



CROFTERS COMMISSION

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WIND FARM DEVELOPMENT ON CROFT LAND AND COMMON GRAZING



Government is encouraging the production of clean energy. Renewable energy technology has come a long way, with energy from wind at the forefront of this drive. This has seen the demand for sites grow at a considerable rate in the North and West mainland and on the islands. As a result, there is a growing demand for sites on croft land and on common grazing.

Owner-occupiers may undertake small-scale developments on croft land, either individually or by pooling the lands that they own and proceeding cooperatively, but crofters and their landlords cannot effectively use or release land for energy production, without the consent or approval of the Scottish Land Court. This leaflet is intended to explain the options for developing tenanted land or pasture or grazings land held by crofters, whether alone or in common.

Q. Does the land to be used for a wind farm development have to be resumed or decrofted?

Not necessarily, crofters and crofting communities wanting to benefit from wind-farm development on common grazing can achieve this through an agreement or contract amongst all the shareholders and the landlord, which must be approved by the Land Court.

If part of a common grazing has been apportioned for the exclusive use of a shareholder, the apportioned area becomes part of the shareholder's croft (or is deemed to be a croft in its own right) and in that case any agreement between the crofter and the landlord will also have to be approved by the Land Court.

Due to uncertainty whether such contracts or agreements will be binding on the successors of the parties, developers are apparently reluctant to proceed under this type of arrangement. Legal opinion suggests that such agreements or contracts can be made binding and the main benefit of such arrangements is that the land will remain subject to the Crofters Act and within the secure hold of the shareholders, although their rights in, and usage of, the affected land will be restricted for the duration of the development.

Unless all crofters affected can agree, this type of arrangement is not an option.

Q. If all shareholders fail to reach agreement what can be done to allow the interested crofters to participate in, or benefit from, the proposed development?

The landlord can still make an Application to the Land Court for authority to resume the site, if some (or indeed most, or even all) of the affected crofters are against the proposed development. The process of resumption will allow crofters or crofting communities to benefit from wind farm development on croft land or common grazing, including those crofters who resist the proposal.

Q. Is the Land Court bound to authorise resumption of land for a wind farm?

No. Any proposed resumption must be for a reasonable purpose related to the good of the croft or common grazing or the estate of which it is part or in the public interest and the Land Court retain discretion to grant or refuse any application. Although wind farms and energy generation are not specified in the list of examples of reasonable purposes for decrofting in the Act, it is clear that a landlord can apply for the Land Court's authority to resume land to use or let or sell it for these purposes. Also, the Land Court is likely to favour any Application that will benefit the local community in economic terms. The Land Court must, however, consider the relative strengths of any arguments by crofters with rights in the land, whether they are for or against the proposal.

Q. What is the effect of resumption?

Once the land is resumed, the crofter(s) will have no say in what happens to the land if it is used for the stated purpose. The crofter(s) must effectively surrender the land once the landlord complies with the conditions imposed by the Land Court in their Order.

Q. Can crofters waive their entitlement to share in the value of the land resumed to obtain an income from the development?

In the Land Court Application RN SLC/42/03 a landlord sought resumption of an area of common grazing for the purpose of leasing the ground as a site for a radio station. All the shareholders in the grazing had agreed with the landlord that they would accept an annual payment (subject to possible increase in line with Retail Price Index) from the proposed lessees of the site. They also agreed that they would receive no compensation for the loss of the ground. In the Order authorising resumption, the Land Court acknowledged the existence of the agreement and made no determination of the market value of the land or the share due to the crofters. Where all shareholders are in agreement, it seems that sites for wind farms may be let on the basis of annual payment and resumption authorised by the Land Court.

Q. How soon can an Application be made to the Land Court for authority to resume land for a proposed wind farm?

While it remains in the discretion of the Land Court to grant (or otherwise) an application for resumption, with or without conditions, they have indicated that they will consider an application for resumption for the purpose of developing a wind-farm prior to planning permission being approved. In that situation, the Land Court would be prepared to issue an interim Order indicating whether the purpose of resumption was reasonable or not. The Application would then be sisted (frozen) until such time as planning permission was granted. This would give the developer a degree of confidence to pursue its proposals, including any Environmental Impact Assessment that may be required, in advance of applying for planning permission.

Q. What about access roads and other accommodation work that may be required for the proposed development?

Access to the development will often be through grazing land adjacent to the development. It may not be necessary for the access routes to be resumed, if the landlord can grant access over the land without interfering with the crofters' security of tenure, especially if crofters can also use the newly created roads for their own purposes. The Land Court might require that gates be erected to prevent vehicular access by others without such rights and that the keys be held by the crofters or common grazing committee members, their clerk and the developer.

Q. If the site is to be resumed from the crofters, what can be done to ensure they retain an influence in the development?

Once croft land is resumed the crofters no longer have control over what happens to that land, at least for the duration of the original purpose. However, transfer of the title to the land to a community company, limited by guarantee, in which the landlord and the crofters are members, may resolve this and allow the crofters some say in how the land is used.

Q. Can the land be returned to the crofters if the development fails or does not take place within a reasonable time?

A further safeguard to ensure that the land can eventually be re-occupied by the crofters is for the crofters to require a Standard Security over the land to be resumed. This should ensure that if the development comes to a premature end, or if the land is not to be redeveloped, then the redundant land will revert to the crofters. They should then be able to integrate the land with the remainder of the common grazing.

Q. Is it only the area to be developed that will be affected or will the controls extend further?

Wind farm developments are expensive to create and activities in the vicinity of the sites can affect the efficiency and output of the units; consequently developers may wish to restrict the activities of the crofters occupying the adjacent land. The major concern for wind-farm developers is the right of crofters to plant trees.

Q. Should a grazing committee employ a solicitor or other independent advisor to look after their interest

This note is only intended to provide some initial guidance to grazing committees or individual crofters in relation to a proposal for a wind-farm development in their township. Crofters or grazing committees are advised to seek professional help as soon as possible in the process so that the final project will ensure maximum benefit for the crofters and the wider community.

Glossary

Apportionment – the process by which the Crofters Commission provides that part of a common grazing will be available for the exclusive use of any shareholder who applies, usually on condition that the area is fenced. There will be a corresponding restriction of the applicant's rights in the rest of the common grazing.

Grazing Regulations – a committee appointed by the shareholders in a common grazing must make regulations for the management and use of the grazing, which become effective only when confirmed by the Crofters Commission.

Resumption – the process by which tenanted land is taken back under the control of the landlord to allow him to use, feu or let it for some reasonable purpose relating to the good of the croft or the estate or to the public interest. Resumption has to be authorised by the Land Court and on resumption the land is effectively decrofted.

Shareholders – the shareholders in a common grazing are those crofters and others who are entitled to keep stock on the grazing or who have obtained an apportionment (see above) but who have reserved rights in the common grazing, such as rights to cut peat or use roads, fanks, pens or other fixed equipment. Other rights – managed by the grazing committee – may include rights to plant trees, to shoot vermin or ground game or to make muirburn.

Standard security – the means of creating or reserving an interest in land to secure an obligation of the landowner; to be effective, the standard security must be recorded or registered in one or other of the public registers relating to land.



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