

Draft Common Grazings Regulations for the Management and Use of xxxxxxx Common Grazing

Points to Note:

The role of the Crofting Commission is to regulate common grazings in terms of Section 47(8) of the Crofters (Scotland) Act 1993.

These regulations shall apply to xxxxxx Common Grazings only, located in the Parish of xxxxxx which comprise.....

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INTERPRETATION OF TERMS

In these Regulations, 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 and the Crofting (Amendment (Scotland) Act 2013.
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 purposes. In this case the common grazing to which these regulations apply
Grazings Committee	A Grazing Committee is appointed under section 47(1) of the Act to administer the regulations for the management and maintenance of the common grazing. In this case the grazing committee to which these regulations apply
Shareholder	Any person, whether or not they are a crofter, who is entitled to share in the Common Grazing. 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 (See Annex A).
Public Notification	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. **Section 55(A)(1) of the Act.**

Resumption

Resumption allows the landlord of a common grazings to apply to the Scottish Land Court for consent to remove an area either permanently or temporarily from crofting tenure and to be then out with the control of the Crofting Acts. **Section 20 & 21 of the Act.**

Maintenance

Upkeep or replacement of existing necessary fixed equipment on the common grazing with all shareholders liable for expenditure. **Section 48(1)(a) of the Act.**

Improvements

A new, or substantial upgrade either on the Common Grazing itself or an item on the Common Grazing, requiring a notice to be issued to all shareholders **Section 48(1)(b) & 48(2) of the Act.**

NOTE: These Regulations are intended to be read in conjunction and subject to sections 47 to 52 (inclusive) of the Crofters (Scotland) Act 1993, which are appended to these Regulations.

1 APPOINTMENT OF NEW GRAZINGS COMMITTEE

- (1) For the avoidance of doubt, a Grazings Committee cannot continue in office beyond the statutory 3-year period and a new Grazings Committee must be appointed at the end of the statutory period. Retiring or existing members are eligible for reappointment.

Prior to end of its 3-year term in office, the Grazings Committee will publish a notice that a meeting will take place to appoint a new Grazings Committee. The venue, date, time of the meeting and the name of the Common Grazing will be set out in the notice, which must be published in one or more newspapers circulating in the district in which the Common Grazing is situated. This notice should be published at least 10 days before the date of the meeting. The notice must state that all Shareholders are invited to attend the meeting to appoint a Grazings Committee. Where the meeting takes place prior to the end of the current Committee's 3-year period in office, the newly appointed Committee will take office at the conclusion of that 3-year period. Should the meeting occur once the Committee's 3-year period in office has concluded, the newly appointed Committee will take office immediately.

Where the Grazings Committee is out of office, the process set out in section 47(1) of the 1993 Act regarding the calling of a public meeting applies. In such circumstances, the crofters sharing in the Common Grazing must take responsibility for calling a meeting of all Shareholders, of which public notification is to be given as set out above, for the purpose of appointing a Grazings Committee. Only the crofters who share in the Common Grazing are entitled to appoint the Committee.

- (2) At the meeting the crofters shall appoint a Grazings Committee of such number as shall be decided at the meeting, all in terms of section 47(1) of the 1993 Act.
- (3) The persons so appointed should give their agreement to serving on the new Grazings Committee.
- (4) The Grazings Committee shall appoint a clerk in terms of section 47(6) of the 1993 Act and such a person shall be referred to as the "grazings clerk" in terms of section 47(6A) of the 1993 Act.
- (5) The term of office of the members of a Grazings Committee is 3 years as set out in section 47(4) of the 1993 Act.

2 MEETINGS

Committee Meetings and conduct of business at meetings

- (1) The Grazings Committee shall meet xxxxxxxxx to conduct the business of the Committee. When a meeting is to be summoned, every effort should be made to notify all the members of the Grazings Committee by any such means as determined by the Grazings Committee at their first meeting. Such notice should be at least 7 days prior to the date of the meeting. The meeting should be convened at a suitable time, date and venue.

An agenda should be provided along with the notice of meeting of the Grazings Committee.

The members of the Grazings Committee will be responsible for appointing a Chairperson to oversee the meetings of the Grazings Committee.

The vote of the Grazings Committee will normally be taken 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.

A minute of a meeting of the Grazings Committee will be taken. The minutes will record the names of members in attendance and those apologising for their absence, and the business transacted at the meeting.

- (2) All members of the Grazings Committee are entitled to vote at Grazings Committee meetings on proposals to carry out actions or works in connection with maintaining the Common Grazing and to provide, maintain and, if necessary, replace the Fixed Equipment required in connection with such maintenance, and on proposals to the improvement of such grazings and equipment¹
- (3) Section 47(5) of the 1993 Act states that a majority of the Grazings Committee shall be a Quorum.
- (4) At Grazings Committee meetings votes shall be determined by a simple majority of those committee members in attendance.
- (5) Special rules apply to meetings held under section 50B of the 1993 Act (the use of Common Grazing for other purposes). The Grazings Committee must follow the rules and procedure set out in section 50B of the 1993 Act where a Shareholder proposes to use a part of the Common Grazing for other purposes.

