



Guidance for Common Grazings

FOREWORD

This Guidance is designed to assist Common Grazings Committees with their responsibilities in the management, maintenance and improvement of common grazings. Traditionally common grazings have consisted of an area of land over which crofters have exercised a shared right to graze livestock, extract peat and thatching material for domestic use, and gather seaweed for use on the croft. In addition, the Crofter Forestry (Scotland) Act 1991 has enabled crofters to plant trees on common grazings, while the Crofters Reform (Scotland) Act 2007 introduced the possibility of crofters using parts of common grazings for purposes other than grazing or woodlands.

A communal resource requires an agreed structure for its management and use. That structure is provided by the appointment of a Grazings Committee and the provision and implementation of Grazings Regulations. The Crofting Commission provides a template for standard Grazings Regulations, based upon what the Act requires to be included within such regulations. It is possible to make additions to this depending upon the specific or individual circumstances of the common grazings. There may be some practical details for good management of the grazings that can be incorporated with regulations but in the main, regulations should reflect the requirements of the Act. The Commission recognises that there can be a range of issues and detail that relate more to good practice than to a requirement within specific regulations. As such, it is preferable to provide such guidance on what is considered to be standards of good practice and to ensure Grazings Regulations concentrate on the statutory requirements.

The Guidance seeks to develop understanding of the role of the Grazings Committee and assist the members of Grazings Committees in carrying out that role. It considers in detail the appointment of committees and the responsibilities of the Grazings Clerk to the committee. It explains the responsibilities that Shareholders have to provide for the management, maintenance and improvement of common grazings and the rights that Grazings Committees have to require payment of any required funding for such purposes. In addition, it covers a range of aspects relating to the management and use of common grazings. It also sets out the process for using parts of common grazings for forestry purposes and for other purposes.

Guidance on the retention and distribution of funds held by a Grazings Committee is provided. However, such matters are often determined by how such funding was sourced originally and it is not generally possible nor necessarily appropriate for the Commission to direct on such matters. Ultimately, Grazings Committees have a responsibility to those sharing in a common grazings and should manage for the benefit of the grazings and the shareholders concerned. In such matters the Commission advises that proper accounts are maintained and that it can be clearly identified what proportion of funding is associated with each share, if necessary. However, it is not the role of the Commission to investigate how a Grazings Committee handles its finances, and it is open to individuals to take their own advice as appropriate.

The Commission intends that this Guidance will benefit both Grazings Committee and Shareholders, assist with better understanding and ensure that Grazings Committees can effectively manage common grazings.

February 2019

INTERPRETATION OF TERMS

In the guidance document, unless the context otherwise requires:-

The Act	The Crofters (Scotland) Act 1993. As amended by the Crofting Reform (Scotland) Act 2007 and The Crofting Reform (Scotland) Act 2010.
Commission	Crofting Commission.
Common Grazings	Areas of land over which crofters, as a pertinent of their crofts, and sometimes others have a right to graze livestock and use for other authorised purposes.
Grazings Committee	A Grazings Committee is appointed under section 47(1) of the Act to administer the Regulations for the management and maintenance of the common grazing.
Shareholder	Any person, whether or not they are a crofter, who is entitled to share in a common grazings. See Section 47(10) of the Act which references non-crofters sharing in the common grazing.
Grazings Clerk	The Grazings Committee shall appoint some person, whether a member of the Grazings Committee or not, to be the Clerk of the Grazings Committee. Section 47(6) of the Act.
Grazings Constable	Where the crofters fail to appoint a Grazings Committee the Commission may appoint a person to be the Grazings Constable who will have like powers and duties of a Grazings Committee. Section 47(3) of the Act.
Souming	The number and type of stock which each Shareholder is entitled to put on the common grazing.
Quorum	A majority of the members of the Grazings Committee.
Chairperson	Not defined within the Act, but the Grazings Committee can appoint a chairperson from among the members of the Grazings Committee.
Fixed Equipment	This has the like meaning as the Agricultural Holdings (Scotland) Act 1991.

Public Notification

As defined in Section 55(A)(1), public notification shall be given by publishing or causing to be published a notice in appropriate form in one or more newspapers circulating in the district of the common grazing

Newspaper

The Crofting Act does not define “newspaper”. The Commission has adopted the following policy definition in relation to “newspaper”. A daily or weekly publication composed of folded sheets containing news, advertisements, topical articles, correspondence etc. circulating in the local area. The Commission may accept adverts in fortnightly newspapers. However, for this to happen, consent would have to be given in advance by the Commission on a case by case basis. This allows the Commission to be satisfied that the publication meets the criteria and is circulating in the local area. A list of acceptable publications can be found on the Commission’s website www.crofting.scotland.gov.uk (see ‘Guidance on advertising applications’ in the ‘Forms and Guidance’ section).

APPOINTING A COMMITTEE AND OFFICE BEARERS

Appointing a Committee

1. The Crofting (Scotland) Act 1993 ("the Act") sets out how a Grazings Committee may be formed or "appointed", as it is worded in the Act. **Section 47(1)** states that: "The crofters who share in a common grazing may from time to time, at a public meeting of which public notification has been given, appoint a grazings committee of such number as the meeting shall decide;" Public notification¹ requires that notice of the meeting must be placed in a newspaper circulating in the area. The Act does not state how far in advance of the meeting notification should be given, but it is recommended that at least 10 days' notice is provided.
2. The Notice will invite all shareholders in the common grazing to attend, and will include the venue, date, time and purpose of the meeting. While legislation requires that Public Notification is given in a newspaper circulating in the area, previous legislation allowed a choice of publication in a newspaper for two consecutive weeks or for notices to be placed at a public place within the locality. Many Grazings Regulations contain the latter option as they were drawn up prior to the change in legislation. Therefore, these Grazings Regulations make provision for placing notices at appropriate venues within the locality. Any provision of notification at other venues does not replace the requirement to give public notification in a newspaper circulating in the locality.
3. The Act allows for non-crofters to be appointed to any position on a Grazings Committee and for the crofters to determine how many individuals should be on a committee.
4. Where there is a Grazings Committee in office, the committee should make timely arrangements for its replacement towards the end of that period. As many Grazings Regulations require notification of a Meeting to appoint a new Grazings Committee to be placed at appropriate venues in the locality, this should be carried out. There remains a requirement to place a notice in a newspaper circulating in the district at least 10 days prior to the date of the meeting, as recommended. Again, the Notice should invite the attendance of all shareholders and include the venue, date, time and purpose of the meeting. Retiring members of a committee can be re-appointed.
5. It is practical for the retiring Grazings Clerk to arrange timeously for the appointment of a new committee at the end of the 3-year period. This prevents any confusion with other shareholders trying to organise a meeting and its notification, and should enable a smooth transition.
6. Where the meeting takes place prior to the end of the existing Committee's 3-year period in office, the newly appointed Committee will take office at the end of that 3- year period. Retiring members of the committee are eligible for re-election.² Should the meeting occur once the Committee's 3-year period in office has expired, the newly appointed Committee will take office immediately. Whatever, the situation there is a requirement for Public Notification of the Meeting, as stipulated in the Act.
7. The shareholders in attendance shall appoint one of their number to chair the meeting. The shareholders should also agree as to who will take a minute of the meeting and record those in attendance.

