



CROFTING COMMISSION'S FUNCTIONS AND DECISIONS:

SCHEME OF DELEGATION

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INTRODUCTION

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 devolved decision making was introduced to enable Commissioners to focus on those issues which relate to the strategic leadership of the organisation.

The potential benefits of such an approach being:

- Frees up Commissioner's limited time
- Decisions are made quicker
- Decisions are more consistent across the organisation
- Decisions are supported by more robust grounds
- Staff are empowered.

How it works is that parameters for each function are agreed by the Board of Commissioners, and if a case falls with the parameters, it can be dealt with by officials.

Initially eight functions and decisions were included in the Scheme of Delegation, but over the last 10 years this has been extended to include the majority of functions and decisions set out in the Crofters (Scotland) Act 1993.

HOW THE SCHEME OF DELEGATION OPERATES

There are two tiers of delegated decision making within the Commission.

TIER ONE

Who makes the decision at Tier One?

- The Casework Officer or the Regulatory Caseworker. For grazings applications the Grazings Officer.

What decision can be made at Tier One?

Regulatory Applications:

- a) To decide applications are invalid where it has been identified at the initial assessment stage of the process either that (i) the applicant does not have the right to apply or (ii) the application is otherwise not capable of being made competent.
- b) To take an administrative step requiring the applicant to provide the Commission with such further information relating to the application as they consider appropriate
- c) To refuse applications where the information required at b) has not been provided within a reasonable timescale¹.
- d) To refuse applications where a croft registration application has not been submitted within the statutory timescale.
- e) To approve applications which comply with the parameters agreed by the Board in relation to the relevant regulatory function subject to the usual statutory factors.

Registration applications:

¹ Currently the Commission allows 28 days for responses to be sent for information, which is the proposed timescale at the point of implementation of these changes.

- a) To decide applications are invalid where it has been identified at the initial assessment stage of the process either that (i) the applicant does not have the right to apply or (ii) the application is otherwise not capable of being made competent.
- b) To make an administrative step to require the applicant to provide the Commission with such further information relating to the application as they consider appropriate.
- c) To take a decision appealable to the Scottish Land Court to refuse to forward applications to the Registers of Scotland (RoS) where the (i) information required at a) has not been provided within a reasonable timescale.
- d) To refuse to forward applications to the RoS where the fee payable in respect of the application has not been tendered within a reasonable timescale.
- e) To take the administrative steps of forwarding applications to RoS where the checks have been carried out against the information relating to the croft in the Commission's Register of Crofts.

When are decisions (generally) made?

- On a daily basis.

When are cases escalated to Tier Two?

Cases are escalated to the second tier of decision making when they fail to meet one or more of the Board agreed parameters at Tier One.

TIER TWO

Who makes the decision at Tier Two?

For regulatory and duties cases:

- A casework group normally consisting of two suitable B2 or higher graded officials, at least one of whom will normally be a member of the Regulatory Support Team, and the B1 Case Officer. Other officials may attend in addition to this as required.

For common grazings cases:

- A casework group normally consisting of two suitable B2 or higher graded officials, at least one of whom will normally be the Grazings Manager, one of which will normally be member of the Regulatory Support Team, and a Grazings Officer. Other officials may attend in addition to this as required.

What decision can be made at Tier Two?

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function.
- To refuse applications which are clearly contrary to the Commission Policy as agreed by Commissioners, and there is no compelling evidence as to why the policy should not be applied.
- To escalate the application to a group comprising the CEO, CC Solicitor and optionally a suitable B2 or higher graded official (as needed) to consider whether the case should be decided by the Board of Commissioners.

When are decisions (generally) made?

- On a weekly basis. A record of the approving parties is maintained by the Regulatory Support Team for all determinations taken by a Tier Two panel.

ESCALATIONS TO THE FULL BOARD

Cases which are novel, or which are perceived by officials to be contentious, or which are considered to fall out with the Board's agreed risk appetite statements, or which are not covered by the Scheme of Delegation will be escalated for determination by the full Board in a closed meeting. Cases may be escalated by a group formed by the CEO where Tier Two cases are passed to this group in the first instance.

Each meeting of the Board will be attended by the owning caseworker who can explain the history and details of the case, and at least one member of the Regulatory Support team who can assist with this explanation and any procedural queries raised.

The Commission's solicitor will attend all Board determinations, where possible, to offer legal advice on the case.

