



NOTE ON LEGAL ADVICE RECEIVED ON OWNER-OCCUPIER CROFTERS RIGHT TO APPLY TO THE CROFTING COMMISSION FOR A DECROFTING DIRECTION

The Crofting Commission, following concern expressed from both outwith and within the Commission about the legislative provisions relating to owner-occupier crofters, recently sought and obtained legal advice on whether owner-occupier crofters could apply to the Commission for a direction that all or part of their owner-occupied croft shall cease to be a croft. Based on the advice we received our understanding is that there is no provision within the legislation for the Crofting Commission to issue a decrofting direction to an owner-occupier crofter who is occupying their owner-occupied croft.

The Commission is currently considering the full implications of the legal advice and will explore what legal remedies are available to resolve the situation. However, having received legal advice that we would be acting outwith legal authority in issuing decrofting directions in this situation, we are not able to accept any new applications to decroft from owner-occupier crofters until further notice. In the meantime, we will hold all current applications for decrofting from owner-occupier crofters in abeyance, as to issue a direction in such cases would entail us acting outwith our powers, as set out in the current legislation.

Prior to 1 October 2011, a crofter was defined solely as the tenant of a croft. Anyone who purchased their croft was essentially a landlord without a tenant i.e. the landlord of a vacant croft. There are separate provisions within crofting legislation for both croft tenants in advance of purchase, and landlords of vacant crofts, to apply to the Commission for a direction that their croft (or part of it) shall cease to be a croft.

The Crofting Reform (Scotland) Act 2010 introduced the new category of owner-occupier crofter from 1 October 2011. A person is 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 crofter since it was acquired from the landlord or constituted as a croft.

Our understanding is that the intention of sub-section 23(12A) of the Crofters (Scotland) Act 1993 was to amend sub-section 24(3) in order to extend the existing decrofting provisions to owner-occupier crofters. However we have been advised that as sub-section 24(3) is concerned with a situation where a croft is “vacant”, and as crofts occupied by owner-occupiers crofters are by separate provision in the Act deemed not to be vacant, then it does not appear to be competent for the Commission, on the application of an owner-occupier crofter who is occupying their croft, to make a direction that the croft (or part of it) shall cease to be a croft.

We will issue a further update once we have had the opportunity to consider the full implications of the legal advice obtained on this issue and have explored the legal remedies which will enable the situation to be resolved.