

Draft Template Common Grazing Guidance for the Management and Use of Insert Name Common Grazing

Forward

To assist committees preparing Regulations that are in line with current legislation, the proposal is that a core set of Regulations is issued by the Commission accompanied by these Guidance notes to support the activities of grazing committees.

The core Regulations would form the basis for all Regulations and would be the minimum requirement that each committee would adhere to before the Commission would be willing to register them. Please see attached core Regulations.

These Guidance notes are designed to assist the grazing committee administer their Regulations with helpful advice and support for their consideration, to operate in an efficient and effective manner to manage the interests of all parties involved in the common grazing.

The core Regulations will, as far as possible, concentrate on the legislative requirements of the committee and assist you with an effective constitution, whilst the Guidance would be regarded as helpful advice including additional duties which may be added to the common grazing Regulations to reflect the uniqueness of your common grazing. Either way the committee requires to submit their proposed Regulations to the Commission for agreement.

It is important that grazings committees members are aware that the grazings committee's function is solely to manage and improve the grazings and to comply with the duties set out in crofting legislation. Should committee members wish to carry out or take part in any community activities or initiatives that go beyond the legal duties of the grazings committee, they must not do so through the structure of the grazings committee. It is important that any funds associated with such activities or initiatives are at all times kept separate from any monies held by the grazings committee on behalf of the crofters sharing in the common grazings.

This approach seeks to ensure that the Commission is not seen as imposing additional administrative functions on committees, but rather working with them to find local solutions to local problems while respecting the requirements of legislation.

It is recommended that once your Regulations have been approved by the Commission a copy of these should be forwarded to all shareholders for their information.

Important note: the following guidance is intended to assist grazings committees with regard to the use of grazings regulations. The guidance does not constitute legal advice, and should not be construed as such. Should a grazings committee and/or shareholder require legal advice on a matter concerning common grazings, independent legal advice should be sought from a suitably qualified solicitor.

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INTERPRETATION OF TERMS

In these Regulations, unless the context otherwise requires:-

The Act	Crofters (Scotland) Act 1993 (as amended)
Commission	Crofting Commission
Common Grazing	The grazing to which these Regulations apply
Committee	The grazing committee or Grazing Constable for the time being appointed to administer these Regulations
Shareholder	Any person, whether or not they are a crofter, who is entitled to share in the common grazing
Grazing Clerk	Person as appointed by the committee
Grazing Constable	Person appointed by the Crofting Commission
Grazing Entitlement/Souming	The number and type of stock which each shareholder is entitled to put on the common grazing

1. APPOINTMENT OF NEW GRAZING COMMITTEE

Procedure

- (1) Not later than one month before the term of office ends, the shareholders should be notified of a meeting to appoint a new Grazing Committee. An advertisement of a meeting to appoint a new Grazing Committee must be placed in a newspaper circulating in the district at least 10 days before the meeting takes place. It is suggested that a Notice is also displayed in a prominent place in the locality of the common grazing, such as public noticeboards, shops, post offices or at places where shareholders would likely visit.
- (2) A retiring member of a committee shall be eligible for re-election.
- (3) A proxy vote can be used at a meeting to appoint a grazing committee.
- (4) At the start of the meeting the assembled shareholders will agree:
 - Who is to take a minute of the meeting, and
 - Who is to chair the meeting
- (5) It will then be recorded who is present at the meeting.

Guidance for Fair and Orderly Meetings

- (6) The common rules and procedures in parliamentary law should be used for deliberation and debate so that each person is on the same footing and speaking the same language. Roberts Rules of Order provides guidance on the parliamentary laws which grazings committees may wish to refer.
- (7) The Chairperson will invite the shareholders to decide on the number of members who will form the committee. If there are more people nominated than the number of the committee places agreed, then a vote requires to be taken.
- (8) A majority of the members of a grazing committee shall be quorum.
- (9) The elected members of the committee will then formally appoint;
 - a Chairperson, who must be a shareholder, from among their number, and
 - a Grazing Clerk, who need not be a committee member or a shareholder in the common grazing,
 - a Treasurer, from among their number (where there are five or less shareholders, for the role of Grazing Clerk and Treasurer can be combined).

Registration of Committee

- (10) Once appointed, the committee must be registered with the Crofting Commission. The Grazing Clerk must notify the Commission of the committee's existence providing details of the committee members, Grazing Clerk, Chairperson and Treasurer. A form 'Notification of a New Grazing Committee' is available from the Crofting Commission for this purpose. A copy of the minute of the meeting at which the committee was established must also be provided. A copy of the advert or notice should also be sent as verification that the meeting was called in accordance with your Regulations.

Failure to appoint a committee

- (11) If the shareholders fail to appoint a committee, the Commission may appoint a committee; alternatively, the Commission may appoint a grazing constable to have similar power and duties as a committee. The Commission are however not required to do either should shareholders fail to appoint a committee themselves.

Grazing constable

- (12) If the Commission appoint a grazing constable then they will have the same powers as a committee and bound by the same requirements.
- (13) The Commission may determine what annual payment a grazing constable should receive and each shareholder shall make an appropriate contribution to meet this cost (Section 47(7)).

