



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

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Application for Apportionment Guidance Notes

Notaichean Stiùiridh air Tagradh Roinnidh



These guidance notes advise of the process whereby someone who shares in a Common Grazing wants to take part of the Common Grazing for their own exclusive use.

1 BEFORE YOU APPLY: YOU MUST DISCUSS THE PROPOSED APPORTIONMENT WITH THE GRAZING COMMITTEE

You must discuss your proposal with the Grazing Committee (or Grazing Constable) for the Common Grazing in order to reach agreement on the location and extent of the area of the Common Grazing you are looking to apportion for your own exclusive use. We recommend that you show the completed application form and the map of the area you want to apportion to the Grazing Committee or Grazing Constable and allow sufficient time for this to be considered by them before you apply.

You may also wish to discuss with your landlord and/or the owner(s) of the common grazings before sending us your completed application. This may reduce the possibility of time-consuming disputes by resolving any issues prior to submission of the application.

The Commission must consult with the grazing committee before deciding whether or not to grant an apportionment for the location and extent you have applied for. You cannot, therefore, change the size or location of the area sought once the application has been submitted. Any changes to the area following the submission of your application will be limited to essential adjustments, such as resolving access issues, correcting mapping discrepancies, restrictions to reflect souming entitlement, or ensuring the area is capable of being fenced as a stock proof enclosure.

If you need to make more substantive changes to the location and extent, you must withdraw this application and submit a new one for the revised area.

The Crofting Commission have no authority to determine the status of any of the land you are applying to apportion, the boundaries of the common grazings or the shareholding position or share/souming entitlement. If there is doubt about any aspect, it is open to you or any other interested party to apply to the Scottish Land Court, Parliament House, 11 Parliament Square, Edinburgh, EH1 1RQ for a determination. The Commission will be unable to process your application until these matters have been determined and any application that is submitted to us will be returned until the Court make its determination.

As required by section 52(4) of the Crofters (Scotland) Act 1993

2 REQUIREMENT TO REGISTER YOUR CROFT LAND

The Crofting Register is map based. When complete, it will provide a definitive record of the extent of and interest in land within crofting tenure in Scotland. In addition to showing the boundaries of land, the register will also contain information on the tenant, owner-occupier crofter and/or the landlord of the registered croft. The Crofting Register is maintained by the Keeper of the Registers of Scotland, although the application for registration should be made in the first instance to the Crofting Commission who will check the information contained in or accompanying the registration application against the information contained in the Commission's Register of Crofts.

If your croft is not already registered, you may need to submit a 'First Registration (FORM A)' application, along with your Apportionment application. This may not be required if the Grazings share you are applying to apportion is entered in the Commission's Register of Crofts as a separate croft from the croft land, and if the common Grazings is already registered on the Crofting Register. A copy of the registration form and guidance notes can be found at: <https://kb.ros.gov.uk/other-registration-types/crofting/register-a-croft>

To avoid delays we recommend that your apportionment application should be accompanied by the application to register the croft on the Crofting Register. This should be accompanied by a map showing the boundaries of the croft along with the registration fee, which is £90 per croft. If an application to register is not submitted within 6 months of the date of receipt of this application, the application to apportion will be withdrawn from our records and returned to you?

N.B. If your grazing share relates to a non-croft holding rather than a croft, the requirement to register does not apply.

3 IMPORTANT INFORMATION

3.1 APPLICATION

All questions must be answered as fully as possible, otherwise the form may be returned. To enable the Commission to give full consideration to your application, we would appreciate if you would provide us with as much information as possible to help us to arrive at a fully informed decision.

If you have purchased your right to graze, you must provide us with evidence (i.e. a copy of your Title) to confirm this, if you have not already done so.

If you are not a crofter, but are entitled to share in a Common Grazing along with other crofters, you must provide evidence of your grazing right:

- Where a share is tenanted, either a signed declaration from the landlord of the Common Grazing stating you have a share or a copy of your lease which confirms the right.
- Where a share is owned, a copy of the Title Deed which shows the right to graze.

3.2 CONSIDERATION BY COMMISSION

Where the Commission receives more than one application to apportion the same area of the common grazings, these will be processed strictly in terms of the date on which the first competent application is received. Two or more applications for the same (or part of the same) area are by their nature mutually incompatible. It is not the Commission's role to decide which of the competing applications is preferred. As we can only process one application for an apportionment of a particular area of common grazings at a time, priority will therefore be given to the competent application that is received first and any subsequently received application(s) will be put on hold until the Commission decide on and conclude the processing of the first application.

