties had diminished by only 10.4% from 1960 – 1994¹ (despite the fact that croft amalgamation was perceived by some as the way forward for crofting during the earlier part of that period).

¹ MacMillan, Dr Gordon; Land, People and Government in Northern Scotland: An Evaluation of Crofting Policy as a Tool for Maintaining the Welfare of Rural Populations in Marginal Areas, April 1996

40. Since 1955, at least, crofting legislation has provided protection not just for the crofter but also for the croft as an integral unit within the crofting system as a whole. This has been further supported by the more recent 2010 Act, which underlined the importance of regulation of all crofts (regardless of whether crofts are tenanted or owner-occupied) for the benefit of crofting.
41. In this context the crofting system provides a valuable infrastructure that is beneficial to rural Scotland. In the exercise of its regulatory function, the Commission wishes to ensure that this system is not only maintained but improved upon. The Commission continues to hold the view that there are three important constituents that merit specific consideration within the regulatory process. These are:
- Residency
 - Land Use
 - Shared Management of Common Resources

Residency

42. The crofting structure of land tenure plays an important and valuable role in the retention of rural populations. As such the Commission gives croft residency specific consideration in exercising its regulatory functions. The Act itself places a duty on crofters and owner-occupier crofters to reside on, or within, 32 kilometres of their crofts.
43. Through effective regulation to ensure residency of crofts, the Commission can help to contribute towards:
- Providing a base for crofters and their families to reside on, utilise the land for agriculture and other enterprises, generally in combination with other means of employment
 - Increasing 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
 - 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.
44. The Commission takes the view that making tenancies available to new entrants and retaining existing crofts within the crofting system supports population retention in rural areas.

Land Use

45. The crofting system of small-scale, extensive agriculture has contributed significantly to the environment, landscape, ecology and biodiversity of the Highlands and Islands. However, the Commission recognises that a decline in the cropping of in-bye croft land and the reduction of livestock on common grazings can also have an adverse impact upon biodiversity. The Act requires all croft tenants and owner-occupier crofters to cultivate and maintain their crofts and not to neglect or misuse them.

46. Through effective regulation to ensure that crofts are cultivated and maintained or put to another purposeful use, and are not misused or neglected, the Commission can help to:
- Ensure that croft land is kept in good condition for present and future generations
 - Increase the income derived from croft land use
 - 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
 - Assist the development of other alternative enterprises on crofts
 - Retain and, where appropriate, enhance biodiversity through the careful management of the natural environment by tenants and owner-occupier crofters.
 - Have regard, where required, to the Nature Conservation (Scotland) Act 2004 and other environmental legislation, regulations and directives.

Shared Management of Common Resources

47. 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.
48. Through effective regulation of common grazing and support for common grazing committees, the Commission will help to:
- Improve the management of common grazings and build capacity at township level
 - 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 for forestry and other purposes on common grazings, with associated carbon reductions and associated economic benefits to crofters and crofting communities
 - Encourage management of common assets
 - 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.

Re-organising Crofting

49. The Commission considers that the consultation process and future Crofting Reform Bill will be of crucial importance to how crofting may be reorganised and operate within the coming years. The Commission is well placed to offer advice on the reform of crofting legislation as we deal directly with all aspects of the practical application of the current legislation on a regular basis. The Commission has already made a significant contribution to the Crofting Law Sump, which has raised a number of issues with the existing legislation.

50. By assisting with the reform of crofting legislation the Commission will:
- Provide detail of any difficulties with current legislation
 - Offer practical solutions for legislative reform
 - Help to provide updated legislation that will support and sustain crofting in the 21st century.
51. At a more specific level, the Commission may reorganise crofting townships for their better development. More detail on this process is provided in the section on specific policies.

