

CROFT HOUSE GRANT (CHG)

The Scottish Ministers in exercise of their powers under the provisions of Section 42(4) of the Crofters (Scotland) Act 1993, hereby offer to give to [name] (“The Grantee”) a Grant of up to [£grant amount], in connection with the cost of the construction of a dwelling house [on/adjacent to] the croft at «address», (“the dwelling house”), which is more particularly described in part 1 of Schedule 1 (“the Project”) and subject to the following terms and conditions:

1. Definitions and Interpretation

1.1 In these Conditions, the words and expressions set out in Schedule 2 shall have the meanings ascribed to them in that Schedule.

1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.

1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.

1.5 This Agreement shall not be varied except by an instrument in writing signed by both parties.

2. Purposes of the Grant

2.1 The Grant is made to enable the Grantee to carry out the Project.

2.2 The Grant shall only be used for the purposes of the Project and for no other purpose whatsoever. No departure may be made from the Project without the prior written consent of the Scottish Ministers.

2.3 No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.

3. Commencement of Work and Claims for Payment of Grant

This letter does not give the Grantee authorisation to commence work. Only after the Scottish Ministers receive the Grantee’s acceptance of these Conditions signed by the Grantee will written authority to commence work be issued.

The procedure for submitting claims for Grant is detailed at Schedule 1, Part 2 and in the CHG Applicants Guidance at www.ruralspayments.org. Also Part A of the CHG claim form which will be issued to you once you return your signed Offer of Grant letter.

4. Amount of Assistance

The estimated cost of the Project (exclusive of VAT) is «Cost of project, from application form» and the total assistance by way of Grant available, including fees, is £28,000 / £38,000 (or less if improvement case) from which the Register of Scotland fee applicable at the time of completion (currently £60 subject to variation) will be deducted from the last Grant payment, for the recording of the Notice of Conditions of Grant.

5. Responsibility for Execution of Work

It is the Grantee's responsibility to arrange with contractors for the commencement of the work and for the continuous progress towards completion. While an Officer of the Scottish Ministers may inspect the work from time to time as it progresses it is emphasised that the Grantee must, before authorising payments to contractors, be satisfied that the work instructed has been carried out properly. The Scottish Ministers cannot accept any responsibility in this connection, nor can they in any way be held responsible in the event of complaints arising at a later date concerning the quality of construction or workmanship. The Scottish Ministers cannot intervene in any dispute between the Grantee and the Grantee's contractors.

6. Grant Payment Arrangements

Claims for payment of the amounts shown in Schedule 1, Part 2 can be made as work progresses.

6.1 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been claimed within 36 months of the date the Scottish Ministers receiving the signed Grantee's acceptance of these Conditions, unless otherwise agreed in writing by the Scottish Ministers.

6.2 The Grantee shall also provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the building project is consistent with the Agreement. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.

7. Statutory Conditions of Grant

Where a Grant has been paid, the Statutory Conditions, set out in Regulation 4 of the Regulations, will apply for a period of 10 years, beginning with the date of completion

of the work for which the Grant is provided. The Statutory Conditions set out in Regulation 4 are:

(1) The dwelling-house must be occupied as an only or principal home by—

- (a) a crofter;
- (b) a cottar;
- (c) an owner-occupier crofter; or
- (d) a member of the family of a person in sub-paragraph (a), (b) or (c).

(2) The dwelling-house must be maintained in a good state of repair.

(3) The dwelling-house must be kept insured against destruction and damage for a sum of not less than the amount of the grant.

(4) Before any of the steps in paragraph (5) is taken in relation to the dwelling-house or the croft, the person mentioned in paragraph (6) must—

- (a) inform the Scottish Ministers, acting through RPID Tiree, The Business Centre, Crossapol, Isle of Tiree PA77 6UP, of the proposed step in writing;
- (b) provide the name and address of any proposed new tenant or owner; and
- (c) obtain the prior written consent of the Scottish Ministers, acting through RPID Tiree, The Business Centre, Crossapol, Isle of Tiree PA77 6UP, to the proposed step.

