

Draft Template Common Grazing Regulations for the Management and Use of Insert Name Common Grazing

Points to Note:

The role of the Crofting Commission is to regulate common grazings in terms of S47(8) of the Crofters (Scotland) Act 1993.

For grazings that are registered with Registers of Scotland, please see details of the boundaries of the common grazing together with information on any apportionments and resumptions on the Register of Scotland website <https://www.ros.gov.uk/services/registration/crofting-register>

Any local information in relation to the location and extent can be included within the regulations if desired but cannot be relied upon as being definitive if challenged.

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INTERPRETATION OF TERMS

In these Regulations, unless the context otherwise requires:-

The Act	The Crofters (Scotland) Act 1993
Commission	Crofting Commission
Common Grazing	The grazing to which these Regulations apply
Committee	The grazing committee or Grazing Constable for the time being appointed to administer these Regulations
Shareholder	Any person, whether or not they are a crofter, who is entitled to share in the common grazing
Grazing Clerk	Person appointed by the committee
Grazing Constable	Person appointed by the Crofting Commission
Souming	The number and type of stock which each shareholder is entitled to put on the common grazing

NOTE: These Regulations are intended to be read in conjunction with sections 47 to 52 (inclusive) of the Crofters (Scotland) Act 1993, which are appended to these Regulations.

1 APPOINTMENT OF NEW GRAZINGS COMMITTEE

- (1) Generally not later than one month before the 3 year term of office of the existing committee ends, the committee will publish a notice that a meeting will take place to appoint a grazings committee. The venue, date, time of the meeting and the name of the common grazings will be set out in the notice, which must be published in one or more newspapers circulating in the district in which the common grazings is situated. This notice should be published at least 10 days before the date of the meeting. The notice must state that all shareholders are invited to attend the meeting to appoint a grazings committee. For the avoidance of doubt, a committee cannot continue in office beyond the statutory 3 year period and a new committee must be appointed at the end of the statutory period.

Where the committee is out of office, the process set out in section 47(1) of the Crofters (Scotland) Act 1993 (“the 1993 Act”) regarding the calling of a public meeting applies. In such circumstances, the crofters sharing in the common grazings must take responsibility for calling a meeting of all shareholders, of which public notification is to be given as set out above, for the purpose of appointing a grazings committee.

- (2) At the meeting, the crofters shall appoint a grazings committee of such number as shall be decided at the meeting, all in terms of section 47(1) of the 1993 Act.
- (3) The persons so elected should give their agreement to serving on the new committee.
- (4) The members of the grazings committee will appoint a Grazing Clerk in terms of section 47(6) of the 1993 Act.
- (5) The grazings committee will take up office with immediate effect at the meeting at which the members of the grazings committee are appointed.
- (6) The term of office of the members of a grazing committee is set out in section 47(4) of the 1993 Act.
- (7) The committee shall appoint a clerk in terms of section 47(6) and such a person shall be referred to as the “grazings clerk” in terms of section 47(6A) of the 1993 Act.

2 MEETINGS

Committee Meetings and conduct of business at meetings

- (1) The grazings committee shall decide where, when and how frequently it will meet to conduct the business of the grazings committee in terms of section 48 of the 1993 Act. It should meet with sufficient frequency to enable it to carry out the duties of the grazings committee. When a meeting is to be summoned, every effort should be made to notify all the members of the committee in writing by post, fax or any accepted form of electronic communication to a member’s usual place of residence at least 7 days prior to the date of the meeting and to convene the meeting at a suitable time, date and venue.

An agenda should be provided along with the notice of meeting of the grazings committee.

The members of the committee will be responsible for appointing a chair to chair the meetings of the committee.

The vote of the committee will normally be taken verbally or by a show of hands. If any member objects to the vote being taken in this manner, and a majority of those present and entitled to vote agree, the vote will be taken by ballot.

A minute of a meeting of the committee will be taken. The minutes will record the names of members in attendance and those apologising for their absence, and the business transacted at the meeting.