Promoting the interests of crofting

52. The Commission recognises that it has a particular responsibility to promote the interests of crofting and believes that this can be achieved in a variety of ways.
53. The Commission has a role in planning as a key agency in Local Development Plans and as a statutory consultee for individual planning applications on croft land. It is important in this context that the crofting interest is represented and promoted at these stages of developments that may affect croft land.
54. The capacity to create new crofts has been identified as beneficial to the interests of crofting. The Commission is willing to promote the concept and assist, where possible, landowners or others who wish to create new crofts.
55. In essence, 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.
56. 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 has provided for the appointment of a Commissioner to represent the interests of landlords of crofts.
57. Additionally, the Commission may appoint assessors to assist in the local execution of our functions. The Commission is committed to working with assessors to ensure that they can input meaningfully to the work of the Commission and its role in the promotion of crofting.

Keeping under review matters relating to crofting

58. While the Commission has no direct role in the delivery of the financial support provided for crofting, it recognises the important contribution this makes to state of crofting. On account of this, we will monitor and advise, as appropriate.

59. Particular attention will be given to on-going preparations for the UK's withdrawal from the European Union and the resultant consideration of future distribution of agricultural and environmental support. It is important that crofting's unique and diverse system is recognised within the forthcoming changes to delivery of support and its capacity to support rural populations and the economy. The Commission is committed to ensuring that the case for crofting will be heard and recognised in this process.

Duty to Report

60. The 2010 Act placed duties on the Crofting Commission to provide an annual report to Ministers on issues affecting crofting; 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.
61. 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.
62. 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

63. 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.
64. 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:
- Ensuring 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.
65. In carrying out its duties, the Commission will give clear reasons and explanations for its decisions, particularly where discretion has been used.
66. 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. More information is available on the Commission's website (www.crofting.scotland.gov.uk) and as notes to any application form.
67. **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.

68. **STANDARD REQUIREMENTS FOR PROCESSING APPLICATIONS FOR APPROVAL:** Subsection 58A(7) of the Act provides that, unless there are express provisions made within the relevant sections of the Act, the Commission must have regard to the following when considering an application for its consent or approval:
- (a) In the case of an application relating to a croft –
 - (i) Whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft;
 - (ii) Whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4)
 - (b) the interests of the estate which comprises the land to which the application relates;
 - (c) the interests of the crofting community in the locality of that land;
 - (d) the sustainable development of that crofting community;
 - (e) the interests of the public at large;
 - (f) any objections received under subsection (4) or (5A);
 - (g) any plan of the Commission approved and published under section 2C (i.e. this Plan);
 - (h) any other matter which the Commission consider relevant.¹
69. Where the Act makes express provision as to how a particular application for approval is to be processed, the Standard Requirements will still be applied but only in so far as they are consistent, and do not conflict with, the express procedural requirements of any particular application.

Crofters' Duties

70. All crofters must comply with a number of statutory duties relating to residency at, 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 remedy this. A long-term solution may be to take up residence, assign the tenancy or, where the croft is owned, to transfer the ownership, or to let, the croft. In the short-term, a crofter is entitled 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'. The Commission does not consider sub-letting or short leasing to be a long-term solution for duty compliance; particularly in relation to the residency duty. However, in terms of the residency duty, it may also be appropriate for the crofter to apply for consent to be absent from the croft for a specified period of time.
71. 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.

¹ Crofters (Scotland) Act 1993, Section 58A(7)

Residency Duty

72. **The Law:** The Acts require that a crofter must be ordinarily resident on, or within 32 kilometres of, that crofter's croft.
73. **Policy:** The Commission recognises that there may be reasons why a croft is without a resident crofter. As already indicated, 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.
74. If the Commission establishes that a crofter is not ordinarily resident, it must give notice of the breach of duty, unless there is good reason not to. In our consideration of a good reason not to take further action, individual circumstances and other relevant factors will be taken into account. The Commission will also allow a reasonable time for an individual to comply with the duty when giving an undertaking to do so. Where the Commission has already given 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 has approved an application for consent to be absent, the crofter complies with the residency duty.
75. 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.
76. 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.
77. 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

