

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD VIA 'TEAMS' AT 9AM, 3 DECEMBER 2021

Present:	Malcolm Mathieson	Convener
	Mairi Mackenzie	Vice Convener
	Andy Holt	Commissioner
	Archie Macnab	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal	Commissioner (Until 11am)
	James Scott	Commissioner
	Bill Barron	Chief Executive
	David Findlay	Commission Solicitor
	Joseph Kerr	Head of Regulatory Support
	Neil Macdonald	Head of Finance
	Jane Thomas	Head of Compliance
	Gordon Jackson	Scottish Government
	Eleanor Ryan*	Glen Shuraig Consulting (Closed Session)
	Barbara Allison*	Glen Shuraig Consulting (Closed Session)
	<i>*Agenda item 17(f)</i>	

Members of staff, assessors and the public (Open Session)

Minute takers:

Neil Macdonald	Agenda items 1-9
Joseph Kerr	Agenda items 10-11, 17(e)
David Findlay	Agenda items 13, 14, 15, 16 & 17(b)
Bill Barron	Agenda items 12, 17(a, c, d, f)

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, including the staff, and members of the public observing, with a greeting in Gaelic, followed in English. Apologies were received from Aaron Ramsay, Head of Digital & Improvement and Heather Mack, Head of Operations.

2 DECLARATION OF INTERESTS

The Convener asked if anyone had any Declarations of Interest that they wished to inform the meeting of. No declarations were recorded.

3 BOARD MINUTES FROM 20 OCTOBER 2021

The Board Minutes of 20 October 2021 had previously been circulated and approved, and subsequently published. They were brought to the meeting for information only.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING 20 OCTOBER 2021

Action Point 4: Commissioner Scott sought clarity regards agenda/presentation proposals for the Cabinet Secretary. This was discussed in detail within agenda item 17(a).

Action Point 12: The Chief Executive updated the Board regards the use of external contractors to assist with reports that RPID would normally undertake. After assessing the benefits/drawbacks it has been decided not to pursue the action at this time. The Head of Regulatory Support advised the Board that turnaround times were improving with RPID, and a joint training session had also recently been delivered successfully.

5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising.

6 UPDATE ON MEETINGS WITH SPONSOR DIVISION

The Chief Executive advised the Board that he, along with the Convener, Vice-Convener and Solicitor had attended a Sponsor Meeting on 22 November. The agenda had been wide ranging, including:

- Staff Workforce Review and Budget
- Deloitte LLP's Wider Scope Audit
- Azets (Internal Audit) review of CIS (progression of recommendations)
- The Commission 2022 Elections
- The regulatory casework backlog

The Convener advised the Board that John Kerr (Head of Agriculture Policy Division) attended the meeting and was aware that there would be budgetary implications in relation to the Workforce Review.

As a point of order, Commissioner Campbell said that he hoped Scottish Government could produce minutes promptly as this was the best way for Commissioners to be informed of what had been discussed.

7 AUDIT & FINANCE COMMITTEE REPORT

(a) Update

The Convener thanked Commissioner Campbell for several years of service to the Committee, as he stepped down as AFC Vice-Chair after the meeting on 3 November. The Board recorded a vote of thanks.

The Head of Finance provided the Board with an overview of the AFC minutes. Commissioner Scott attended the AFC meeting as a newly appointed committee member on 3 November.

November is traditionally a meeting where the Committee reviews various standing policies, in line with its agreed work plan, to ensure that they remain fit for purpose. There was nothing of significance to report to the Board and the Head of Finance advised that policies that were linked to the Scottish Government Framework agreement would be refreshed once the Board has approved a revised Framework.

- **Release of New Version of CIS**

Given the current demands on all teams, and in particular the backlog of case work that the Commission is currently dealing with, a proposal was put forward to introduce a planned delay of 6 months to the release of the next CIS build in order to lessen these demands on other teams in the current climate. The Committee was advised that coding will continue to completion as planned, as will technical testing and user acceptance testing at a modest pace, however there will currently be no planned release of CIS until roughly May 2022.

This date will be reviewed periodically along with the backlog situation, and if the workload position changes significantly before then the release may be brought forward again.

The Systems Architect and Business Systems Analyst have been working with a range of staff to look at some of the key issues staff have raised about the CIS, such as document attaching, and short term resolutions have been developed. This makes the delay to the next full release much less critical.

The Head of Digital had advised the Committee that the Commission is still actively addressing the audit recommendations highlighted within the recent internal audit review of CIS and this proposal was a conscious delay of launching a new version of CIS, rather than forcing out a release to colleagues who are already under significant pressure.