¹ 1993 Act, s 55A

² 1993 Act, s47(4)

8. The Chairperson will invite the shareholders to decide on the number of individuals who will form the committee.
9. If there are more people nominated than the number of the committee places agreed, then a vote requires to be taken. Any voting should be conducted on the basis that each shareholder has equal voting rights i.e. one vote per person.
10. A proxy vote may be permitted, but the non-attending shareholder's agreement must be stipulated in writing and passed to the appointed Chairperson at the start of the Meeting.

Grazings Committee Office Bearers

11. Having been appointed by the shareholders, the members of the Committee in turn appoint the office bearers for the committee.
12. The Act requires that the Committee appoint someone, whether a member of the committee or not to be the clerk to the committee¹, and will be referred to as the 'Grazings Clerk'.² The Grazings Committee may determine to pay an annual remuneration to the Grazings Clerk and recover the costs from the crofters sharing in the grazings.³
13. The Act does not specify that the Grazings Committee is required to appoint any other office bearers. It is the norm, however, to appoint a Chairperson to ensure orderly meetings and, in some circumstances, it may be appropriate to appoint a Treasurer to manage the committee's finances.

Notification of Grazings Committee's Appointment

14. Once appointed, the committee must be recorded with the Crofting Commission. The Grazing Clerk must notify the Commission of the committee's existence, providing details of the committee members, Grazings Clerk, Chairperson and Treasurer (where appointed). A form 'Notification of a New Grazing Committee' is available from the Crofting Commission for this purpose.
15. A copy of the Public Notification from the relevant newspaper must be provided to confirm that the meeting was held in accordance with the legislation.

DUTIES, FUNCTIONS AND RESPONSIBILITIES OF A GRAZINGS COMMITTEE

16. The Grazings Committee has responsibility for the management and maintenance of the common grazing. As such, the committee has a duty to make and administer common grazings regulations for the management and use of the common grazing.⁴

¹ 1993 Act, s47(6)

² 1993 Act, s47(6A)

³ 1993 Act, s47(9)

⁴ 1993 Act, s48(1)(c)

Duty to Make and Submit Regulations

17. Every Grazings Committee has a duty to make and submit Grazings Regulations to the Crofting Commission within six months of being required to do so by the Commission. It is recommended that the committee consult with 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.
18. The Commission strongly recommends that the draft template Grazing Regulations (available on the Commission's website) is used as the basis for making new or revising existing Grazing Regulations. The template is based upon what crofting legislation requires within Grazings Regulations.

Amendments to Regulations

19. A Grazings 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 is advised to 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 amended Regulations are to come into operation.
20. Grazings Committees are encouraged 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 as to why additional or different regulations should apply.

What Must be Included in Regulations

21. **Section 49(2)** of the Act states that Grazings Regulations must make provision for:
 - (a) the recovery of expenses by the committee for maintaining the common grazing and providing, maintaining or replacing any fixed equipment;
 - (b) the recovery of expenses by the committee for works of improvement or crofter forestry on the common grazing regarding the proposed/approved or modified allocation of expenditure;
 - (c) the levying by the grazings committee of the sums necessary to meet expenses which may be incurred in the maintenance and improvement of the common grazings and equipment;
 - (d) the number and kind of stock that each crofter is entitled to put on the common grazing;
 - (e) any alteration of individual soumings where improvement works or improvement to fixed equipment on the common grazing have been carried out but not all the crofters have contributed to the expenses;
 - (f) where appropriate, the cutting of peats and the collection of seaweed; and,
 - (g) the summoning of meetings of the grazings committee and the procedure and conduct of business at such meetings.

Responsibilities of Committee Members

22. The number of times a committee should meet is not prescribed in the Act; however, many current Grazings Regulations state that a committee should meet as and when required, but at least 4 times a year.

Chairperson

23. The chairperson should chair each meeting, or in their absence, the remaining members of the committee should decide who will take the chair.
24. 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:
- (a) all meetings are run effectively,
 - (b) the committee functions properly,
 - (c) there is full participation at meetings,
 - (d) all relevant matters are discussed at meetings.

Grazings Clerk

25. The Grazings Clerk should:
- (a) Give notice of any meeting of the committee at least 7 days prior to the date of the meeting; Meetings should be convened at a suitable time, date and venue;
 - (b) Provide an agenda to ensure all items requiring discussion are covered;
 - (c) Keep a record of the form of notification given to shareholders about each meeting;
 - (d) Keep minutes of the meetings held and record any resolutions or actions;
 - (e) Keep records of all procedures followed by the committee in carrying out its duties. These records should include all contributions either in cash or in labour. This is important for future reference and is especially important in the context of works for the improvement of the common grazings and equipment;
 - (f) Keep an up-to-date register of shareholders;
 - (g) Deal with all correspondence on behalf of, and reflecting the views of, the Grazings Committee;
 - (h) Collate a record of stock held on the common grazings based on information provided by the shareholders; and,
 - (i) Retain a record of shareholders' stock markings and/or other means of stock identification .
26. If the Grazings Clerk is unable to attend any meeting, then the remaining members of the committee decide who will take on the Grazings Clerk's duties for that meeting.
27. It is further recommended that a clerk should:
- (a) Provide shareholders with a copy of the Grazings Regulations once approved by the Crofting Commission.
 - (b) Circulate a copy of the draft minutes of the previous meeting to the members of the Grazings Committee and the upcoming agenda in advance of the next meeting.