Shares and grazing entitlement

- (14) The grazing entitlement for each holding is the number of stock of various kinds or equivalents that each shareholder is entitled to put on the whole common grazing (Section 49(2) (d)).
- (15) The shareholders, the number of shares held by each shareholder, the crofts to which the shares pertain and the grazing entitlement for each share is shown in Schedule 1 of the common grazing Regulations.

Area of common grazing

- (16) The Commission are responsible for the first registration of all common grazings in the crofting counties. The Crofting Register (administered by Registers of Scotland) will provide a unique reference number and the extent of the boundaries will be mapped and available to the shareholders. Apportionments are mapped with croft registration boundaries.

Duty to make and submit Regulations

- (17) Every grazing committee has a duty to make and submit grazing Regulations to the Commission within six months of being required to do so by the Commission. The committee should consult with all shareholders on the proposed grazing Regulations. Grazing Regulations will be of no effect unless confirmed by the Commission. If the committee fail to make and submit Regulations to the Commission within the required six months, or fail to make and submit Regulations which in the Commission's opinion are sufficient and satisfactory, then the Commission may make and put in place Regulations for the common grazing. The Commission strongly recommends that the draft template Grazing Regulations (available on the Commission's website) is used as the basis for Grazing Regulations.

Amendments to Regulations during term of office

- (18) A grazing committee may, from time to time, request amendments to their Regulations by seeking confirmation of the proposed amendments from the Commission. Prior to seeking the Commission's confirmation, the committee should consult with all shareholders on the proposed amendments. The Commission may confirm with or without modification or refuse to confirm any proposed amendments to the Regulations submitted to them for confirmation and may fix the date on which the Regulations are to come into operation. Grazings committees are urged to examine the draft template Grazings Regulations (available on the Commission's website), as any amendments to the Regulations will usually be approved by the Commission only where they are

consistent with the draft template Grazings Regulations, unless there is good reason in the Commission's view why additional or different regulations should apply.

Breach of Grazing Regulations

- (19) (a) Where it is averred by the committee or the owner of the common grazing that a person has contravened, or failed to comply with, any common grazing Regulations for the time being in force the committee or as the case may be the owner, may apply to the Commission for a determination in the matter.
- (b) When the Commission receive such an application, they shall serve notice on the person of the assertion and shall send a copy of that notice to the committee and the owner, all of whom shall be afforded the opportunity to make representations to the Commission and may have their evidence heard by the Commission but only if the Commission considers it appropriate to do so.
- (c) If the Commission determine that the alleged breach or failure has occurred, they may require the person to conform to the regulation in question and to make good, within a specified reasonable period, any resultant damage.
- (d) If the person does not conform with the regulation and make good any damage, the Commission may determine that all or part of the person's share in the common grazing be suspended for a specified period.
- (e) The continued failure of the person to attend to these matters may result in the termination of all or part of their grazing share, but the Commission will seek to work with any such persons and will ordinarily terminate all or part of a grazings share only as a matter of last resort.

Other Arrangements

- (20) The Regulations are for the management and operational activity of the common grazing and are effective by the appointed grazing committee as the recognised entity.

Term of office

- (21) The term of office of the members a grazing committee will be three years from the date of the meeting at which they were appointed.

2. MEETINGS AND FINANCIAL MATTERS

Who is responsible for what?

Chairperson

- (1) The chairperson must chair each meeting, or in their absence, the remaining members of the committee shall decide who will take the chair.
- (2) In an **emergency situation** where a chairperson has called a meeting of the committee at 24 hours' notice, this could cover such situations as an outbreak of an infectious disease, immediate response to a political decision affecting animal health or the financial impact on crofters. This list is not exhaustive; however, the matter would require being of a serious nature and not for business that would be considered routine by the committee.

- (3) The Chairperson is responsible for ensuring each meeting is conducted in an orderly and efficient manner. The role of the Chairperson is to direct discussion of the committee and ensure that:
- all meetings are run effectively,
 - the committee functions properly,
 - there is full participation at meetings,
 - all relevant matter are discussed at meetings.

Grazing Clerk

The Clerk must:

- (4) (a)
- Provide all shareholders with a copy of the grazing Regulations within 28 days of having been confirmed by the Commission.
 - Keep a record of the form of notification given to shareholders about each meeting.
 - Keep minutes of all meetings held and record all proceedings and resolutions.
 - Circulate to all committee members draft minutes of meetings within 21 days of the meeting having been held.
 - Circulate to all shareholders approved minutes of meetings within 21 days of the meeting at which the minutes are approved.
 - Give 14 days' notice of any meeting of the committee; except when – the date of the meeting has been agreed at the previous committee meeting, in which case a reminder issued 3 days before the meeting shall be sufficient.
 - Keep records of all procedure followed by the committee in carrying its duties. These records should include all contributions either in cash or in labour. This is of vital importance for future reference and is especially important in the context of improvement schemes where additional shareholders may wish to join at a later date.
 - Keep an up-to-date register of shareholders.
 - Deal with all correspondence on behalf of, and reflecting the views of, the grazing committee.
 - Collate a record of stock held on the common grazing based on information provided by the shareholders.
- (b) If the Grazing Clerk is unable to attend any meeting then the remaining members of the committee **must** decide who will take on the Grazing Clerk's duties for that meeting.

