



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

25 JUNE 2020

**CROFTING COMMISSION MEETING (SKYPE)
25 JUNE 2020 AT 10:30 hrs**

AGENDA

- | | | | |
|-----------|---|----------------|-----------------------|
| 1 | APOLOGIES | <i>Oral</i> | <i>Standing Item</i> |
| 2 | DECLARATION OF INTERESTS | <i>Oral</i> | <i>Standing Item</i> |
| 3 | BOARD MINUTES FROM 14 MAY 2020 (<i>already published</i>) | <i>Minutes</i> | <i>For info</i> |
| 4 | MATTERS ARISING FROM PREVIOUS MINUTES | <i>Oral</i> | <i>Standing Item</i> |
| 5 | ‘ROUND THE TABLE’ UPDATES FROM COMMISSIONERS | <i>Oral</i> | <i>Update</i> |
| 6 | UPDATE ON OPERATIONAL EFFECTIVENESS
(<i>including discussion on office base</i>) | <i>Oral</i> | <i>Update</i> |
| 7 | CROFTING DUTIES: POLICY PROPOSALS | <i>Paper</i> | <i>For discussion</i> |
| 8 | WOMEN AND THE BOARD – GENDER BALANCE LEGISLATION | <i>Paper</i> | <i>For discussion</i> |
| 9 | <i>THIS ITEM WILL BE DISCUSSED AT A LATER DATE</i> | | |
| 10 | DATE OF NEXT MEETING
Monday 24 August 2020 – Skype Meeting | | |
| 11 | ANY URGENT BUSINESS | | |
| 12 | EXCLUSION OF THE PRESS AND PUBLIC | | |

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD BY SKYPE ON 14 MAY 2020

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal	Commissioner (from 9:50)
	James Scott	Commissioner
	David Findlay	Commission Solicitor
	Mary Ross	Head of Operations & Workforce
	Aaron Ramsay	Head of Digital & Improvement (from 10:14)
	Joseph Kerr	Head of Regulatory Support
	John Toal	Head of Policy
	Garry Laws	RALUT (from 12:39)
	Jane Thomas	Head of Compliance and minute taker
	Betty Mackenzie	Communications (until 13:30)
	Gordon Jackson	Sponsor Division
	Michael Nugent	Sponsor Division

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, in Gaelic followed by a welcome in English. Apologies were given for the CEO, Bill Barron, who was temporarily assisting the Scottish Government's Community Health Directorate on the national response to COVID-19.

2 DECLARATION OF INTERESTS

The Convener asked if anyone wished to declare an interest. No interests were declared in the public part of the meeting.

3 BOARD MINUTE OF 19 MARCH 2020

The Minute of the Meeting of 19 March 2020 had been approved by email and published on the website. It was brought to the meeting for information only. There were no questions.

4 MATTERS ARISING FROM PREVIOUS MEETING

Commissioners sought an Addendum to the March Minute, wishing the word "stated" to replace the word "commented" in the section under item 1 relating to staff safety being the top priority for the Board. A Note to that effect will be added to the published Minute.

It was confirmed that the Commission no longer uses the Board Papers App, after a Commission decision at the February Board meeting. This was due to the cost involved. The papers would be presented via the OneNote App for the June Board meeting.

Commissioner Mathieson, as Vice Chair of the Audit & Finance Committee, wished to raise as a governance issue the fact that the CEO was absent, which he was not happy about. Others agreed this was regrettable. The Convener stated that he wished to proceed with the meeting, though he too would have liked the CEO to attend. In the event of an item requiring the presence of the Accountable Officer, the Convener stated that he would postpone a decision on the relevant item until the Accountable Officer was present.

It was confirmed that no Interim CEO has been appointed and there is no Deputy CEO. Sponsor Division explained that the roles of CEO and Accountable Officer are not the same and that the CEO has decided to retain both roles during secondment to another SG Directorate for a temporary period. The Convener confirmed to the meeting that the secondment is likely to last for another month.

The meeting then went into private session at 9:54, to allow Commissioners to discuss the absence of the CEO/AO and the impact this is having on the Commission.

CLOSED SESSION

The meeting then went back in **PUBLIC** session at 10:57am.

