

## Apportionment

***The Commission has the right to apportion a part of a common grazings for the exclusive use of a crofter, subject to any appropriate conditions.***

### LAW

Crofters (Scotland) Act 1993, section 52(4)

*The Commission may, on the application of any crofter who holds a right in a common grazing, and after consultation with the grazings committee, apportion a part of the common grazing (including the site of the dwelling-house of the crofter so applying if situated on the common grazing), other than a part on which the grazings committee have planted trees and which they are using as woodland under section 48(4) of this Act, for the exclusive use of the applicant. **Section 52(4)***

### POLICY

Crofting Commission Policy Plan on Apportionment

*The Commission recognises that apportioning areas of common grazing for the exclusive use of individuals may result in better land use. The Commission, in considering applications for apportionments, will take account of the communal use of common grazings and its aim of promoting shared management by crofters.*

*The Commission will generally specify conditions, particularly in relation to any fencing requirements. The Commission is also entitled to apportion for a period of time or to determine that an apportionment is subject to review at fixed periods of time. Depending upon the circumstances, the Commission may adopt either or both options where it considers it appropriate to do so. Where the Commission apportion for a period of time the crofter is entitled to apply for an extension of that period.*

*The Commission will not generally consent to an apportionment on an unregulated common grazing. Where there is no grazings committee or constable in office, the applicant will need to demonstrate support for the apportionment from other crofters with shares in the common grazing, or failing that will need to show good reason for the apportionment to be considered.*

*An application to apportion from a crofter in breach of statutory duties, including the residency duty and in the latter case one who does not have consent to be absent, will need to demonstrate how the proposed apportionment will help to resolve the breach of duty.*

## PROCEDURE

- (1) An application<sup>1</sup> for an apportionment by:
- (i) a crofter who holds a right in a common grazings;
  - (ii) a person who, not being a crofter, is entitled to share in a common grazings along with crofters under section 47(10) of the Act

shall be made in the appropriate form provided by the Commission.

An application from a crofter in breach of any of the statutory duties, including the residency duty where consent to be absent has not been obtained, will need to demonstrate how the proposed apportionment will resolve the breach.

- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include checks that the applicant has:
- (i) given public notification<sup>2</sup> of the application. The advert will make clear that submissions may only be made by shareholders in the common grazings which is the subject of the application or other parties who can demonstrate they have an interest in the application;

In addition:

- (a) If the proposed use requires planning consent, the Commission will require a copy of the planning permission or evidence that an application for planning consent has been made.
- (b) Where the apportionment is for another purposeful use<sup>3</sup>, the Commission will require the applicant to seek the written consent of the landlord to the purposeful use. If the landlord's consent is not obtained, refer to paragraph 7 of this procedure.
- (c) If the common grazings is not regulated, the applicant must take reasonable steps to provide a signed declaration or other written evidence from the landlord confirming the names of the shareholders in the grazings together with their share entitlement and the total extent of the grazings<sup>4</sup>.

If the application is invalid or not complete, it will be returned and reason(s) provided for doing so. If the applicant is the crofter of an **unregistered croft** the Commission will also advise the crofter of the requirement to submit an application for first registration of the croft.

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<sup>1</sup> It is competent to apply for an apportionment where the area applied for is the only part of the common grazings that has not already been apportioned (section 52(5) refers)

<sup>2</sup> For information on public notification refer to separate Rules of Procedure on *Public Notification*. The public notification should run in conjunction with the submission of the application to the Commission.

<sup>3</sup> Purposeful use means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner, or the use of adjacent land

<sup>4</sup> This evidence may not be required if the Commission has previously apportioned areas of the unregulated common grazings