Treasurer

- (5) (a) The Treasurer deals with the day-to-day financial business of the grazing committee where the committee holds any monies or funds on behalf of shareholders.
- (b) The Treasurer **must**:
- keep up-to-date financial records, where the committee holds any monies or funds on behalf of shareholders
 - submit a financial statement and make a report to the Annual General Meeting.
- (c) While the Treasurer has a specific role within the committee in relation to monetary matters, the overall responsibility for financial management lies with the whole committee.

Financial matters

- (d) The following guidance is provided in order that Grazings Committees adopt best practice with regard to all financial matters. The Crofting Commission will not

regulate a Grazings Committees financial affairs but may exercise its right to remove some or all committee members and/or clerk in the event that the committee does not discharge its responsibilities under the 1993 Act to distribute funds, for instance from resumption, immediately amongst shareholders.

The Grazings Committee is strongly recommended to adopt a system for financial accountability and transparency. It is advised that the financial year of the grazings committee should run from 1 April to 31 March.

All monies shall be lodged in a bank account in the name of the grazing committee. This account should be used by the committee solely for the management and maintenance of the common grazing. The Grazings Committee should be aware at all times that any monies it holds are held on behalf of the shareholders.

The signing of cheques and withdrawal of monies should require two signatures. The signatories should be the Treasurer and another member of the grazing committee, preferably the Chairperson or Clerk. In the absence of a grazing committee, a registered Grazing Constable will deal with this duty.

The income and assets of the committee must be applied solely towards the objectives of the committee, and within the committee's legislative powers in terms of the Crofters (Scotland) Act 1993 as amended.

Other Funds, including Resumption and Scheme for Development monies

A separate set of accounts must be kept for each and every income stream paid into the account(s), and out of it shall be paid all charges in connection with the establishment of the individual scheme/s and its future maintenance.

All funds received through:

- (a) Schemes for Development,
- (b) Compensation under section 20(1) of the 1993 Act or
- (c) resumptions, being a share in the value of the land

must be distributed immediately following receipt of payment by the clerk amongst shareholders who are willing for the share payable to them to be paid by the landlord to the clerk for distribution by the clerk. The distribution will be in proportion to the individual's shareholding entitlement. Prior to distributing the funds, the committee should be satisfied that all scheme requirements have been fulfilled. Any committee that does not make immediate payment of such funds to shareholders as set out above, or is guilty of any financial impropriety or irregularity, may expose itself to claims and/or charges against the committee in the Sheriff Court or other relevant Court. The Commission may also exercise its right to remove all or some of the committee members and/or clerk in the event that the committee does not discharge its responsibilities under the 1993 Act, including making payments to shareholders under section 20 of the 1993 Act.

Committee Expenses

- (6) Where the committee has or will incur expenses in managing the common grazing for the purpose of these Regulations or in providing, maintaining or keeping in good repair any fixed equipment for shareholders' use, each shareholder shall be liable for expenses thus incurred, and this should be made clear to all shareholders. The level

of expenses will be in proportion to the individual's shareholding entitlement and again shareholders should be advised accordingly.

Remuneration of the Grazing Clerk

- (7) The committee should agree on an annual payment to be made to the Grazing Clerk and the committee may recover this cost from each shareholder in proportion to their shareholding entitlement.

Raising of monies

- (8) The powers of the grazing committee include the power to raise money (whether by borrowing or otherwise) for the purpose of implementing any proposal approved under section 50B of The Act, relating to the use of common grazing for other purposes. However, the committee can only exercise this power if a majority of the grazing committee vote to do so. The Grazings Committee should be aware, and should make shareholders aware, that any section 50B consent provided by the Crofting Commission does not constitute permission from the Commission for the proposed use under section 50B. Commission consent simply confirms that the formalities of and requirements of section 50B have been complied with.

Scrutiny of Accounts

- (9) A grazing committee shall undertake an annual independent scrutiny of their financial accounts. The committee should satisfy themselves that the level of scrutiny is proportionate to the value of monetary transactions.

Financial Irregularities

- (10) The Commission will not get involved in any matter relating to alleged financial impropriety. This is potentially a civil and/or criminal matter and should be dealt with by the relevant authorities. Any evidence of financial impropriety involving a failure to comply with any of the duties contained in the 1993 Act may result in the removal of some or all of the committee and/or clerk.

Committee Members

- (11) (a) Committee members must act openly, frankly and fairly.
- (b) Committee members will make decisions as a collective group and hold joint responsibility for decisions taken by the committee. They are responsible for taking decisions which are in the best interests of the shareholders in the common grazing.
- (c) A majority of the members of a grazing committee will be a quorum. A quorum is the number of committee members who must be present at a meeting in order that business can be validly transacted. Any vacancy occurring in the membership of a grazing committee, by reason of death, resignation or otherwise, will be filled by the remaining members of the committee nominating a person onto the committee.
- (d) Committee members should:
- prepare for, attend and participate at meetings,
 - send an apology to the Grazing Clerk if they are unable to attend a meeting,
 - have a good understanding of the committee and how its functions are carried out,
 - be clear about what has been decided at meetings.

