

## CROFTING COMMISSION MEETING

5 August 2015

Report by the Chief Executive

### SUMMARY

This Paper considers the rationale for the Commission appointing grazing constables and what requirements need to be considered when doing so.

### BACKGROUND

Section 47(3) of the Crofters (Scotland) Act 1993 as amended, states: *“If the crofters who share in a common grazing fail at any time to appoint a grazing committee, the Commission may, after making such inquiry, if any, appoint a grazing committee, or may appoint a person to be a grazing constable; and a committee or constable so appointed shall have the like powers and duties as a grazing committee appointed under subsection (1) above.”*

The Commission, therefore, has the option of either appointing a grazing committee or a grazing constable where no grazing committee has been appointed by the shareholders.

### CURRENT POSITION

The Crofting Commission has the right to appoint either a grazing committee or a grazing constable. However, the Commission is not obliged to appoint either and need only do so where the Commission considers it necessary. It may be judicious for the Commission not to prescribe the exact circumstances in which it will appoint a grazing committee or a grazing constable, as this may be determined by specific situations. It may simply be appropriate to establish guidelines as to what will be part of its consideration should the possibility of an appointment arise.

The Commission has stated in its Policy Plan that *“it will promote the establishment of effective and active grazing committees for all common grazings. Properly constituted common grazing committees with appropriate common grazings are, in the Commission’s view, the most effective way of ensuring purposeful use of the common grazings and they are the most effective safeguard against misuse.* This is sustained in the Commission’s Corporate Plan with a commitment to increasing the potential of common grazings and the number of active and effective grazing committees.

It might be considered that these aspirations do not commit the Commission itself to appointing grazing committees or, indeed, constables. The Commission may promote and assist crofters sharing a common grazing to appoint a grazing committee without committing itself to take on this responsibility should the crofters concerned fail to do so. The Commission has to consider where there may be apathy or discord which prevents a committee being appointed by shareholders whether it is appropriate or, indeed, feasible for it to take on the responsibility. It might be considered that where there is a failure to deliver at a community level, it is not necessarily the Commission’s responsibility to provide a solution.

While it may well be possible for the Commission to appoint effective and active grazing committees, it is more appropriate that they are appointed by and accountable to those who share in a common grazing. The Commission also has the power under Section 47(8) to remove individual or all members of a grazing committee and appoint others in their place, where the duties are not being carried out properly. The failure of shareholders to appoint a grazing committee in the first place would suggest either a lack of willingness or a lack of agreement. A Commission appointed grazing committee in either circumstance would not necessarily be appropriate nor necessarily offer any feasible solution.

## **APPOINTING GRAZINGS CONSTABLES**

In certain circumstances, the appointment of a grazing constable could be a more feasible proposition. The Commission could consider appointing a grazing constable, for instance, in situations where shareholders are unable to appoint a committee, for whatever reason, but are agreed on an individual who would be capable of operating as a grazing constable. The Commission would also have to be satisfied that it was not feasible for the shareholders to appoint a committee and that the proposed grazing constable was suitable; as ultimately it is a Commission appointment.

Where there are competing proposals being made for the appointment of a grazing constable within a community, it would appear prudent for the Commission to avoid appointing any of the proposed, unless a proposal is for a neutral appointment. If proposals are representative of different factions, which itself may have been the cause of the failure to appoint a committee, there is the possibility that this would make the role of any appointee particularly difficult. The Commission should avoid appointing anyone who might represent a particular party where there is a divisive situation.

An appointment need only be made if there is a clear purpose for making one. The appointment is not simply a substitute for a grazing clerk, as there is no grazing committee to service or report to. Therefore, in a situation where shareholders request an appointment, they would have to provide justification for an appointment being made. Any appointee would have to be someone capable of ensuring the management of the grazings, of any associated funds and taking forward any agreed developments. This would suggest that were the Commission to make an appointment, it should be someone neutral and suitably qualified for the management requirements. To some extent that would be determined by the current and the immediate future use of the common grazings.