78. 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 another purposeful use during their absence. Indications of 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.
79. 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, and assign or transfer the croft.
80. 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

81. 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.
82. **The Law:** The Act states that crofters must cultivate and maintain their croft or put it to another accepted purposeful use.¹ Crofters must submit an annual return to the Commission confirming whether they are fulfilling their duties to cultivate and maintain their crofts.
83. **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 enforcement will require that an undertaking be given to ensure the situation is rectified within a specific timescale. 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.
84. 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 crofts, reasonable time to seek assistance.
85. 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.

¹ Cultivation and purposeful use are both defined at section 5C(8) of the Crofters (Scotland) Act 1993. These definitions are provided within the glossary to this Plan.

Duty not to Misuse or Neglect

86. **The Law:** A crofter must not misuse or neglect his or her 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.
87. **Policy:** The Commission will investigate competent reports of misuse or neglect and, where these are proven, will require that the situation is rectified within a 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.
88. Recognition will be given to individual crofters' circumstances, and these will be considered in any requirement to rectify misuse or neglect of the croft.

Complaints of Breach of Statutory Duty

89. **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.
90. **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.

Croft Registration

91. The law provides for crofts to be registered in two complementary systems. The Commission holds the Register of Crofts under s41 of the 1993 Act, while the Registers of Scotland (RoS) is establishing the Crofting Register under s3 of the 2010 Act. The key difference is that only the Crofting Register contains maps of the land. The public has access to both registers.

Register of Crofts (held by the Crofting Commission)

92. **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 an offence. Such information is required by the Commission as part of its duty to compile and maintain the Register of Crofts.
93. **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 notice returns).

Crofting Register (held by Registers of Scotland)

94. The Crofting Register is map-based and will provide a definitive record of the extent of land within crofting tenure. Responsibility for the Crofting Register lies with Registers of Scotland but the Commission has a role in its operation. In particular, the Commission receives applications and payments for croft registration and forwards these to Registers of Scotland; and in respect of common grazings registration (with the exception of a New Common Grazings) the Commission is itself the applicant. The Commission will take forward more registrations of common grazings as its resources permit, but it is reliant on local stakeholders, including grazings committees and landlords, to help ensure that maps are correct.
95. Most applications to the Crofting Commission now require the applicant to register the croft and any subsequent changes to the croft on the Registers of Scotland Crofting Register. Even if approval is given by the Commission, failure to register will render the change null and void.

Decrofting

96. 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 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. In its assessment of demand the Commission may consider reports of demand from its assessors and others, as well as expressions of demand from individuals in response to the advertising of the decrofting proposal. The Commission will not assume that the absence of any express demand is evidence that there is no general demand for a tenancy of the croft. The Commission recognises that crofts provide an important resource for future generations of crofters and the loss of crofts from the crofting system may undermine the longer term sustainability of crofting.
97. 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.
98. 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 what would normally be considered in any particular area as an appropriate size for a dwellinghouse and garden area.

99. 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.
100. The Commission may place conditions on any decrofting direction, including conditions that relate to the use of the land to be decrofted.
101. The Commission may modify any application in relation to which a decrofting direction is given as it considers appropriate.
102. 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 tenure. 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.

Decrofting – Existing Croft House Site and Garden Ground

103. **The Law:** 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).
104. **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.

Assignment

105. **The Law:** A crofter must obtain the consent of the Commission to assign their croft to another person, 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.
106. **Policy:** When considering applications to assign, the Commission will apply the standard requirements 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 their crofting duties.