5 EMAILED PAPERS

(a) Gaelic Language Plan

Head of Compliance confirmed Commissioners had approved the draft in November, it had then gone out to consultation with staff and the public. As no responses were received, the draft is as it was when approved in November.

The Commission approved the Plan, which would now be made ready to send to Bòrd na Gàidhlig. It was confirmed that work such as language classes was currently suspended but would hopefully be picked up as soon as restrictions are eased, or plans would have to be adapted.

Decision	Board approve Gaelic Language Plan 2020-2025
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(b) Grazings committees and Covid-19

Head of Policy explained the paper had previously been approved in principle and was now before the Commission to sign it off. Quite a number of grazings committees were interested in it and the work of the grazings team had begun to show marked improvements in the number of regulated committees in office by the end of March, going up to 490.

The Commission approved the change as detailed in the paper. A point was raised about the procedure for approving papers circulated by email, which will be picked up when Standing Orders are reviewed in August.

Decision	The Commission approved provisions for grazings committee appointment during the Covid crisis.
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6 HOW THE COMMISSION IS RESPONDING TO THE COVID-19 CRISIS

As the CEO was absent, the paper was presented by the Convener. Commissioners felt that, as it had been written on 23 April, it was now out of date, though the timeline was useful. Commissioners asked for a verbal update on Annex A, which was provided by the Commission solicitor, who explained that 60 applications have been received and 28 registrations, which have been logged for processing. The Convener wanted to see the information on a weekly basis, logged by Tier level and application type.

It was confirmed that RoS have one person working on registration forms.

It was stressed that the Commission should not lose sight of big-ticket items and that if a backlog is inevitable, we must take the opportunity to look at processes carefully to see what can be streamlined. Commissioners hoped that officers would help them understand the systems to gain long-term benefits via business reorganisation.

Answering a question about CIS, Head of Operations explained that access was not a problem, things were running more slowly but that was not necessarily associated with CIS. There are many factors which contribute to staff not being able to process through cases as quickly as they would have done in GGH. Things are starting to settle down more as staff become more used to working remotely and problems are identified and dealt with. Going forward, it is likely that partial home working will be part of the medium-term strategy.

Head of Operations confirmed that the wording on the website regarding applications is being looked at, with changes to be made at the beginning of the week, to soften the message and differentiate between applications and Notifications. It was confirmed that a Lessons Learnt Log has been created, as part of the BCP and this is being populated to capture learning and will be made available to the AFC and from there to the Board. It was agreed that the review of the Business Plan mid-year would also capture learning from the current crisis.

Commissioners favoured setting up working groups to help make progress.

7 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS

The Convener asked if anyone wished to make a contribution.

Commissioner Neilson wished to compliment the staff, as they seemed to be working well in trying circumstances. The staff he had been in touch with have been first class.

Commissioner Holt said he was enjoying the increased contact with customers over the phone and would like it to continue. Commissioner Mackenzie agreed and said people are very appreciative of having someone to talk to. She too would like to continue with this.

Commissioners Campbell and Mathieson, along with the Convener, returned to the idea of establishing working groups to help speed up progress and felt these should include staff at all levels as well as Commissioners.

8 AFC REPORT

(a) Update from Malcolm Mathieson

Commissioner Mathieson commented that quite a lot of discussion had already taken place regarding items he would have brought up at this point. He explained there had been two AFC meetings because one was needed to address the current situation. He was disappointed that the CEO had not attended the last one. He continues to have a concern that the AO is not available at a time of unprecedented challenge for the Commission.

He was also concerned that Commissioners on the AFC have not pushed management hard enough on risks but stated that they would be pressing harder from now on. The current risk was not foreseen but we have to learn from it. For instance, if there is a big backlog due to the change in how we are working, we can only change this by changing our working practices, such as by moving to online applications now. However, with our current staff resources it will be hard to clear a backlog. We need more resources. If this is not possible, expectations have to be managed.

Commissioner Mathieson reported that the IT risks previously identified have been reduced by having access to a third party as back-up but the reliance on access to GGH, which is being severely restricted, causes concern. The need to house a server externally has become critical.