If your application is approved, the Commission may impose appropriate conditions, including the requirement to fence the apportioned area.

In some cases the Commission may decide that the apportionment should only be granted for a specific period of time (usually a minimum of 15 years) and this is referred to as a '**Term Apportionment**'. In such cases, if the crofter wishes to continue to use the apportioned area beyond the end of the term approved by the Commission they can apply to the Commission for an extension. Applications to extend the term of an apportionment must be submitted before the apportionment is due to end. The Commission will then consider whether to grant an extension of the apportionment.

In some cases the Commission may determine that the apportionment **will be subject to review at fixed intervals**. These reviews are to confirm that the apportioned area is still required by the crofter for their exclusive use. Where the Commission decides that it is appropriate to apportion land subject to review at fixed intervals, its policy in most cases is to have a review every ten and twenty years from the date of the Order. It will however take account of the circumstances of each application. On review, the Commission may decide to:

- (i) take no action;
- (ii) vary or revoke any condition imposed on the apportionment;
- (iii) impose a new condition;
- (iv) bring the apportionment to an end.

4 MAPPING INFORMATION

Your application must be accompanied by a site map and a location map of the proposed apportionment. Please refer to the example map in Appendix 1 for further details of requirements. All maps must be clear, legible and ideally in colour. Maps that do not meet our required standard will result in your application being returned with notes highlighting issues that need addressed.

5 PURPOSE OF APPLICATION

The table below may help you decide if an apportionment application is the correct route to take:

| Purpose | Appropriate Section of the Crofters (Scotland) Act 1993 | Regulatory Function |
|---|---|---------------------|
| Cultivation: Stock Management | Section 52(4) | Apportionment |
| Cultivation: Agricultural Building (Existing or Proposed) | Section 52(4) | Apportionment |
| Site of an Existing Dwelling House | Section 52(4) | Apportionment |
| Site of a *Proposed Dwellinghouse | Section 52(4) | Apportionment |
| Planting trees/use as woodlands for the exclusive use of the crofter | Section 52(4) | Apportionment |

- * If the apportionment application is in respect of a site for a proposed agricultural building or dwellinghouse, you must have applied for and/or obtained planning consent from the local Planning Authorities. You should therefore include a copy of the planning consent obtained for the proposed development or your planning application reference number (where the planning application has not yet been decided). If the local Planning Authorities have determined that planning permission is not required, you must provide written confirmation of this together with a copy of the relevant Planning Department's final response to the Prior Notification procedures if applicable.

N.B. Should any crofter propose that an area of common grazing be used for another use, this should be done by the grazing committee under section 50B of the Crofters (Scotland) Act 1993. This section of the Act requires that the proposal is not detrimental to the use being made of the grazing or the interests of the owner. The process requires that the grazing committee hold a meeting of shareholders and invite the owner to give his or her views and the opportunity to discuss the proposal in advance of the meeting. The proposal must obtain a majority support from shareholders attending the meeting, and then the Committee must apply to the Commission seeking approval for its implementation. It is only in this manner that an area of the common grazing can be used for some other purpose. Therefore, any application to apportion for another purpose will not be considered.

Should your proposed apportionment form part of a designated area listed below, you should contact the responsible body for the designated site and you must provide a copy of the proposed management agreement or prior written approval from the responsible body.

| Designation | Responsible body |
|--|-----------------------------------|
| National Nature Reserve (NNR) | Local Authority |
| Special Area of Conservation (SAC) | NatureScot |
| Special Site of Scientific Interest (SSSi) | NatureScot |
| Special Protected Area (SPA) | NatureScot |
| Listed Buildings Scotland (LBS) | Historic Environment Scotland |
| Scheduled Ancient Monuments (SAMS) | Historic Environment Scotland |
| National Scenic Area (NSA) | NatureScot |
| Cairngorm National Park (CNP) | Cairngorm National Park Authority |
| Loch Lomond & The Trossachs National Park | LLTTNP Authority |
| Forestry schemes (SFGS/WGS) | Forestry Authority |
| Agri-Environment Climate Scheme (AECS) | NatureScot |

There will be a presumption against granting an individual apportionment where:

- there is a management scheme, involving an agreement entered into between the Grazing Committee and others that provides financial or other benefits or incentives for the township where apportionment may prejudice that scheme
- an application to enter any such scheme has been properly lodged

If we are satisfied that a Grazing Committee has already proposed to the shareholders that all or part of the Common Grazing be managed and used under any common management scheme that could provide financial or other benefits to participating shareholders or to the township in general, we will reject any application for apportionment of any part of the Common Grazing to which that proposal relates for a reasonable period (usually up to 6 months) until the Committee's proposal and any objections to it have been properly considered.