107. 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 promotion of 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

108. **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.
109. **Policy:** In considering applications, the Commission will apply the standard requirements and its policies on residency, land use and shared management, and it will take into account the demand for crofts in the area. The Commission may condition the sublet or short lease – including their duration – as it consider appropriate.
110. 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

111. **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.
112. **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.
113. The Commission will apply the standard requirements and exercise its discretion to decide every application for division on its merits. However, the Commission will not generally consent to divisions unless satisfied that the croft will not be fragmented into unsustainable units, because the Commission recognises that proper control of the division of crofts prevents unnecessary fragmentation of croft land. 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 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.
114. 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.
115. The Commission will apply its standard policy on access, to ensure that all new crofts have the required standard of access available.

116. The Commission will also, where appropriate, apply its policies on sustainability and sustainable development.
117. 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

118. **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 vacant¹ 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.
119. **Policy:** The Crofting Commission will work with crofting landlords and landowners and encourage them to let vacant crofts and to take action, where appropriate, to 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 is expected that the landlord will submit proposals to let the croft, as required. It is further expected that when a landlord is required to submit proposal to let vacant crofts an opportunity may be given to those seeking crofts in that locality to register their interest with the landlord.
120. 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.
121. 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.
122. 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 expect any tenant to have, or acquire, the requisite skills and ability 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

123. **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.

¹ A definition of a vacant croft is provided in Part 3: Policy on Interpretation of Key Words

124. **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. Applications to create woodland crofts will also be considered within this context.
125. 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.
126. 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

127. **The 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. For the land to become part of the crofter's croft it will be necessary to apply to the Commission to give a direction for that purpose. 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.
128. **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

129. **The 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 the standard requirements contained in section 58A of the Act (see para 68).
130. **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

131. The Commission regards the shared management and beneficial 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 grazings. Properly constituted grazings committees with appropriate regulations are, in the Commission's view, the most effective way of ensuring proper management of common grazings.
132. **The Law:** The Act provides for the establishment of grazing committees to manage common grazings, 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.
133. **Policy:** The Commission will work with crofting communities to promote the establishment of effective grazings committees and will actively support established committees. The Commission may, in the event that a grazings 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 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

134. **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.
135. 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 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 state that the Commission's approval does not preclude other necessary consents or permissions required to implement the proposal. In giving its approval under section 50B, the Commission is **not** 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) in the absence of any other consents or permissions that are required from any other statutory body and/or the landowner for the proposal to be implemented.

Apportionment

136. **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.

137. **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 must and will consult with the grazings committee, if there is one in office
- The Commission will consider any evidence that the apportionment will adversely affect either (i) the interests of the other crofters sharing in the grazings or (ii) that part of the common grazing remaining unapportioned
- The Commission may also consider the effect of the apportionment, if granted, on any shared management practices and communal workings of the common grazings.
- 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 so called "hope" or development value to ensure that the interests of other crofters sharing in the grazing are not adversely affected.

Even in the absence of any comment from the grazings committee and/or any crofters sharing in the common grazing, 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

138. **The 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 Act.
139. 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.
140. **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.

Resumption of Croft or Part of Croft or of Common Grazing

141. **The 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.

142. **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 and may object, for example, where applications for a house site and amenity land exceeds what would normally be considered in any particular area as an appropriate size for a dwellinghouse and garden area.

Re-organisation

143. 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.
144. **The 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.
145. **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.

Working with others

146. 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.
147. **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.
148. 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.
149. The 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.
150. **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.
151. 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.

152. The Commission will sometimes 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.
153. 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.
154. 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

155. The Crofting Commission will work with landlords 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

156. 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, as a statutory consultee in a planning application concerning croft land, may 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.
 - operational need for the proposed development

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

157. 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 or 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 even where planning permission has been granted for a development on the area that is the subject of the decrofting application. This is because the Commission must balance the public interest with the good of the croft and the estate and the interests of the crofting community in determining whether a reasonable purpose relates to the public interest.