He wanted also to alert the Board and Sponsor Division that it will not be possible to remain in budget this year without losing staff and that this would impact performance further. In response to the news on the budget challenges, Sponsor Division hoped the Commission would make their best endeavours to work with the situation.

The committee were not able to sign off the AO report because he was not there. It was felt more respect needed to be paid to the Board and its authority as an NDPB and that if information and answers were not forthcoming to the AFC, its Commissioner members would resign.

Commissioners thanked the AFC members for being frank and open about the situation and the Convener wished to record the confidence the Board has in the committee.

(b) Draft Minutes from March & April meetings

There were no comments on the Minutes, save to compliment the Finance Manager on them.

(c) 2019/20 Self-Assessment questionnaire results – AFC committee

Commissioner Mathieson explained the background and asked for questions.

(d) 2019/20 Self-Assessment results – the Board

Commissioner Mathieson was pleased to report that the whole Board had completed the questionnaire. It was agreed to focus on the 'don't know' responses, which Head of Compliance and Board Support will help the Convener work through.

(e) Q4 Key Performance Indicators

There were no comments on the KPIs.

(f) Operational Risk Register

There were no comments on the Operational Risk Register.

9 STRATEGIC RISK REGISTER

There were no comments on the Strategic Risk Register.

10 EXTENDING THE SCHEME OF DELEGATION

Head of Regulatory Support explained the need for the extension, which was about signing Directions and Orders, the change being propelled by having to move to electronic signatures. This has been moved forward speedily, with everything relevant in place. This was approved.

Decision	Commission approved widening Scheme of Delegation
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11 RALUT REPORT

Garry Laws from the Regulatory and Land Use Team had joined the meeting to cover this item. He explained the background and asked if any clarification was needed. Commissioners regretted that staff resources were taken away from the team, as their work was critical. Much more could be done with the necessary resources.

There was a discussion on non-return of crofting census forms and forms which are not filled in correctly. Mr Laws confirmed that the Team have proposals for acting against serial non-returners. Sponsor Division confirmed the data from the Commission is seen by the Cabinet Secretary. It was confirmed that it is an offence not to complete a Crofting Census return. Commissioners were also urged to consider the impact of long-term sublets on the work of the team. The Commission solicitor said he would consider whether there was a possibility of using a Late Penalty Notice.

Commissioners commended the paper and the work of the team.

12 DATE OF NEXT MEETING

The next meeting of the Commission will take place via Skype on 25 June 2020.

13 AOB

An item had been raised by Commissioner Maciver with the Convener prior to the meeting, as per Standing Orders, as it was felt the issue of charges in care homes should be discussed by the Board. It was explained that the Western Isles Council is pursuing the Executors of late crofters, in some cases, in order to recover care homes fees by utilising the family croft as a financial asset. Commissioners are agreed that the Crofting Commission should take a view on this, so that a clear public position can be stated.

The Convener's view was that some crofts would represent a financial liability to the family, rather than an asset. It is certain that there will be enormous financial pressures on local authorities in the near future but, if the view of councils veers towards crofts being valuable assets that can be used, it would seem to run contrary to the view of banks and lenders, who are reluctant to lend because of the lack of freehold rights on crofts.

There was a concern that it is not only a question of monetary worth but a question of pressure being put on families to decroft, to cover care home debt, thereby depriving the next generation of being able to enter crofting.

It was agreed that the CEO should be asked to seek legal advice and that, once this is forthcoming, the matter will revert to the Board.

14 EXCLUSION OF PRESS AND PUBLIC

The Convener thanked everyone for their contribution and closed the meeting at 15:27.

'ROUND THE TABLE' – ORAL UPDATE

**UPDATE ON OPERATIONAL EFFECTIVENESS
(including discussion on office base)**

Oral

CROFTING COMMISSION MEETING

25 June 2020

Report by the Chief Executive

Crofting Duties: Policy Proposals

SUMMARY

This paper follows on from a previous examination of the rationale and outcomes of the current duties process, with agreement in principle to consider any necessary amendments. Consequently, a number of recommendations are made that will assist the delivery of outcomes to the benefit of crofting and its sustainable development.