- (12) If there is a vacancy on the committee caused by either death or resignation this will be filled by the remaining members if the committee nominating a person into the committee. Any changes of committee members are to be notified to the Commission.

Shareholders

- (13) (a) A shareholder in the common grazing is any individual who holds shares and has a right to graze animals on the common grazing.
- (b) Each shareholder should familiarise themselves with the contents of the grazing Regulations.
- (c) Each shareholder shall be liable for expenses incurred by the committee in carrying out its duties. The level of expenses will be in proportion to the individual's grazing entitlement.
- (d) Each shareholder is bound to comply with such instructions and directions as may be given by the committee for the purposes of the Regulations.
- (e) Each shareholder must provide the Grazing Clerk with their current postal address and, if available, an e-mail address. It is the shareholders' responsibility to notify the Grazing Clerk of any changes to these addresses. Failure to provide the Grazing Clerk with an up-to-date address may lead to the matter being referred to the Commission to take action. This may lead to the suspension or termination of the shareholders' share in the common grazing.
- (f) Each shareholder is entitled to attend and vote at either an Annual general Meeting (AGM), Extraordinary General Meeting (EGM), or a meeting held to appoint a grazing committee.
- (g) All shareholders (or their representatives where appropriate where voting will be by means of a proxy) shall register with the clerk prior to the start of any meeting.
- (14) Emergency situation [2(e)] – as a way to illustrate this point, this may be an outbreak of an infectious disease or something of significant proportion that necessitates the committee meeting urgently.
- (15) Part 2 Meetings item 6(c) – Such purposes would include any proposals which would deliver targeted environmental, social or economic benefits.

Collective responsibility of the Committee

- (a) In terms of the Scottish Government's Cross Compliance specifications inclusive of the Standard Management Requirements (SMR) and also the Good Agricultural and Environment Conditions (GAEC):

copies can be found at - www.scotland.gov.uk/Publications/2005/12/0990918/09199.

- (b) Duty to Report:
- Part 4 (b) states the minimum requirements which will be requested by the Commission. They will use the experiences of gathering information from the Crofting Census and make a similar style of form for the Grazing Committees to complete. For a full understanding of the obligations under this section, please see Section 49A of the Act. The requirement to report on the state of the common grazing, once commenced, will take place every 5 years thereafter.

- Where a grazing committee have an issue with an individual shareholder they may apply to the Commission to make a determination on the matter. The Commission will generally require to be in possession of a completed Duty to Report form in order to conduct their enquiry and to understand the full context of the grazings.

(c) The grazings committee will be responsible for ensuring that any Environmental Impact Assessment and/or Habitats Regulations Appraisal/ Appropriate Assessment is carried out by a Competent Authority before any works of improvement and/or forestry projects are commenced, and for liaising with the Competent Authority where it is not clear whether consent is required under environmental law and regulations before any improvements, forestry or other projects are carried out. The Commission will not be responsible for ensuring compliance with environmental legislation and regulations; this responsibility will lie with the grazings committee.

Declarations of interest

- (16) Examples of what should be declared would be any family or working relationship, whether for money or other, between shareholders, owners of the common grazing or members of the Crofting Commission or staff employed to assist the Crofting Commission or members of Grazings Committees. It is very important in the maintenance of confidence in the Grazings Committee that any declarations of interest are declared timeously, and any member or other person who has declared an interest absents himself or herself from that part of the meeting in respect of which an interest has been declared.

3. FINANCE

Accounts

- (1) The Commission cannot advise on the eligibility or otherwise of any grazings committee to apply for any scheme (such as SRPD) or grants, and any committees considering applying for any such scheme(s) are recommended to seek independent advice. Any breach of the scheme obligations is not a matter that the Commission can regulate. The Committee should also satisfy itself that it has received appropriate specialist tax advice on the tax implications (if any) for individual shareholders of participating in any such schemes, and inform shareholders accordingly.

Committees going out of office

- (2) There is no standard procedure for closing a grazings committees business however, the following should be considered:
- All debts, liabilities and assets should be identified and dealt with appropriately, also all contracts should be terminated.
 - Assets and any money held in the grazing fund and bank accounts should be distributed between the shareholders depending on their grazing entitlement.
 - Bank account holders will need to close the common grazings bank account
 - The final accounts should be prepared before formally closing business.

