

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD IN GREAT GLEN HOUSE AT 9:30AM ON 22 MARCH 2023

Present:	Malcolm Mathieson	Convener
	Andrew Thin	Commissioner
	Mairi Renwick Mackenzie	Commissioner
	Duncan Gray	Commissioner
	Iain Maciver	Commissioner
	Duncan Macaulay	Commissioner (via Teams)
	Colin Kennedy	Commissioner
	Donald Macdonald	Commissioner
	Rod Mackenzie	Commissioner
	Bill Barron	Chief Executive
	Christopher Reynish	Director of Operations & Policy
	Aaron Ramsay	Director of Corporate Services
	Aart Wessels	Head of Digital
	Heather Mack	Head of Operations and Minute taker from item 12 (via Teams)
	Fiona MacDonald	Minute taker to item 11 (via Teams)
	Aileen Rore	Scottish Government (via Teams)
	Gift Mlambo	Scottish Government (via Teams)
	Emma McCallum	Scottish Government (for Item 6)
	Lorna Shaw	Research Resource (for Item 6)
Observers:		Members of staff, Assessors and the public via Teams

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. Apologies were received from David Findlay, Solicitor and Jane Thomas, Head of Compliance.

2 DECLARATION OF INTERESTS

No interests were declared in the public part of the meeting.

3 DRAFT BOARD MINUTES FROM 8 FEBRUARY 2023

The draft Minutes were approved. It had been agreed at the last meeting that all Action Points would now be recorded in the minutes and this had been done.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING

Action points were discussed. All were completed or in hand.

It was noted that only four commissioners had responded to an invitation to give views on which agricultural shows to go to in the summer. The Chief Executive asked whether email was an effective method of communication for Officials to the Board as delays had been experienced using email. The Director of Corporate Services suggested a trial be run using a WhatsApp sub group comprising the Commission Executive team and Commissioners. The Board agreed this, noting that WhatsApp messages could be used either in their own right or as a reminder to check an email containing the detail.

It was noted that an action was missing from the supplied grid in the paper, AP15, but that it had been completed by the CEO.

Action Point 1	<i>Director of Corporate Services to set up a trial run on WhatsApp for Commissioners by next Board meeting in May</i>
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5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising.

6 PRESENTATION ON THE ECONOMIC CONDITION OF CROFTING SURVEY (by Research Resource and RESAS)

Lorna Shaw, Research Resource went through the presentation of the findings from the recent Survey, which is done on a 4-yearly cycle. This time around there were new topics added: peat restoration, biodiversity activities and forestry/woodland.

A random selection of 4000 crofters had been made from 12,409 crofters with reliable contact details. Out of these, 24% were returned, which equated to 942 responses (460 by email, 398 by post, 54 online and 30 by phone). This survey showed an improvement in return rate of 6 points compared to the 2018 survey, which was largely postal.

The Board thanked Lorna for her presentation and agreed that it contained excellent information which would be useful when setting strategic direction going forward. Emma McCallum confirmed that 24% was a good response rate for this type of survey, and the trends were meaningful although subject to sampling error.

Commissioners and officials noted points around the economic viability answers in particular, such as the small amounts of money that crofting generated. It was also noted that the survey could be considered to convey information about active crofters rather than crofters overall, as few non-active crofters would have responded.

Commissioner Mackenzie asked about the follow up survey the Commission was running in conjunction with the annual notice, and how the return rates compared. The Director of Corporate Services said there had been around 1600-1700 respondents to that survey so far. It would close, with the census itself, at midnight on Friday 7 April.

7 DRAFT BUDGET 2023-2024

The draft Budget for 2023-2024 was approved.

Commissioner Mackenzie raised the point that one Commissioner salary was not being collected and that this had been forecast for the whole 2023/24 budget year. It was agreed that future budget plans should make clear that there was no assumption that this situation would continue.

8 MEDIUM TERM FINANCIAL PLAN 2023-2028

The MTFP was approved.

The Board noted the risk of future budgets failing to keep pace with inflation. Commissioner Thin suggested that the MTFP wording about this risk should not assume that this was inevitable. Commissioner Mackenzie suggested that future revision to the MTFP should consider whether the Commission could sensibly levy charges for some of its services. The Board agreed that this should be visited again in the future.

Action Point 2	<i>Officials to investigate and consider the potential for generating income, in future budget forecasts</i>
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9 WORKFORCE PLAN 2023-2028

The CEO presented the workforce plan, explaining that it overlapped to some degree with the MTFP in considering possible future expansions or reductions in staff, while also covering how we manage, recruit, train and support the workforce. The Board approved the Plan.

Commissioner Kennedy noted the importance of succession planning for the highly skilled posts in Regulatory Support.

10 REGULATORY CASEWORK UPDATE

The Convener introduced this item by touching on his last meeting with the Cabinet Secretary who had prioritised discussion of the outstanding caseload of undecided regulatory applications.