Treasurer

28. The Treasurer deals with the day-to-day financial business of the grazings committee where the committee holds any monies or funds on behalf of shareholders. This function is often combined with the role of the Clerk.
29. The Treasurer should:
 - (a) Keep up-to-date financial records, where the committee holds any monies or funds;
 - (b) Submit a financial statement and report to the Annual General Meeting.
30. It should be noted that while the Treasurer has a specific role within the committee in relation to financial matters, the overall responsibility for financial management lies with the whole committee.

Committee Members

31. Committee members should act openly, frankly and fairly. 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 for the proper management and use of the common grazings.
32. A majority of the members of a Grazings Committee present at a Committee Meeting will be a quorum.¹
33. Any vacancy occurring in the membership of a Grazings Committee, by reason of death, resignation or otherwise, will be filled by the remaining members of the committee nominating a person onto the committee.² Any change of committee members must be notified to the Commission.
34. The use of proxy voting is not permitted at a Grazings Committee Meeting. If it is necessary to vote on a matter of business, this will normally be done verbally or by a show of hands. If any member objects to the vote being taken in this manner, and a majority of those present and entitled to vote agree, the vote will be taken by ballot.

Annual General Meeting

35. There is no statutory requirement within the Crofting Act for a Grazings Committee to hold an Annual General Meeting. However, in providing guidance for Grazings Committees, the Land Court, in the case of Mackinnon -v- Duke of Argyll 1947 SLCR 35, recommended that an AGM should be held. It has been standard practice to include the holding of an AGM in Grazings Regulations approved by the Crofters Commission and subsequently the Crofting Commission.
36. It continues to be recommended that the holding of Annual General Meeting be included in Grazings Regulations. Holding an AGM indicates that a committee is prepared to operate "openly, frankly and fairly", as was also advised should be done in the aforementioned Land Court case.

¹ 1993 Act, s47(5)

² 1993 Act, s47(5)

37. As there is no statutory requirement to hold an AGM, there is also no legal requirement to provide public notification within a newspaper. However, many existing regulations will require that notification is published in a newspaper and this and any other agreed means of notification should be followed. It is recommended that appropriate notice of an AGM is provided to ensure that all shareholders are given the opportunity to attend.
38. The Grazings Committee, normally through the office of the Grazings Clerk, should provide an account of the activity undertaken by it on behalf of the shareholders over the previous year. An indication of any intended work for the forthcoming year should also be given. A report on the income and expenditure over the past year should be provided, and the opportunity may also be taken to indicate intended expenditure during the coming year.
39. The calling of an AGM should not be confused with the calling of a Meeting to appoint a Grazings Committee. It is recognised that for convenience and to save expenses, that some public notifications may cover both meetings on the same date and at the same venue. While it is possible to provide a single notification covering both meetings, a clear distinction should be made between the two meetings in practice. If an AGM has been called, all business pertaining to it should be completed and that meeting closed before a meeting to appoint a grazings committee is opened. The Meeting to Appoint a Grazings Committee is a separate matter and should be conducted for that purpose and in accordance with the guidelines provided at 1 above.

Attendance at Meetings

40. Shareholders – the crofters who share in a common grazing – are entitled to attend meetings held to appoint a Grazings Committee, an Annual General Meeting, or any other general meeting of shareholders.
41. Should a shareholder be unable to attend a meeting, it is possible to nominate someone to represent them and to vote on their behalf, should that prove necessary. Nominations should normally be in writing and clearly state who the representative is, the specific meeting being attended and who they are authorised to represent. It must also be signed by the authorising shareholder. Any nomination forms should be given to the Chair for the Meeting at the beginning of the meeting and be retained by the Grazings Committee for its period of office, or for an appropriate period regarding any decisions taken. The details of any representations – who was represented and by whom – should be recorded in the minute of the meeting.
42. Generally, shareholders who are not members of the committee are not entitled to attend a Meeting of the Grazings Committee unless invited to attend by the committee. Such invitation may relate to an item of committee business, such as an application for apportionment or some other matter. Attendance does not entail any right to vote or participate in the committee's decision-making process.

Duty to Report

43. Grazings Committees are required to submit a report every five years on the condition of the common grazings, amongst other things. A report on the condition of every croft and owner-occupied croft sharing in the common grazing, and any other matter required by the Commission must also be provided. Where the Committee considers that a crofter or owner-occupier crofters sharing in the grazings is not complying with a crofter's duty, it should also supply relevant information on that. The committee is also entitled to include any other information affecting the common grazings or the crofting township associated with the common grazings that it considers appropriate. The Commission has created a template form which allows committees to comply with this duty, it is available on our website at <http://www.crofting.scotland.gov.uk/common-grazings-census>

Commission Appointment of Grazings Committee or Grazings Constable

44. Where crofters sharing in a common grazings fail to appoint a committee, the Commission is entitled to appoint a committee or a person to act as a Grazing Constable. The appointment of either has the same powers and duties as a Grazings Committee appointed at a public meeting by crofters sharing in a common grazings.¹ Where a Constable is appointed, the Commission may determine that a suitable annual remuneration be paid by the crofters sharing in the common grazing.²
45. The Commission will not normally appoint a grazings committee where Shareholders have failed to do so. The Commission encourages those sharing in a common grazing to take responsibility for the management of their grazings and will provide guidance and support to assist with this.
46. Consideration may be given to the appointment of a Grazings Constable where there is a small number of crofters sharing in the common grazings and it is not practical to appoint a committee, and there is agreement on the appointment of a constable.