Scrutiny of accounts

- (3) An independent examination is a form of external scrutiny which:

- offers an assurance that nothing has been found that needs to be brought to the attention of shareholders,
 - is less rigorous than an audit,
 - is less costly than an audit.
- (4) When an independent examiner's report is prepared it means that there is an assumption that the examiner is content with the accounting records and accounts unless they specifically state otherwise. The report is intended to be simpler than an audit and no opinion is expressed on the accounts.
- (5) In contrast, an auditor is required to build up a body of evidence and express an opinion on the accounts. The opinion given in an audit depends on the nature of the accounts that have been prepared.
- If receipts and payments accounts have been prepared, the opinion will state whether or not the accounts 'properly present' the receipts and payments for the common grazings for the financial year.
 - If fully accrued accounts have been prepared, the opinion will state whether the accounts provide a 'true and fair view' of the financial affairs of the common grazings.
- (6) Historically, the term 'audit' has been used loosely to describe any external scrutiny of accounts, however if the term 'audit' is used in the Grazings Regulations, the accounts must be audited by a registered auditor.
- (7) Audits are more commonly required for larger common grazings, although smaller common grazings may also require an audit. It is possible that the Regulations may contain specific terms requiring the accounts to be audited or referring to an 'auditor'. In such a situation, the common grazings are required to have the accounts audited and an independent examination would not be acceptable in such cases. In other situations, 'audit' may be instructed because that has been the custom in the past.

Compensation and share in value of land

- (8) Under Section 21(2) of The Act, crofters sharing in a common grazing are entitled to a share in the value of the land resumed where land is being taken for a valuable purpose. The value is the open market value of the site freed from crofting tenure as at the date of resumption.
- (9) Under Section 21(4) of The Act, if land intending to be resumed forms or forms part of a common grazing, the share of the value of the land shall be distributed amongst the crofters sharing in the common grazing according to the shareholders' individual soumings/ grazing entitlement, as set out in more detail in paragraphs (13) to (17) below.
- (10) If a grazing committee or a grazing constable has been appointed under Section 47 of The Act, the share shall be paid by the landlord to the clerk of the committee or the constable for immediate distribution by him among the crofters concerned in terms of paragraph (10) above. Where any crofter wishes the proportion of the share payable to him to be paid directly to him by the landlord, the landlord shall do so.

Method of calculation of individual shareholders entitlement

- (11) There is no further reference in the legislation detailing the mechanism by which the share of the value of the land apportioned among the crofters sharing in the common

grazing is calculated. Where shares have an equal value there would not appear to be a difficulty, the share of the development value and compensation (if any) must be distributed with a value allotted per share, and each shareholder's proportion of compensation would be calculated as a multiple of the number of shares held.

- (12) The situation is different, however, where shares have an unequal value, typically where some shareholders have apportioned an area for their own exclusive use in accordance with Section 52(4), and have had their grazing entitlement reduced.
- (13) This was the situation presented to the Scottish Land Court in a recent Section 19A 'Schemes for development' application. In their approval of the application the Land Court commented that they were satisfied that the compensation proposals met the requirement set out at Section 19A (2)(c) of The Act that:

"... the scheme provides for there to be fair recompense to each member of the crofting community, in the area affected by the development for the effects of the development (including, in relation to the croft land of each such member, recompense at least equivalent to the recompense which the member might be expected to have obtained had that croft land been resumed)."

- (14) If the total value of compensation was, for example £20,650.00, then according to the court order each shareholder had been allocated share equivalents in the total value of compensation on the basis of their individual grazing entitlement with 1 cow equivalent to 7 shares and 1 sheep equivalent to 1 share.
- (15) For example, shareholder X had a grazing entitlement of 2 cows (14 shares) and 15 sheep (15 shares) giving him a total of 29 shares of the compensation entitlement. In total there were 125 cows (875 shares) and 1190 sheep (1190 shares) giving a total of 2065 shares, therefore shareholder X was allocated 29/2065ths of the compensation value (or £290.00 of £20,650.00).

4. MANAGEMENT & MAINTENANCE OF THE GRAZINGS & FIXED EQUIPMENT

Fixed equipment

- (1) The definition of 'fixed equipment' is taken from section 85 of the Agricultural Holdings (Scotland) Act 1991, which states:

"Fixed equipment" includes any building or structure affixed to land and any works on, in over or under the land, and also includes anything grown on land for the purpose other than the use of produce thereof, or amenity, and, without prejudice to the foregoing generality, includes the following things, that is to say-

- (a) All permanent buildings, stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding necessary for the proper conduct of the Common Grazings;
- (b) All permanent fences, including hedges, stone dykes, gate posts and gates;
- (c) All ditches, open drains and tile drains, conduits and culverts, ponds, sluices, flood banks and main water courses;
- (d) Farm access or service roads, bridges and fords;
- (e) Water and sewerage systems;
- (f) Electrical installations including generator plant, fixed motors, wiring systems, switches and plug sockets;
- (g) Shelter belts,

And references to fixed equipment on land shall be construed accordingly'.

Improvements of grazing and fixed equipment

(2) Section 30(7) of The Act refers to "permanent improvement":

1. Dwelling-house
2. Improvement works carried out in compliance with a notice of a final resolution served under Part IV of the Housing (Scotland) Act 1987
3. Farm offices
4. Subsoil and other drains
5. Deep trenching
6. Walls and fences
7. Clearing the ground
8. Planting trees, other than under section 48(4) of this Act
9. Making piers or landing stages
10. Roads practicable for vehicles from the croft to the public road or the sea shore
11. All other improvements which, in the judgement of the Land Court, will add to the value of the croft as an agricultural subject
12. Buildings or other structures erected under section 5 of the Crofters (Scotland) Act 1961 or section 31 of this Act, being buildings or structures which are fixtures on the land, or works executed under the said section 5 or 31.