- (3) If the application is valid and complete, the Commission will check whether the shareholding relates to a registered croft.
- (i) If it relates to an **unregistered** croft, the Commission will check whether an application for first registration of the croft has been received. If not, the Commission will inform the applicant in writing that unless an application for first registration is submitted, it will not consider the application at the end of the 28 day public notification period. The applicant will be further advised that failure to submit an application for first registration of the croft within 6 months, beginning with the date on which the application was made, will result in the application being returned.
  - (ii) If the croft is **registered** or where an application for first registration is received, at the end of the 28 day public notification period the Commission will review the information contained in the application form and any objections received.
  - (iii) If the application is received from a person who, while not a crofter is entitled to share in a common grazing along with crofters, at the end of the 28 day public notification period the Commission will review the information contained in the application form and any submissions received. There are no croft registration requirements in relation to such applications, although there will be change registration requirements if the common grazings is registered and the apportionment application is approved.
- (4) Where any submissions<sup>1</sup> to the application are received by the Commission – refer to separate Rules of Procedure on objections.
- (5) The Commission shall consult with the grazing committee or constable (if there is one in office) and consider whether it is necessary to undertake any further investigation before deciding on the application. If appropriate, the Commission shall make such enquiry and carry out such inspection as it deems necessary to inform itself about local crofting conditions, the circumstances of the applicant, the quality of the grazings, the effect the apportionment would have on the interests of other shareholders and what conditions should be attached to the apportionment if it were granted.

In the absence of a grazings committee or constable the applicant will need to demonstrate support for the apportionment from other crofters with shares in the common grazing, or failing that will need to show good reason for the apportionment to be considered.

- (6) The Commission shall consider all the information available, taking particular account of its specific policy on apportionments. If it is satisfied there is sufficient information available to allow it to decide on the application and:
- (a) if the Commission is satisfied that the application should be granted, and no valid submissions have been received, it may grant the application.
  - (b) where the Commission is not satisfied that the application should be granted, or where valid submissions have been submitted to the Commission and not withdrawn, prior to deciding the application –

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<sup>1</sup> Details of the persons who can make submissions and information on how the Commission treat submissions received, is contained in the separate section *Objections etc received following the public advertising of regulatory applications*

- (i) the Commission shall serve a copy of all of the available information (in the form of a case paper) on the applicant and other interested parties, to allow them sight of the evidence the Commission will consider when reaching its decision. If appropriate, this will include a map of any modified area under consideration by the Commission. The Commission will allow the applicant and other parties the opportunity to submit further information within 21 days from the date of service of the case paper. However, this will be limited to correcting factual inaccuracies in the case paper.
  - (ii) copies of any further information received and accepted by the Commission following the serving of the case paper, shall be served on all involved parties for their information only, prior to the Commission deciding on the application.
  - (iii) the Commission may direct that a hearing<sup>1</sup> is held before deciding on the application and shall consider any new information obtained at the hearing.
- (7) If the intention is for the apportionment to be put to another purposeful use for which the landlord has failed to provide or has refused to give consent, the Commission will write to the applicant to request that he apply to the Commission for consent<sup>2</sup> to the purposeful use. No decision will be taken on the apportionment application until this is received by the Commission.
- (8) The decision on the apportionment application (and if appropriate on the application for the Commission's consent to another purposeful use) will be taken at the appropriate level as set out in the Commission's Instrument of Delegation. It must decide the application by: –
- (i) granting it<sup>3</sup> (this may be the area applied for or a modified area);
  - (ii) granting it subject to conditions (this will normally include a requirement that the applicant fence the apportionment within 2 years of the date of offer of apportionment); or
  - (iii) refusing it.

If granting the application, the Commission will make an offer of apportionment and will specify the condition(s) on which the offer is made.

In addition the Commission may –

- (a) determine that an apportionment shall be subject to review at a fixed interval(s); and/or
- (b) apportion a part of the common grazings for a period

which it shall specify. Equally the Commission may decide to offer an apportionment without specifying either a review or a term in relation to it

- (9) The Commission will give notice of its decision to the applicant and other interested parties, within 21 days of the decision being taken, specifying the reasons for its decision.

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<sup>1</sup> For further information please see separate Rules of Procedure on *Hearings and the Opportunity To Be Heard Following Representations*.

<sup>2</sup> The provisions relating to consent to purposeful use at Sections 5C(4) to (7) of the Crofters (Scotland) Act 1993 will apply. For further information on purposeful use, please refer to separate Rules of Procedure on *Consent to Another Purposeful Use*

<sup>3</sup> The granting of an apportionment application will be in the form of an offer of apportionment.