Post the Boards' determination, the Regulatory Support team will produce draft grounds of the determination. These will then be approved by the Commission solicitor before being passed to each of the determining Board members for approval.

The approval process will iterate until a Board majority approved set of grounds is obtained.

REGULATORY APPLICATIONS MADE BY A COMMISSIONER OR A MEMBER OF STAFF

Any application submitted by a Commissioner **shall be escalated to the Full Board for consideration in closed session.** The Commissioner who submitted the application will be excluded from any determination.

Any application submitted by a member of staff which complies with all the parameters for delegation, as agreed by the Board, **can be progressed at Tier One (Casework Officer)**, but must be reviewed and approved by the Chair of the Board prior to any determination being finalised.

Any regulatory application submitted by a member of staff which fails to comply with one or more of the parameters for delegation, as agreed by the Board, **shall be escalated to the Full Board for consideration in closed session.**

FUNCTIONS AND DECISIONS WHICH ARE INCLUDED IN THE SCHEME OF DELEGATION

Decisions in these functions can be made at any of the 2 Tiers (depending on the consideration of the agreed parameters).

The Crofters (Scotland) Act 1993

The following functions and decisions are included in the Scheme of Delegation:

- Constituting non-croft land as a new croft (Section 3A)
- Constituting non-croft land as a new common grazings (Section 51A)
- Enlargement of Crofts (Section 4)
- Exchange of crofts or parts of crofts (Section 4A)
- Assignment (Section 8)
- Assignment to a family member (Section 8)
- Division of a croft by a tenant (Section 9)
- Division of a croft by an executor to create 2 or more crofts (Sections 9 & 10)
- Division of a croft by an owner-occupier crofter (Section 19D)
- Whether to serve a notice to terminate a tenancy due to a failure of statutory succession (Section 11(4) to 11(8))
- Commission consent for absence from croft (Section 21B)
- Extension of consent for absence from croft (Section 21C)
- Variation of condition for absence from croft (Section 21D)
- Letting of a vacant croft by a landlord (Section 23(3))
- Letting proposals by a landlord (Section 23(5))
- Letting proposals by an owner-occupier crofter (Section 26(J))
- Short term letting by owner-occupier crofters (Section 29)
- Letting of an owner-occupier croft (other than on short lease) by an owner-occupier crofter (Section 29A)
- Decrofting house site and garden ground by a landlord or tenant (Section 24)
- Decrofting part or whole croft by a landlord or tenant (Section 24)
- Decrofting house site and garden ground by an owner-occupier crofter (Section 24A)
- Decrofting part or whole croft by an owner-occupier crofter (Section 24A)

- Decrofting House site and garden ground in feu of which was granted under Section 17 or 18 (Section 24)
- To decide whether a reported breach of duty is frivolous or vexatious (Section 26A(5))
- To decide whether a notice should be served informing the crofter that the Commission consider a duty is not being complied with (Section 26C(1))
- To decide whether a duty is being complied with, having provided the crofter with the opportunity to make representations (Section 26C(5))
- To decide whether to accept an undertaking by a crofter to resolve the breach (Section 26D(4))
- To decide whether to divide a croft prior to taking action to terminate a croft tenancy or to seek letting proposals from an owner-occupied crofter (Section 26G)
- To decide whether there is a good reason not to terminate a crofter's tenancy (Section 26H)
- Tenancy Termination procedure (Section 26H)
- To decide whether there is a good reason not to direct an owner-occupier to submit a proposal for letting the owner-occupier's croft (Section 26J)
- Owner-occupier crofter: seeking croft letting procedure (Section 26J)
- Subletting (Section 27)
- To decide whether to issue an order allowing a former subtenant to remain in occupation of a croft for up to 1 year following the termination of a sub-tenancy (Section 29(3))
- To decide whether it is deemed necessary to make an enquiry to determine whether any or all members of a grazings committee (or the grazings clerk) are properly carrying out the duties imposed on them by the 1993 Act (Section 47(8))
- As a result of an enquiry, to determine whether any or all members of a grazings committee (or the grazings clerk) are properly carrying out the duties imposed on them by the 1993 Act (Section 47(8))
- To decide whether it is appropriate to draw up an action plan with the grazings committee to identify and resolve any issues to enable the duties to be properly carried out. (Section 47(8))
- Confirming, making, or amending grazing regulations (Section 49(7))
- Use of common grazings for forestry purposes (Section 50)
- Use of common grazing for other purposes (Section 50B)
- To decide whether a person has contravened or failed to comply with any common grazings regulations (Section 52(1C))
- To decide whether to require the shareholder to conform with the grazing regulation in question (Section 52(1C)(a))