Compliance with Grazings Regulations and the Duties of Committees

47. A Grazings Committee, as well as the owner of a common grazing, may report a contravention or non-compliance with the Grazings Regulations to the Commission for its determination.³ Consequently, the Commission may require adherence to the regulation or the repair of any damage. Non-compliance with the Commission decision could entail suspension of the relevant share or ultimately the termination of the share.
48. Where a Grazings Committee, or some of its members or the Grazings Clerk are not properly carrying out their duties, the Commission has the power to remove them, as appropriate, from office. It may appoint or provide for the appointment of replacements.⁴
49. The Commission prefers to work with Grazings Committees and individuals to resolve any difficulties that arise regarding compliance with Grazings Regulations and fulfilling committee duties. Only in exceptional circumstances will individual members of Grazings Committees be removed from office or shareholders have their share terminated.

FINANCES

Funding of Management & Maintenance of Common Grazings

50. All shareholders have a responsibility for paying the costs incurred by the Committee in maintaining the common grazings, and providing, maintaining or replacing fixed equipment. The Committee is entitled to levy shareholders according to their souming to meet costs incurred or liable to be incurred for these purposes. Grazings Regulations will stipulate that costs can be met in this manner, and all shareholders are liable for payment irrespective of whether they are using their souming or not.
51. The Grazings Committee may maintain a Grazings Fund for the purpose of meeting the expenditure involved in the management and maintenance of the common grazings.

¹ 1993 Act, S47(3)

² 1993 Act.S47(7)

³ 1993 Act, s52(1)

⁴ 1993 Act, S47(8)

Grazings Fund

52. Grazing Committees generally have basic running costs and so a practical approach that can be adopted is for the Grazings Committee to agree an appropriate amount of money be paid annually by each shareholder within the Grazings to form such a fund.
53. Examples of the types of items where a Grazing fund could be used would be:
 - (a) Newspaper adverts;
 - (b) Hire of venues for meetings;
 - (c) Stationary/Postage;
 - (d) Remuneration of the Grazings Clerk;
 - (e) Agricultural advisory services in relation to the Management of the Common Grazing; and,
 - (f) Minor maintenance or repairs required at short notice.
54. It is advisable for Grazings Committees to minute in their records: the agreed amount and the annual date when payment is due.
55. It is also appropriate for a Grazings Committee to request that such details be included within their Grazings Regulations.

Funding of Improvements to Common Grazings & Equipment

56. All shareholders participating in works for improvement of the common grazings or for equipment pertaining to it are obliged to pay the costs incurred by the Committee in the undertaking of such developments. The Committee is entitled to levy participating shareholders to meet the expenses which they may incur in undertaking these duties.
57. The committee is firstly required to give notice to all shareholders of proposals to carry out improvements and of the proposed allocation of expenditure. 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.
58. The Commission has prepared a template notice that can be provided to Grazings Committees upon request.
59. Within one month of the date of notification of the improvement and the allocation of expenditure, a shareholder may make representation to the Commission regarding either or both the proposal and proposed allocation of expenses. The notification should advise Shareholders of their right to make representation to the Commission, and a copy of the notification should be sent to the Commission. The Commission may approve the proposals or the proposed allocation of expenditure with or without modification or reject them.
60. The committee must maintain an account for all financial transactions associated with any works of improvement to the common grazings. 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.

Funding for Use of Common Grazings for Forestry Purposes

61. All shareholders participating in a scheme for the planting of trees or the development of woodland on the common grazing are obliged to pay any costs incurred by the Grazings Committee in such an undertaking.
62. The committee is firstly required to give notice to all shareholders of the proposals and of the proposed allocation of expenditure. 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.
63. The Crofting Commission can provide a template notice for Committees to use upon request.
64. Within one month of the date of the notification any shareholder may make representation to the Commission in respect of the proposal or the allocation of expenditure. The Commission may approve the proposals or the proposed allocation with or without modification or reject them.
65. The Committee must keep an account of all financial transactions relating to the use of the common grazings for forestry purposes.
66. It should be decided by the participating shareholders prior to any application being submitted how any resulting income received from a forestry project will be used to avoid any disagreements at a later stage. Any such agreements should be in writing and retained within the Committee records.

Remuneration of Grazings Clerk

67. The Grazings Committee is also entitled to recover costs from all shareholders to pay for the annual remuneration of the Grazings Clerk.¹

Grazings Regulations and Funding

68. Grazings Regulations must make provision for the recovery and levy of expenses for the maintenance and improvement of common grazings and, where necessary, the planting of trees and use of common grazings as woodlands.
69. Other than relative to these functions, the Commission has no locus in a Grazings Committee's financial matters. Accordingly, Commission policy is not to be involved in a committee's financial affairs as it is not the appropriate body to undertake any necessary investigations.
70. The Commission is restricted to matters that the Act stipulates must be included within Grazings Regulations.
71. The Commission recognises that there could be funding sources that may be available to a Grazings Committee other than those derived through levies for the maintenance and management of the grazings or its use for forestry purposes. However, the Commission is not empowered to determine how such other funding sources should be managed and utilised. Generally, it is for the Grazings Committee and shareholders to agree how monies are retained or distributed, bearing in mind the share position of each shareholder.

¹ 1993 Act, s47(9)

72. A Grazings Committee should also consider the purpose it serves, and the provisions within the Act for the recovery of expenses incurred in maintaining and improving the grazings and for levying in advance of expenditure. Other than matters such as these, the Commission can only provide general guidance as they are out with the requirements of Grazings Regulations. While the Commission will not regulate a Grazings Committee's financial affairs, it advises that Committees should adopt best practice with regard to all financial matters.
73. 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 the following year.
74. All monies should be lodged in a bank account in the name of the grazing committee. A specific account should be used by the committee for the management and maintenance of the common grazing. If separate accounts are not maintained, it should be made clear in the annual statement to what specific area items of expenditure and income relate to.
75. The signing of cheques and withdrawal of monies will generally require two signatures. Normally, the signatories should be the Clerk/Treasurer and another member of the grazing committee, preferably the Chairperson. In the absence of a grazing committee, a Grazings Constable, appointed by the Commission, may perform this duty.
76. A Grazings Committee may wish to consider the necessity of retaining large sums of money in its bank account, unless there is planned use for the money within an acceptable timetable, as agreed with shareholders. Essentially, such funding may be retained for the management and maintenance and/ or improvement of the grazings; and it should be possible to estimate and provide for reasonable expenditure on an annual basis.