Annual General Meeting

- (6) The Grazings Committee will hold an Annual General Meeting to which all the Shareholders in the Common Grazing will be invited in xxxxxx of each year. A Shareholder other than the Grazings Clerk should chair the meeting. The Grazings Clerk should provide a report on any work undertaken by the Grazings Committee over the previous year and on the financial position².

¹ Section 48(1)(a)&(b) of the Crofters (Scotland) Act 1993

² There is no statutory requirement in the Crofting Act for a Grazings Committee to hold an Annual General Meeting. However, it was recommended by the Land Court (Mackinnon -v-Duke of Argyll 1947 SLCR 35) that Grazing Committees should hold an AGM, and it became standard to include such a requirement in the regulations when the Crofters Commission took over responsibility for Grazing Committees in 1955.

3 FINANCE

Resumptions

- (1) All funds received through Resumption of part of the Common Grazing are to be distributed in terms of section 21(4) of the 1993 Act.

Committee Expenses

- (2) Where the Grazings Committee has or will incur expenses in managing and maintaining the Common Grazing for the purpose of these Regulations or in providing, maintaining or replacing any Fixed Equipment required in connection with such maintenance¹ each Shareholder shall be liable for expenses thus incurred. The level of expenses will be in proportion to the individual's Souming. Each Shareholder will be required to contribute to the expense incurred in terms of his or her Souming regardless of whether or not the Shareholder uses only some or none of his or her Souming.

Remuneration of the Grazing Clerk

- (3) The Grazing Committee shall pay such annual remuneration to the Grazing Clerk as may be determined in terms of section 47(9) of the 1993 Act. The Grazing Committee may recover such expenditure from Shareholders in terms of section 47(9) of the 1993 Act.

For the avoidance of doubt, any person who is entitled in terms of section 47(10) of the 1993 Act to share in a Common Grazing along with crofters will be subject to these regulations and will be obliged to contribute to the expenses incurred by the Grazings Committee according to his or her Souming in a like manner as though he or she was a crofter sharing in the Common Grazing.

Other Funds

- (4) Only the funding listed above is subject to these Grazings Regulations. Any other funding held or available to the Grazings Committee does not fall within the remit of the Grazings Regulations. However, such funds remain the responsibility of the Grazings Committee.

4 MANAGEMENT & MAINTENANCE OF THE COMMON GRAZING AND EXISTING FIXED EQUIPMENT

- (1) The duties of the Grazings Committee to maintain and improve the Common Grazing are set out in section 48 of the 1993 Act.

- (2) **Cutting of Peats**

The Grazings Committee shall direct and control all cutting of peats on the Common Grazing by all shareholders. The Committee shall indicate where and by what means peat shall be extracted. After extraction the Shareholder shall restore the soil and surface to proper condition.

¹ Section 48(1)(a) of the Crofters (Scotland) Act 1993

(3) **Duty to Report**

The Grazing Committee **must** report to the Commission every five years in terms of section 49A of the 1993 Act. The relevant form is available from the Commission's website at <http://www.crofting.scotland.gov.uk/common-grazings-census>

5 PROPOSALS OF WORKS OF IMPROVEMENT AND REVIEW OF SUCH WORKS

- (1) The need for works of improvement must be kept under review by the Grazings Committee. It is the duty of the Grazings Committee to carry out works for the improvement of the Common Grazing and equipment. It is also the duty of the Grazings Committee when carrying out works of improvement to follow carefully the notification and proposed allocation of expenditure procedures set out in section 48(2) and section 48(3) of the 1993 Act, and pay particular regard to the rules concerning rights that are sublet or let as set out in the said section 48(3) of the 1993 Act. The Grazings Committee must monitor when works of improvement are considered to be obsolete and, where appropriate, submit to the Commission any amendments to their regulations.
- (2) A notice under s48(2) of the 1993 Act must be in writing and should be delivered to each Shareholder or left at their proper address or sent to them by post. If the notice is sent by post then it should be sent by registered post or the recorded delivery service, addressed to the Shareholder at their last known address.
- (3) The notice should also inform the Shareholders of their right to make representations to the Commission in respect of the proposals or the proposed allocation, within one month of the date of the notice.
- (4) Notice must be given to Shareholders, even if they have sublet their croft or let it on a short-term basis, but no liability for expenditure shall be imposed on the Shareholder for the period of the sublet or short term let.
- (5) In cases where representations are received by the Commission, then the Commission may approve the proposals or proposed allocation of expenditure with or without modifications or reject them. In such cases, the Grazings Committee cannot proceed without formal confirmation from the Commission.
- (6) If proposals are agreed and implemented, then each Shareholder is liable to the Grazings Committee for a proportion of the expenses incurred by the Grazings Committee according to the proposed allocation of expenditure.
- (7) If the decision of the Grazings Committee is that it should not continue any works of improvement, then monies held in account for the works of improvement will have to be distributed to the Shareholders in terms of the proposed allocation of expenditure (or such allocation as has been approved or modified by the Commission).
- (8) Where the Grazings Regulations provide (in terms of section 49(3) of the 1993 Act for any restriction of any part of the Common Grazing on which works of improvement have been carried out, and where it is decided that it is no longer necessary to continue with any such works of improvement, the Grazings Committee will apply to the Commission for an amendment of the Regulations to have any such restriction removed.