- (2) All members of the committee are entitled to vote at committee meetings in respect of any decisions by the committee to carry out actions or works in connection with section 48(1)(a) and section 48(1)(b) of the 1993 Act or the committee's powers under section 48(4) of the 1993 Act.
- (3) Section 47(5) sets out what constitutes a quorum for a grazings committee. No business of the committee can be carried out unless there is a quorum of members present.
- (4) At committee meetings votes shall be determined by a simple majority of those members in attendance.
- (5) Each shareholder is bound to comply with such instructions and directions as may be given by the committee in terms of sections 48 and 49 of the 1993 Act.
- (6) Special rules apply to meetings held under section 50B of the 1993 Act (the use of common grazings for other purposes). The grazings committee must follow the rules and procedure set out in section 50B of the 1993 Act where a shareholder proposes to use a part of the common grazings for other purposes.

Annual General Meeting

- (7) The Committee may make provision for an Annual General Meeting of shareholders within their regulations in terms of section 49(2)(g). The committee should fix a time of year when such a meeting will be held and to which all the shareholders in the common grazings will be invited, with reasonable notice given. A shareholder other than the grazings clerk should chair the meeting. The clerk should provide a report on any work undertaken by the committee over the previous year and on the financial position.

There is no statutory requirement in the Crofting Act for a grazings committee to hold an Annual General Meeting. However, it was recommended by the Land Court in *MacKinnon -v- Duke of Argyll* 1947 SLCR 35 that grazing committees should hold an AGM, and it became standard to include such a requirement when the Crofters Commission took over responsibility for grazing committees in 1955.

3 FINANCE

- (1) All funds received through Resumption of part of the Common Grazings are to be paid in terms of section 21(4) of the 1993 Act.

Committee Expenses

- (2) Where the committee has or will incur expenses in managing and maintaining the common grazing for the purpose of these Regulations or in providing, maintaining or replacing any fixed equipment required in connection with such maintenance (all in terms of section 48(1)(a) of the 1993 Act), each shareholder shall be liable for expenses thus incurred. The level of expenses will be in proportion to the individual's souming. Each shareholder will be required to contribute to the expense incurred in terms of his or her souming regardless of whether or not the shareholder uses only some or none of his or her souming.

"Fixed equipment" has the like meaning as in the Agricultural Holdings (Scotland) Act 1991, a copy of the definition of which is annexed to these regulations.

Remuneration of the Grazing Clerk

- (3) The committee shall pay such annual remuneration to the Grazing Clerk as may be determined in terms of section 47(9) of the 1993 Act. The committee may recover such expenditure from shareholders in terms of section 47(9) of the 1993 Act.

Section 47(10) shareholders – non-crofters sharing in the common grazings

For the avoidance of doubt, any person who is entitled in terms of section 47(10) of the 1993 Act to share in a common grazing along with crofters will be subject to these regulations and will be obliged to contribute to the expenses incurred by the committee according to his or her souming in a like manner as though he or she was a crofter sharing in the common grazings.

4 MANAGEMENT & MAINTENANCE OF THE COMMON GRAZING AND EXISTING FIXED EQUIPMENT

- (1) The duties of the grazings committee to maintain and improve the grazings are set out in section 48 of the 1993 Act.

- (2) **Cutting of Peats**

Regulations should make specific provision, where appropriate, for the cutting of peats. Such provision should identify as clearly as possible the nature of the rights to cut peat and where and, if relevant, when they are to be exercised.

- (3) **Collection of Seaweed**

Regulations should make specific provision, where appropriate, for collection of seaweed. Such provision should identify as clearly as possible the nature of the rights to collect seaweed and where and, if relevant, when they are to be exercised.

(4) **Duty to Report**

The grazing committee must report to the Commission every five years in terms of section 49A of the 1993 Act. The relevant form is available from the Commission's website at [URL link].