A general Board discussion ensued regards delivery timelines. While disappointed by the recommendation, the Board acknowledged the reasons behind the postponement and confirmed that this was ultimately an operational decision for the SMT. Concerns were expressed that this may lead to a loss of focus on addressing audit recommendations.

- **Financial Planning & Scrutiny Internal Audit**

The Head of Finance advised the Board that the Committee had received a positive audit report that the Crofting Commission's financial planning processes are operating in line with the documented financial planning framework, in a generally well controlled environment. Minor recommendations from the audit have been actioned.

- **Health, Safety & Welfare Update**

The Board was advised that lessons have been learnt from the recent external meeting at Lairg in relation to implementing an improved risk assessment process for external meetings, particularly as Covid remained a high concern/risk.

- **Progress Report on Audit Recommendations**

The majority of the agenda item involved an update from Deloitte regards the wider scope audit and expectations relating to the Commission providing evidence to the Parliamentary Audit Committee on 2 December.

Deloitte noted that the Commission had marked a number of recommendations as 'completed' when actions would still be required in the future (Commissioner Appraisals as an example). While Deloitte have no issues regards how the Commission monitors progress, the recommendations will be formally reviewed during the 2021/22 audit. Deloitte will apply professional scepticism (critical and central to all audits) to test whether the Commission's view on progress appears to be reasonable.

Deloitte had noted that it was difficult for a small NDPB to meet similar governance expectations that are placed on larger organisations. This was acknowledged during a recent discussion between Deloitte and Audit Scotland that any small NDPB that was subject such a detailed wider scope governance audit review would potentially accrue significant audit recommendations.

- **Draft Budget 2022/23**

The Wider Scope audit undertaken by Deloitte recommended that *“the budget setting process should provide sufficient opportunity for the Board to contribute to the budget setting process at the ‘input’ stage, rather than only at the ‘approval’ stage”*.

The timescale has therefore been accelerated to facilitate a first draft review of the budget at the November AFC meeting.

The Head of Finance advised the Board that while the paper was detailed, it was based upon a number of assumptions and there were various unknown factors at this time:

1. Confirmation of Grant-in-Aid award for 2022/23
2. Pay award still to be concluded for 2021/22 and 2022/23 will not be formalised until into the start of new budget year
3. The independent staffing review with conclusions anticipated relating to resourcing, structure, grading and responsibilities. This could potentially have a significant impact upon staff resource requirements.

The Board’s attention was drawn towards the Financial Risk Appetite of the Commission for 2022/23. Historically the Commission’s financial risk appetite has been Very Low/Averse. The Head of Finance recommended that the Commission moves to a Low/Minimalist appetite. *“We are willing to accept a small amount of risk which would lead to a variance in our budget by 3% however we are risk averse regards fraud, error or failing to meet statutory requirements”*.

This effectively translates to the Commission being open to taking a Value for Money approach between staff costs versus an efficient use of staff resource. Currently the Finance Team tracks staff underspend caused by turnover that is difficult to reallocate effectively within a relatively short time scale (in-year). By adjusting the risk appetite, the Commission could potentially recruit another post A3/B1 on the assumption it will be funded from associated funding released due to turnover.

It was agreed that this will be revisited at the Strategic Board meeting scheduled for 8 December, but in principle the Board was in favour of an adjustment to the financial risk appetite.

- **Financial Performance 2021/22**

The Board was advised that the AFC had been provided with detailed performance papers relating to the Commission’s financial performance as at Quarter 2 of the financial year. There were no specific concerns raised by the Committee. The Head of Finance is tracking a minor underspend of £43k (1.3% of budget allocation) as at Quarter 2. This is primarily related to staff turnover and efficiencies obtained regards the proposed electronic delivery of the crofting census.

(b) Draft Minutes from 3 November 2021

There were no specific material comments on the content of the Minute.

(c) Nomination of Board Member to sit on Audit & Finance Committee

The Board appointed Commissioner Neilson as an Audit & Finance Committee Member. The Committee will appoint a Vice-Chair from the three members prior to the scheduled AFC meeting of 26 January.

8 STRATEGIC RISK REGISTER

The Chief Executive presented the paper to the Board. It is a Deloitte recommendation that the Operational & Strategic Risk Registers are refreshed. The SMT has recently completed training with the Scottish Government Risk Management & Policy Team, which emphasised a focus upon 'Additional Planned Actions' within a risk register.

