



Crofting Reform etc. Act 2007

2007 asp 7

PART 4

COMMON GRAZINGS

26 Use of common grazing

- (1) In section 50 of the 1993 Act (use of common grazings for forestry purposes)—
- (a) in subsection (1)—
 - (i) for the word “interested” there is substituted “who holds a right”; and
 - (ii) in paragraph (b), for the word “landlord” there is substituted “owner”;
 - (b) in subsection (2)—
 - (i) for the words “A landlord's” there is substituted “An owner's”;
 - (ii) after paragraph (b) there is inserted—
 - “(bb) may be given subject to conditions provided that those conditions are reasonable;”;
 - (iii) in paragraph (c), for the word “landlord” there is substituted “owner”; and
 - (iv) in paragraph (e), for the word “landlord's” there is substituted “owner's”;
 - (c) after subsection (2) there is inserted—
 - “(2A) An owner may refuse consent on (and only on) the grounds that implementation of the proposal would—
 - (a) adversely affect the exercise of any rights which he has under or by virtue of Schedule 2 to this Act;
 - (b) prevent an intended resumption by virtue of section 20(1) of this Act;
 - (c) be detrimental to the sound management of the estate which comprises the land;
 - (d) cause hardship to a crofter who shares in the common grazing;
 - (e) cause the owner undue hardship; or
 - (f) lessen significantly the amenity of (either or both)—

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- (i) the land;
- (ii) its surrounding area;

and without prejudice to subsection (2B) below any refusal shall be in writing and shall specify the grounds of refusal.

(2B) If, within six weeks after application under subsection (1)(b) above, there has neither been written consent nor written refusal, the owner shall be deemed to have refused the application.

(2C) If, on an application—

- (a) under sub-paragraph (i) of section 53(1)(e) in relation to a consent applied for under subsection (1)(b) above but refused, the Land Court is not satisfied that any of the grounds mentioned in subsection (2A) above has been made out, it may determine that the consent is to be deemed given, or
- (b) under sub-paragraph (ii) of that section in relation to a consent so applied for but granted subject to a condition, the Land Court is not satisfied that the condition is reasonable, it may determine that the consent is to be deemed given—
 - (i) free of the condition; or
 - (ii) subject instead to a condition specified in the determination.”;

(d) in subsection (3), for the words “A landlord's” there is substituted “An owner's”;

(e) after subsection (3) there is inserted—

“(3A) The Commission shall, on receipt of any application under subsection (1)(a) above, consult as regards the proposal the owner, the crofters who share in the common grazing and such other persons as appear to the Commission to have an interest.

(3B) The reference in subsection (1) above to using as woodlands is to having the right to exclusive economic and recreational use, including (without prejudice to that generality)—

- (a) felling, removing, selling and replacing the trees in question;
- (b) collecting trimmings, fallen timber, foliage, sap, flowers, fruit, seeds or nuts for use or sale;
- (c) grazing animals in the woodlands; and
- (d) selling timber, timber products and other forestry products,

except that this subsection is without prejudice to any person’s access rights (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003 (asp 2)).

(3C) Where the owner’s consent is, under subsection (2)(bb) above, subject to a condition that land be fenced, or otherwise enclosed, any expenditure incurred in complying with that condition (including expenditure incurred in that connection in maintenance, repair or renewal) shall be met—

- (a) in a case where the applicant is the grazings committee, by that committee, and
- (b) in any other case, jointly and severally by the crofters sharing in the common grazing.”;

- (f) for subsection (4) there is substituted—
 - “(4) In this section, “owner’s consent” means the consent of the owner referred to in subsection (1)(b) above (or a deemed such consent);”;
and
- (g) at the end there is added—
 - “(5) This section is without prejudice to section 50A of this Act and is subject to the terms of any agreement under that section.”.

(2) After section 50 of the 1993 Act, there is inserted—

“50A Joint forestry ventures etc.