5. REVIEW OF IMPROVEMENT SCHEMES

Common Grazing Improvement Scheme

- (1) An improvement scheme would be defined as a specific area of Common Grazing which was been fenced off from the main body of the Grazing and then improved through reseeding via the application of: lime (or sand), fertilisers, phosphates and grass seed, as required, and then maintained in this condition through annual maintenance, either for stock grazing or fodder production.
- (2) These Schemes must be agreed by the Grazing Committee and may include the following memberships:
 - All shareholders
 - An individual shareholder
 - Groups of shareholders (sometimes known as minority parks)

The shareholder(s) involved contribute to the initial whole cost of the scheme and then annual maintenance thereafter, through an agreed payment amount.

6. PROPOSED IMPROVEMENT TO THE COMMON GRAZING & FIXED EQUIPMENT

Please refer to the draft Regulations.

7. STOCKING OF THE COMMON GRAZING

Please refer to the draft Regulations.

8. REVIEW OF APPORTIONMENTS

- (1) The grazings committee, the owner(s) of the common grazing, or the crofter who has/have been granted an apportionment or the township, may apply to the Commission for an apportionment to be reviewed.

- (2) One of the possible outcomes of such a review would be that the apportionment is brought to an end and the land in question reverts to common grazing. Other outcomes include the revoking or varying of a condition or the imposition of new condition to the apportionment.
- (3) This process does not currently apply to land constituted as new common grazing under Section 51A of The Act.

9. USE OF COMMON GRAZING FOR OTHER PURPOSES

- (1) A shareholder may propose to the grazing committee that a part of the common grazing be used for a purpose other than grazing, peat cutting, seaweed use, gathering of thatching material or woodlands. The detailed procedure to be followed by the grazings committee on receipt of such a proposal is set out in detail in section 50B of the 1993 Act. The grazings committee and crofter(s) participating in such a proposed use are recommended to seek their own independent advice on the provisions of 50B. The Commission is unable to offer legal advice on these matters.

Any approval from the Commission under section 50B(6) does not constitute approval from the Commission for the purpose applied for, but simply acknowledges that the requirements of section 50B have been complied with regarding the implementation of the proposal. The Commission provides no guarantee that any statutory or other consents required for the proposal have been obtained, including (for instance) planning consents, SEPA consents/ licences, grid connection consents, Scottish Water consents, consents under the Environmental Impact Assessment Regulations and any Habitat Regulations Appraisal/ Appropriate Assessments under the Habitats Directive.

10. USE OF COMMON GRAZING FOR FORESTRY PURPOSES

- (1) Where a grazing committee or any shareholder proposes that the committee should plant trees on and use as woodlands any part of the common grazing, the committee shall apply for the approval of the Commission and the consent of the owner(s) of the common grazing.
- (2) Prior to applying for the Commission's approval and owner's consent, the committee must 'give notice' to each shareholder of such proposals and the proposed allocation of expenditure to be incurred in respect of those works among the shareholders. A copy of the notice must be sent to the Crofting Commission.
- (3) The notice must be in writing and must be delivered to the shareholder or left at their proper address or sent to them by post. If the notice is sent by post, then it must be sent by registered post or the recorded delivery service, addressed to the shareholder at their last known address.
- (4) The notice should also inform the shareholders of their right to make representations to the Crofting Commission in respect of the proposals or the proposed allocation, within one month of the date of the notice.
- (5) The application from the committee for the Commission's approval to the proposal will provide full details of the proposal and any correspondence or objections from shareholders and owner(s).
- (6) The Commission may approve the proposals or proposed allocation with or without modifications or reject them.
- (7) The committee shall ensure that not all the common grazing is planted with trees and used as woodland.