The Board was advised that the Commission's Risk Registers will be reviewed with this recommendation in mind. The Chief Executive provided an update on each strategic risk, stating that risk scores had primarily increased due to the associated pressure of the case backlog which was impacting upon all areas of Commission operations.

Risk '007' 'Delivery of the Crofting Commission Elections' is a new risk added to the register as it is a reputationally critical project for the Commission. Although timescales are tight, the project is on track.

The Board noted the report.

9 REVISED STANDING ORDERS

The Head of Compliance presented the paper, advising the Board that the Commission Standing Orders are reviewed on an annual basis which also affords the opportunity for the Commission to ensure every member of the Board is familiar with the details contained in Standing Orders.

The wider scope audit completed by Deloitte identified an issue which it recommended, at 4.10, could be addressed by revising Standing Orders. It recommends that Standing Orders should clearly set out how informal, private meetings of the Board can be called, how they should be conducted, any records which should be kept and emphasise the importance of the Board not using these meetings to in essence take Board decisions.

The following clause was suggested as a recommendation to address the above:

2.6 The Convener may wish to consult with the Board by holding an informal private meeting, for Board members only. He/she must inform the Chief Executive that such a meeting has taken place and the general nature of the discussion. Though no formal Minute will be taken, the Convener should draft a contemporaneous Note of the discussion, including who attended and forward this to the Chief Executive for saving. This ensures that the provisions of the Freedom of Information (Scotland) Act are adhered to. No Board decisions can be taken outside formal Board meetings.

A general discussion ensued regards what constitutes an informal discussion between Board Members, and the merits of taking a formal note of a coming together at the behest of the Convener for a focused discussion.

Commissioner Campbell also highlighted that clause 2.8 should be adjusted to reflect that it is the Convener that should have the final say on the agenda for a meeting of the Commission. It was also highlighted that a clause should be added regards observer protocol at a Board meeting.

Based upon the Board discussion, the Head of Compliance will revisit the Standing Orders.

10 COMMISSIONERS' TRAINING PLAN

The Head of Compliance and Business Support presented the paper by referencing the annex which listed all the training Commissioners had received since 2017.

The purpose of this item was to plan training for the new Board of Commissioners coming into place in March 2022 following the elections. At the recent training, there had been a suggestion that the training for the current Board had been too heavily front loaded in the early months and there may be benefit in spreading the training out over a longer period. If that was the case, it would be helpful if Commissioners could indicate which training items could potentially be held later in the lifetime of the new Board.

This led to a general discussion which included:

- Reference to the importance of training on the respective roles and responsibilities of the Board, the Convener, the Cabinet Secretary, the Sponsor Division, the Chief Executive and the Senior Management Team.
- A recognition that the recent on-board training was considered to be really valuable, and Commissioners had gained a greater understanding of the respective roles, and that this should help frame the appropriate relationship with Sponsor Division moving forward.
- The importance of training on recognising and differentiating between strategic and operational matters.
- The suggestion that on-board training should be delivered annually as Commissioners gain greater insights into the practical application of the training as they develop in the role.

Commissioner Scott commented that in terms of the content and timing of delivery of training for the new Board, the real unknown is not knowing the make-up of the new Board, and the skills and experience that new members are going to be bringing to the Board. He suggested that certain aspects of the training should be treated as core training for any Board member e.g. induction, on-board training, best practice etc and that a further discussion should be held on other training content and timing once the make up of the new Board was known.

There was general agreement with Commissioner Scott's suggestion.

11 ON-BOARD TRAINING PLAN

The Chief Executive presented this paper setting out the action plan put forward following the On-Board training sessions held in October and November and inviting Commissioners to comment. The CEO differentiated between Annex A – Action Plan set out as points 1 to 17, which included Sponsor Division, and Annex B set out as bullet points which did not involve Sponsor Division.

Commissioner Scott pointed out the contradiction between AP2 which states:

“Wherever possible, the Commission website and all internal written and oral communications should not distinguish between Elected and Appointed Commissioners”

With AP13 which states:

The Commission will make it clear to all those standing for election as Elected Commissioners that they have a corporate role and not a lobbying role. The Commission will include this in pre-election briefing material

It was agreed that it should be made clear that the reference to “..not a lobbying role” applied to both appointed and elected Commissioners.

Commissioner Maciver raised concern that there was no reference in the plan to training and support for Assessors. The Chief Executive did not disagree that training and support for Assessors was an important issue, but suggested that this was part of a separate discussion, and it will be a matter for the next Board to consider.

Subject to the qualification agreed at AP13, the Annex A of the On-Board Training Plan was agreed.