It is also considered that the duties relating to croft use and management should be fully considered in the context of a related Land Court decision. This and other aspects of delivering crofting duties could also benefit from a Commission Working Group that will identify priorities and resource requirements.

BACKGROUND

At its meeting on 23rd March, the Commission considered a policy paper on the process being employed in the enforcement of crofting duties. The paper raised concerns that while this process may have been appropriate at the time of introducing the annual notice for crofters and the requirement to report on compliance with duties, it might not now be delivering the best results for crofting overall. In particular, it highlighted the fact that it primarily delivers longer term sublets that effect little overall change and basically maintains the status quo within crofting.

Subsequent strategy meetings covered the topic further in the context of making crofts affordable and available for new entrants. Providing access to crofting and the opportunities that may be developed from a crofting base is considered important in the overall context of crofting development. It has been increasingly recognised that a vacuum has developed in terms of crofting development and there is the possibility that the Commission will be tasked and resourced to deliver on this. Greater emphasis on crofting duties, particularly in relation to enabling entry to crofting for those prepared to live on and work crofts and actively participate in the development of crofting communities, could become an essential component of this work. From this perspective, while discharging duties works remains a regulatory function, it will have relevance beyond ensuring perfunctory compliance with a duty to delivering more sustainable crofting communities.

CURRENT POSITION

While the previous paper indicated what the existing process for duties delivers – providing recent statistics and the evidence from case sampling – this paper suggests how the process could deliver results of potentially more benefit to crofting overall and within a potentially shorter timeframe. Elements of this have recently included within a strategy paper and the

outcomes of subsequent discussions or emerging issues are incorporated within these proposals. Essentially, the duties provisions are viewed as an important tool in the development of crofting and enabling access to the opportunities that crofting may provide.

Passing mention has been made of only picking “low lying fruit” and to some degree if a system of choice and so-called self-regulation is what is promoted the outcomes will more than likely reflect that. Accordingly, the most convenient and easy option will be chosen more often and that generally and naturally will be to play for as much time as possible before fully resolving any breach of duty. Consideration might be given as to whether this meets with the legislative requirements of duties enforcement. While it might be argued that this is a pragmatic approach and it unlikely to be taken issue with, the Commission’s responsibility is for what best serves and promotes the interest of crofting.

Legislative Requirements

When the Commission considers that a duty is not complied with, following an investigation or otherwise, unless there is good reason no to do so, it is obliged to give the crofter or owner-occupier crofter written notice explaining why it considers that the duty is not complied with. A period for representation is then provided before the Commission determines whether or not the duty is being complied with. If the Commission decides that duty is not complied with, it must give written notice to that effect and give an opportunity to comply with the duty within a period of time that the Commission considers reasonable. It is only after failure to give or effect an undertaking that the Commission could move on to the next phase to terminate a tenancy or to require that a croft is let.

Undoubtedly, this is potentially a demanding process with prescribed time periods that require a disciplined and well organised approach. To do this on any meaningful scale would entail that the Commission would have to have staff specifically dedicated to these tasks and there would not be the same operational flexibility and movement available. Of course, that depends upon what priority is to be given to this area of work. If one takes account of the potential strategic benefits that have been identified, then it would be given a high priority. It is perhaps understandable why the process currently employed has kept such stipulations for a later stage after other options are proffered and the resultant numbers are more easily managed. However, any process will require resourcing and it is arguable that these would be better directly employed in the actual process than advising around it.

The role of sub-lets and short leases are specifically mentioned in enforcement part of the Act. This prevents any misunderstanding or debate as to their status in relation to crofting duties. It states that where these are in place the duties may be considered complied with as long subtenant/leaser is compliant. However, it does not state that the Commission should await these to be put in place before undertaking its duty to investigate and give notice. Admittedly, once they are in place it obviates the need for duties action on the Commission’s part and does not require any further consideration.

By entering the initial stage in the process earlier – as would appear to be the requirement of the Act – the Commission would potentially have more control of timescales and ensure that resolutions can be more directly achieved. To some extent this enables the Commission to be more pro-active in the process and set the agenda and timescales for resolution within the context of the undertakings to comply with a duty which are officially part of the duty enforcement process. In simple terms, a realistic undertaking to take up residence within three years will significantly reduce the timescale in comparison to a relatively standard 10 year sublet. At the end of that 10-year period, the original breach of duty may still prevail, and past history of absenteeism indicates that is quite likely, so the actual resolution process must begin again. If another temporary resolution via sublet is not again agreed, the actual resolution process will begin many years later than what might have been the case had the legislative route had been entered into at the outset.