- (1) A crofter who holds a right in a common grazing, or a grazings 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 woodlands as part of the common grazing concerned; and subject to subsection (4) below that agreement shall bind the parties to it and their successors.
- (2) Subject to the terms of any agreement under subsection (1) above, where there are, on part of a common grazing which is to be used as woodlands by virtue of section 50 of this Act, trees other than such as are mentioned in paragraph 11(d) of Schedule 2 to this Act, the owner and the grazings committee may agree—
 - (a) that those trees are to be 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.
- (3) Where an agreement is entered into under subsection (1) or (2) above, a copy of that agreement shall be lodged with the Commission.
- (4) The persons who for the time being are bound by the agreement in question may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (3) above (or as the case may be that agreement as last amended under this subsection).
- (5) Any person who is for the time being bound by an agreement under subsection (2) above may appeal to the Land Court against a valuation carried out by virtue of paragraph (a), or the assessment of a share entitlement carried out by virtue of paragraph (b), of that subsection.
- (6) In an appeal under subsection (5) above, the Land Court may reassess the value or entitlement in question.
- (7) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.
- (8) In subsection (2)(b) above “planned natural regeneration” means regeneration which takes place in accordance with—

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- (a) an agreement entered into under or by virtue of this Act or of any other enactment; or
- (b) the conditions of—
 - (i) any grant for purposes which include such regeneration and which is paid out of the Scottish Consolidated Fund; or
 - (ii) such other grant of a public nature as may be prescribed.

50B Use of common grazing for other purposes

- (1) A crofter who holds a right in a common grazing may propose to the grazings committee (or, if there is no grazings committee, to the grazings constable) that a part of the common grazing be used other than for—
 - (a) grazings or a purpose mentioned in section 52(9) of this Act; or
 - (b) woodlands.
- (2) The use proposed must not be such as would be detrimental to—
 - (a) the use being made, as at the time of application, of the other parts of the common grazing; or
 - (b) the interests of the owner.
- (3) On receipt of a proposal made under subsection (1) above the grazings committee (or as the case may be the grazings constable) shall, for the purpose of there being a discussion and vote on the proposal, summon a meeting of the crofters who share in the common grazing.
- (4) Regulations under section 49(2)(g) of this Act shall, in relation to any meeting so summoned, provide that—
 - (a) the time, place and purpose of the meeting (including the proposal in question) should be—
 - (i) set out in a notice sent by registered post to each of those crofters and to the owner; and
 - (ii) intimated by public notification, at least 28 days before the meeting; and
 - (b) the grazings committee (or grazings constable) shall, in sending such notice to the owner—
 - (i) invite him to give his views as to the proposal; and
 - (ii) afford him the opportunity to discuss it, at such reasonable time before the meeting as is convenient to him, with a member of the committee (or with the grazings constable);
 - (c) at the meeting any views so given (or disclosed in discussion) shall be made known to the crofters attending;
 - (d) subject to subsection (5) below, the vote on the proposal shall be by simple majority of the votes cast by the crofters attending (a crofter being entitled to a single vote for each share in the common grazing which he holds);
 - (e) the result of the vote shall be declared at the meeting; and
 - (f) the owner shall be advised by the grazings committee (or grazings constable), by written notice given within two weeks after the meeting takes place, of its outcome (that is to say, of whether the proposal has been accepted or rejected, of the number of crofters present, of the

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numbers of votes, including votes by proxy or by post, respectively for and against and of the number of crofters attending but abstaining) and, if the vote is in favour of the proposal, of what subsection (6) of this section requires to be done.

- (5) A crofter who is unable to attend the meeting so summoned but who has notified the grazings committee (or grazings constable) of that circumstance may vote by proxy or by post (provided that any vote posted shall be valid only if received by the committee before the meeting).
- (6) If the vote is in favour of the proposal the committee (or grazings constable) shall, in such manner as the Commission may require, apply to the Commission seeking their approval for its implementation.
- (7) On receipt of an application under subsection (6) above the Commission shall—
 - (a) consult, as regards the proposal, the owner and any other person who appears to the Commission to have an interest; and
 - (b) give public notification—
 - (i) that the proposal has been made;
 - (ii) that they are considering whether to approve it; and
 - (iii) inviting written comments within such period as shall be specified in the notification.
- (8) Within 28 days after public notification is given under subsection (7)(b) above—
 - (a) the owner;
 - (b) any crofter who shares in the grazing; or
 - (c) any member of the crofting community in the locality of the grazing,may submit to the Commission an objection as regards the application, being an objection of the description given in section 58A(16) of this Act.
- (9) The 28 days mentioned in subsection (8) above include the day on which the notification in question is given.
- (10) If the Commission think fit, they may hear evidence as regards the proposal.
- (11) The period specified under subsection (7)(b)(iii) above and the period of 28 days mentioned in subsection (8) above both having expired, the Commission may approve or reject the implementation of the proposal and if they give their approval they may, if they think fit, impose conditions as respects that implementation; and they may, if requested by the grazings committee or the owner to review that implementation, decide to carry out such a review, and may by virtue of that decision (if they think fit)—
 - (a) either or both—
 - (i) vary or withdraw any such conditions,
 - (ii) impose further conditions, or
 - (b) revoke the approval.
- (12) Where the Commission give approval they are, if—
 - (a) the owner so requests; and
 - (b) they are satisfied that the circumstances are as mentioned in subsection (13) below,

