



**CROFTING COMMISSION  
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# **Application for Apportionment Guidance Notes**



These guidance notes advise of the process whereby someone who shares in a Common Grazing wants to take part of the Common Grazing for their own exclusive use.

If the application is being submitted by anyone other than you or your Solicitor, the form should be accompanied by written confirmation from you that you have authorised the signatory to act as your agent.

## 1 REQUIREMENT TO REGISTER YOUR CROFT LAND

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The Crofting Register is map based and will provide a definitive record of the extent of and interest in land within crofting tenure in Scotland. In addition to showing the boundaries of land, the register will also contain information on the tenant, owner-occupier crofter and/or the landlord of the registered croft. The Crofting Register is maintained by the Keeper of the Registers of Scotland, although the application for registration should be made in the first instance to the Crofting Commission who will check the information contained in or accompanying the registration application against the information contained in the Commission's Register of Crofts.

If your croft is unregistered, the Commission will be unable to make a decision on your apportionment application until the croft has been registered with the Keeper of the Registers of Scotland. To avoid delays therefore, we recommend that your apportionment application should be accompanied by the application to register the croft on the Crofting Register. This should be accompanied by a map showing the boundaries of the croft along with the registration fee; which is £90 per croft. A copy of the registration form and accompanying guidance notes can be found at: <http://www.ros.gov.uk/croftingregister/guidance.html>. If an application to register is not submitted within 6 months of the date of receipt of this application, the application to apportion will be withdrawn from our records and returned to you.

**N.B. If your grazing share relates to a non-croft holding rather than a croft, the requirement to register does not apply.**

## 2 IMPORTANT INFORMATION

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Any information you provide is part of an open process and made available to other parties involved in the process. Your information would also be released under a Freedom of Information enquiry subject to any disclosure exemptions under the Data Protection Act 1998.

All questions must be answered as fully as possible, otherwise the form may be returned. To enable the Commission to give full consideration to your application, we would appreciate if you would provide us with as much information as possible to help us to arrive at a fully informed decision.

Your apportionment application must be accompanied by a site map and a location map of the proposed apportionment. Please refer to the example plan (Appendix 2) for further details of requirements. All maps must be clear, legible and ideally in colour. Maps that do not meet our required standard will result in your application being returned with notes highlighting issues that need addressed. If you have purchased your right to graze, you must provide us with evidence (i.e. a copy of your Title) to confirm this, if you have not already done so. If you are not a crofter, but are entitled to share in a Common Grazing along with other crofters, you must provide evidence of your grazing right:

Where a share is tenanted, either a signed declaration from the landlord of the Common Grazing stating you have a share or a copy of your lease which confirms the right.

Where a share is owned, a copy of the Title Deed which shows the right to graze.

If approved, the Commission may impose appropriate conditions including the requirement to fence the apportioned area.

### 3 APPLICATION DETAILS

#### 3.1 MAPPING INFORMATION

Your apportionment application must be accompanied by a site map and a location map of the proposed apportionment. Please refer to the example map at the end of the guidance notes for further details of requirements. All maps must be clear, legible, and ideally in colour. Maps that do not meet our required standard will result in your application being returned with notes highlighting issues that need addressed.

### 4 PURPOSE OF APPLICATION

The table below may help you decide if an apportionment application is the correct route to take:

Purpose	Appropriate Section of the Act	Regulatory Function
Cultivation: Stock Management	Section 52(4)	Apportionment
Cultivation: Agricultural Building (Existing or Proposed)	Section 52(4)	Apportionment
Site of an Existing Dwelling House	Section 52(4)	Apportionment
Site of a *Proposed Dwellinghouse	Section 52(4)	Apportionment
Planting trees/use as woodlands for <b>the exclusive use of the crofter</b>	Section 52(4)	Apportionment
<b>Communal</b> planning of trees/use as woodlands	Section 50	Use of common grazing for forestry purposes
Purposes other than cultivation or woodlands e.g. renewable energy projects	Section 50B	Use of common grazing for other purposes

- \* If the apportionment application is in respect of a site for a proposed agricultural building or dwellinghouse, you must either include a copy of outline planning consent or confirmation from the local Planning Authorities stating that the planning permission is not required for the proposed development together with a copy of the relevant Planning Department's final response to the Prior Notification procedures.

**N.B. Should any crofter propose that an area of common grazing be used for another use e.g. renewable energy/wind farm improvements, this should be done by the grazing committee under section 50B. This section of the Act requires that the proposal is not detrimental to the use being made of the grazing or the interests of the owner. The process requires that the grazing committee hold a meeting of shareholders and invite the owner to give his or her views and the opportunity to discuss the proposal in advance of the meeting. The proposal must obtain a majority support from shareholders attending the meeting, and then the Committee must apply to the Commission seeking approval for its implementation. It is only in this manner that an area of the common grazing can be used for some other purpose. Therefore any application to apportion for another purpose will not be considered.**

Should your proposed apportionment form part of designated area listed below, you should contact the responsible body for the designated site and you must provide a copy of the proposed management agreement or prior written approval from the responsible body.