It is recognised that operating on this basis will require a disciplined approach and may be more challenging operationally and also in relation to how it may be more widely received. It may be necessary to establish some element of prioritisation, and arguably the duration-based approach to residency would have provided a seamless transition at the outset in 2015. Unfortunately, the opportunity for such continuity, despite it having apparent Ministerial direction at the time, has now gone.

The role of sublets/short leases

As indicated, crofting sublets and short leases are recognised as means of duty compliance. They are by nature short to possibly medium-term fixes that in reality do not alter any existing situations, often simply formalising what is happening in practice on the ground. The norm will be to apply for the maximum period available and generally this will be unopposed and granted. It is understood that the legislation allows the Commission to modify the period of let and that point was specifically included in the Commission Policy Plan of 2017¹. That does give the Commission the option to curtail the time period available and stipulate what that could be in general terms, obviously allowing for particular circumstances.

The point has been made that the Commission cannot just make decisions on the fact it has a policy. However, such a policy is based around the legislation, but can also be considered from other requirements of the legislation. As with other applications these cases have to be considered in relation to section 58A(7). Apart from stipulation on duties compliance there are other aspects that the Commission has to have regard to:

- The interests of the crofting community in the locality of that land
- The sustainable development of that community
- The interests of the public at large
- Any plan of the Commission approved and published under section 2C
- Any other matter which the Commission consider relevant.

By way of illustrating the issues an example of a fictitious crofting community is provided. Within the township there are 5 absentee crofters and there are 4 active crofters who use the crofts of the absentee and other resident crofters. One of the active crofters is one of the five absentees who has grown up in the township but currently has good employment elsewhere. He continues to maintain a house and croft, keeps his own stock, and returns frequently and assists at gatherings and other township activities. When absent, he pays one of the active crofters to look after his stock.

By coincidence, all five absent crofters have been contacted by the Commission, informed of their apparent breach of duties, and advised of their options to ensure compliance. Four of the five absentees, some of which have been absentee for many years, submit sublet applications for 10 years, accompanied by plans showing the investment in the croft management to be made by the sub-tenant during this period. All applications are approved at the first level and will be sub-tenanted by the active crofters in the township.

Meanwhile, the other non-resident crofter decides against arguing that he is actually ordinarily resident but wants to continue to work the croft himself and does not see subletting as an option. He applies for consent to be absent which is subsequently granted, but not necessarily automatically and for a maximum of 5 years. By being active and having an obvious desire to be part of and return to this community, this individual is disadvantaged in comparison with others who do not demonstrate any similar commitment. He invests in and pays to remain an active member of that crofting community, but others are in effect paid to be inactive and absent from it.

¹ Crofting Commission Policy Plan, October 2017, p21, para109

In terms of approving such sub-lets and the issues to which the Commission must have regard to, it is questionable as to how many of these matters are actually met. If the interests of the crofting community are determined by there being no objections that is a very low threshold. If sustainable development of a crofting community is not enabling new entrants, with potential investment in croft housing and other enterprises, along with the concomitant support for other businesses, services and community infrastructure, the sustainability measurement may be questionable. It is further questionable how such can be considered to meet with public interest and, as already indicated, there is little cognisance of the Commission's own Plan.

Different outcomes might be more readily achieved were these cases introduced into the duties' enforcement process, as is the recommendation of this paper. In terms of **section 26C** the active individual would not receive written notification as there is a good reason not to send one. Operating as such, the system would not disadvantage such individuals as it may appear to do at present. As for the others; similarly, if any has a good reason not to receive notification of a potential breach of duty one will not be sent, otherwise they will move into the process of receiving formal breach of duty notifications and providing formal undertaking to rectify the situation (**section 26D**). As already indicated, it is contended that this could considerably reduce the timeframe for rectification and make the process more meaningful in terms of sustainable crofting development.