The Director of Operations & Policy updated the Board on the throughput of casework, advising that over 160 cases had been reported as discharged in February, with discharges in March expected to exceed that number. The Commission was therefore expecting to discharge, perhaps, 1800 cases in financial year 2022-23. 1800 discharges would be a 20% improvement on financial years 2020-21 and 2021-22, but short of the target of 2000 for financial year 2022-23, which would have matched levels reported before the pandemic.

11. REGULATION – LINES OF ENQUIRY

The Director of Operations and Policy introduced the paper, making two points:-

- Although the increase in the throughput of regulatory applications in financial year 2022-23 was positive, it was short of the target and, moreover, the target to discharge 2500 cases in financial year 2023-24 – a 25% increase on the pre-pandemic norm – felt very ambitious. He advised that he was not confident that existing plans would deliver that level of improvement, and that he and colleagues would therefore develop a wide-ranging improvement plan to identify and drive further measures to increase the throughput of casework.
- He challenged the idea that the very low rate of refusals of applications necessarily meant that work to decide upon those applications had no or little impact. Rather, caseworkers at all levels and all stages of the process were supporting applicants to review and iterate their applications and plans so that applications could be approved.

The Director of Operations and Policy advised that Annex A to the paper set out the interventions already underway or agreed, that would be included in the improvement plan, as well as options for further consideration. He invited Board views on any specific interventions that were being progressed but should not be; and any other potential interventions that should be included in the options for further consideration.

Commissioner Thin noted that long decision-making processes in response to regulatory applications could delay economic development in crofting communities and caused dissatisfaction among applicants. He welcomed development of an improvement plan. He suggested that it may also be beneficial to explore options for short-term “emergency measures”, that could be taken as a one-off intervention without setting precedent, to rapidly reduce the outstanding caseload of undecided applications. A variety of views were expressed by Commissioners, including:

- agreement that the Board wished to see radical proposals;
- some concern about the resource implications for officials of developing potential emergency measures in addition and in parallel to the broader improvement plan; and
- the suggestion that potential ‘emergency measures’ might include approval or refusal of some defined sub-set of applications out-with normal policy rules.

The Board agreed that there should be further exploration of potential ‘emergency measures’.

Commissioner Macaulay asked for advice on the number of applications that could be easily approved without the caseworkers having to seek clarification or further information; and the number of cases that could not be decided without more caseworker intervention. The Director of Operations & Policy noted that he had sought views from his team which had indicated that it was uncommon for a case to be approvable on first receipt – but that detailed management information was not currently available to answer the question. Work to help crofters iterate their applications and plans to comply with the legislation – and the impact on crofting of that work – was effectively invisible in the Commission’s statistical reporting. The Director of Operations & Policy advised that Annex A to the paper set out measures planned to gather the information requested.

The CEO advised that around 80% of cases were discharged at Tier 1, which included cases where advice on the decision was informally provided by Tier 2 staff; slightly over 15% went to Tier 2 for decision; and slightly under 5% went to Tier 3 for decision. These figures referred to completed cases, but the outstanding caseload would include a much higher proportion of cases destined for Tier 2 or Tier 3.

Similarities were noted between the Commission’s approach and the pre-application processes adopted by Councils to facilitate engagement between planning officers and applicants seeking planning permission. Commissioner Thin requested that the Commission explore whether it should have an analogous, formal pre-application process, ahead of submission of an application and decision-making. This could affect when an application should be considered to have become a substantive application.

Commissioner Gray asked for clarification as to whether the digital applications would help to increase efficiency of throughput. The Director of Corporate Services responded that it could help to some limited extent, but only where the issues that required additional clarification resulted from missed or incorrectly completed questions.

Commissioner Kennedy suggested that the Board could alter the parameters of delegation, so that more cases could be cleared at Tier 1. The Convener noted that this had already been done and, for that reason, only a small number of cases now go to Tier 3.

Commissioner Kennedy also suggested – and the Board agreed – that there was a case for reviewing both:

- the number and duration of potential rounds of objections and responses that were allowed in response to an application; and
- the frequency with which RPID reports were requested and when they were necessary.

Action Point 3	<p>Director of Operations & Policy to present to the May Board meeting an improvement plan of interventions to reduce the outstanding caseload of undecided applications. This could include consideration of interventions to:-</p> <ul style="list-style-type: none"> • Develop a pre-application engagement process; • Clarify when an application becomes – and should be recorded as – a substantive application; • Review when and under what circumstances RPID reports should be requested; and • Explore and review what restrictions there should be on the number and duration of potential rounds of objections and responses.
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Action Point 4	<p>Director of Operations & Policy to present options to the May Board for “emergency measures” that might be taken as a one-off intervention, without setting precedent, to rapidly reduce the caseload of outstanding applications.</p>
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12. STANDING ORDERS

The Convener introduced the paper drawing attention to the two highlighted sections where changes had been made to the standing orders. A short discussion followed about the text regarding Board meetings being held in a location other than Inverness and there was reference to the cost implications of this. The Chief Executive agreed to delete the words ‘where practically possible’ and change to ‘the Commission *may*’ hold Board meetings in another location, which will allow more flexibility. Commissioners were happy with the proposed changes in addition to the amendment proposed by the Chief Executive.