Sustainability

158. 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.
159. 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.
160. 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

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 land holding subject to the Crofting Acts, more fully defined in section 3 of the Crofters (Scotland) Act 1993.	Section 3 of the Crofters (Scotland) Act 1993
Crofter	The registered tenant of a croft (see also definition of owner-occupier crofter below)	
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
Cultivate	"Cultivate" includes the use of a croft for horticulture or for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, the growing of fruit, vegetables and the like and the planting of trees and use of the land as woodlands.	Section 5C(8) of the Crofters (Scotland) Act 1993
Deemed Croft	When a crofter purchases his/her croft land and the grazings shares pertaining to that croft remain held in tenancy, the right to graze and any associated rights are " deemed " to be a separate and distinct croft in their own right.	Section 3(5) of the Crofters (Scotland) Act 1993
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 exhaustive and will be dependent upon individual circumstances considered in the context of individual policies. It is for the Commission to decide if any reason submitted is a 'good reason'.	Section 21B(3) of the Crofters (Scotland) Act 1993
Hearing	The Commission is only obliged to hold a hearing in certain decrofting applications, and only if requested by the applicant. The Commission may also hear evidence at its discretion in respect of contravention of grazings regulations. The commission may also provide a personal hearing to a person who has been served with a notice under section 58(2) of the Crofters (Scotland) Act 1993.	Hearing

Term or Phrase	Definition	Source
Interested Party/Objectors	The Commission will generally only consult those who are competent objectors, but may consider consulting others as it deems appropriate and/or where the Commission considers a person to have a relevant interest	Section 58A(4) of the Crofters (Scotland) Act 1993 (in respect of applications for approval or consent)
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 use 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
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 acquired 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.	Section 19B(2) to (4) of the Crofters (Scotland) Act 1993 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.
Owner Occupier	A person who has purchased his or her croft (or is their successor in title) but is not within the definition of an owner-occupier crofter. The reasons for this could be that: <ul style="list-style-type: none"> • the person did not purchase the whole of the croft • different people own various parts of the croft • the person acquired title to the croft other than through the crofter or the crofter's successor in title (for instance, the party obtained title to the croft directly from the landlord on renunciation of the croft tenancy by the croft tenant) • the person acquired title from a constituting landlord other than through a purchase • the land was acquired as a small landholder's holding prior to the 1955 Act coming into force 	
Public interest	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. The Commission has set out its policy consideration of public interest at paragraph 157 of this Plan.	

Term or Phrase	Definition	Source
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. For croft tenants, purposeful use requires consent.	Section 5C(8) of the Crofters (Scotland) Act 1993
Reasonable purpose	A reasonable purpose for decrofting 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. The extent of the land to which the application relates must not be excessive in relation to that purpose. Reasonable purpose includes (but is not limited to): 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.	Sections 20 and 25(1)(a) of the Crofters (Scotland) Act 1993
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. The landlord has a right to take action in the event that any of the statutory conditions are breached by the tenant.	Section 5 and Schedule 2 of the Crofters (Scotland) Act 1993
Sustainable Development	Sustainable development is development that reasonably sustains the present without compromising the ability of future generations to sustain themselves.	Our Common Future – Brundtland Report 1987
Vacant Croft	A croft which has no tenant or sub-tenant (with special provision being made for owner-occupied crofts): “... a croft shall be taken to be vacant notwithstanding that it is occupied, if it is occupied otherwise than by: (a) the tenant of the croft; (b) the owner-occupier crofter of the croft; (c) the subtenant of a sublet to which section 27 applies; or (d) the tenant of a let to which section 29A applies”.	Section 23(10) of the Crofters (Scotland) Act 1993

Term or Phrase	Definition	Source
Valid objection	An objection by an objector falling within section 58A(4) and which complies with s.58A (16), both of the Crofters (Scotland) Act 1993 (which provides the objection must be in a permanent form capable of being used for subsequent reference).	Section 58A(4) & (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 and/or (where appropriate) the owner of the common grazing to be valid objectors. Any other person the Commission considers has a relevant interest in the application is also a category of valid objector.</p>	Section 58A (4) of the Crofters (Scotland) Act 1993