If the application is for forestry you must consult the Grazing Committee about any intention they may have to lodge a forestry or conservation application on behalf of the whole township.

Before you start any developments on your apportioned croft land, we suggest you contact your local Scottish Government Rural Payments & Inspections Directorate (SGRPID) office about the Environmental Impact Assessment (EIA) Regulations.

EIA is a procedure for considering potential environmental impacts of changes in land use. Therefore, if your development plans include changing the use of uncultivated land and/or semi natural areas for agricultural production, you should clarify if your plans will be affected by the EIA Regulations.

Applicants should make contact with their Local Authority's Access Officer to establish any obligations on access rights over the area being sought.

5.1 PUBLIC NOTIFICATION

Once we have confirmed that your application and accompanying maps are valid, we will provide you with guidance on how to advertise your application.

6 RESIDENCY AND LAND USE

WHAT ARE CROFTER'S DUTIES?

Crofters Duties

Both tenant and owner-occupier crofters have a duty to:

- **Be resident on, or within 32 kilometres (20 miles) of their croft**
- **Not to misuse or neglect the croft**

Misuse – This refers to a croft being used for something which is not considered as cultivation. Crofters require the consent of their landlord or, failing that, the Crofting Commission if they wish to put their croft to another purposeful use.

Neglect – This refers to the management of the croft which should meet the standards of Good Agricultural and Environmental Condition (GAEC).

- Cultivate and maintain the croft

Cultivate – This refers to the croft being used for cultivation or put to another purposeful use. This includes horticulture, keeping livestock including poultry and bees, growing of crops and the planting of trees.

Maintain – This refers to the maintenance of the croft; to enable the croft to be cultivated it must be maintained in a fit state except where another purposeful use is incompatible with the croft being kept in such a state.

Purposeful use – This means any planned and managed use which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner, or the use of adjacent land.¹

¹ A crofter may only put the croft to a purposeful use if the landlord has consented to the use or the Commission has consented to the use if the landlord has withheld their consent.

