

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 22 AUGUST 2018

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| Present: | Rod Mackenzie | Convener |
| | Andy Holt | Commissioner |
| | Mairi Mackenzie | Commissioner |
| | Malcolm Mathieson | Commissioner |
| | James Scott | Commissioner |
| | David Campbell | Commissioner |
| | Billy Neilson | Commissioner |
| | Iain Maciver | Commissioner |
| | Cyril Annal | Commissioner |
| | Bill Barron | Chief Executive |
| | Donna Smith | Deputy CEO |
| | David Findlay | Commission solicitor |
| | Joseph Kerr | Head of Regulatory Support |
| | Jane Thomas | Head of Compliance |
| | John Toal | Head of Policy |
| | Fiona MacDonald | Minute-taker |
| | Betty Mackenzie | Communications Officer |
| | Conor Healy | Deloitte |
| | Reporter and Camera woman | BBC |
| | Member of the Public | |

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting in Gaelic and then in English.

There were no apologies.

2 DECLARATION OF INTERESTS

Commissioner Maciver declared an interest in Item 15(c).

3 MATTERS ARISING FROM PREVIOUS MEETING

There were no matters arising from the minutes (already approved) of the meeting on 10 May 2018.

4 ADVANCED PAPERS FOR APPROVAL

(a) Delegated Decision Making:

- (i) Extending range of functions and decisions
- (ii) Reviewing Parameters

Head of Regulatory Support advised that as this paper was discussed at the Strategy Meeting on 28 June, it came today for ratification and approval. *(Please see note of decision at end of Minutes).*

Commissioner Campbell raised the point that it would be helpful if the Board could have some form of mechanism in place where they could get a structured report on cases. Head of Regulatory Support advised that this would be done for the outcome of Tier 2 casework decisions along the same lines as the Tier 3 report.

The paper was approved.

(b) Gaelic Language Plan

It was pleasing that there was only one action point at amber and Head of Compliance advised that this could now be classed as green, if Bòrd na Gàidhlig agreed.

Convener asked if there were any plans for further Gaelic Awareness courses and Head of Compliance confirmed there were.

Commissioner Maciver commended the staff for buying into the Gaelic Language Plan and this was echoed by the Convener.

The paper was approved.

5 ANNUAL REPORT (SIGNING OFF)

Conor Healy attended from Deloitte and the CEO signed off the Annual Report. Commissioner Mathieson wished it to be known that the Audit & Finance Committee were very pleased with the quality of the annual report.

6 AUDIT & FINANCE COMMITTEE REPORT

(a) Update from Malcolm Mathieson

Commissioner Mathieson provided an overview of the last Audit & Finance committee (AFC) meeting, which Commissioner Neilson had attended as an observer. He noted that progress against a number of the previous Internal Audit recommendations were behind schedule, but also that none of these was critical or contentious.

(b) Draft Minutes from 15 August 2018

The draft Minutes were noted and approved.

(c) Risk Register

The main item on this was the backlog of work and the risk aspect for the reputation of the Commission. The AFC were concerned about the standard of service and the reputational risk that could result. CEO noted these concerns and added that extra resources have already been put in place and the backlog is decreasing.

Commissioner Campbell wished it noted to staff how well they are dealing with the backlog.

The contents of the Risk Register were noted.

(d) Key Performance Indicators and Business Plan 2018-19

AFC had not discussed these at this meeting as it felt there were quite a few gaps. CEO explained that work was continuing on both and that he had passed a new draft of the Business Plan to AFC members today.

Conor Healy left the meeting at 1005hrs.

(e) Complaints Handling Report

The contents of the report were noted. The numbers of complaints in Q1 of 2018-19 remained very low.

However, Head of Compliance warned that the figure for Q2 would be much higher, as the backlog had resulted in a number of complaints about speed of processing applications.

Other items

The Board also noted the results of the self-assessment questionnaire, which was found to have interesting answers and indicated where more support could be provided.