(5) The steps are—

- (a) renunciation, assignation or sub-lease of the tenancy;
- (b) sale; or
- (c) lease.

(6) The person is—

(a) in the case of a dwelling-house that is part of, or relates to, a croft—

- (i) the crofter or owner-occupier crofter for the time being; or
- (ii) any assignee or transferee of that person's interest in the dwelling-house; and
- (b) in the case of a dwelling-house that is part of, or relates to, the holding occupied by a cottar—

- (i) the cottar for the time being; or
- (ii) any assignee or transferee of that person's interest in the dwelling-house.”

8. Registration

On completion of the work for which the Grant is made , the Scottish Ministers will, in terms of the Regulations, record in the Register of Sasines or register in the Land Register for the County of «county», a Notice of Conditions of Grant which sets out that the Statutory Conditions in Regulation 4 apply to the dwelling-house for a period of ten years.

9. Recovery and Repayment of Grant for Breach of Statutory Conditions

Where the Statutory Conditions in Regulation 4 apply and are recorded in the Register of Sasines or registered in the Land Register, the arrangements for recovery and repayment of Grant in the event of breach of any of the Statutory Conditions are set out in Regulation 6. This provides -

“(1) In the event of a breach of a condition in Regulation 4, the Scottish Ministers may, after giving notice in writing to the person specified in paragraph (5) of this Regulation, recover from that person as a debt—

- (a) a sum calculated in accordance with paragraph (2) of this Regulation; and
- (b) interest on that sum at the rate of 8 per cent per annum above the Bank of England base rate, calculated on a daily basis, from the date on which payment of the grant was made until the date of repayment.”

The sum in paragraph (2), referred to above, is a sum bearing the same proportion to the grant as the period from the date of breach of the condition and the expiry of the ten year grant period bears to the whole of that grant period.

The person from whom the sum can be recovered is set out in paragraph (5) of Regulation 5 as follows - “(5) The person is -

- (a) where the breach is a breach of a condition in regulation 4(4), the person who by virtue of regulation 4(6) was required to comply with that condition;
- (b) where the dwelling-house in respect of which a grant has been provided becomes vacant on the death of the person mentioned in regulation 4(6), the executor of the deceased in that person’s capacity as executor;

(c) where the tenancy of—

- (i) the croft; or
- (ii) the holding occupied by a cottar,

relating to the dwelling-house in respect of which a grant has been provided terminates otherwise than on the death of the tenant and the dwelling-house is unlet, the person who was the last tenant of that croft or holding; and

(d) in any other case, the person mentioned in regulation 4(6).”

For full details of the Regulations that apply to grant assistance awarded under CHG, the Grantee should refer to the Croft House Grant (Scotland) Regulations 2016.

10. Other Conditions of Grant

The following further Conditions apply–

1. The Grantee must exhibit to the Scottish Ministers on demand the receipts for the premiums in respect of the renewals of insurance of the dwelling-house that is required against destruction and damage.
2. In the event of the Grantee’s death during the grant period, the executor must notify the Scottish Ministers of the date of death and the name and address of any proposed new tenant or owner of the dwelling-house.
3. The Grantee must allow any person authorised by the Scottish Ministers to enter and inspect the house to check whether the Conditions are being complied with and the Grantee must, if requested, provide the Scottish Ministers with a certificate stating that the Conditions are being complied with.
4. The Grantee must notify RPID Tiree if the Grantee intends to assign or otherwise dispose of the croft.

Breach of any of these Conditions will amount to a default under the Agreement and may result in the Grantee having to repay the Grant (see also section 13 Default and Recovery etc. of Grant).

11. Data Disclosure

11.1 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty’s Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon

the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.

11.2 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

12. Intellectual Property Rights

The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third party copyright or intellectual property right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

13. Default and Recovery etc. of Grant

13.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:

13.1.1 The Grantee commits a Default;

13.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;

13.1.3 The Grantee fails to carry out the Project;

13.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory; or

13.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy.