Commissioner Kennedy requested paper copies of the standing orders be sent to him.

Action Point 5	<i>Update standing orders on section 2.7 to remove ‘where practicably possible’ and change ‘the Commission will hold at least one public meeting a year’ to ‘the Commission may hold at least one public meeting a year’.</i>
Action Point 6	<i>Paper copies of standing orders to be sent to Commissioner Kennedy</i>

13. CIS RELEASE GOVERNANCE

The Director of Corporate Services introduced the paper and explained the background whereby a release of CIS is usually an operational matter, but with respect to the upcoming release there are particular strategic risks which the Board should be aware of, noting this as advice from the Head of Digital who has experience in this field. The paper therefore proposed that for releases of this importance, the Board itself should sign off the decision to implement the change, on the basis of comprehensive advice from officials.

The Director of Corporate Services introduced the new Head of Digital, Aart Wessels who was in attendance. Commissioners questioned the likelihood of losing data and it was clarified that the risk was that casework processing for a period of time could be lost if the system had to be rolled back if testing failed in a very specific way.

Commissioner Thin noted that the change in process didn't in itself strengthen governance and assurance. The Head of Digital explained that the decision would be brought to the Board at the end of an extensive assurance process, to give the Board the final say. The paper which was planned for the May Board should have the appropriate evidence and assurance to enable the Board to take an informed decision, and the Director of Corporate Services confirmed that officials were fully aware that one potential outcome was that the Board could reject the release.

The Board accepted the recommendation of the paper.

14. DIGITAL APPLICATIONS AND PAPER FORM REVIEW

Director of Corporate Services introduced the paper and gave an update that the division by tenant application had since gone live to the online applications and the division by owner occupier was imminent.

The Chief Executive gave an update on a draft report of the advice supplied by Brodies solicitors. He said that early feedback has indicated that there is no fundamental difference to the online and paper forms in terms of fraud risk, however they are recommending some improvements to both.

A discussion was had about the removal of paper forms and several Commissioners expressed concerns about applicants who are unable to use the digital option and that they should still be able to use the paper form if they wished. The Board strongly expressed the view that they wanted to push on with the online applications more quickly.

Commissioner Thin stated that he would like to see a roadmap and milestones with regard to the plan for online applications at the May Board meeting. The Board agreed this.

The Chief Executive stated that he would like to discuss how to encourage more applicants to use the electronic forms, with the suggestion raised that the development team could help with the marketing of digital applications by focusing on the positives.

There was clear consensus from Commissioners that they were prepared to apply a higher risk tolerance to the digital apps.

Action Point 7	<i>Director of Corporate Services to present a road map for the move to digital applications to the May Board meeting.</i>
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15. COMMISSION VISIBILITY IN CROFTING COMMUNITIES

The Chief Executive introduced the paper explaining that it followed on from discussions about Commission attendance at shows. The paper has a broad agenda and covered aspects including whether the focus at events should be policy, support or signposting and what combination of in person or online the events should be.

Commissioner Mackenzie stated that he thought the paper lacks targets and an outcome. Some Commissioners shared the view that policy should be a key focus for future public meetings and that they should cater to all by a combination of in person and online meetings. Commissioners would need to be prepared prior to any public meetings so they are all sharing the same message.

Action Point 8	<i>Provide the Board with consistent messaging in advance of public meetings.</i>
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It was felt important to include some events with MSPs as well as communicating the value of crofting to the whole of Scotland, not just crofting areas; but a Holyrood reception would not be a priority.

Commissioner Renwick Mackenzie mentioned the success of the recent grazings meetings and there were comments that the Commission should start doing regulatory meetings again as these have been useful previously. There was also mention of the importance of having a relevant and interesting agenda for meetings.

16. REPORT ON MEETINGS WITH SPONSOR DIVISION

The Chief Executive presented this paper and reflected on discussions with the Cabinet Secretary. These have been positive meetings attended by the Chief Executive and Convener and discussions include the backlog, recruitment and online applications.

17. DATE OF NEXT MEETING

The Convener confirmed that the date of the next public Board meeting will be 10 May. He thanked attendees and closed the public session of the meeting at 12.30.

18. Any Urgent Business

No urgent business was noted.

19. EXCLUSION OF PRESS AND PUBLIC

The Convener thanked everyone and closed the meeting at 14.50.