

- (1) Hearings; and
- (2) The opportunity to be heard following representations

1. Hearings

## LAW

Crofters (Scotland) Act 1993, section 25(6): **Supplementary provisions relating to decrofting**

*The Commission shall advertise all applications under the said section 24(3) or subsection (4) above (except an application made in respect of a part of a croft consisting only of the site of the dwellinghouse on or pertaining to the croft or only of land the conveyance in feu of which was granted under section 17 or 18 of the 1955 Act) in one or more newspapers circulating in the district in which the croft to which the application relates is situated, and before disposing of such an application shall, if requested by the applicant, afford a hearing to the applicant and to such other person as they think fit.*

A Hearing enables the Commission to publicly seek information and views from those with an interest into decrofting applications.

The Commission is required by statute to afford Hearings into decrofting applications when requested by the applicant before reaching a decision on that application. They may also afford Hearings into decrofting applications on the request of such other person as they think fit.

Where possible the Commission arranges the Hearing in the crofting community concerned, usually in a local village hall or school to provide a more informal atmosphere where participants feel at ease. There will be, almost invariably, a site inspection so the Commission can familiarise itself with the area. Occasionally this

will be a formal site inspection where evidence is taken and used in the final decision. However, the Commission prefer informal site inspections due to the practicalities of hearing what people have said and taking notes in often difficult weather conditions.

A Hearing is held in public but only those invited by the Chair may speak. The Commission publicise Hearings throughout the community, by advertisement in a local newspaper and displaying public notices. The Commission send a brief summary of the case to all recognised interested parties advising them of the date, time and place of the Hearing.

A Commissioner will normally conduct the Hearing with support from a member of the Commission staff and the local Scottish Government Rural Payment and Inspections Directorate Reporting Officer (SGRPID).

No decision is taken at a Hearing. The information gathered allows the Commission to reach a fair decision based upon the information presented at the hearing, the information gathered prior to the Hearing and the relevant policy and legislative requirements.

**N.B.** The Commission reserves the right to determine how it processes other applications and regulatory functions, and will consider holding 'public meetings' where it is appropriate to do so, but will not usually call these 'hearings'. For instance where more information is required, the Commission may decide to hold a public meeting to gather more relevant facts before making a decision.

## 2. The Opportunity to be Heard (Following Representations)

### LAW

Crofters (Scotland) Act 1993, section 58(3): **Provisions as to representations**

*A person to whom notice is given as aforesaid may within the time specified in the notice make representations to the Scottish Ministers in writing, and, whether or not representations are made to the Scottish Ministers in writing, may within the time so specified require that an opportunity be afforded to him of being heard by a person appointed by the Scottish Ministers for the purpose; and, if he so requires, such an opportunity shall be afforded to him and, on the same occasion, to any other person to whom under the enactment referred to in subsection (1) above the Scottish Ministers are required to afford such an opportunity, and the Scottish Ministers shall not take action in relation to the matter until they have considered any representations made as aforesaid.*

The opportunity to be heard is contained in Section 58 of the Crofters (Scotland) Act 1993, "Provisions as to Representations". It relates specifically to the prospect of the Commission taking an action after affording to a person an opportunity to make representation to the Commission. Where the opportunity for representation is specifically mentioned, the Commission is obliged to follow a certain process.

The Commission must give notice to the particular person, providing details of the matter under consideration and advising that, irrespective of whether they make representation in writing, may also require that an opportunity be afforded to him of being heard by a person appointed by the Scottish Ministers (Crofters Commission) for the purpose. Therefore an opportunity to be heard must be provided for such an individual and, on the same occasion, to anyone else that the Commission is required to afford such an opportunity (that is anyone else who has the right to make representation). Any action cannot be taken until the Commission has considered such representation.

There are a limited number of instances where the specific wording on representation is used in this context:

**Section 11(4) – Intestacy.** This is where the Commission is aware at the end of the 24 month notification period in which the executor of a deceased and intestate crofter has to notify the landlord to whom the croft will be transferred that this notification has not transpired. The Commission then has the responsibility of giving notice to the landlord, the executor, if confirmed, and if not confirmed, to each person that the Commission is aware may have a claim on the intestate estate. The notice will state that the Commission is proposing to terminate the tenancy and declare the croft vacant and invite the relevant individuals to make representations as respects the proposal to the Commission within a month of the date of the notice. In this instance, the Commission is proposing an action and giving notice allowing for representation. Therefore, the relevant parties are entitled to request an opportunity to be heard.

**Section 26C – Notice of suspected breach of duty.** This is where the Commission gives a crofter or owner-occupier crofter written notice advising that it considers a duty is not being complied with. The notice must explain why the Commission considers the duty is not complied with and advise that the relevant person may make representations to the Commission within a period of 28 days. This specific reference to representations entitles the recipient of the notice to have an opportunity to be heard.

**Section 52(1B) – Allegation of shareholder contravention or non-compliance with grazing regulations.** Where a grazings committee or owner of the grazings applies to the Commission for a determination that a shareholder is contravening or not complying with the grazing regulations. The Commission serves a notice on the person and a copy to grazings committee and the owner.

The person, the committee and the owner shall all be afforded the opportunity to make representations as regards the averment and, if the Commission think fit, the Commission may hear evidence in the matter. Section 52(1B) – This section refers to representation but qualifies the requirement to hear evidence as being at the discretion of the Commission.

If the Commission receive a request for the opportunity to be heard, the Commission will prepare and issue a brief summary of the case to all recognised interested parties advising them of the date, time and place where the opportunity to be heard will be afforded. No decision is taken at that time. The information gathered as a result of the process will, however, allow the Commission to reach a fair decision based upon the information presented at the right to be held, the information gathered prior to this and the relevant policy and legislative requirements in relation to the regulatory function involved.