



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

**CROFTING COMMISSION'S
FUNCTIONS AND DECISIONS:
SCHEME OF DELEGATION**

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INTRODUCTION

Up until October 2015 all decisions on regulatory applications were taken by Commissioners; either by a single Commissioner, a Casework Group comprising three Commissioners or the full Board. The level of decision-making being determined by the Commission's Instrument of Delegation.

From November 2015 a rolled-out programme of devolved decision making was introduced to enable Commissioners to focus on those issues which relate to the strategic leadership of the organisation.

The potential benefits of such an approach being:

- Frees up Commissioner's limited time;
- Decisions are made quicker;
- Decisions are more consistent across the organisation;
- Decisions are supported by more robust grounds;
- Staff are empowered.

How it works is that parameters for each function are agreed by the Board of Commissioners, and if a case falls with the parameters it can be dealt with by officials.

Initially 8 functions and decisions were included in the Scheme of Delegation, but over the last 3 to 4 years this has been extended to include the majority of functions and decisions set out in the Crofters (Scotland) Act 1993.

HOW THE SCHEME OF DELEGATION OPERATES

There are 3 tiers of delegated decision making within the Commission.

TIER ONE

Who makes the decision at Tier One?

- The Area Case Officer.

What decision can be made at Tier One?

- To approve applications which comply with the parameters agreed by the Board in relation to the relevant regulatory function.

When are decisions (generally) made?

- On a daily basis.

N.B. If one or more of the parameters are breached, the case must be referred to Tier

TIER TWO

Who makes the decision at Tier Two?

- A Casework Group normally consisting of the Head of Regulation, Crofting Regulatory Manager and the B1 Case Officer.

What decision can be made at Tier Two?

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function.
- To escalate cases to Tier Three.

When are decisions (generally) made?

- On a weekly basis.

N.B. Neither Tier One or Two have the delegated authority to refuse an application.

TIER THREE

Who makes the decision at Tier Three?

- A Casework Group consisting of 3 Commissioners, supported by the Commission Solicitor, Head of Regulatory Support, Crofting Regulatory Manager and the B1 Case Officer.

What decision can be made at Tier Three?

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function.
- To refuse applications.
- To escalate cases to the full Board of Commissioners.

When are decisions (generally) made?

- On a monthly basis.

FUNCTIONS AND DECISIONS WHICH ARE INCLUDED IN THE SCHEME OF DELEGATION

Decisions in these functions can be made at any of the 3 Tiers (depending on the consideration of the agreed parameters) or can be escalated to the full Board of Commissioners.

The following functions and decisions are included in the Scheme of Delegation:

- Constituting non-croft land as a new croft (Section 3A);
- Constituting non-croft land as a new common grazings (Section 51A);
- Enlargement of Crofts (Section 4);
- Exchange of crofts or parts of crofts (Section 4A);
- Assignment (Section 8);
- Division of a croft by a tenant (Section 9);
- Division of a croft by an executor to create 2 or more crofts (Sections 9 & 10);
- Division of a croft by an owner-occupier crofter (section 19D);
- Whether to serve a notice to terminate a tenancy due to a failure of statutory succession. (Section 11(4) to 11(8));
- Commission consent for absence from croft (Section 21B);
- Extension of consent for absence from croft (Section 21C);
- Variation of condition for absence from croft (Section 21D);
- Letting of a vacant croft by a landlord (Section 23(3));
- Letting proposals by a landlord (Section 23(5));
- Letting proposals by an owner-occupier crofter (Section 26(J)).
- Short term letting by owner-occupier crofters (Section 29);
- Letting of an owner-occupier croft (other than on short lease) by an owner-occupier crofter (Section 29A).
- Decrofting house site and garden ground by a landlord or tenant (Section 24);
- Decrofting part croft by a landlord or tenant (Section 24);
- Decrofting house site and garden ground by an owner-occupier crofter (Section 24A);
- Decrofting part croft by an owner-occupier crofter (Section 24A);

- Decrofting House site and garden ground in feu of which was granted under Section 17 or 18
- Subletting (Section 27);
- To decide whether to issue an order allowing a former subtenant to remain in occupation of a croft for up to 1 year following the termination of a sub-tenancy (Section 29(3));
- Use of common grazings for forestry purposes (Section 50);
- Use of common grazing for other purposes (Section 50B)'
- Apportionment (Section 52(4))
- Review of apportionment (Section 52)(12);
- Dealing with Late Objections (Section 58A(5A));
- Dealing with objections from individuals who the Commission consider do not have a relevant interest in an application.
- To decide whether a reported breach of duty is frivolous or vexatious. (Section 26A(5))
- To decide whether a notice should be served informing the crofter that the Commission consider a duty is not being complied with. (Section 26C(1))
- To decide whether a duty is being complied with, having provided the crofter with the opportunity to make representations. (Section 26C(5))
- To decide whether to accept an undertaking by a crofter to resolve the breach (Section 26D(4)).

FUNCTIONS AND DECISIONS WHICH ARE EXCLUDED FROM THE SCHEME OF DELEGATION

Decisions in these functions can only be made by Tier 3 or by the full Board of the Crofting Commission.

The following functions and decisions are exempt from the Scheme of Delegation. These decisions have to be made by the Board of the Crofting Commission.

- Complaints as respect Breach of a crofter's statutory conditions (Section 5A)
- Schemes for development (Section 19A);
- Whole Croft Decroftings (except for residual sites extending to less than 0.75(ha) – Section 24(3) and Section 24A);
- Whether to divide a croft prior to taking action to terminate a croft tenancy or to seek letting proposals from an owner-occupier crofter (Section 26G);
- Tenancy Termination procedure (Section 26H);
- Owner-occupier crofter: seeking croft letting procedure (Section 26J)
- Reorganisations Schemes (Section 38);
- To determine whether any or all members of a grazings committee (or the grazings clerk) are properly carrying out the duties imposed on them by the 1993 Act (Section 48(8));
- Confirming, making or amending grazing regulations (Section 49(7));
- To determine whether a person has contravened or failed to comply with any common grazings regulations (Section 52(1C);
- Whether to suspend a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1D);
- Whether to terminate a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1E);
- Jurisdictional provisions i.e. whether to make reference to the Land Court for a determination on any question of fact or law (Section 53).

DECISIONS MADE BY THE COMMISSION IN 2017/18