OTHER FUNDS, INCLUDING RESUMPTION AND SCHEMES FOR DEVELOPMENT

Resumption

77. An application for resumption of croft land for some reasonable purpose may be made by a landlord to Land Court. The process for compensating shareholders for land resumed from crofting tenure that forms part of a common grazing is set out in **Section 21(4)** of the Act. Compensation will be calculated in accordance with a shareholder's right in the common grazings. Where there is a properly appointed Grazings Committee or Grazings Constable the share of compensation will be paid to either, as relevant, for distribution among the shareholders.
78. The Act does not state that the Grazings Clerk must distribute such payments immediately or whether distribution may entail assigning a proportionate amount to shareholders' current or future expenditure. However, the Act does state that a crofter can request that their proportion of the payment be paid directly to them by the landlord.¹ Therefore, any crofter requiring immediate payment of their proportion of resumption monies can do so at the outset by specifically requesting such payment from the landlord.

¹ 1993 Act, s21(4)(c)

79. In some instances, it may be practicable for a committee to allocate funding or part of funding proportionately towards shareholders' current expenditure in respect of maintenance or improvements to the common grazings. If there is immediately occurring expenditure it may be practical for a proportion of resumption payments to be allocated towards such, as opposed to paying the money out and then requiring payment to be made back within a short timescale. In such circumstances that would appear to be a practical arrangement.
80. Retaining such money over a longer period can create problems for committees, particularly for future committees if they must determine at a later date who is entitled to receive a share of the payments. It is recommended that money should only be retained if there is clear mandate from all shareholders for such retention.

Schemes for Development

81. The landlord or owner of croft land or common grazings may apply to the Land Court for consent to undertake a development for a reasonable purpose on croft land or common grazings.¹ The Act requires that the scheme provides for fair recompense for each member of that crofting community equivalent to what might be expected were the land to be resumed. Unlike the relevant section in the Act pertaining to resumptions there is no stipulation as to recompense for the use of common grazings land being paid to the grazings clerk for distribution to shareholders.
82. The application for the Scheme for Development to the Land Court should set out the recompense to members of the crofting community, and any practical details as to how that is to be paid. It is for the scheme and Land Court's approval to set out how the payments will be made, and to whom, and whether this will be a lump sum or periodic payments for the lifetime of the development.

Calculation of Share in Compensation or in Cost of Improvements or Maintenance

83. Where all shares in a common grazing are of equal value there should be no difficulty in allocating a proportionate share for expenses or the distribution of any compensation payments. However, it is not always the norm to have all shares with an equal value, and the calculation of compensation for resumption from, and the share of expenses for the maintenance and improvement of, the common grazings is then determined by the souming held by each shareholder. The souming is the allocation of the maximum stock per shareholder and provides the basis for the sharing of expenses and distribution of compensation.
84. The following chart provides an example of how such payments may be calculated. This is based on souming for cattle and sheep, with the one cow being the equivalent of five sheep. Therefore, three cows provide the equivalent of fifteen sheep and the basis by which an exact calculation for payment from or to each shareholder is made.

¹ 1993 Act, s19A

RESUMPTION MONIES CALCULATION				
Resumption Money for Distribution:-	£6,600			
CROFT HOLDING	CATTLE	SHEEP	TOTAL EQUIVALENT	PAYMENT ALLOCATION (£)
1 Cregneash	3	35	50	£223.12
2 Cregneash	3	42	57	£254.36
3 Cregneash	4	49	69	£307.91
4 Cregneash	3	33	48	£214.20
5 Cregneash	4	50	70	£312.37
6 Cregneash	3	42	57	£254.36
8 Cregneash	5	57	82	£365.92
9 Cregneash	3	35	50	£223.12
10 & 11 Cregneash	5	55	80	£357.00
12 Cregneash	2	30	40	£178.50
13 Cregneash	3	50	65	£290.06
14 Cregneash	4	65	85	£379.31
15 & 16 Cregneash	5	65	90	£401.62
17 Cregneash	4	75	95	£423.94
18 Cregneash	3	48	63	£281.14
19 Cregneash	5	55	80	£357.00
20 Cregneash	3	33	48	£214.20
21 Cregneash	2	32	42	£187.42
22 Cregneash	3	34	49	£218.66
23 Cregneash	1	30	35	£156.19
24 Cregneash	2	17	27	£120.49
25 Cregneash	3	38	53	£236.51
26 Cregneash	1	21	26	£116.02
27 Cregneash	2	19	29	£129.41
28 Cregneash	4	54	74	£330.22
29 Cregneash	1	10	15	£66.94
		Total	1479	£6,600.00

Agri-Environment Climate Scheme

85. A Grazings Clerk is entitled to apply on behalf of a Grazings Committee to the Scottish Rural Development Programme's Agri-Environment Climate Scheme which promotes beneficial land developments. The Scheme rules require that an application from a Grazings Clerk must include:
- (a) the written consent of a majority of the crofters with shares in the common grazing;
 - (b) evidence that notice of the intention to submit an application and the proposed division of the grant amongst the eligible crofters has been issued by the grazings committee or constable to all shareholders sharing in the common grazings.
86. The Scheme is delivered by the Scottish Government Rural Payments and Inspection Division and Scottish Natural Heritage. While it is possible that some amendments to Common Grazings Regulations might result or there could be related requirements in respect of maintenance or improvements to a common grazing, the Crofting Commission has no role in any aspect of such a Scheme. Any matters concerning the conditions or requirements of the Scheme are matters for the bodies responsible for its delivery.

Other Funds

87. Generally, other sources of funding whether from grant support or other types of payments to the Grazings Committee, are held in trust on behalf of the shareholders. 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.