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to impose under subsection (11) above a condition that the land is to be enclosed by means of a deer-proof barrier (as defined by section 45(1) of the Deer (Scotland) Act 1996 (c. 58)).

- (13) The circumstances are that—
- (a) implementation of the proposal is likely to result in the land to which the proposal relates becoming more attractive to deer; and
 - (b) there are sufficient reasons for imposing the condition, being reasons relating to—
 - (i) deer management; or
 - (ii) the protection or enhancement of the environment.
- (14) Within two weeks after coming to a decision as respects implementation of the proposal, the Commission shall advise—
- (a) the proposer;
 - (b) the grazings committee (or grazings constable);
 - (c) the owner; and
 - (d) every person who submitted written comments by virtue of subsection (7) or an objection under subsection (8), or gave evidence by virtue of subsection (10), above,
- as to the decision and as to any conditions imposed under subsection (11) above.
- (15) Where the decision is to approve implementation but subsequently the Commission vary or withdraw conditions, impose further conditions or revoke the approval they shall, within two weeks after doing so, advise the persons mentioned in paragraphs (a) to (d) of subsection (14) above accordingly.”.

27 **New common grazing**

After section 51 of the 1993 Act, there is inserted—

“51A New common grazing

- (1) The Commission shall have power, on the application of the owner of any eligible land, to constitute the land as a common grazing by entering it as such, in accordance with section 41 of this Act, in the Register of Crofts; but no such entry shall be made until the period mentioned in section 52A(2) of this Act has elapsed without any appeal to the Land Court being made or until any such appeal timeously made is decided or abandoned.
- (2) The Commission shall, on receipt of any such application, give public notification of it; and such notification shall specify a period within which comments as regards the application, being comments of the description given in subsection (10) below, may be made.
- (3) After the period mentioned in subsection (2) above has elapsed the Commission—
 - (a) shall determine whether to exercise their power under subsection (1) above; and
 - (b) shall give public notification of that determination.

- (4) In so determining the Commission shall have regard to—
- (a) such written comments, if any, as are duly made by virtue of subsection (2) above;
 - (b) the public interest and the interests of the crofting community in the locality of the land; and
 - (c) whether social or economic benefits might be expected as a consequence of constituting the land as a common grazing.
- (5) Land is eligible land for the purposes of subsection (1) above only if it is—
- (a) neither tenanted nor occupied by a cottar;
 - (b) situated in the crofting counties but not constituted as a croft; and
 - (c) not adjacent or contiguous to a croft.
- (6) The owner and the persons who are to share in the common grazing shall agree in writing what the use of the common grazing is to be; and subject to subsection (8) below that agreement shall bind –
- (a) the owner and those persons; and
 - (b) the successors of the owner and of those persons;
- and a copy of the agreement shall be lodged with the Commission.
- (7) The use mentioned in subsection (6) above may be for (any or all)—
- (a) grazings;
 - (b) a purpose mentioned in section 52(9) of this Act;
 - (c) woodlands;
 - (d) a purpose other than is mentioned in paragraphs (a) to (c) above,
- and in the agreement different provision may be made for different parts of the common grazing.
- (8) The persons who for the time being are the owner and the persons sharing in the common grazing may by written agreement lodged with the Commission under this subsection amend the agreement lodged under subsection (6) above (or as the case may be that agreement as last amended under this subsection).
- (9) Section 6 of this Act applies in relation to land constituted as a common grazing under this section as it applies in relation to a croft.
- (10) The description is that the comments are made in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape).
- (11) For the purposes of subsection (10) above (and without prejudice to the generality of that subsection), comments are to be treated as made in writing where they are—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.??