13.2 The Scottish Ministers may withhold the payment of the Grant at any time within the duration of the Agreement:

13.2.1 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made

against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

13.2.2 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.

13.3 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 13.1, other than due to a breach of a Statutory Condition in Regulation 4 of the Regulations, the Grantee shall pay the Scottish Ministers the appropriate sum within 28 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 28 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest. In the event of a breach of a Statutory Condition in Regulation 4 of the Regulations, recovery and repayment is governed by Regulation 6, as detailed in the Recovery and Repayment of Grant for Breach of Statutory Conditions section above.

13.4 Notwithstanding the provisions of this clause 13, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 13 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

13.5 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 13.1 to 13.3 shall not be construed as a waiver of such right or remedy.

14. Assignation

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

15. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

16. Continuation of Conditions

These Conditions, except for the Statutory Conditions noted in section 7, shall continue to apply for a period of 10 years after the end of the financial year in which the final instalment of the Grant was paid. The Statutory Conditions shall continue to apply for a period of 10 years from the date of completion of the Project.

17. Compliance with the Law

The Grantee shall ensure that in relation to the Project, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

18. Governing Law

This contract is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts.

19. Other Matters

It is an offence for any person to knowingly or recklessly make a false statement for the purpose of obtaining grant assistance under CHG. Any such person may be liable on summary conviction to a fine not exceeding level 5 on the standard scale (presently £5,000).

Providing false or misleading information may also result in the refusal of CHG or the recovery of any assistance paid.

As a crofter, the Grantee is required by law to comply with the statutory obligations as set out in the Crofters (Scotland) Act 1993, as amended. Failure to do so may result in the refusal of assistance or the recovery of any assistance paid.

If you wish to accept the offer of this Grant on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date the box below. You should retain the second copy of the offer of Grant and Schedules for your own records. This signed copy should be returned to RPID Tìree no later than 28 days from the date of this letter.

SCHEDULE 1

PART 1: THE PROJECT

Construction of a new «2/3/4 bedroomed, single storey/11/2 or 2 storey» dwelling-house in accordance with Building Standard (Scotland) Regulations and Local Authority Building and Planning requirements, and in accordance with the details of the works previously provided to Scottish Ministers (“the approved work”).

The dwelling house must not exceed «sqm as per the application».

This offer is based upon the «agricultural/business plan» detailed in your application. You must deliver this plan as summarised in the table below. It is a condition of your grant award that you maintain the crofting activity achieved in year 5 of your business plan until the end of your (10 year) grant conditions.

Year	Milestones
One	«details as per the five year plan attached to the application»
Two	« details as per the five year plan attached to the application»
Three	« details as per the five year plan attached to the application»
Four	« details as per the five year plan attached to the application»
Five	« details as per the five year plan attached to the application»

PART 2: PAYMENT OF GRANT

The total Grant of up to «£38,000/£28,000(delete as applicable)» shall be payable by the Scottish Ministers to the Grantee in arrears on receipt of completed claim(s) for Grant.

All work must be completed and claims submitted to RPID Tiree within 36 months of the date the Scottish Ministers receive the signed Grantee's acceptance of these Conditions. The Grantee should contact the RPID Tiree office should they not be able to meet this timescale.

Claims can be paid in up to three instalments or alternatively the Grantee can submit one final claim once the project is completed. Minimum and maximum claim amounts are detailed in the CHG Applicants Guidance at www.ruralpayments.org and in Part A of the CHG claim form which will be issued to you once you return your signed Offer of Grant letter.

If the Grantee chooses to submit instalment claims the first claim for payment must provide the following documentation :-

- Evidence of milestones achieved in relation to the business plan submitted with your application and detailed in the CHG offer of grant letter.
- If applicable, copy of correspondence from Local Authority confirming no planning consent is required for works
- Building Warrant and stamped drawings or local authority waiver letter confirming no building warrant is required

Second instalment claims for new houses and major improvements can only be made when the house is wind and water tight.