Examination of Accounts

88. Many existing Grazings Regulations provide for an annual audit of the committee's accounts. The term audit implies a more detailed process than may be necessary for the level of funds within most committee's accounts.
89. It is in a Grazings Committee's own interest to arrange for independent scrutiny of their accounts. This should be proportionate to the level of funding and transactions undertaken by the committee. An independent examination is a form of external scrutiny which:
- (a) offers an assurance that nothing has been found that needs to be brought to the attention of shareholders,
 - (b) is less rigorous and less costly than an audit.
90. 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.
91. Normally, an audit should not be required unless an independent examiner advised that it was necessary. This would then entail a more in-depth examination of the accounts, with a view expressed as to whether they properly present the receipts and payments for that financial year. It is recommended that where regulations state that an annual audit should be undertaken that this should be amended to an independent examination.

MANAGEMENT AND MAINTENANCE OF THE GRAZINGS & FIXED EQUIPMENT

92. It is the duty of Grazings Committee to maintain the common grazing and to provide, maintain and replace necessary fixed equipment relating to the use of the common grazing. The definition of 'fixed equipment' is taken from section 85 of the Agricultural Holdings (Scotland) Act 1991, which states:
93. "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, including farm houses and farm cottages, necessary for the proper conduct of the agricultural holding
 - (b) all permanent fences¹, 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) all stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding
 - (e) farm access or service roads, bridges and fords
 - (f) water and sewerage systems
 - (g) electrical installations including generating plant, fixed motors, wiring systems, switches and plug sockets
 - (h) shelter belts,

and references to Fixed Equipment on land shall be construed accordingly.

94. Generally, the required equipment of a common grazing may include, some agricultural buildings, fanks and other types of holding equipment for livestock, drains and ditching and, perhaps most importantly fencing.

Fencing Provision

95. The Grazings Committee is generally responsible for the provision of fencing on common grazings.
96. Even in situations where the Grazings Committee may not have provided a fence in the first instance, it may have responsibility for its maintenance. For instance, where a fence separates the common grazing from individual croft holdings, the committee is obliged to maintain the fence, irrespective of who erected it, as this is fixed equipment that is required for the common grazings.²

Apportionment Fencing

97. The fencing of an apportionment of part of a common grazings is the responsibility of the person who has been granted the apportionment and will normally be included as a condition of apportionment. The Grazings Committee is not responsible for the maintenance of such fencing even where it adjoins the common grazing.

¹ Whilst all permanent fences are defined within the Agricultural Holdings (Scotland) Act 1991, fencing responsibilities within a crofting context may differ and so should be established prior to commencing new or maintenance of fencing.

² *Crofters Commission- v- Cameron of Garth* 1964 SC 229.

98. Where 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).

IMPROVEMENTS TO COMMON GRAZINGS & EQUIPMENT

99. It is the duty of a grazings committee to carry out works for the improvement of common grazings and equipment.
100. In terms of whether something is maintenance or a work of improvement; the standard position is that maintain is to repair or replace something that already exists, whereas and improvement is to provide something new.

Works for Improvement of Common Grazings and Equipment

101. At one time an improvement of the common grazings would generally have entailed the fencing of a specific part of the common grazings from the remainder and improving it by means of drainage and reseeding; involving the application of lime, fertiliser phosphates, and grass seed, as required, and maintaining it thereafter. Improvements of specific areas along these lines are no longer the norm, but could still include measures such as fencing, drainage or creating access.
102. Improvements to equipment could entail providing an agricultural shed or possibly replacing an existing fank and dipper with ones of higher specification.
103. Where an improvement to the common grazings or equipment is proposed the Grazings Committee must give notice under **section 48(2)** to every crofter sharing in the common grazing. Giving notice requires that notice in writing is given to the crofter, left at the proper address or sent by registered post or by recorded delivery post.
104. The notice must detail the proposed improvements and the allocation of expenditure according to shareholders' respective souming. The notice must also inform the shareholders of their right to make representations to the Commission within a month of the date of the notice regarding the proposed improvements or proposed allocation of expenses. A copy of the notice should be sent to the Commission.
105. The Commission will then either approve the proposed improvements and allocation of expenditure, or it may modify them as appropriate or reject them. Modifications to a proposal or to the expenditure could entail that access to the works of improvement will be restricted to participating shareholders. This may also entail some adjustment to individual soumings depending upon which shareholders are participating and contributing towards the cost of the improvement.
106. Consideration must be given to any sub-let or short-term lease that may be in place. Where these pertain to the common grazings, a sub-tenant or short-lease tenant has responsibility for grazings' requirements for the duration of the period. No liability to meet the proposed expenditure can be imposed upon the crofter while such arrangements are in place,¹ although both shareholder and sub-tenant or short-term tenant should receive notification and are entitled to make representations.

¹ 1993 Act, s 48(3)

107. The Grazings Committee should keep the management of any improved area of common grazings under review and consider whether there continues to be justification for managing such an area separately or restricting its use to certain shareholders. Following consultation with shareholders, the Committee may decide to formally close the improvement scheme and if any funding remains in the related account this should be distributed proportionately amongst the participating shareholders.
108. The Commission's template for Grazings Regulations provides for the inclusion of details relating to works of improvement. The requirements for any specific improvement can be inserted as required.
109. The Grazings Committee should also apply to the Commission to make any necessary amendments to the Grazings Regulations where restrictions to an improved area no longer apply or where a work of improvement need no longer be considered distinctive in terms of managing the common grazings.

USE OF COMMON GRAZINGS

Management of Livestock

110. The Act requires that Grazings Regulations provide for the number and type of stock that each crofter is entitled to put on the common grazings. The Grazings Committee has responsibility to arrange for the proper management of livestock numbers on the common grazings. The following are all matters that a committee should take account of in terms of managing livestock on common grazings and relate to the regulations:
 - (a) The 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;
 - (b) For the purposes of calculating an equal grazing entitlement in a common grazing that has souming for sheep and cattle, it is the norm to provide an equivalent number of sheep to a single cow. For instance, one cow may be considered equivalent to five sheep, or whatever ratio was used in existing regulations or may be the appropriate equivalent in a locality;
 - (c) The calves and lambs from the shareholders' breeding stock of each year will not be considered in making up a shareholder's souming;
 - (d) If any shareholder does not use or is unable to maintain their full souming entitlement, the committee may permit 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 any conditions that the committee may specify;
 - (e) Where the Committee charges a fee for the temporary use of any unused souming, it may allocate part or all the sum raised towards any payment due to the Committee from the relevant shareholder(s); and,
 - (f) Any cost associated with the management of stock may be recovered by the Grazings Committee from the stockholders, with payment based on a levy per head of stock.

