

# DELEGATION OF DECISION MAKING BY THE COMMISSION

In terms of the foregoing Instrument of Delegation, the Commission's functions under the following provisions of the Crofters (Scotland) Act 1993 are, to the extent specified in Table 1, delegated by the Commission to any of their members, committees, chief executive, any person whose services are provided to them by the Scottish Ministers, or their employees:

SECTION	DECISION	BOARD	DELEGATED BY THE BOARD		
			THREE COMMISSIONERS (Majority should be elected unless such a majority cannot be maintained)	SINGLE COMMISSIONER	FUNTION DEALT WITH UNDER DELEGATED DECISION MAKING
Schedule 1 Section 16(1)	Appointment of a Panel of Assessors. To make a determination of a complaint about an Area Assessor.				
Schedule 1 Section 16(1)	Whether an Area Assessor who is the subject of a complaint should be excluded from their duties while an investigation is in process.				Delegated to CEO with Area Commissioner made aware of decision
Section 3(4)	Whether to agree to amend an entry in the Register of Crofts to enlarge a croft by a non-croft share in a common grazings.				
3A(1)  3A(2)	Whether to constitute land in the crofting counties or in an area designated by Scottish Ministers as a croft, on the application of the land owner. Whether to constitute land in an area designated by Scottish Ministers as a croft, on the application of the tenant.				
4(1), (2)	Whether to make a Direction, if an owner and tenant jointly apply to allow non-croft land to become part of a croft.				
4A and 58A	Whether to consent to the proposed exchange of a croft (or part of a croft) for another croft (or part of a croft) by a tenant.				
5A	Whether to make an application to the Scottish Land Court in relation to a complaint of a breach of statutory conditions.				

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5C(6)	Whether to consent to any proposed purposeful use of a croft by a tenant (to which the landlord's consent has not been obtained).				
8 and 58A	Whether to consent to the proposed assignation of a croft by a tenant (or any right in pasture or grazing land deemed to form part of a croft).				See Annex 1
8(5)	Whether a croft should be declared vacant (following an invalid assignation by a tenant without Commission consent).				
9 and 58A	Whether to consent to the proposed division of a croft by a tenant crofter or the Executor of a deceased crofter following a valid bequest.			(If the division application is in respect of part of the croft). Can be escalated to three Commissioners if the case caused any doubt	If the division application is in respect of the site of the dwellinghouse, see Annex 1
11(4) to 11(8)	Whether to serve notice proposing to terminate the tenancy of a croft and declare the croft vacant on the failure of succession following the tenant's death. Following consideration of representations whether to terminate the tenancy of a croft and declare the croft vacant on the failure of succession following the tenant's death.				
19A(7)	Whether to object to the Scottish Land Court, regarding an application by a landlord of croft land or an owner of common grazing or affected nearby land, for consent to a development on such land. Whether to object to the Scottish Land Court in respect of the intimation by a landlord of croft land or an owner of common grazing or affected nearby land that every person with rights in such land has consented to its being developed in accordance with a scheme detailed in the intimation.				

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19D and 58A	Whether to consent to the proposed division of an owner-occupied croft by an owner-occupier crofter.			Can be escalated to three Commissioners if the case caused any doubt	
20(1A), (4)	Whether to oppose an application to the Scottish Land Court for authority to resume a croft or any part of a croft or common grazing for any purpose.				Delegated to the Legal Team with Area Commissioner made aware of decision to oppose
21B	Whether to consent to an application from a tenant or owner-occupier crofter to be ordinarily resident other than on, or within 32 kilometres of the croft.				See Annex 1
21C	Whether to consent to an application from a tenant or owner-occupier crofter for an extension to the duration of our consent to be absent.				
21D	Whether to consent to an application from a tenant or owner-occupier crofter for a variation of any condition applied to their consent.				
23(3) and 58A	Whether to consent to the proposed letting by a landlord of a croft or any part of it to any person.				
23(4), (5)–(7)	Whether to serve written notice on an occupier of a croft who does not have a valid letting agreement, requiring them to surrender occupation. Whether to give notice to the landlord of a vacant croft asking for proposals for re-letting the croft, either as a separate croft or as an enlargement of another croft (unless the tenancy had been terminated by the Commission as part of the duties enforcement process). Where the Commission itself undertakes the letting of a vacant croft, the choice of the new tenant and, in consultation with the landlord, the fixing of the terms and conditions of letting.				