In terms of Annex B, Commissioner Campbell wished it to be reflected that only five Commissioners participated in the workshop which produced the set of bullet points.

There then followed a general discussion on the bullet points in Annex B. Following the discussion, the key actions set out in the bullet points were agreed.

12 UPDATE ON CHANGES TO THE COMMISSION’S SCHEME OF DELEGATION

Head of Regulatory Support reported that the changes agreed by the Board at the previous meeting were being implemented. The changes to parameters meant that more cases were now being decided at Tier 1. Escalation from Tier 2 to Tier 3 would also reduce because of the agreement that Tier 2 could make refusals, and similarly could judge whether an objection had been fully answered. However, all uncertain cases would still be escalated to Tier 3, and the Board would remain responsible for deciding all the parameters to be applied.

Parameters were being developed for the 5 new delegated functions, and these would be brought to the next Board meeting.

Responding to questions from Commissioners, Head of Regulatory Support said that these changes would make a contribution to tackling the backlog; and that Regulatory Support colleagues were comfortable with the increased responsibility now held at Tier 2.

13 UPDATE ON DELOITTE AND PUBLIC AUDIT COMMITTEE

The CEO said that the Convener and the CEO had appeared before the Public Audit Committee of the Scottish Parliament on 2 December 2021 in connection with report prepared by the Auditor General under s22 of the Public Finance and Accountability (Scotland) Act 2000. It was noted that the appearance was streamed live on Parliament TV and is available to be viewed.

In his evidence, the Convener had advised that 31 of the Deloitte action points and recommendations have been completed. Commissioners Campbell and Scott said it would be more accurate to note that some of the 31 were still work in progress, and the CEO agreed that there was follow-up work required on some of the recommendations, such as the Medium Term Financial Plan, even though initial action in response to the recommendation had been made at the time. Commissioner Macnab said that ultimately and, in any event, the external auditors Deloitte would decide whether or not the Commission has actually achieved and implemented its recommendations and followed them through successfully.

The Head of Finance said that the Medium Term Financial Plan would come again to Commission's own audit committee in January 2022. This recommendation is completed as far as it can be at this time, but it is a "living" document and will be subject to changes and revision over time, not least in the light of the budget announcement expected on 9 December.

Commissioner Scott said a number of points were not made accurately at the appearance before the Public Audit Committee, for example, with regard to how long the appointed Commissioners would stay in office. It was clarified that an appointed Commissioner could stay in office as a member of the Commission's Board for an extended term only if invited to do so by the Scottish Ministers. Commissioner Campbell said that it was not fully accurate to say that the Board was not aware that it could employ its own staff as he was aware of this since he had become a Board member.

Commissioner Neilson commended both Convener and CEO on how they handled their appearances before the Public Audit Committee.

14 COMMISSION FRAMEWORK DOCUMENT

The CEO presented this item. He said that changes to the framework document had been developed through discussions between the Convener, Vice Convener, Sponsor and himself, largely to clarify the authority of the Board and the CEO's accountability to the board. One change remained to be made to the current draft, to allow flexibility on whether the Director or Deputy Director would appraise the Convener. Subject to this change and to the Board's agreement, this draft was now ready to put the Scottish Ministers for formal approval.

Commissioner Campbell said the language of the document has to be correct, especially to recognise the relationship between the Board and government being directly with the Scottish Ministers. However, the CEO said that as the document was meant to include a practical guide to who does what, it was helpful that it set out, for example, when the Convener should communicate with Sponsor Unit. The Convener suggested that a "definition of terms" at the beginning of the document might help to reconcile these two views. Commissioner Campbell said that the wording about the Commission potentially employing staff should be clearer. He also emphasised that the framework document has to be consistent with the relevant legislation, and Commissioners Scott and Maciver agreed with this point.

The Convener said that he did not see that resolving these points needed be an obstacle to having the framework document agreed and approved quickly. He asked Commissioners to come back to him with immediate comments in writing, so that he could collate the requested changes. He would then consult Scottish Government and would thereafter revert to Commissioners during the week commencing 6 December 2021.

15 DATE OF NEXT MEETING

It was confirmed the date of the next meeting would be Tuesday 8th February 2022. It would likely be held on Microsoft Teams due to the ongoing issues with Covid-19 and omicron, but this will be confirmed in due course.

16 ANY URGENT BUSINESS

This was addressed within closed session.

17 EXCLUSION OF THE PRESS AND PUBLIC

The Convener thanked everyone for their participation and closed the meeting at 3.20 pm.