

WOODLAND CROFTS - GUIDANCE

What is a woodland croft?

A woodland croft is a croft with sufficient tree cover overall to be considered a woodland under forestry policy.

Woodland crofts are an opportunity for individuals and communities to build lives and livelihoods based on the woodland resource. It is also expected that the approach to management taken by woodland crofters will deliver social, economic and environmental benefits. Lifestyles & livelihoods based on woodlands are traditional in many parts of the world, but are currently rare in Scotland.

Although it is anticipated that woodland crofts will always involve an element of woodland management, the exact nature and extent of this is not prescribed. Whilst there are constraints on how a woodland is managed at the whole woodland scale, there is considerable flexibility for individual woodland croft tenants to manage their crofts to meet their own needs and aspirations.

Woodland crofts are governed by a combination of crofting legislation, and forest regulation. These are considered separately below, in terms of their bearing on woodland crofts.

How have woodland crofts arisen?

A croft is a unit of land subject to the Crofting Acts. Crofting is a system of land tenure that applies in the crofting counties (and in other parts of Scotland in areas designated by an order made by Ministers). It is regulated by the Crofting Commission¹.

Traditionally crofting has been based primarily on agriculture, often supplemented by other sources of income. The Crofting Reform Act 2007 however amended existing crofting legislation and introduced some significant changes. These included the ability for new crofts to be created, and also for crofts to be put to a 'purposeful use'² other than 'cultivation'³.

As a result it is now possible to create crofts from existing woodlands⁴, manage them as woodland and run woodland-related businesses from them. Such crofts are woodland crofts.

One of the main mechanisms for establishing new woodland crofts is expected to be through purchase of woodland from the Forestry Commission by a community body under the National Forest Land Scheme (NFLS),⁵ and the subsequent creation of crofts, although other possibilities exist.

Woodland crofts may also be existing crofts which have historically been wooded; or they may have been traditional agricultural crofts on which woodland has been established following Crofter Forestry legislation passed in 1991 which enabled this.

Crofting regulation

As crofts, woodland crofts are governed by all existing crofting legislation and are thus regulated by the Crofting Commission like any other croft. The statutory conditions of let and regulations regarding such issues as decrofting, subletting, right to buy etc are the same as for 'traditional' crofts. However, note that a landowner creating new crofts (whether woodland or traditional) may withhold certain rights (for example the right to buy), or apply additional conditions⁶. A community landowner is likely to want to do this in order to safeguard the wider community and public interest.

As with traditional crofting, areas of woodland that do not comprise an individual crofter's own woodland croft can be used collectively. Much of the land under crofting tenure generally is not in the exclusive occupancy of individual crofters (ie croft, or 'in-bye', land). Rather, it is used by groups of crofters and others in common, mainly for grazings or pastoral purposes.

This land is referred to as common grazings and those individuals having an interest in the land are referred to as 'shareholders'. In the context of woodland crofts, it may be more helpful to refer to these areas of woodland as common woodland. Such areas are governed by the same regulations which apply to common grazings and are managed by a committee⁷ elected by the shareholders.

It is important to note that under crofting legislation the right to extract and manage most existing trees on croft land rests with the landlord⁸. Nevertheless, the landlord could allow the tenant to extract trees from the croft (in-bye) if wished with the rent set to reflect this, or he could simply sell the trees to the tenant. However, trees established on the croft by the crofter, belong to the crofter.

A crofter with shares in the common woodland, or the common woodland committee, can enter a written agreement with the landowner to engage in joint forestry ventures. This provides one way for the crofter to access timber in the 'common woodland' areas. Other arrangements can also be devised to allow landowner and tenants to manage the woodland together.

Crofting activity is supported through grant schemes such as the Crofting Agricultural Grant Scheme (CAGS) and the Croft House Grant Scheme (CHGS). As crofters, tenants of woodland crofts are eligible for these schemes.

Forest regulation

Forestry policy in Scotland is laid out in the UK Forestry Standard⁹. Regulation of forestry, including that on woodland crofts, is carried out by Forestry Commission Scotland (FCS) through a combination of legal powers and incentives for good management. Each of these is considered separately below:

Legal powers:

- FCS permits felling in woodlands by granting a felling licence or by approving a long-term Forest Plan (see below). It is an offence to fell trees without approval, unless an exemption applies. FCS policy is that areas felled will be replanted or naturally regenerated except where felling is allowed for environmental improvement or to enable development authorised under planning regulations.