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23(5ZB)	Whether to approve or reject proposals for letting the tenancy of a croft following the issue of a notice to do so under Section 23(5) – <b>where the proposal is within agreed parameters.</b>				Delegated to CEO with Area Commissioner made aware of proposal
23(5ZB)	Whether to approve or reject proposals for letting the tenancy of a croft following the issue of a notice to do so under Section 23(5) – <b>where the proposal is outwith agreed parameters.</b>			Can be escalated to three Commissioners if the case caused any doubt	
23(5C)	Where the Commission itself has undertaken the letting of a vacant croft, to determine whether to let a croft to an applicant and in consultation with the landlord on what terms and conditions – <b>where there is one candidate.</b>				
23(5C)	Where the Commission itself has undertaken the letting of a vacant croft, to determine whether to let a croft to an applicant and in consultation with the landlord on what terms and conditions – <b>where there is more than one candidate.</b>				
24(3), 24B(1) & 25 Whole Croft	Whether to give a Direction that a whole croft shall cease to be a croft on application by the landlord or, where appropriate, the owner-occupier crofter. Whether to give a conditional Direction that a whole croft shall cease to be a croft on application by the tenant (in anticipation of its due acquisition). Whether to make a subsequent Direction that land shall become a vacant croft (where there has been a breach of any condition imposed in a previous Direction). Whether any condition imposed in a Direction should be modified.		Can be escalated to the full Board if the case is complex or caused any doubt		If the area applied for is for a residual house site extending to no greater than 0.75 ha, the case can be dealt with under the Delegated Decision Making arrangements set out at Annex 1

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24(3), 24B(1) & 25(1)(a) Part Croft	Whether to give a Direction that part of a croft shall cease to be part of a croft on application by the landlord or, where appropriate, the owner-occupier crofter. Whether to give a conditional Direction that part of a croft shall cease to be part of a croft on application by the tenant (in anticipation of its due acquisition). Whether to make a subsequent Direction that land shall be a vacant croft (where there has been a breach of any condition imposed in a previous Direction). Whether any condition imposed in a Direction should be modified.				
24(3), 24B(1) & 25(1)(b) Statutory House Site	Whether to give a Direction that part of a croft shall cease to be part of a croft consisting of the statutory dwellinghouse.				See Annex 1
24(3) & 25 House sites previously feud under Sections 17 or 18 of the Crofters (Scotland) Act 1955	Whether to give a direction that part of a croft shall cease to be part of a croft consisting only of the site of a dwellinghouse the conveyance of which was granted under Section 17 or Section 18 of the Crofters (Scotland) Act 1955				See Annex 1
25(6) Hearings	Whether to direct a hearing or agree to hold a hearing following a request by the applicant and by such other person as they think fit			Single Commissioner but can be escalated to three Commissioners if necessary	

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Various Public Meetings	Whether to direct a public meeting or agree to hold a public meeting following a request by the applicant and by such other person as they think fit			Single Commissioner but can be escalated to three Commissioners if necessary	
26C to 26D	26C(1) – Whether to give the relevant person a suspected breach of duty notice. 26D(4) – Whether to accept an undertaking to comply with a duty – where the undertaking matches the terms of the notice.				
26C to 26J	26C(1) – Assessing whether there is a good reason not to issue a suspected breach of duty notice. 26C(4) – Whether a duty is being complied with. 26D(4) – Whether to accept an undertaking to comply with a duty – <b>where the undertaking differs from the terms of the notice.</b> 26G(1) – Whether it is fair to divide a croft prior to taking termination or letting action. 26H(1) – Whether to issue an order terminating the tenancy of a croft and seek re-letting proposals under Section 23(5). 26H(5) – Whether to apply to the sheriff for a warrant for ejection of a tenant who fails to give up occupation of the croft. 26H(7) – Whether to recover expenses from the tenant in making an application for a warrant or in executing a warrant. 26J(1) – Whether to direct the owner-occupier crofter to submit a proposal for letting the croft. 26J(3) – Whether to approve or reject a proposal for letting the croft from the owner-occupier crofter. 26J(8) – Where the Commission have invited application for the tenancy, to determine which of the applicants (if any) should be let the croft.				