7 COMMON GRAZINGS REGISTRATIONS AND RECTIFICATIONS

CEO began by talking about rectifications. He explained that two years ago marked the end of the main programme of common grazings registration applications by the Commission. However, the Commission are still receiving requests for rectification of these, typically where errors in the mapped boundary have come to light. If the error results from a mistake by the Commission, the policy has always been to apply to RoS to rectify it, but it is far more common for the error to have arisen in the information provided to the Commission in the first place.

Accordingly, since 2017 the Commission had also been making rectification applications to RoS in cases where it had made no mistake, provided there was unanimity by interested parties regarding the correction required, and with those parties encouraged to try and avoid repeated corrections. CEO invited the Board to confirm this approach.

Convener asked how many requests to correct grazings registrations there had been and Commissioner Maciver stated that a lot of common grazings registrations are not correct at this present time.

Solicitor explained that the Scottish Government Bill Team were hoping to use the new Bill to give RoS a wider power to rectify inaccuracies in the crofting register, which should in due course reduce the demand for rectifications by the Commission.

The Board agreed the 2017 approach to rectifications. .

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| Decision | The Board agreed the 2017 approach to rectifications. |
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CEO went on to talk about new registration of common grazings. He explained that there had been a four-year push between 2012 and 2016, supported by additional funding from SG, with the aim of registering all of 1000 common grazings. However, in the event only one-third had been put through in that timescale, due to the unforeseen complexities of the task, particularly regarding mapping, lists of shareholders, and details of apportionments and resumptions..

SG have asked the Commission to make its own decision regarding this so the question now arises as to whether or not we bring common grazings registration back?

This is a difficult job to do on a small scale and although it was previously pushed as a priority, CEO believed that it did not currently rank as the highest priority for our stakeholders.

CEO asked the Board what their view was on giving this priority at this present time.

Responding to Commissioner Scott, CEO confirmed that this was currently identified as a priority in the Corporate Plan. Despite this, the Board agreed that this should not be prioritised at present. CEO would explain this to SG Sponsor Division.

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| Decision | The Board agreed that this should not be prioritised at present. CEO would explain this to SG Sponsor Division. |
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8 CROFTING AND PLANNING

CEO introduced the paper by explaining that there ought to be a harmonious connection between the Commission and the planning world because the roles were complementary, both aimed at supporting appropriate, and preventing inappropriate, development.

The general question he raised was what is our basic message to planning and housing colleagues and how do we connect with it? The second aspect was how do we seek to engage with it, which has proved challenging for the Commission in the past.

Looking at the recent history it seems that at the time the 2011 regulations were being drawn up, there was a big push by stakeholders for the Commission to comment on individual planning applications; but SG had warned that this might be difficult to resource and this has proved to be the case in practice.

Commissioner Mathieson made the point that the Commission should be involved in planning issues as early as possible, based on his experience of the cases that come to Tier 3 meetings.

Commissioner Campbell explained that he had attended a Highland Council planning seminar and afterwards had spoken to a couple of people (one who was head of planning) and the message coming back was that they didn't feel that the Commission was engaging with them. Commissioner Campbell had advised them to contact the CEO.

Head of Policy explained that the Commission is consulted at main issues stage and then again at the draft stage, and makes general and specific comments on the draft plans, direct to planning authorities.

Commissioner Holt said that it may be a good idea to make applicants and planning authorities aware at the start of the process to bear in mind that it may be crofting land and therefore the application may not be approved. However, Head of Policy explained that often it is not known whether a proposed development is on croft land or not.

CEO wished it put on record that the Commission are not resourcing looking at individual planning applications, except in individual cases brought to our specific attention. This was because our experience was that the resource input far exceeded the limited influence it achieves. However, this policy will be kept under review and can be revisited.

9 PROCESSING OF GENERAL QUERIES UNDER FOISA/EIR

Head of Compliance explained the process regarding the wide variety of general queries received (3000), the majority of which are straightforward. Under Freedom of Information (FOISA) and Environmental Information Regulations (EIR), the Commission processes around 80 per year, some of which could incur a charge depending on the time taken to process the enquiry.