- (8) The committee should give consideration to the future needs of any shareholders who do not participate in a proposed forestry scheme, so that their share of the plantable land would be available to them, or their successors, in the future.
- (9) The owner's consent shall be in writing, specifying the part of the grazing to which the application relates and may be subject to reasonable conditions.
- (10) If the owner's consent is not received within six weeks of the committee applying for it, the owner will be deemed to have refused the application.
- (11) Where the owner's consent is obtained, the committee should send a copy of this, together with their application, to the Commission.
- (12) The Commission shall, on receipt of any application, consult the owner, the (13) shareholders and other persons whom the Commission regard as having an interest.
- (13) The Commission will inform all shareholders and the owner(s) of its decision, and of any conditions which have been imposed.
- (14) If the Commission give approval the details will be entered in the Register of Crofts.
- (15) The owner's consent will cease to be effective if the committee have not commenced the planting within seven years of the consent being entered in the Register of Crofts.
- (16) When the committee receive the approval of the Commission, the committee shall send detailed proposals (including location, extent, estimated costs, proposed allocation of costs, expected effect on grazing entitlements plus note of conditions associated with the proposals). This information will be conveyed in writing to all shareholders, who should also be informed of their right to make representations to the Commission in respect of these proposals within one month. A copy of this letter of notification must be sent to the Crofting Commission.
- (17) The committee are responsible for ensuring all conditions of consent/approval/grant are satisfied, and for the management of any scheme including woodland.
- (18) All shareholders shall be bound to comply with all instructions or directions given by the committee under this regulation.
- (19) No shareholder is allowed to detach their interest in the woodland area, from the share in the common grazing to which it relates.
- (20) The committee must maintain an account for all financial transactions associated with any scheme. Before paying out any of the proceeds of grant or sales or other income to a participant, the committee may deduct any levies, costs etc, which the participant is due to pay as their share of the management, maintenance and appropriate improvement costs properly incurred by the committee in the course of their management duties.
- (21) The reference to using the area as woodlands is to having the right to exclusive economic and recreational use (except where this may prejudice access rights under the Land Reform (Scotland) Act 2003). These exclusive economic rights include:-
 - felling, removing, selling and replacing the trees in question
 - collecting trimmings, fallen timber, foliage, sap, flowers, fruit, seeds or nuts for use or sale
 - grazing animals in the woodlands; and
 - selling timber, timber products and other forestry products.

11. JOINT FORESTRY VENTURES

- (1) A crofter who holds a right in a common grazing or a grazing committee may, with the agreement of the Commission, enter into a written agreement with the owner of the common grazing that they shall engage in a joint forestry venture to use part of the common grazing as woodlands. This agreement shall bind the parties, and their successors, to it. However, the persons who for the time being are bound by the agreement may, by written agreement, amend the agreement.
- (2) A copy of any agreement must be lodged with the Commission.

Subject to the terms of any agreement where there are, on part of the common grazing which is to be used as woodlands by virtue of The Act, trees (other than such as are mentioned in paragraph 11(d) of Schedule 2 to the Act) the owner and the committee may agree:

- that those trees are sold to the committee at current value; or
 - that the owner is to be entitled to a share of the timber obtained from such use, being a share which is proportionate having regard to the numbers, respectively, of those trees and of the trees planted (or obtained from planned natural regeneration of the trees planted) in the course of such use.
- (3) An appeal may be made to the Scottish Land Court by either party to the agreement with regard to the aforementioned valuation, or the assessment of share entitlement.

12. GENERAL OPERATING PROCEDURES

Shares, grazing entitlement and seasonal allocation of unused rights:

- (1) The grazing entitlement or souming for each croft or non-croft holding is the number and kind of stock which each shareholder is entitled to put on the common grazing.
- (2) The shareholders, their respective rights in the common grazing, together with the crofts or non-croft holdings to which the right to graze pertains is shown in **Schedule 1** of the Regulations.
- (3) For the purposes of calculating an equal grazing entitlement right in the common grazing, one cow shall be deemed equivalent to seven sheep.
- (4) The calves and lambs from the shareholders' breeding stock of each year will not be taken into account in making up the grazing entitlement.
- (5) Shareholders are not allowed to keep any stock on the common grazing in excess of their grazing entitlement, except as approved by the committee.
- (6) If any shareholder is not able to maintain their full grazing entitlement, only the committee have the power to allow another shareholder(s), or failing that, any other person(s), to graze stock on the common grazing to the extent of the deficiency, for a set period subject to such conditions that the committee specify.
- (7) The person who has been permitted to graze stock shall make payment to the committee of such sum as the committee may fix.
- (8) The committee may credit the payment towards the current or future liability of the shareholder(s) whose grazing entitlement rights are being used by the other person(s).

- (9) The committee has authority to collect from the stockholders, payment to cover the stock management costs based on a levy per head of stock.
- (10) The committee is responsible for meeting environmental obligations where a common grazing contains a designated site.

How are SSSIs managed and protected

- (11) The Site of Special Scientific Interest (SSSI) is a statutory designation made by Scottish Natural Heritage under the Nature Conservation (Scotland) Act 2014.
- (12) Most SSSIs are in private ownership and Scottish Natural Heritage works closely with their owners and managers to ensure appropriate management of the sites natural features; and to ensure decision-makers, land managers, their agents and advisors, as well as local authorities and other public bodies, are aware of SSSIs when considering changes in land-use or other activities which might affect them.
- (13) Scottish Natural Heritage must provide each SSSI owner and occupier with a site management statement that describes the interest of the site and explains the management needed to conserve its protected natural features.
- (14) The Crofting Commission would suggest that you contact the local Scottish Natural Heritage (SNH) office or alternatively use their website <https://gateway.snh.gov.uk/sitelink/> to obtain information on any designated sites within your Common Grazing boundaries. Be aware that there could be operations for your site which require legal consent to be given before being undertaken.