There are quite likely to be costs associated with someone of this nature being appointed. As indicated in Section 47(7), the Commission is entitled to determine the length of the appointment and the annual remuneration. The annual remuneration *“shall be defrayed by an assessment levied in such manner as the Commission may deem reasonable on the crofters who share in the common grazing.”* The mechanism for dealing with non-payment by a shareholder would appear to be addressed through the failure to comply with common grazings regulations at Section 52(1). Consequently, the Commission should ensure that this is included within the regulations of a common grazings when appointing a grazing constable.

## **SUMMARY OF REQUIREMENTS**

For the appointment of a grazings constable, it is required that:

- The Commission is satisfied that a grazing committee cannot be appointed
- The Commission considers that the appointment of a grazing constable is necessary
- The Commission will normally only make an appointment recommended by shareholders, if satisfied that the individual has the necessary skills and will operate in an impartial manner
- The Commission will normally appoint a suitably qualified and impartial person
- The Commission will specify the length of the appointment, subject to its continuing requirement and satisfactory performance
- The Commission will determine the remuneration to be paid to a grazing constable
- The Commission will ensure that the relevant grazing regulations enable the remuneration of a grazing constable.

## **WHEN TO APPOINT GRAZINGS CONSTABLES**

It is suggested above that the Commission need not be prescriptive as to the circumstances in which it might appoint a constable. It has to be considered that these circumstances for appointment are where the crofters who share in a common grazings have failed to do so, and the Commission considers it appropriate to appoint a constable.

A potential circumstance could be in relation to the mapping of common grazings. The mapping of common grazings is currently being undertaken by the Commission. There are many common grazings without a grazings committee and, therefore, there is no obvious point of contact or source of information from shareholders. In circumstances such as this, the Commission may wish to have someone provide this service. Therefore, it may be appropriate that the Commission appoint a constable to assist in the mapping process.

Another circumstance may be where there is no desire or capacity on the part of shareholders to form or operate a committee but one shareholder or another identified individual is prepared to carry out the function of grazing constable. Should the Commission be satisfied as to the will of shareholders, the suitability and ability of the individual, and their capacity to act impartially, then there appears to be no obvious reason not to appoint in such circumstances. The Commission can make appropriate inquiry, as indicated by the Act. This might be viewed to some degree as a voluntary proposal; although a Commission appointment, it would be requested and justified by the individual or by the shareholders.

There may be other situations that the Commission might consider merits the appointment of a grazing constable. Such appointments should be governed by the principle that this should be by exception, and that there has to be a clear and specific need for such an appointment. This should be proportionate and for the Commission to determine based upon the specific circumstances.

There is a presumption that the most obvious occasion for the Commission to appoint a constable is in the context of Section 47(8). This is where the Commission has had occasion to remove all members of a grazing committee from office and can appoint other persons in their place. The implication of this subsection appears to be that the Commission may remove individual or all members of a committee and replace an individual or all of the committee. There does not appear to be a direct cross over with Section 47(3) which allows the Commission to directly appoint a constable as a substitute for the grazing committee. The appointment of a constable appears to be where the shareholders fail to appoint a committee and not where the Commission removes a committee from office. Accordingly there would have to be an opportunity for the shareholders to elect another committee and only where they fail to do so, should the Commission consider appointing a grazing constable.

The appointment of a grazings constable is essentially an optional situation. The need for the Commission would be where it is pragmatic to do so and will be of value to crofting. The instance of mapping common grazings could be such an example. Similarly, it would be pragmatic for the Commission to appoint where shareholders cannot or will not form a grazing committee and have agreed on someone with the capabilities to carry out the role of grazing constable. On the other hand, it does not appear that the Commission can directly appoint a constable as part of a disciplinary process where a committee is not carrying out its duties.

In an overall context, the Commission encourages self-regulation and the formation of grazing committees is part of that process. First and foremost, the Commission should encourage shareholders in a common grazing to form a grazing committee, and the appointment of a grazing constable should only be considered where this is not possible and is considered to be of necessity.

#### **RECOMMENDATION**

**It is recommended that the Commission adopts the guidelines provided for the appointment of a grazing constable, but only considers such appointments when strictly necessary.**

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Author         John Toal, Head of Policy