5 PROPOSALS OF WORKS OF IMPROVEMENT AND REVIEW OF SUCH WORKS

- (1) The need for works of improvement must be kept under review by the committee. It is the duty of the committee to carry out works for the improvement of the common grazings and equipment. It is also the duty of the committee when carrying out works of improvement to follow carefully the notification and proposed allocation of expenditure procedures set out in section 48(2) and section 48(3) of the 1993 Act, and pay particular regard to the rules concerning rights that are sublet or let as set out in the said section 48(3) of the 1993 Act. The committee must monitor when such works of improvement are complete.
- (2) If the decision of the committee is that it should not continue any works of improvement, then monies held in account for the works of improvement will have to be distributed to the shareholders in terms of the proposed allocation of expenditure (or such allocation has been approved or modified by the Commission in terms of section 48(2) of the 1993 Act) in terms of section 48(2) of the 1993 Act.
- (3) Where the grazing Regulations provide (in terms of section 49(3) of the 1993 Act) for any restriction of any part of the common grazing on which works of improvement have been carried out, and where it is decided that it is no longer necessary to continue with any such works of improvement, the committee will apply to the Commission for an amendment of the Regulations to have any such restriction removed.

[WORKS OF IMPROVEMENT – include as appropriate]

These Regulations provide that works of improvement consisting of [*drainage, etc.*] are being carried out on that part of the common grazings shown marked [] on the plan annexed hereto, and the use of the said part is restricted to the crofters who have contributed towards the expenses incurred by the committee in carrying out the works. The said crofters are:

[list the contributing crofters.]

These Regulations provide that the number and kind of stock which each such contributing crofter may put on the said part are:

[list the number and kind of stock that each contributing crofter may put on the part on which improvement works are being carried out.]

These Regulations also provide that the number and kind of stock which each crofter (whether or not he or she is a contributing crofter) may put on the remainder of the common grazings are:

[list the number and kind of stock that each crofter may put on the remainder of the common grazings. NB THIS MUST BE CONSISTENT WITH THE LIST OF SOUMINGS ANNEXED TO THE REGULATIONS.]

The proposed allocation of expenditure (or such allocation as is approved or modified by the Commission in terms of section 48(2) of the 1993 Act) is as follows:

[set out the allocation by listing each crofter and the allocation of the expenditure for each crofter.]

This allocation shall be recovered by the grazings committee as follows:

[set out how the allocated sums will actually be recovered by the committee, such as billed in advance or in arrears, with payment due for instance 28 days following receipt of the invoice.]

6 LEVYING AND RECOVERY OF EXPENSES

Performance of section 48(1)(a) duties under the 1993 Act

The committee shall be entitled to recover from all the shareholders (including persons with a right to graze in terms of section 47(10) of the 1993 Act) all the expenses incurred by the committee in terms of its duties under section 48(1)(a) of the 1993 Act, namely maintaining the common grazing and in providing, maintaining or replacing any fixed equipment required in connection with such maintenance.

Such recovery of expenses will be by way of a levy by the committee on, and recovery from, all the crofters in respect of the duties carried out under section 48(1)(a) of the 1993 Act. The proportions in respect of which each crofter shall be liable, and the sums which the committee is of the opinion must necessarily be levied on the shareholders in the performance of the duties set out under the said section 48(1)(a), is as follows:

[list all the shareholders and the proportion/ sums which each is due – this can be done as an appendix to the Regulations.]

Performance of section 48(1)(b) duties under the 1993 Act

The committee shall be entitled to recover from the contributing shareholders (including persons with a right to graze in terms of section 47(10) of the 1993 Act who are contributing to any works of improvement) all the expenses all the expenses incurred by the committee in terms of its duties under section 48(1)(b) of the 1993 Act, namely the carrying out of works for the improvement of the common grazings and equipment.

Such recovery of expenses will be by way of a levy by the committee on, and recovery from, all the crofters contributing to works of improvement in respect of the duties carried out under section 48(1)(b) of the 1993 Act. The proportions in respect of which each contributing crofter shall be liable, and the sums which the committee is of the opinion must necessarily be levied on such shareholders in the performance of the duties set out under the said section 48(1)(b), is as follows:

[list all the contributing shareholders and the proportion/ sums which each is due in terms of the proposed allocation (or such allocation as is approved or modified by the Commission - this can be done as an appendix to the Regulations.)

7 STOCKING OF COMMON GRAZING

Souming

- (1) The shareholders, their respective rights in the common grazing, their soumings together with the crofts or non-croft holdings to which the right to graze pertains is shown in **Schedule 1**.