Gathering and Control of Livestock

111. 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 will normally require the permission of the grazing committee.
112. 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 holding.

Hire or Purchase and Management of Bulls or Tups

113. Traditionally Grazings Regulations have entitled committees to hire, buy or sell bulls and tups as they consider necessary. Each shareholder on the common grazing would be bound to pay a proportion of such cost, and to pay for or provide a proportion of keep, including the wintering, in proportion to their souming. It is now less common for a Grazings Committee to carry out this role or for all shareholders to contribute to the cost of provision and keep. Where such responsibilities are no longer undertaken, the Grazings Committee should not without good reason prevent shareholders from providing their own bull or tups.
114. To accommodate changing circumstances the following requirements may be considered more appropriate depending upon the situation:
 - (a) The committee may decide only to require payment from those shareholders who put their stock to the bull and/or tups.
 - (b) A shareholder must request the approval of the committee if they wish to keep bulls and tups the common grazing. Any shareholder, whose request is approved, must remove such animals from the common grazing on dates determined by the committee.
115. Grazings Committee should manage this in a pragmatic way that enables those with stock to utilise the common grazing for this purpose. If desired details, such as those at 114, can be added into the regulations.

Sheep Markings

116. The committee is encouraged to keep a register of marks used by each shareholder. Each shareholder should mark his stock with their own distinctive mark or brand and provide details to the committee as appropriate.

Control of Dogs

117. Some existing grazings regulations state that no person shall take a dog or dogs to the common grazings unless authorised by the Grazings Committee. This can only be applied to shareholders in the common grazings in terms of enforcing grazings regulations and has been included to enable appropriate control of stock. It refers to the unauthorised use of working dogs on the grazings and cannot be used in respect of other dogs that have to be managed in accordance with the Scottish Outdoor Access Code. Grazings Regulations are only applicable to shareholders and if there are concerns about the control of dogs belonging to non-shareholders this should be dealt with through other appropriate authorities.

Damage to Common Grazings etc

118. As with the above many existing regulations state that no person shall deposit on any part of the common grazings rubbish or other material which, in the opinion of the committee, could damage the common grazings or cause injury to stock. Such a regulation only applies directly to a shareholder and any other instance should be raised with an appropriate authority.

USE OF COMMON GRAZINGS FOR FORESTRY PURPOSES

119. The Crofting Act at **section 50** allows for the possibility of crofters planting trees and managing woodland on common grazings. However, prior to making an application to the Commission for its approval, it is necessary to consult all shareholders in an identical fashion to that for improvements as stipulated at **section 48(2)**. This entails giving notice of a proposal to all shareholders. An outline of the process involved and the requirements for Grazings Committees are provided as follows:

- (a) 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;
- (b) As indicated above, 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;
- (c) 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;
- (d) 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;
- (e) The Committee should ensure that they have grazings regulations and, if necessary, update these to ensure they can levy shareholders for any funding necessary for the planting of trees and the use of woodland on the common grazing;
- (f) Following the notification of shareholders and any meeting of shareholders to discuss the proposals, the committee may apply to the Commission for approval to plant trees on and use as woodland the relevant part of the common grazing. The application from the committee will provide full details of the proposal, the names of the shareholders participating and those who are not, and any correspondence or objections from shareholders and owner(s). Details of the proposal will include the location, extent, estimated costs, updated proposed allocation of costs, expected effect on souming plus note of any conditions associated with the proposal;
- (g) The consent of the owner must be in writing and specify the part of the grazing to which the application relates. Reasonable conditions may be included with the consent, and where there is a fencing condition the grazings committee is responsible for complying with it;
- (h) The owner's refusal of consent may be challenged in the Land Court. If the owner's consent is not forthcoming within 6 weeks of the application, then it is considered to be refused;
- (i) The committee shall ensure that not all the common grazing is planted with trees and used as woodland;

- (j) The Commission shall, on receipt of any application, consult the owner, the shareholders and other persons whom the Commission regard as having an interest;
- (k) Should the Commission approve the application, it will inform all shareholders and the owner(s) of its decision, and of any conditions which have been imposed;
- (l) If the Commission give approval the details will be entered in the Register of Crofts;
- (m) 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;
- (n) The committee are responsible for ensuring all conditions of consent/approval/grant are satisfied, and for the management of any scheme including woodland;
- (o) No shareholder is allowed to detach their interest in the woodland area, from the share in the common grazing to which it relates;
- (p) The committee must maintain an account for all financial transactions associated with any forestry 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 and maintenance costs properly incurred by the committee in the course of their management duties; and,
- (q) 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:
 - (i) felling, removing, selling and replacing the trees in question;
 - (ii) collecting trimmings, fallen timber, foliage, sap, flowers, fruit, seeds or nuts for use or sale;
 - (iii) grazing animals in the woodlands; and,
 - (iv) selling timber, timber products and other forestry products.

JOINT FORESTRY VENTURES

120. 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.
121. A copy of any agreement must be lodged with the Commission.
122. 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)¹ the owner and the committee may agree:
- (a) that those trees are sold to the committee at current value; or
 - (b) 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.

¹ Paragraph 11 of Schedule 2 of the 1993 Act refers to the crofters permitting the landlord to exercise certain rights – subject to compensation for any damage incurred – upon the croft. Paragraph 11d details: *cutting or taking timber or peats, excepting timber and other trees planted by the crofter or any of his predecessors in the tenancy, or which may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the croft.*

123. An appeal may be made to the Scottish Land Court by either party to the agreement regarding the valuation, or the assessment of share entitlement.