(10) The applicant or any person with an interest in the application may appeal

- (i) the Commission's decision; or
- (ii) the imposition of a condition by the Commission,

to the Scottish Land Court within 42 days after notification of the Commission's decision.

(11) After the 2 year period<sup>1</sup> (or any alternative period) set out in the offer of apportionment, the Commission will check and confirm that the apportionment has been fenced and other conditions included in the offer of grant have been met.

If the apportionment has been fenced and the conditions in the offer have been met, the area will require to be surveyed and a map prepared prior to the Commission issuing an Apportionment Order.

If either the apportionment has not been fenced or the conditions in the offer have not been met, the Commission will withdraw its offer of apportionment.

(12) If the apportionment relates to a **first registered croft**, the applicant must within 3 months of the issue of the Apportionment Order, notify the Commission that the change has taken effect. As soon as reasonably practicable after this, **the Commission** must notify the Keeper of the Registers of Scotland of the change. If the Commission is not notified then the apportionment is deemed not to have taken effect.

The apportionment takes effect on the date of registration.

(13) If the apportionment relates to a **registered croft** (other than a first registered croft):

any apportionment expires at the end of 3 months beginning with the date of the issue of the Apportionment Order, unless an application for registration of the apportionment is submitted by **the applicant** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.

The apportionment takes effect on the date of its registration.

(14) If the apportionment relates to an applicant who is a 47(10) shareholder i.e. a person, who while not being a crofter, is entitled to share in a common grazing along with crofters:

- (i) Where it relates to an **unregistered common grazings** – no registration provisions apply.

The apportionment takes effect on the date of the Apportionment Order.

- (ii) Where it relates to a **registered common grazings** - any apportionment expires at the end of 3 months beginning with the date of the issue of the Apportionment Order, unless an application for registration of the apportionment is submitted by **the applicant** to the Commission for forwarding to Keeper of the Registers of Scotland before the expiry of this period.

The apportionment takes effect on the date of its registration.

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<sup>1</sup> Generally the offer will require that the apportionment is enclosed with stockproof fences within 2 years of the offer of apportionment. An extension to this period may be sought, but must be made to the Commission within the 2 year offer period.

- (15) Where the apportionment is granted in respect of:
- (i) a grazings share pertaining to a croft – the apportioned area becomes part of the croft (for the term of apportionment if one has been applied);
  - (ii) a grazings share which is deemed by section 3(5) of the Crofters (Scotland) Act 1993 to be a croft – the apportioned area becomes part of the deemed croft (for the term of apportionment if one has been applied);
  - (iii) any other grazings share not pertaining a croft nor deemed to be a croft – the apportioned area is deemed to be a croft in terms of section 3(5)(b) of the Act.
- (16) If the Commission has determined that an apportionment shall be subject to review at a fixed interval(s) or if the Commission has received an application from the crofter, the grazings committee or the owner of the common grazings to review an apportionment<sup>1</sup> and has agreed to do so, the Commission may:
- (i) vary or revoke any condition imposed on the apportionment;
  - (ii) impose a new condition(s);
  - (iii) bring an apportionment to an end and return the area to common grazings land.
- (17) Where a period of apportionment fixed by the Commission comes to an end, the area in question reverts to being common grazing land. However, there is provision for (a) the Commission extending the period of apportionment<sup>2</sup>, and/or (b) reviewing the apportionment prior to the period fixed by the Commission coming to an end<sup>3</sup>.

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<sup>1</sup> If an application is received from the crofter, the grazings committee or the owner of the common grazings to review an apportionment, evidence of dereliction or abandonment or evidence that the conditions of the apportionment are no longer being met (eg that the fences is not being maintained in a stockproof condition) will need to be provided before the Commission will decide whether or not to undertake such a review

<sup>2</sup> An application to extend the period of apportionment can be made by the crofter under sub-section 52(11) of the Act.

<sup>3</sup> An application to review the apportionment can be made by the crofter, grazings committee or owner under sub-section 52(12) of the Act.