[Note: the Regulations have the power to regulate the number and kind of stock which each crofter is entitled to put on the common grazing. The souming is not fixed but could be amended by the Grazings Regulations to effect changes to the overall carrying capacity of the land.]

[Note: the Regulations must provide for the alteration of soumings where works for the improvement of the common grazing or the fixed equipment have been carried out and all the crofters have not contributed to the expenses incurred in carrying out such works.

Example: each of the 20 crofters has a souming of 4 cattle. 10 crofters carry out improvement works of drainage and reseeding, resulting in the carrying capacity of the land increasing to a total souming of 90 cattle (an increase of 10). The 10 contributing crofters should enjoy a souming of 5 cattle whilst the 10 non-contributing crofters continue with a souming of 4 cattle.]

- (2) A souming of one cow shall be deemed equivalent to a souming of (insert number)¹ sheep.
- (3) The calves and lambs from the shareholders' breeding stock of each year will not be taken into account with regard to a shareholder's souming.²

Reallocation of soumings and excess stock

- (4) The grazings committee may reallocate any unused souming on a year-to-year basis to another crofter with a right to share in the grazing, or failing which, to any other person. A payment set by the committee will be made to the committee by any crofter who acquires such use of additional souming. The committee in turn shall make payment to any crofter whose souming has been used in this manner. Where the crofters whose souming is being used owes money to the committee under section 49(2)(a) to (c), the committee may reasonably offset any unused souming payment due against the money owed.

Bulls and Tups

- (5) A grazings committee may hire, buy or sell bulls and tups. Where not provided by the grazings committee, any bulls or tups may only be on the grazings with the express permission of the grazings committee. Committees should manage this in a pragmatic way that enables those with stock to utilise the grazings for this purpose.
- (6) Stock which cannot be kept on the Common Grazing by ordinary herding, or for reasons of good stock management, must be kept on the individual's holding.

¹ Relevant number to be inserted depending upon locality. The sheep to cattle ratio may vary in different areas depending upon breed of sheep.

² Please refer to guidance for suggested options which may be used to account for local agreements which shareholders would wish to be included within this section.

Open Township

- (7) Where it has been customary and is still considered necessary and practical to allow grazing of individual crofts in common during the winter months, the committee will fix appropriate dates for the access and removal of stock in the autumn and spring of each year. This may be established dates which should be included in the regulations, or it may be for the committee to determine on an annual basis. If the latter method is chosen, the decision should be made sufficiently in advance and all crofters with shares in the grazing advised accordingly.

Where a township operates on this basis, a crofter may apply to the Committee to exclude other stock from his croft or from a part of his croft. If dissatisfied with the decision of the committee on such application the crofter may make appeal to the Commission as indicated in section 52(2).

8 MISCELLANEOUS

Muirburn

- (1) The committee shall be responsible for any muirburn considered necessary on the common grazings. This must be carried out in accordance with the Muirburn Code.

Area of the Common Grazing etc

- (2) For details of the boundaries of the common grazing together with information on any apportionments and resumptions please refer to your registered common grazing on the Register of Scotland website
<https://www.ros.gov.uk/services/registration/crofting-register>

Schedule 1

LIST SHOWING THE NUMBER AND TYPE OF STOCK WHICH EACH SHAREHOLDER IS ENTITLED TO PUT ON THE COMMON GRAZING

ANNEX – FIXED EQUIPMENT

Fixed equipment¹” includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and, without prejudice to the foregoing generality, includes the following things, that is to say —

- (a) all permanent buildings, including farm houses and farm cottages, necessary for the proper conduct of the agricultural holding
- (b) all permanent fences, including hedges, stone dykes, gate posts and gates
- (c) all ditches, open drains and tile drains, conduits and culverts, ponds, sluices, flood banks and main water courses
- (d) all stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding
- (e) farm access or service roads, bridges and fords
- (f) water and sewerage systems
- (g) electrical installations including generating plant, fixed motors, wiring systems, switches and plug sockets
- (h) shelter belts,

and references to fixed equipment on land shall be construed accordingly.

¹ Has the like meaning as in the Agricultural Holdings (Scotland) Act 1991