The final instalment of grant will be paid only if the approved work is completed to the satisfaction of the Scottish Ministers within 3 years (36 months) of the date the signed Grantee's acceptance of these Conditions is received. The Local Authority Certificate of Completion must be submitted along with the claim for payment of the final instalment of Grant.

Additional proof of costs incurred by the Grantee are required to be submitted along with the claim forms, up to the amount of Grant paid. This must be in the form of original invoices. Further proof of payment must also be included with all original invoices submitted to support a claim (bank statement).

In the case of house improvements, claimed costs should be exclusive of VAT if the Grantee is VAT registered or if the Grantee intends to claim the VAT back from HMRC in the future. In addition any claimed costs for a new house should be under exclusion of VAT.

On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 8 weeks of receiving a claim and any required documentation and information relevant to the claim.

1. The legal definitions from SCHEDULE 2 of the Croft House Grant contract are detailed below.

DEFINITIONS

"Agreement" means the agreement constituted by the Scottish Ministers' invitation to apply for a grant, the Grantee's Application, these Conditions and the Grantee's acceptance of these Conditions;

"Conditions" means these grant conditions;

"Statutory Conditions" means the Conditions of Grant set out in Regulation 4 of the Regulations;

"Default" means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);

b) Any failure to perform or the negligent performance of any obligation under this Agreement;

c) Any breach of any legislation; or

d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

“Financial Year” means a period from 1 April in one year until 31 March in the next;

“Grant” means the grant offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

“Grantee” means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“Intellectual Property Rights” means all rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced as part of the Project by or on behalf of the Grantee including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property;

“Project/Programme” means the purpose for which the Grant has been awarded as described in the Offer of Grant;

“Payment” means each of the payments specified in Schedule 1 hereto.

“the Regulations” means the Croft House Grant (Scotland) Regulations 2016, as may be amended from time to time.

2. The Croft House Grant applicants guidance has recently been updated to replace the term “immediate family” with the correct term “a member of the family” as is used in the Crofters (Scotland) Act 1993 (as amended) when referring to a crofters family.

Section 61(2) of the 1993 Act (as amended) lists what is meant by a member of family.

Any reference in this Act to a member of a person's or crofter's or former crofter's or deceased crofter's family is a reference to the individual in question's –

- (a) spouse or civil partner (or cohabitant provided that the individual has no spouse or civil partner and that the cohabitation has included cohabitation for at least two years in a dwelling-house on or pertaining to the croft);*
- (b) sibling;*
- (c) sibling's spouse or civil partner;*
- (d) spouse's or civil partner's sibling;*
- (e) father;*
- (f) mother;*
- (g) son;*
- (h) daughter;*
- (i) son's or daughter's spouse or civil partner;*
- (j) grandchild;*
- (k) grandchild's spouse or civil partner;*
- (l) aunt;*
- (m) uncle;*
- (n) nephew; or*
- (o) niece .*

Section 4(1) of the The Croft House Grant (Scotland) Regulations 2016 states the following in relation to whether the term “member of the family” also applies to a cottar.

The dwelling-house must be occupied as an only or principal home by—

- (a) a crofter;*
- (b) a cottar;*
- (c) an owner-occupier crofter; or*
- (d) a member of the family of a person in sub-paragraph (a), (b) or (c).*

Therefore for the purposes of Croft House Grant the term “member of the family” applies to a cottar as well as a crofter.

3. The definition of a cottar in the Crofters (Scotland) Act 1993 (as amended) section 12(5) says the following;

“In this Act "cottar" means the occupier of a dwelling-house situated in the crofting counties with or without land who pays no rent, or the tenant from year to year of a dwelling-house situated as aforesaid who resides therein and who pays therefor an annual rent not exceeding £6, whether with or without garden ground but without arable or pasture land”