USE OF COMMON GRAZINGS FOR OTHER PURPOSES

124. A shareholder may propose to the grazing committee that a part of the common grazing be used for a purpose other than grazing or woodlands, or for other permitted purposes such as peat cutting, seaweed for croft use and heather or grass for thatching. The proposed change in use must not be detrimental to:
- (a) the use being made at the time of the application to other parts of the common grazing; or,
 - (b) the interests of the owner.
125. 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. Essentially, the committee is required to summon a meeting of the shareholders to discuss and vote upon the proposal.
126. The notice of the meeting must provide the time, place and purpose of the meeting and must be sent by registered post to the shareholders and the owner. The notice must also be placed in a newspaper circulating in the area at least 28 days before the meeting. The owner must also be consulted with before the meeting and any views made known at the meeting itself.
127. A vote will be taken upon the proposal, with a single vote for each share, and a simple majority of shareholders or their proxies attending, or any postal votes timeously received deciding the outcome. A vote in favour of the proposal enables the Grazings Committee to apply to the Commission seeking its approval.
128. The Commission must be satisfied that all the procedural requirements have been properly carried out and the legislative requirements met. Where approval has been provided for the initial stage, the Grazings Committee can now move on to seek the Commission's approval or consent under section 58A. This is standard for most applications to the Commission and allows for objections from the owner of the common grazings, members of the crofting community and others with a relevant interest in the application.
129. Given that a requirement of section 50B is that the proposal cannot be detrimental to the interests of the owner, any proof that this will be the case will entail refusal. Where there is no objection or evidence of detriment to the interests of the owner, consideration can be given to a range of requirements that the Commission must have regard to under section 58A(7). These considerations include, amongst others, any other objections received, the interests of the estate, the interests of that crofting community and its sustainable development, and the interests of the public at large.
130. While the Commission may grant approval, with or without conditions, this only fulfils the requirements of crofting legislation and does not obviate the need for any other consents that may be required, such as planning permission, SEPA licences or any range of environmental requirements.

MISCELLANEOUS PROVISIONS

Review of Apportionment

131. A Grazings Committee is one of the parties entitled to apply to the Commission for a review of an apportionment granted on the common grazing. The review could result in the apportionment being brought to an end or to varying or revoking existing conditions or to imposing new conditions.

Participation in Animal Health Schemes

132. With the agreement of all shareholders a grazing committee may make specific regulations for entry to and the compliance and management of an Animal Health Scheme. Any regulations would be specific to a particular scheme and would be drawn up as required.

Open Township Provision

133. Historically some Grazings Regulations have recognised 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.¹
134. It is suggested that Grazings Committees might consider whether an open township regulation remains relevant or appropriate to their present-day situation.

Muirburn

135. It is recommended that muirburn on common grazings should only be undertaken with the express written permission of the owner. If given, 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

136. Without prejudice to the powers of the Commission regarding peat schemes², 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.
137. 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.

¹ The 1993 Act, s52(2)

² 1993 Act, s52(9) enables the Crofting Commission to draw up a scheme regulating the use of peat bogs by crofters on the same estate for the reasonable purposes of their crofts.

138. The Commission's template for Common Grazings Regulations provides for the inclusion of regulations regarding peat cutting. All shareholders shall be bound to comply with all instructions and directions given by the committee regarding such regulations, should they be included.

Seaweed

139. Without prejudice to the powers of the Commission regarding schemes for regulating the use of seaweed¹, 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.
140. The Commission's template for Common Grazings Regulations provides for the inclusion of regulations regarding seaweed. All shareholders gathering seaweed are bound to comply with all instructions and directions given by the committee regarding such regulations should they be included.

Machair

141. Where there are areas of machair land within common grazings, specific regulations may be incorporated into Grazings Regulations for their proper management. Machair is an important land feature in a number of coastal areas, particularly the Western Isles, and can require careful cultivation and management. Regulations can require shareholders to preserve the surface of the machair in unbroken and good order and ensure that parts that may be cropped are not to be exposed to drifting sand.
142. Stipulations may also be contained in regulations as to the number of years that crops may be grown consecutively upon areas of arable machair. Timescales may also be set for when stock may be permitted to graze, or be excluded from, the machair. Where the machair forms part of the common grazings, the committee has responsibility for its management, this includes the allocation of any unused share of arable machair.

Management and Protection of Sites of Special Scientific Interest

143. The Site of Special Scientific Interest (SSSI) is a statutory designation made by Scottish Natural Heritage under the Nature Conservation (Scotland) Act 2014.
144. 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.
145. 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.

¹ 1993 Act, s52(9) enables the Crofting Commission to draw up a scheme regulating the use of seaweed by crofters on the same estate for the purposes of their crofts.

146. If you do not already hold information on designated sites within your common grazing boundaries, the Crofting Commission recommends that you contact the local Scottish Natural Heritage (SNH) office or alternatively use their website <https://gateway.snh.gov.uk/sitelink/>. It should be that there could be operations on sites which require legal consent to be given before being undertaken.

Public Liability Insurance Requirement

147. A Grazings Committee may wish to consider whether they have appropriate insurance cover to deal with any problems or claims that may arise because of activities on the common grazing. The cost of any insurance should be met by all shareholders.

General Data Protection Regulation

148. Since 25 May 2018 Grazings Committees, like many public bodies, businesses, small organisations, clubs and charities, are subject the General Data Protection Regulation. This entails that a Grazings Committee has a particular responsibility for any personal data it holds and processes while carrying out its business. The personal data that a Grazings Committee is likely to hold will normally consist of the names and addresses and other contact details of the shareholders and committee members.
149. The Grazings Committee must have a lawful reason for retaining personal information. It is necessary for a committee to hold such information to fulfil its statutory requirement to manage, maintain and improve the common grazings.
150. The Grazings Committee should document how such information is obtained, how it will be used, how it is secured and how individual shareholders can access any personal information held about them. The length of time for which information is held should also be documented. Information should only be retained while an individual is a shareholder or a member of the Grazings Committee. It would be normal for the Grazings Clerk to be the person responsible for data protection within a Grazings Committee.
151. The Crofting Commission does not have responsibility for overseeing how Grazings Committees manages data protection requirements. Responsibility for data protection rests with the Information Commissioner and further information can be obtained at <https://ico.org.uk/>, or the telephone helpline 0303 123 1113, or by writing to Information Access Team, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