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27, 29(4) and 58A	Whether consent should be given to a proposed sublet of a croft or part of a croft by a tenant. Where a proposed sublet is allowed, whether to impose any conditions upon the tenant or subtenant.				See Annex 1
29(3)	Whether to allow the subtenant to remain in occupation of the croft subject (for up to one year) where the tenancy of the croft has been terminated.				
29A(1) 29A(2)	Whether consent should be given to a proposed lease of an owner-occupied croft by an owner-occupier crofter for a period not exceeding 10 years (a "short lease"). Whether, in giving our consent to the lease, conditions should be imposed.				See Annex 1
38–39	Preparation of, consultation on and putting into effect of a reorganisation scheme.				
40	Whether to serve notice on an owner or occupier of a croft, or on the Executor of the most recent owner or occupier, requiring them to provide the Commission with information required for compiling and maintaining the Register of Crofts or for carrying out its statutory functions.				
47(3) & (6)	Whether to appoint a Grazings Committee and a Grazings Clerk (or a Grazings Constable) where the shareholders in a common grazing fail to appoint a Grazings Committee.				
47(8)	Whether to remove from office any or all of the members of a Grazings Committee or its Clerk (for failing in their duties).				
48(2)	Whether to approve any proposal by a Grazings Committee for the improvement of the common grazing or the planting of trees on it.				

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48(7)	Whether to appoint a person to summon and attend meetings of Grazings Committees to advise and assist them in the performance of their duties.			Can be escalated to the full Board if the case was complex	
49(4), (5) & (6)	Whether to confirm, make or amend Common Grazings Regulations.				
50(1)	Whether to approve the use of a common grazing for forestry purposes.				
50A	Whether to agree to a joint forestry venture between any shareholder(s) and the owner of a common grazing.				
50B and 58A	Whether to approve the proposed use of a part of a common grazing for any purpose other than for grazing or forestry.				
51	Whether a Direction should be made to enlarge a common grazings following an application from the owner and crofters			Can be escalated to three Commissioners if necessary	
51A	Whether to constitute eligible land as a new common grazing on the application of the land owner.				
52	Whether an alleged contravention or failure to comply with Common Grazing Regulations has occurred and, if so, the requirements to be imposed as a result and the timescale for making good any resultant damage. Whether a person's share in a common grazing should be suspended because of a contravention of or failure to comply with Common Grazing Regulations and whether any damage should be made good (after any requirement already imposed upon a defaulting shareholder has not been duly met). Whether all or part of a person's share in a common grazing should be terminated and that share or part apportioned to other shareholders.				



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52 (Cont'd)	<p>Whether to allow an appeal by a shareholder against a Grazing Committee's decision to decline consent to the shareholder excluding stock, belonging to other shareholders, from the appellants' croft (where the common grazing regulations require that person to make the croft available to other shareholders' stock during the winter season).</p> <p>Whether to apportion a common grazing shared by two or more townships into separate parts for the exclusive use of one or more townships (temporarily or permanently), on application by any interested crofters.</p> <p>Whether to apportion any eligible part of a common grazing for the exclusive use of a shareholder (temporarily or permanently) on application by that shareholder.</p> <p>Whether to apportion lands held runrig among the holders of that land (temporarily or permanently), on the application of any interested landlord or crofter.</p> <p>Whether an existing apportionment should be reviewed on the application of a township, shareholder, Grazings Committee or owner.</p> <p>Whether conditions imposed upon an existing apportionment should be varied, revoked or replaced by other conditions.</p> <p>Whether an existing apportionment should be brought to an end.</p> <p>Whether to draw up a scheme to regulate the use by shareholders of peat bogs or of seaweed used for the croft or of grass used for thatching purposes.</p>				

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58A(4)	To consider whether any other person objecting to an application has a relevant interest in a Section 58A application.				
58A(5A) etc	To determine whether to accept an objection to any regulatory application where the objection is submitted after the 28 day period set out in the advertisement giving public notification of the application, where there is a good reason for the objection being late.			Can be escalated to three Commissioners if the case caused any doubt	
58A(11)	Delegating powers on whether or not to grant the approval or consent applied for under Section 58A or grant it subject to conditions.				
58B	Where the Commission grant an application for consent under Section 58A, whether to modify the condition(s) imposed on an application from the person who applied for the initial consent.				
General	When considering regulatory applications from a Commissioner or member of the SMT.	Consideration will take place in Closed Session. Decision will be announced in Open Session.			
General	When considering regulatory applications from other staff members outwith the SMT.	Consideration will take place in Closed Session. Decision will be announced in Open Session.			

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General	The Commission agreed that any decision that is returned to the Commission for consideration will be the subject of an oral report as to the reasoning and outcome of the appeal at the next Board Meeting. At the meeting, the Board will determine the appropriate delegated decision level for the reconsideration of the case, based on the circumstances, with the defaulted position being that the case would normally be considered by a casework group of three Commissioners, the majority of which were not parties to the original decision.				

**NOTE:** *Regulatory applications submitted for crofts where the Commission are taking action in terms of the Breach of Duties should be referred to the Duties Casework Meeting, where possible, to allow an overall assessment of the situation relating to that croft to be made.*