28 Contravention of, or failure to comply with, common grazings regulations

In section 52 of the 1993 Act (miscellaneous provisions as to common grazings etc.), for subsection (1) there is substituted—

“(1) Where it is averred by the grazings committee or the owner that a person has contravened, or failed to comply with, any common grazings regulations for the time being in force under section 49 of this Act, the committee or as the case may be the owner may apply to the Commission for a determination in the matter.

(1A) On receipt of an application made under subsection (1) above the Commission—

- (a) shall serve notice on the person of the averment; and
- (b) shall send a copy of that notice to the grazings committee and to the owner.

(1B) The person, the committee and the owner shall all be afforded the opportunity to make representations as regards the averment and if the Commission think fit the Commission may hear evidence in the matter.

(1C) If the Commission determine that the averred contravention or failure has occurred they may require the person—

- (a) to conform with the regulation in question, and
- (b) to make good, within such reasonable period as they shall specify, any damage which has directly resulted from the occurrence.

(1D) Where—

- (a) a requirement imposed under subsection (1C) above is not complied with (and subsection (1E) below does not apply), the Commission—
 - (i) may determine that all or part of the person’s share in the common grazing is suspended for such period as they shall specify; and
 - (ii) if the non-compliance consists in a failure to make good damage within the period specified under subsection (1C)(b) above, may require it be made good within such further period as they may specify,
- (b) all requirements imposed under subsection (1C)(a) above and any requirement imposed under sub-paragraph (ii) of paragraph (a) above (whether or not as that sub-paragraph applies by virtue of subsection (1E)(a) below) are complied with, the Commission may end a suspension imposed under sub-paragraph (i) of that paragraph.

(1E) Where, while all or part of the person’s share in the common grazing is suspended by virtue of subsection (1D)(a)(i) above, a requirement imposed under subsection (1C)(a) above is not complied with as regards so much of the share as is not suspended, or as the case may be a requirement imposed under subsection (1D)(a)(ii) above is not complied with, the Commission—

- (a) may (but on one occasion only) extend either or both periods mentioned in subsection (1D)(a) above; or
- (b) may—
 - (i) determine that all or part of the person’s share is terminated; and

(ii) apportion the share or part to other persons sharing in the common grazing.

(1F) Reference in this section to a share in the common grazing includes reference to any rights and privileges pertaining to that share.”.

29 Further amendment of section 52: apportionment

(1) Section 52 of the 1993 Act is amended as follows.

(2) In subsection (4), for the words “interested, after consultation with the grazings committee, apportion a part of a” there is substituted “who holds a right in a common grazing, and after consultation with the grazings committee, apportion a part of the”.

(3) At the end there is added—

“(10) Without prejudice to the generality of subsections (3), (4) and (8) above, the Commission may under any of those subsections (either or both)—

- (a) apportion a part for a period;
- (b) determine that an apportionment shall be subject to review at fixed intervals,

which they shall specify.

(11) The Commission may extend any such period as is mentioned in subsection (10)(a) above on the application of the township which, or as the case may be the crofter who, has exclusive use.

(12) Without prejudice to subsection (10)(b) above, the Commission may, on the application of that township or crofter or of the grazings committee or owner—

- (a) review an apportionment made in pursuance of subsection (3) or (4) above;
- (b) (whether or not on such review)—
 - (i) vary or revoke any condition imposed under subsection (6) above;
 - (ii) impose a new condition under that subsection;
 - (iii) bring an apportionment made as mentioned in paragraph (a) above to an end.

(13) Where—

- (a) a period of apportionment fixed under subsection (10)(a) above (or so fixed and extended under subsection (11) above) comes to an end; or
- (b) it is determined on review under subsection (10)(b) above, or is determined under subsection (12)(b)(iii) above, that an apportionment is to come to an end,

the land in question reverts to being a common grazing.

(14) Where land reverts under subsection (13) above, the Commission may, having regard to the rights held in the common grazing immediately before the apportionment in question, make such determination as they consider equitable as to shares in the common grazing.

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(15) Subsections (10) to (14) above do not apply as respects land constituted as common grazing under section 51A of this Act.”.