

## **Law and Procedure**

### **BOARD CASEWORK GROUP MEETINGS**

#### **1. LAW**

Various sections of the Crofters (Scotland) Act 1993 (“the 1993 Act”) are relevant to Board Casework Group meetings.

#### **2. POLICY**

Various paragraphs in the Commission’s Policy Plan (Dated December 2022) are relevant to Board Casework Group meetings.

#### **3. PROCEDURE**

##### **3.1 BACKGROUND**

Up until October 2015 all decisions on regulatory applications were taken by Commissioners. Either by a single Commissioner, a Casework Group comprising three Commissioners or the full Board. The level of decision-making being determined by the Commission’s “Instrument of Delegation.”

From November 2015 a rolled out programme of devolving decisions to officials commenced to enable Commissioners to focus on those issues which relate to the strategic leadership of the organisation.

##### **3.2 SCHEME OF DELEGATION**

The former “Instrument of Delegation” has been superseded by the current “Scheme of Delegation”. The Scheme of Delegation sets out 2 levels of delegated decision making:

- Tier One: The Casework Officer or the Regulatory Caseworker;
- Tier Two: A Casework Group comprising two members of the Regulatory Support Team (RST) and the Casework Officer or the Regulatory Caseworker;

The Tier 2 casework group may escalate cases to the Board of Commissioners for a decision when required

### **3.3 BOARD CASEWORK GROUP PROCESS**

- 3.3.1** Board Casework Group meetings will generally be held on the day of the scheduled general Board meeting although arrangements will be in place to hold ad-hoc casework meetings if there are individual cases which have to be considered between the scheduled general Board meetings as and when required. The aim will be to have no more than 4 cases to be considered at any Board casework meeting.
- 3.3.2** A Board Casework Group meeting will comprise all Board Commissioners. All Commissioners are eligible to take part in Board casework meetings unless they declare a conflict of interest in the case which is under consideration.
- 3.3.3** Four papers will be prepared for each case to be considered at the Board casework meeting. The papers will comprise the following:
- A case paper prepared by the Casework Officer;
  - A paper providing written legal advice by the Commission Solicitor<sup>1</sup>;
  - A paper prepared by the Regulatory Support Team setting out the reasons why the case has been escalated to the Board of Commissioners for consideration, detailing each of the delegation parameters which the application is not compliant with. The paper may also include a recommendation;
  - The Commission's "Law and Procedure" relating to the relevant regulatory functions under consideration.
- 3.3.4** The papers will be sent out to Commissioners at least seven days prior to the meeting.
- 3.3.5** The Board Casework meetings will generally be held at Great Glen House or at an alternative location although arrangements can be made, if required, for a meeting to be held remotely.
- 3.3.6** As well as the Casework Group consisting of the Board of Commissioners, the Commission Solicitor, Head of Regulatory Support, a Crofting Regulatory Support Manager and the B1 Casework Officer will also generally be in attendance.
- 3.3.7** The decision will be made solely by the Board of Commissioners. The role of the staff being to support Commissioners by presenting the papers that have been provided prior to the meeting and by answering any questions raised by Commissioners in relation to the cases under consideration.
- 3.3.8** The Board Casework meetings will have a quorum of 5 Commissioners. A decision on a case can be taken either on a unanimous basis or on a majority basis. Commissioners must set out the decision reached, the reasons for the decision and the underpinning facts in relation to each case.

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<sup>1</sup> Should the Commission solicitor declare an interest in any case under consideration, the Head of Regulatory Support will liaise with the Commission's Chief Executive Officer on whether external legal advice should be obtained.

The Board of Commissioners has the authority to:

- approve, condition or modify applications;
- refuse applications;
- request further information or direct a hearing or a public meeting be held

**3.3.9** The case then comes to officials to prepare draft grounds for the Commission's decision. During this stage of the process, officials are asked to highlight to the CEO and the Board of Commissioners if they have any doubts that the decision is in line with the Act, the Policy Plan, and other related decisions (unless the decision appears to be supported by compelling reasons why the policy should not be applied); equally, any Commissioner may also highlight concerns about the decision. The CEO shall decide whether to reconvene the Board of Commissioners.

**3.3.10** Unless any concerns are raised by an official or Board member, the post-meeting process is as follows:

A member of the Regulatory Support staff will prepare a draft set of grounds which will look to accurately reflect the decision, the reasons and the underpinning facts in relation to each case. The draft grounds will then be escalated to the Commission solicitor for legal input. The draft grounds, with the written legal input from the Commission solicitor are then circulated by the Regulatory Support Team to the Commissioners who attended the meeting to obtain confirmation on whether they are satisfied that grounds accurately reflect the decision, the reasons and the underpinning facts in relation to each case as discussed and agreed at the Board casework meeting.

**3.3.11** The decision is finalised when a set of grounds has been agreed by the majority of Board members who attended the meeting.

**3.3.12** The finalised grounds are then forwarded to the Casework Officer to issue decision letters to the applicant and other interested parties, at that point the Commission has disposed of the application.