6 LEVYING AND RECOVERY OF EXPENSES

(1) Providing, Maintaining or Replacing any Fixed Equipment¹

The Grazings Committee shall be entitled to recover from all the Shareholders (including non-crofters)² all the expenses incurred by the Grazings Committee in terms of its duties under the Act, namely maintaining the Common Grazing and in providing, maintaining or replacing any Fixed Equipment required in connection with such maintenance.

Such recovery of expenses will be by way of a levy by the Grazings Committee on, and recovery from, all the shareholders. The proportions in respect of which each crofter shall be liable, which the Grazings Committee is of the opinion must necessarily be levied on the Shareholders in the performance of the duties set out under section 48(1)(a) of the 1993 Act³, will be directly in proportion to their soumings, as stated in the appendix, Schedule 1, to these regulations.

(2) Works for the Improvement of the Common Grazing⁴

The Grazings Committee shall be entitled to recover from the contributing Shareholders (including non-crofters)⁵ all the expenses incurred by the Grazings Committee in terms of its duties under the Act, namely the carrying out of works for the improvement of the Common Grazing and equipment.

Such recovery of expenses will be by way of a levy by the Grazings Committee on, and recovery from, all the shareholders contributing to works of improvement in respect of the duties carried out under the Act. The proportions in respect of which each contributing crofter shall be liable, which the Grazings Committee is of the opinion must necessarily be levied on such Shareholders in the performance of the duties set out under sections 48(1)(b) and 48(2) of the 1993 Act⁶ and will be detailed in any notice⁷ sent to a shareholder in accordance with the provisions in section 48(2) and 55 of the 1993 Act.

A copy of the agreed works will be added as an Appendix to these regulations.

7 STOCKING OF COMMON GRAZING

Souming

- (1) The crofts which share in the Common Grazings and their Soumings, together with non-croft holdings to which the right to graze pertains are shown in **Schedule 1**.
- (2) A Souming of one cow shall be deemed equivalent to a Souming of xxxxx sheep.
- (3) The calves, lambs and foals from the Shareholders' breeding stock of each year will not be taken into account with regard to a Shareholder's Souming.

Reallocation of Soumings

¹ Section 48(1)(a) of the Crofters (Scotland) Act 1993

² Section 47(10) of the Crofters (Scotland) Act 1993

³ As must be provided for in the Regulations in terms of section 49(2)(a) of the 1993 Act

⁴ Section 48(1)(b) of the Crofters (Scotland) Act 1993

⁵ Section 47(10) of the Crofters (Scotland) Act 1993

⁶ As must be provided for in the Regulations in terms of section 49(2)(b) of the 1993 Act

⁷ Section 55 of the Crofters (Scotland) Act 1993

- (4) The Grazings Committee may allow another crofter sharing in the common grazings or failing such, any other person, to use any unused souming on a year to year basis.

Bulls and Tups

- (5) A Grazings Committee may hire, buy or sell bulls and tups. Where not provided by the Grazings Committee, any bulls or tups may only be on the Common Grazing with the express permission of the Grazings Committee.
- (6) Stock which cannot be kept on the Common Grazing by ordinary herding, or for reasons of good stock management, must be kept on the individual's holding.

8 MISCELLANEOUS

Muirburn

- (1) Any muirburn to be carried out on the Common Grazing by the Grazings Committee will require the express consent of the landlord(s) and/or the owner(s) of the Common Grazing. These Regulations do not seek to regulate any muirburn activities.

Area of the Common Grazing etc

- (2) For details of the boundaries of the Common Grazing (where registered in the Crofting Register) together with information on any apportionments and resumptions please refer to your registered common grazing on the Register of Scotland website (if registered) <https://www.ros.gov.uk/services/registration/crofting-register>

SCHEDULE 1

LIST SHOWING THE NUMBER AND TYPE OF STOCK WHICH EACH HOLDING SHARING IS ENTITLED TO PUT ON THE COMMON GRAZING

ANNEX A – FIXED EQUIPMENT

Fixed equipment¹ includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or 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 fences², 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.

ANNEX B – RELEVANT SECTIONS OF LEGISLATION

http://www.crofting.scotland.gov.uk/userfiles/file/Act_and_Policy/Crofters-Scotland-Act.pdf?d=14/01/2016%2016:15:05

Relevant Sections: - 47 to 52

¹ Has the like meaning as in the Agricultural Holdings (Scotland) Act 1991.

It should be noted that the Agricultural Holdings (Scotland) Act 1991 provides for a general definition of fixed equipment, however when fixed equipment is being considered within Grazing regulations, it should be viewed from a crofting context. (See fencing footnote below)

² 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.