Another important element here is the apparent mismatch between the timescale provided for Commission consent to be absent and the length of time provided for sublets. It is suggested that the normal length of sublet agreed for absentees should be in line with the length of time for which consent to be absent is normally given. It is accepted that there was an initial view that allowing 10 sublet years would provide opportunities for new entrants to give a reasonable period of time in which to justify investing in a croft. That has not proved realistic and there is little, if any, evidence to support such occurrence. Anyway, the main consideration in terms of the residency duty is the occupation of the croft and not its operation. The Commission does have an overarching responsibility to have regard to population retention in the crofting counties.

On this basis, the Commission could have a policy that applications from those not ordinarily resident to sublet or provide a short lease of a croft will not normally be granted for more than five years. This does not prevent an application for a longer period being considered but that would be the exception rather than the norm, as at present. Again, the purpose of having a residency duty is to ensure that crofts are occupied by crofters on long-term basis, not operated by proxy on a relatively long-term basis. In most cases five years is a reasonable time period in which to allow individuals to take up residence or to release the tenancy of the croft.

In this way the Commission will generally be halving the period in which what is effectively an interim arrangement is in place for. In terms of decision making, applications that are for more than 5 years would go beyond the initial tier and there may be concerns that this will place additional demands upon that process. That might be the case initially but is likely to recede.

Consent to be Absent

There may be some balancing achieved in terms of adding to sublet processing requirements if a simpler consent to absent process were employed. Currently anyone applying for this can be redirected to making sublet applications – having possibly already gone through one application and assessment to get there. It is understandable as to why this is the case as effectively all duties – with the possible exception of the duty not to misuse the croft - may be covered by a sublet. However, it could also be considered presumptuous to consider that duties to cultivate the croft are not being met when considering an application for consent to be absent. The recent Land Court decision in the case of *Malone -v- Pattinson*² is instructive

² Peter Malone v Mark Pattinson, SLC 39/17.

<http://www.scottish-land-court.org.uk/decisions/SLC.39.17.html>

in terms of how low the bar may be in terms of assessing what might constitute cultivation of a croft. On this basis, the preference to go down a route that in effect generally ensures a longer period than that provided through a consent to be absent becomes questionable. It is suggested that some time and resources could potentially be saved for both the Commission and applicants if this mechanism were employed more as the temporary means of safeguard for someone absent from their croft.

Owner-Occupier Crofter

Owner-occupier crofters have been officially part of the scene since the Crofting Reform (Scotland) Act came into effect. As such the crofting duties apply equally to this category of crofter. The previously mentioned papers have highlighted the apparent paucity of cases relating to this sector, given the proportion of crofts held by this category and also the fact that previously purchase of the croft was viewed as a means of avoiding absentee tenancy action. The more recent report from Residency and Land Use has indicated an intent to rectify this. However, there are elements that can make this more complicated, not least the fact that there will often be a share separated from the croft that is still in tenancy.

Owner Occupiers

There are other croft ownership situations that do not come within the definition of owner-occupier crofter. As such, these are not subject to the specific crofting duties, however they are still subject to crofting legislation. The Commission Policy Plan defines this category of crofter as an “owner-occupier” and states: *The Commission retains the power to require an owner-occupier to let an owner-occupied holding/croft. We will use our discretion to decide when it is appropriate to require an owner-occupier to let his or her croft.*³

A croft that does not fall within the owner-occupier crofter definition is legally vacant. As such, the Commission has the power to require it to be re-let at any time to a crofter, or for part of the croft to be re-let (for instance, where different parts of a croft are owned by different individuals). There could be good reasons for doing so where the owner is not living on or close to the croft, and/or is not cultivating the croft.

Again, options are available where there are issues with this category of croft, although there could be other aspects such as associated shares that do not allow for the same process. Of course, it has to be accepted that there are resource issues that may well curtail what is possible for the Commission to commit to. However, in terms of having crofts occupied and actively managed this may be another category that should not be overlooked.