7 POLICY ON APPORTIONMENT

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

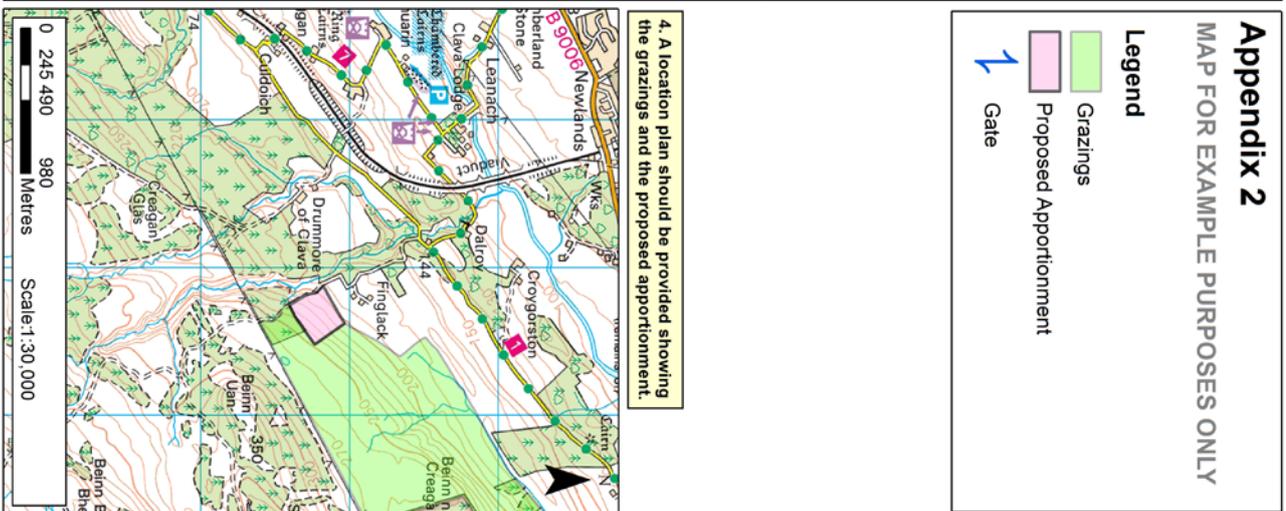
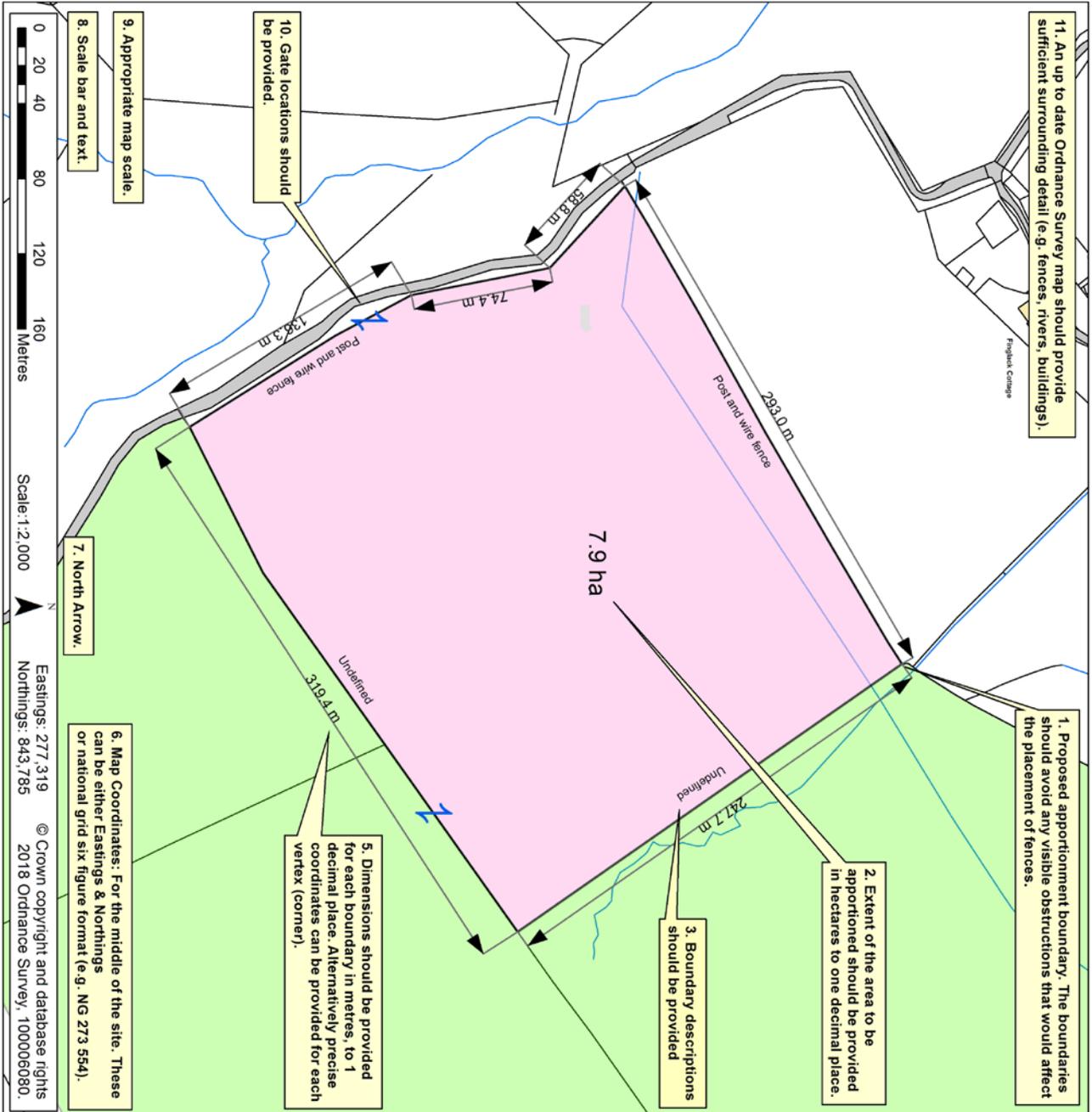
The Commission recognises that there can be differing views around issues to do with the value of land, and that the value of land cannot be measured solely from an agricultural point of view. However, the Commission has no specialist skills in land valuation and will not approach apportionment applications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

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

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

In affording the committee and/or the crofters sharing (in the absence of a committee) the opportunity to make comments, the Commission will usually assume that in the absence of any reasonable adverse comments from the committee and/or the crofters, the apportionment will not adversely affect the interests of the other crofters. Even in the absence of such comment, however, the Commission may find that the apportionment applied for will adversely affect the common grazing where there are good reasons for such a finding.

APPENDIX 1





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