There is not an expectation from the Scottish Information Commissioner that every case will be treated as an FOI or an EIR, as this would be too resource intensive. The way to distinguish cases is for the query to be looked at within certain parameters. If the request is simple and straightforward, this can be done very quickly. If the request is going to involve a lot of work e.g. redaction and/or investigating, or there is a risk that the customer is not going to be satisfied, then these queries must be dealt with under FOISA or EIR. No protection is in place for a customer if they are not processed under these regimes, so if the query is going to take at least a day to process then it should be processed under FOISA or EIR.

Head of Compliance explained that there had only been three cases so far where charging had been proposed. Of these, once the three people in question received a fee notice and had time to think as to whether they really needed the information, one was withdrawn; one was narrowed down and one never came back for the information.

The Board agreed that they were content.

At this point, the meeting went into closed session and Commissioner Maciver and member of the public left the room at 1215hrs.

15 EXCLUSION OF PRESS AND PUBLIC

Commissioner Maciver returned to the room at 1330hrs.

The meeting went back into Open Session at 1355hrs – member of the public did not return to the meeting.

11 INSTRUCTIONS TO SOLICITOR

Solicitor introduced the paper seeking guidance on when he would seek advice from the Board. Examples were put forward as to which types of decision would come before the Board and which could be decided by management.

Discussion followed about advertising applications and do they need to be advertised in a local newspaper as this proves costly. Head of Regulatory Support advised that the Act requires adverts to be advertised in a local newspaper circulating in the district. Deputy CEO advised that the website lists the applications received on a weekly basis.

The Board agreed that they were content with the proposal but that it would be kept under review.

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| Decision | The Board agreed that they were content with the proposal but that it would be kept under review. |
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Solicitor left the meeting at 1410hrs.

10 ASSESSORS

Deputy CEO introduced the paper, explaining that after the last Board meeting she had met with the working group to discuss next steps. There were four suggestions in the paper that the Board were asked to consider:

- Whether the Board felt there was good value in continuing with phone calls to Assessors from Commissioners.
- An action to e-mail Assessors to gauge level of interest in participating in one of two focus groups – the Crofting Bill and online applications.
- Raising the profile of Assessors through our website/social media.
- To consider whether to proceed with a second recruitment phase.

Convener made the point that Assessors need to be involved more as soon as possible.

Commissioner Scott suggested that Assessors could disseminate information regarding the backlog of work.

Deputy CEO advised that information packs are in the process of being completed which would include factsheets about various applications explaining the timescale of applications.

Commissioner Mackenzie explained that some Assessors were feeling that nothing much had happened since they had got together in February and would it be a good idea to have a meeting in, for example, the Aros Centre in Skye where Commissioners and staff could come along and update Assessors on the backlog situation and hand out information packs?

Commissioner Mackenzie suggested that a representative from CHGS come to the next Board meeting to give a presentation.

It was agreed that Commissioners organise meetings in their locality during September/October and phone Assessors inviting them along as follows:

- Group One – Skye
- Group Two – Argyllshire
- Group Three – Lairg/Bonar Bridge/Dornoch
- Group Four – Northern Isles

Sigurd Thomson would be invited to the external meeting in Kirkwall.

It was also agreed to leave the second recruitment phase for another few months and to set up a closed Facebook page to facilitate discussion between Assessors, Commissioners and staff.

With the external meetings taking place in Thurso and Kirkwall in October, it was agreed to include an invite in the advert for anyone interested in applying to be an Assessor to come along.

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| Decision | <p>It was agreed that Commissioners organise meetings in their locality during September/October and phone Assessors inviting them along as follows:</p> <p>Group One – Skye Group Two – Argyllshire Group Three – Lairg/Bonar Bridge/Dornoch Group Four – Northern Isles</p> <p>Sigurd Thomson would be invited to the external meeting in Kirkwall.</p> <p>It was also agreed to leave the second recruitment phase for another few months; and to set up a Closed Facebook page.</p> <p>With the external meetings taking place in Thurso and Kirkwall in October, it was agreed to include an invite in the advert for any Assessors interested in applying to come along.</p> |
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12 DATES FOR 2019 BOARD MEETINGS