- To decide whether to require the shareholder to make good any damage which has directly resulted from their contravention or failure to comply with any common grazing regulations, within a timescale specified by the Commission (Section 52(1C)(b))
- Apportionment (Section 52(4))
- Extension of the period of a termed apportionment (Section 52(11))
- Review of apportionment (Section 52(12))
- Dealing with objections from individuals who the Commission consider do not have a relevant interest in an application (Section 58A(4)(d))
- Dealing with Late Objections (Section 58A(5A))

The Crofting Reform (Scotland) Act 2010

- Whether or not to forward an application for registration to the Keeper of the Registers of Scotland (RoS) (Section 7)

FUNCTIONS AND DECISIONS WHICH ARE **EXCLUDED FROM THE SCHEME OF DELEGATION**

The following functions and decisions are exempt from the Scheme of Delegation. These decisions have to be made by the Board of the Crofting Commission.

- Complaints as respect Breach of a crofter's statutory conditions (Section 5A)
- Schemes for development (Section 19A)
- Reorganisations Schemes (Section 38)
- To decide whether to remove from office any members of grazings committees or clerks where it is determined that they are not properly carrying out their duties (Section 47(8))
- To decide whether to appoint or provide for other persons in the place of any members of grazings committees or clerks where it is determined that they are not properly carrying out their duties (Section 47(8))
- To decide whether to suspend a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1D))
- To decide whether to terminate a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1E))
- Jurisdictional provisions i.e., whether to make reference to the Land Court for a determination on any question of fact or law (Section 53).
- To determine if exceptional circumstances exist to the ten-year restriction for an assignation on the back of a letting by the Commission.

What decision can be made by the Board of Commissioners?

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function and the Commission's Policy Plan.
- To refuse applications having considered the parameters agreed by the Board in relation to the relevant regulatory function and the Commission's Policy Plan.
- To direct that Hearings or other forms of meeting be held to gather further information.
- To determine that exceptional circumstances to the ten-year exclusion for assignation on the back of a letting by the Commission exist, and that a regulatory application can proceed.

DOCUMENTS AND AUTHORISED SIGNATORIES

DIRECTIONS AND ORDERS WHICH OFFICIALS ARE AUTHORISED TO SIGN

The table below sets out the identified directions and orders and the proposed authorised signatories:

Statute: Crofters (Scotland) Act 1993	Description of Direction or Order	Title of officers/level of authorised signatory
Section 24(3)	Direction: Decrofting house site and garden ground by a landlord or tenant	Chief Executive Officer Any suitable B2 or higher graded official
Section 24(3)	Direction: Decrofting part croft or whole croft by a landlord or tenant	Chief Executive Officer Any suitable B2 or higher graded official
Section 24(3)	Direction: Decrofting House site and garden ground in feu of which was granted under Section 17 or 18	Chief Executive Officer Any suitable B2 or higher graded official
Section 24B(1)	Direction Decrofting house site and garden ground by an owner-occupier crofter	Chief Executive Officer Any suitable B2 or higher graded official
Section 24B(1)	Direction: Decrofting part or whole croft by an owner-occupier crofter	Chief Executive Officer Any suitable B2 or higher graded official
Section 25(3)	Direction: Recrofting land following a breach in conditions	Chief Executive Officer Any suitable B2 or higher graded official

Section 26H(1)	Order: Termination of a croft tenancy	Chief Executive Officer Any suitable B2 or higher graded official
Statute: Crofters (Scotland) Act 1993	Description of Direction or Order	Title of officers/level of authorised signatory
Section 26J(1)	Direction: Seeking proposals for letting an owner-occupied croft	Chief Executive Officer Any suitable B2 or higher graded official
Section 38(8)	Order: Preparing a Scheme for the reorganisation of a township.	Chief Executive Officer Any suitable B2 or higher graded official
Section 47(8)	Order: Removing a clerk or members of a grazings committee.	Chief Executive Officer Any suitable B2 or higher graded official
Section 49(7)	Order: Confirming, making of amending grazings regulations	Chief Executive Officer Any suitable B2 or higher graded official
Section 52(1E)	Order: Terminating a person's share in a common grazing.	Chief Executive Officer Any suitable B2 or higher graded official
Section 52(4)	Order Apportionment	Chief Executive Officer Any suitable B2 or higher graded official