

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 dwellinghouse 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 2022

Policy on Apportionments (Paragraphs 40 to 43)

The legislation and case law from the Scottish Land Court set out the basis on which the Commission considers apportioning an area of common grazing for the exclusive use of a crofter or township. In assessing apportionment applications, the Commission will consider the application on its merits and exercise its discretion to balance the interests of the applicant in having the land apportioned and the interests of the shareholders in the common grazings, and will consider any comments from the grazings committee as part of its statutory consultation, as well as any comments from shareholders and the landlord/ owner of the common grazings.

The Commission recognises that there can be differing views around issues to do with the value of land, and that the value of land cannot be measured solely from an agricultural point of view. However, the Commission has no specialist skills in land valuation and will not approach apportionment applications from the basis of a land valuation. Where the land sought to be apportioned is considered to have “hope value” and there is a reasonable prospect of development, such “hope value” is a relevant consideration and the Commission will decide how much weight to give to such a consideration having regard to all the facts of the case. The Commission could decide, for example, to apportion land where there is an element of “hope value”, but decide to make the apportionment order subject to review at fixed intervals or for a fixed period time. It is the Commission’s view that where a development takes place on a common grazings involving the landlord and third parties, all the shareholders, should in principle, share in terms of their souming rights in the value of any land that is resumed or subject to a scheme for development. This will be a factor among others in deciding whether or not to apportion land.

When apportioning land, the options available to the Commission include apportioning for a set period of time and/or subject to review at fixed intervals. Where the Commission decides that it is appropriate to apportion land subject to review at fixed intervals, its policy in most cases is to have a review every ten and twenty years. It will however take account of the circumstances of each application. The Commission’s underlying policy in this area is that where the crofter has ceased to use the apportionment or is not utilising it as intended, or where there are concerns about the use of the apportionment, the possibility of restoring the crofters’ common grazing rights over the land should be considered.

The Commission will publish more detailed guidance to applicants of apportionments, which will be available on its website, but will not form part of this Policy Plan. This guidance will set out the factors which an applicant should consider if he or she wishes to maximise the likelihood that the application will be approved. All applications will however be assessed on their merits and having regard to the relevant facts and circumstances.

PROCEDURE

- (1) An application¹ 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 Actshall be made in the appropriate form provided by the Commission.

- (2) On receipt of an application on the said form, the Commission will check that the application is valid. This will include checks that:
 - (a) The applicant is a shareholder in the common grazings.
 - (b) The application is for one of the following purposes:
 - Cultivation: Stock Management
 - Cultivation: Agricultural Building (Existing or Proposed)
 - Site of an Existing Dwellinghouse
 - Site of a proposed Dwellinghouse
 - Planting trees/use as woodlands for the exclusive use of the shareholder.
 - (c) 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.
 - (d) That the accompanying map meets the required standards.
 - (e) Where the area applied for includes part of a designated area, that details of existing management agreements and evidence of contact with the responsible body about the proposal to apportion has been provided.
 - (f) 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 grazings².

¹ 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)

² This evidence may not be required if the Commission has previously apportioned areas of the unregulated common grazings

- (3) **Note on competing applications for the same area of land:** Where the Commission receives more than one application to apportion the same area of the common grazings, these will be processed strictly in terms of the date on which the first competent application is received. Two or more applications for the same (or part of the same) area are by their nature mutually incompatible. It is not the Commission's role to decide which of the competing applications is preferred. As we can only process one application for an apportionment of a particular area of common grazings at a time, priority will therefore be given to the competent application that is received first and any subsequently received application(s) will be put on hold until the Commission decide on and conclude the processing of the first application.
- (4) 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.
- If the application is valid, the Commission will prepare a map and issue to the applicant requesting that he provides written confirmation that the map accurately reflects the area applied for.
- (5) Once the applicant has accepted the Commission prepared map as being an accurate reflection of the area applied for, the Commission will instruct the applicant to advertise the apportionment in a newspaper circulating in the district to which the croft and common grazing relates.
- (6) At the same time as instructing the applicant to advertise the application, the Commission shall consult with the grazing committee or constable (if there is one in office) by sending out a questionnaire for completion and return. We will also provide the committee with a copy of the application and plan.
- (7) Where any submissions¹ to the application are received by the Commission – refer to separate Rules of Procedure on objections.

¹ 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*

- (8) At the end of the 28-day public notification period and following consultation with the grazing committee or constable, the Commission will proceed as follows:
- (i) If the application 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. It will be held in abeyance until a competent registration application is received. 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 submissions received from the grazings committee, individual shareholders or the owners of the grazings.
 - (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 from the grazings committee, individual shareholders or the owners of the grazings. 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.
- (9) In every application for apportionment, the Commission will request that a report be prepared by an Officer from the local SGRPID Office. This will include a site inspection where any modifications required e.g. for topographical reasons, will be agreed by the applicant. The grazings committee and any shareholder or owner who made submissions in response to the public notification of the application will also be contacted in the course of preparing the report.

- (10) 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 –
 - (i) The Commission shall serve copies of any additional information or further evidence obtained by the Commission including, where applicable, the SGRPID report (along with the application form) on the applicant and other interested parties, and will allow them the opportunity to comment on this additional information or further evidence within 21 days. This is not however, an opportunity for parties to submit new objections or to raise substantive new issues.
 - (ii) Any comments received and accepted by the Commission will be taken into consideration by the Commission when deciding on the application.
 - (iii) the Commission may direct that a site inspection and meeting with the applicant, shareholders and owner of the grazings¹ is held before deciding on the application and shall consider any new information obtained at the inspection and meeting.
- (11) The decision on the apportionment application) 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 it² (this may be the area applied for or a modified area as agreed with the applicant);

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

² The granting of an apportionment application will be in the form of an offer of apportionment.

- (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.

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 grant an apportionment without specifying either a review or a term in relation to it.

- (12) If the Commission grant an apportionment it will issue an apportionment order with an accompanying plan. The Order will normally include a condition that the apportionment be made stockproof by fencing within 2 years of the granting of the Order. The Order will also normally include a condition reducing or extinguishing the applicant's souming entitlement. The reduction in souming, however, will not take effect until confirmation has been received that the fencing condition has been complied with.
- (13) 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.
- (14) 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.

- (15) 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 advised by the applicant.

- (16) 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.

- (17) 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.

- (18) 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.
- (19) After the 2-year period for erecting a stockproof fence set out in the offer of apportionment, the Commission will check and confirm that the apportionment has been fenced.

If the apportionment **has been fenced**, the souming reduction will take effect. If the souming is extinguished the applicant will cease to be a shareholder in the common grazings.

If the apportionment **has not been fenced**, then it is open to the applicant, the grazings committee or the owner of the grazings to apply for a review of the apportionment under section 52(12) of the 1993 Act. Following a review, the Commission can determine to:

- (a) Vary or revoke a condition,
- (b) Impose a new condition,
- (c) Bring an apportionment to an end.

Where it is determined following a review to bring an apportionment to an end, the land in question reverts to being a common grazing.