Gathering and Control of Stock

- (15) The gathering of livestock on a common grazing for communal husbandry practices or stock removal may be a requirement of all shareholders and will be pre-arranged by the grazing committee. Additionally, shareholders may gather their own stock to address issues arising from animal ill-health or accident at any time as necessary for the welfare of the livestock. Any other gathering activity of livestock on the common grazing requires the permission of the grazing committee.
- (16) Any stock which, in the committee's opinion, cannot be kept on the common grazing by ordinary herding, must be kept on the stockowner's individual croft or non-croft holding.

Animal Health & Welfare

- (17) Shareholders are required under EC legislation to comply with Statutory Management Requirements Cross Compliance with the keeping and husbandry of livestock.
- (18) The grazing committee shall ensure communal management husbandry operations on the grazing are compliant with statutory management requirements.

Fencing

- (19) **(i)** Apportionment fencing adjoining a common grazing
 - When an apportionment fence adjoins a common grazing boundary fence the responsibility for the maintenance, repair and where necessary replacement of this fence usually lies with the person who was granted the apportionment (and their

successors). If the said person, or their successor, fails to maintain this fence then the committee has the power to carry out such maintenance, repair or replacement as they consider necessary and to recover the cost from the said person, subject to the specific terms of the apportionment order.

- Any decrofted land will usually be the subject of a condition to fence the relevant area.

(ii) Fences separating common grazing from crofts

- (20) It is the duty of the grazing committee to maintain, repair and if necessary replace fences separating individual crofts from the common grazing.

Sublet of Grazing Share

- (21) A shareholder is entitled to apply to the Commission for consent to sublet their share to a person of their own choice. The Commission must decide on an application for its consent to sublet a share by granting it, granting it subject to conditions (other than any relating to rent) or refusing it.
- (22) Liabilities for expenditure incurred by the committee should be met by the official subtenant, during the term of a sublet.

Public Access Rights

- (23) The Scottish Outdoor Access code identifies the rights and responsibilities of all parties. A grazing committee should familiarise themselves with these rights and responsibilities and act accordingly.

13. ADDITIONAL DUTIES OF THE COMMITTEE

Hire or Purchase and Management of Bulls or Rams

- (1) The committee shall be entitled to hire, buy or sell bulls and rams as they consider necessary, or where requested to do so by a shareholder with stock on the grazings, and are responsible for their proper management. Each shareholder on the common grazing shall be bound to pay a proportion of such cost, and also to pay for or provide a proportion of keep, including the wintering, in proportion to their grazing entitlement. Should the committee fail to respond to a request from a shareholder either to hire or to buy bulls or rams or to allow them to do so without good reason, they may be in breach of their duties and be subject to investigation.
- (2) The committee may decide only to require payment from those shareholders who put their stock to the bull and/or ram.
- (3) A shareholder must request the approval of the committee if they wish to keep bulls and rams on the common grazing. Any shareholder, whose request is approved, must remove such animals from the common grazing on dates determined by the committee.

Sheep Marks

- (4) The committee shall keep a register of marks used by each shareholder. Each shareholder shall mark his stock with their own distinctive mark. If a question or doubt arises as to the use of, or identity of a mark, the committee shall have the authority to alter the mark as necessary.

- (5) No shareholder shall, except with the consent of the committee, use more than one mark. Any unmarked stock found on the common grazing will be treated as trespassing stock unless the committee is satisfied as to ownership.

Participation in Animal Health Schemes

- (6) A grazing committee shall make specific Regulations where all shareholders have agreed to enter an Animal Health Scheme for the compliance and management operations of the scheme. These Regulations are subject to approval by the Commission.

Open Township Provision

- (7) Some townships have agreed, through their Regulations that the right of a crofter to share in the common grazing shall be conditional on them making their croft available during the winter season for the accommodation of any stock belonging to other persons sharing in the common grazing. Any crofter in that situation may apply to the committee for their consent to exclude such stock from part or all of their croft. If they are dissatisfied with the decision of the committee, they may appeal to the Commission.
- (8) It is suggested that committees consider whether an open township regulation is appropriate in their situation.

Muirburn

- (9) The committee will be responsible for any muirburn necessary on the common grazing and this must be carried out in accordance with The Muirburn Code.

Peat Cutting

- (10) Without prejudice to the powers of the Commission regarding peat schemes, the committee must direct and control the cutting of peats on the common grazing by shareholders. The committee shall indicate where and by what means peat shall be extracted.
- (11) After extraction, the shareholder must restore the soil and surface to a suitable condition. If any shareholder fails to do so, the committee has the power to recover from that shareholder the cost of any necessary restoration work.
- (12) All shareholders shall be bound to comply with all instructions or directions given by the committee under this regulation.

Seaweed

- (13) Without prejudice to the powers of the Commission regarding schemes for regulating the use of seaweed, the committee must regulate the gathering, division and taking away of seaweed (cut or drift) for the reasonable purposes of the crofter shareholders

in the township from those parts of the shore from which it has been the custom to obtain supplies of seaweed.

- (14) All persons so obtaining supplies of seaweed shall be bound to comply with all instructions and directions given by the committee under this regulation.

Public Liability Insurance Requirement

- (15) The committee shall consider whether they have appropriate insurance cover to help them deal with any problems or claims that may arise as a consequence of activities on the common grazing.