The following dates were agreed:

| 2019 Board Meetings |
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| Thursday 7 February |
| Thursday 21 March |
| Thursday 9 May |
| Thursday 27 June |
| Monday 19 August |
| Monday/Tuesday/Wednesday 7, 8 and 9 October – Tiree, Appin or Mull (location to be confirmed) |
| Thursday 28 November |

13 DATE OF NEXT MEETING (1-3 OCTOBER – THURSO/KIRKWALL)

There was a discussion on the external meeting at Kirkwall as to where the Board were going to visit on Tuesday 2 October. After various options were suggested, it was left open for the Convener and Commissioner Annal to discuss and decide where the Board were going to visit that afternoon.

The question was raised as to what message the Board wished conveyed at the public meetings. It was agreed that both public meetings would begin with a presentation (possibly landlords of vacant crofts for Kirkwall) and that thought would be given as to who to invite from outside the organisation.

14 AOB

Deputy CEO advised the Board that Heather Donnachie, Executive Support would be leaving the Commission on Friday 31 August. The Board wished their thanks to be recorded for Heather's efficient and expedient work while in the post.

15 EXCLUSION OF PRESS AND PUBLIC

Commissioner Maciver suggested that the Commission should contact Murdoch MacLeod, SG's Location Director for the Western Isles.

The Convener thanked everyone for their input and closed the meeting at 1520hrs.

Note of Decision taken at Strategy Meeting on 28 June 2018 (relating to 4a(i) and (ii) of these Minutes)

DELEGATED DECISION MAKING

(a) Extending the range of delegated functions/decisions

The Board agreed to delegate the following functions/decisions with immediate effect:

| Section | Decision | Reasoning |
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| 11(8) | Whether to serve a notice to terminate a tenancy due to a failure of statutory succession. | Because this follows a requirement set out in the Act, rather than a discretionary decision. Section 11(4) states that the Commission... "shall give a notice..." proposing to terminate a tenancy. Sections 11(5) to 11(7) thereafter set out the circumstances in which a final notice may not be issued, and in the absence of any of these issues we should simply proceed to issue the notice under section 11(8). |
| 23(5) | Whether to serve a notice on the landlord of a vacant croft requiring re-letting proposals. | We will shortly have the facility to distinguish between a landlord of a genuinely vacant croft, and a pre-2010 owner-occupier. We should take the view that genuinely vacant crofts should be occupied and serve a notice accordingly. |
| 29(3) | To decide whether to issue an order allowing a former subtenant to remain in occupation of a croft for up to one year following the termination of a subtenancy. | We can have a simplified parameter whereby officials can grant the order where all parties agree, and it would only be escalated to Commissioners where the landlord, an executor or a successor tenant opposed the application. |
| 58A(4) | To refuse to accept objections from individuals who the Commission consider do not have a relevant interest in an application. | There has not been a single case to date where Commissioners have recognised anyone outwith the crofting community as having a "relevant interest" in an application. The recommendation is to delegate the right not to accept an objection to officials, and to escalate to Commissioners where they consider that there is a compelling reason(s) for accepting an objection under these provisions. |

The Board further agreed that staff prepare papers setting out parameters for delegating the following functions/decisions for discussion and agreement to a future Board Meeting:

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| Section 5C | Consent for Purposeful Use |
| Section 25(3) | Issuing an Order bringing land back into crofting |
| Section 50A | Joint Forestry Ventures |
| Section 51 | Enlargement of Common Grazings |
| Section 58B | Variation of conditions on approval or consent |

(b) Reviewing Parameters

The Board agreed to extend the parameters for delegated decision making in relation to “Decrofting Whole Croft (Only where it relates to a residual house site)”, to include the decrofting of any small residual site extending up to 0.75(ha) (including sites where there is no house or a site for a reasonable purpose). These decisions can be made at Tier 2.

The Board noted the change to the parameters for delegated decision making in relation to “Decrofting House Site and Garden Ground” to reflect that fact that, following legal advice, we no longer accept applications for statutory dwellinghouse sites on common grazings, unless the land has previously been apportioned.