- FCS exercises legal powers to prevent the entry of non-endemic pests and diseases of trees. Trade in 'reproductive material' (seed, plants or cuttings) of the 28 species of tree relevant to forestry in the UK is controlled by Forest Reproductive Material regulations.
- Proposals for new planting, deforestation, forest road construction and forestry quarries that might have significant environmental impacts require an Environmental Impact Assessment (EIA). For such projects, FCS might have to give formal consent for the work to take place. An Environmental Impact Assessment is used to determine whether consent should be given for work to go ahead.

The consequences of the above are that when woodland crofts are created from a woodland, continued management of the croft as part of that wider woodland is required. Although restructuring woodland to create up to 20% open space may be necessary to meet the UK Forestry Standard (and this open space might include associated sites for crofts, croft housing, infrastructure etc), additional woodland removal (e.g. for other purposes) beyond that indicative figure is unlikely to be acceptable unless compensatory planting is undertaken.

Forestry is also subject to legislation which applies more generally, for example Health & Safety legislation.

Incentives

Forest management, including new planting and restocking, has been supported by Forestry Commission Scotland through various grant schemes in the past. Currently all land based management including forestry is supported via the Scottish Rural Development Programme (SRDP)¹¹ which provides an integrated approach. Conditions attached to this support ensure good practice is maintained.

Forest Plans

A forest plan is a long-term plan that describes the proposed management of a woodland over time. An approved forest plan can give approval for felling and thinning and provides the means of accessing grants for restructuring felling and regeneration. It will also provide access to other grant support through SRDP.

Forest plans can usefully be used to integrate management between groups of occupiers, for all their neighbouring woodland. They are also ways to demonstrate that the proposed management meets acceptable standards¹², particularly during periods of significant change such as restructuring a woodland.

For all these reasons forest plans are likely to be essential elements of any new woodland crofts project. They will address issues such as the introduction of open space, and the conversion of the woodland to a structure that best meets the needs and aspirations of tenants and landlord, whilst maximising public benefit.

For further information on forest plans see the guidance note 'Woodland Crofts Forest Management'.

Other Issues

Housing: One benefit of crofting has been the right of a tenant to build a house on their croft. The arrangements for this can vary and are no different for woodland crofts. It should be noted that planning approval is always required and different local authorities may take different approaches to housing on crofts.

One opportunity of particular relevance to woodland crofts is that of house design and construction. There is increasing interest in the use of timber in construction and as woodfuel for heating. Designs which make use of alternative techniques (and are often thus particularly suitable for locally produced timber) are becoming more common and provide the opportunity for a very direct and tangible connection between a house and the trees growing on the croft. Such approaches offer considerable benefit in terms of both cost and sustainability.

Contacts

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This guidance note has been produced to provide an introduction to woodland crofts. While it is intended to provide an accurate reflection of the main provisions of the applicable crofting and forestry regulations, it does not cover all the detail included within them and there is no guarantee of the legal accuracy of its content. We strongly recommend that professional and legal advice be sought for more detailed information and guidance on specific cases.

Notes

1. www.crofting.scotland.gov.uk
2. "purposeful use" in general terms is any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or the use of adjacent land.
3. "cultivation" is defined to include 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.
4. Woodland or forest is land predominately covered in trees (defined as land under stands of trees with a canopy cover of at least 20%), whether in large tracts (generally called forests) or smaller areas known by a variety of terms (including woods, copses, spinneys or shelterbelts) (UK Forestry Standard 2011).
5. The rationale behind this is outlined in the report of the Woodland Crofts Steering Group (2006), available from the Background to Woodland Crofts page of the FCS website: <http://bit.ly/1B6wtJN>
This followed discussion of the concept in community circles over a period of years.
6. Any additional conditions of let (which are not given or guaranteed by the Crofters (Scotland) Act 1993, as amended by the Crofting Reform etc Act 2007), must be reasonable as they can be challenged in the Scottish Land Court, and if judged to be unnecessarily restrictive could be removed by the Court. Furthermore, if an additional condition of let is proposed which withholds a right included in the Act from a crofter, other than those referred to in the Act under section 5(3), this will require the prior approval of the Land Court.
7. ie the Grazings Committee
8. As per 'the statutory conditions' of let to which every croft tenancy is subject
9. Available at [http://www.forestry.gov.uk/pdf/fcfc001.pdf/\\$FILE/fcfc001.pdf](http://www.forestry.gov.uk/pdf/fcfc001.pdf/$FILE/fcfc001.pdf)
10. 'woodland removal' is defined as the permanent removal of woodland for the purposes of conversion to another type of land use. Further information on the FCS policy on woodland removal can be found at <http://bit.ly/1Aw9RRz>
11. <http://www.scotland.gov.uk/Topics/Rural/SRDP>
12. ie meet the minimum requirements of the UK Forestry Standard.