Description	Responsible body
National Nature Reserve (NNR)	Local Authority
Special Area of Conservation (SAC)	SNH
Special Site of Scientific Interest (SSSi)	SNH
Special Protected Area (SPA)	SNH
Listed Buildings Scotland (LBS)	Historic Scotland
Scheduled Ancient Monuments (SAMS)	Historic Scotland
National Scenic Area (NSA)	SNH
Cairngorm National Park (CNP)	Cairngorm National Park Authority
Forestry schemes (SFGS/WGS)	Forestry Authority

There will be a presumption against granting an individual apportionment where:

- there is a management scheme, involving an agreement entered into between the Grazing Committee and others that provides financial or other benefits or incentives for the township where apportionment may prejudice that scheme
- an application to enter any such scheme has been properly lodged

If we are satisfied that a Grazing Committee has already proposed to the shareholders that all or part of the Common Grazing be managed and used under any common management scheme that could provide financial or other benefits to participating shareholders or to the township in general, we will reject any application for apportionment of any part of the Common Grazing to which that proposal relates for a reasonable period (usually up to 6 months) until the Committee's proposal and any objections to it have been properly considered.

If the application is for forestry you must consult the Grazing Committee about any intention they may have to lodge a forestry or conservation application on behalf of the whole township.

Before you start any developments on your apportioned croft land, we suggest you contact your local Scottish Government Rural Payments & Inspections Directorate (SGRPID) office about the Environmental Impact Assessment (EIA) Regulations.

EIA is a procedure for considering potential environmental impacts of changes in land use. Therefore, if your development plans include changing the use of uncultivated land and/or semi natural areas for agricultural production, you should clarify if your plans will be affected by the EIA Regulations.

Applicants should make contact with their Local Authority's Access Officer to establish any obligations on access rights over the area being sought.

#### **4.1 GRAZING COMMITTEE NOTIFICATION**

Applicants should carry out the initial consultation procedures. You should consult with the Grazing Committee (or Grazing Constables) involved in the Common Grazing. This will reduce the possibility of time consuming disputes by resolving them informally before you lodge the application and allow us to reach a decision at an earlier date.

We recommend that you complete the application form and show this together with the map of the area applied for to the Grazing Committee or Grazing Constable. However, the Commission will also consult directly with the Grazing Committee as part of the case consideration process as required by Section 52(4) of the Crofters (Scotland) Act 1993.

The Crofting Commission have no authority to determine the status of the grazing, its boundaries or the shareholding position. If there is doubt about any aspect of it, it is open to you or any other interested party to apply to the Scottish Land Court, George House, 126 George Street, Edinburgh, EH2 4HH for a determination. The Commission cannot process your application until these matters have been determined.

#### **4.2 PUBLIC NOTIFICATION**

Once we have confirmed that your application and accompanying maps are valid, we will provide you with guidance on how to advertise your application.

## 5 RESIDENCY AND LAND USE

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### WHAT ARE CROFTER'S DUTIES?

#### Crofters Duties

Both tenant and owner-occupier crofters have a duty to:

- **Be resident on, or within 32 kilometres (20 miles) of their croft**
- **Not to misuse or neglect the croft**

**Misuse** – This refers to a croft being used for something which is not considered as cultivation. Crofters require the consent of their landlord or, failing that, the Crofting Commission if they wish to put their croft to another purposeful use.

**Neglect** – This refers to the management of the croft which should meet the standards of Good Agricultural and Environmental Condition (GAEC).

- Cultivate and maintain the croft

**Cultivate** – This refers to the croft being used for cultivation or put to another purposeful use. This includes horticulture, keeping livestock including poultry and bees, growing of crops and the planting of trees.

**Maintain** – This refers to the maintenance of the croft; to enable the croft to be cultivated it must be maintained in a fit state except where another purposeful use is incompatible with the croft being kept in such a state.

**Purposeful use** – This 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>1</sup>

<sup>1</sup> A crofter may only put the croft to a purposeful use if the landlord has consented to the use or the Commission has consented to the use if the landlord has withheld their consent.

## 6 POLICY PLAN ON APPORTIONMENT

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### Section 52(4) of the Crofters (Scotland) Act 1993.

- Every apportionment application will be decided on its individual merits.
- The Commission will take fully into account any comments made by the applicant.
- The Commission has no discretion as to whether it consults with the grazing committee – it must and will do so.
- In the absence of any comment(s) in response to the public advertisement, the Commission will assume that it will have no adverse impact on other crofters
- The Commission will usually have to be satisfied that the applicant will cultivate the apportionment or use it for a purposeful use (subject to obtaining any consent)
- The Commission will consider any evidence that the apportionment will adversely affect either (i) the interests of the other sharing crofters or (ii) that part of the common grazing remaining unapportioned
- The Commission will usually exercise its discretion to reduce, as appropriate, the applicant's souming in the common grazing if the application is granted.
- The Commission will usually specify conditions particularly in relation to fencing, unless there is good reason not to impose such a condition.
- The Commission may apportion an area of land to an individual crofter for a fixed period of time or provide that the apportionment will be subject to review consistent with any planning permission that had been granted for any particular development on the land to be apportioned.
- The Commission may use its discretion where the area applied for has development value to ensure that the interests of other crofters sharing in the grazing are not adversely affected.

In affording the committee and/or the crofters sharing (in the absence of a committee) the opportunity to make comments, the Commission will usually assume that in the absence of any reasonable adverse comments from the committee and/or the crofters, the apportionment will not adversely affect the interests of the other crofters. Even in the absence of such comment, however, the Commission may find that the apportionment applied for will adversely affect the common grazing where there are good reasons for such a finding.



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