Land Use Duties

The duties not to misuse or neglect a croft (**section 5B**) and to cultivate the croft or put it to another purposeful use (**section 5c**) are more problematic in their execution. For a start they will generally require site inspections to be carried out to identify what breach has taken place and how it should be rectified. It would normally require further inspection to verify whether the breach has been rectified or not within the allotted timescale. While an occasional site inspection of this nature may be possible, it would generally be difficult for these to be undertaken regularly unless special arrangements were in place. The Commission is dependent upon another partner in this respect which will could also have implications for timescales within the legislation.

It is suggested that it is essential that the Commission considers in some detail the previously mentioned case of *Malone -v- Pattinson* which was decided by the Land Court in October 2018. This is instructive in terms of the duty to cultivate the croft and what the Land Court considers

³ Commission Policy Plan, October 2017, p 4.

to be its negative equivalent, not to misuse the croft. While the case relates to a Landlord and tenant it has considerable implications for the Commission and even some opinion as to what it considers the Commission should do. The feasibility of that is another matter, however this being the first case of its kind in terms of certain crofting duties, it is important that the Commission gives it due consideration.

It is recommended that the Commission gives some time to considering the detail of this case with due guidance and direction from the Commission's solicitor. It would appear appropriate that the implications and directions of this decision are collectively analysed prior to the Commission committing to any definitive course of direction in respect of these specific duties. The Commission's solicitor advises that with regard to agricultural tenancies, which are of course subject to different considerations, it is generally considered with the sector to be notoriously difficult to prove that a tenant has abandoned a croft.

The Commission may also wish to consider setting up a working group to examine how it might take forward work on crofting duties, with particular regard to croft land management. This could also include some of the other owner-occupier aspects as well possibly prioritising on areas or other categories and identifying the necessary resources required. If this is agreed, it would make sense that is best undertaken with those currently involved with the operational processes for crofting duties.

RECOMMENDATION

The recommendations of this paper are:

- **The Commission should alter its current practice and provide a notice of suspected breach duty at the appropriate legislative juncture**
- **The Commission should normally restrict sublets/short lease applications from non-resident crofters to five years or less**
- **The Commission should make more use of the consent to be absent route in providing temporary dispensation for non-resident crofters**
- **The Commission should collectively consider the findings of the Land Court decision on *Malone -v- Pattinson* prior to concertedly pursuing duties relating to neglect and croft cultivation**
- **The Commission could set up a working group to take forward work on land use duties in particular; to identify priorities and additional resourcing requirements**

Date 02 June 2020

Author John Toal, Head of Policy

CROFTING COMMISSION MEETING

25 June 2020

Report by the Chief Executive

Gender Representation on Public Bodies

SUMMARY

Under the Gender Representation on Public Boards (Scotland) Act 2018, the Crofting Commission has a duty to report on activities undertaken to meet the Scottish Government objective of 50% representation by women on Boards by 2022. Commissioners are asked to consider how to take forward activity to meet the duty.

BACKGROUND

Under the Gender Representation on Public Boards (Scotland) Act 2018, the Scottish Government introduced a gender representation objective that 50% of Appointed members to public Boards should be women, with a deadline of 31 December 2022 to achieve this.

There will be one new Appointment to the Commission Board in 2022.

Under Regulations which came into force on 29 May 2020, Scottish Government and public bodies share a duty to report on activity undertaken to encourage women to come forward for Appointment vacancies, in order to meet the objective.

Under the Regulations, Scottish Government must state whether the named public body has achieved the objective of 50% female representation by 30 April 2021; how many vacancies there are for Appointments to the body; for each vacancy, how many of the applicants are women and details of the steps taken to encourage applications from women.

The public body likewise must report on steps taken to encourage women to apply for vacancies. The report must be accessible to the public and can be made in another document (for example, an Annual Report). The report will have to be prepared according to Guidance to be issued by Scottish Government (not yet published) and be made public by April 2021, and thereafter updated every two years.

CURRENT POSITION

There are three Appointed positions on the Commission Board. One new Appointment will be made in 2022 and another two in 2023. Therefore, under the Gender Representation Act, the Commission will need to seek to have at least one woman Appointed by 2023 to meet the objective.

Scottish Government lead on the public appointment process but the Commission is expected to work closely with sponsor division to co-ordinate activity aimed at encouraging women to apply for Appointment vacancies and more generally to come forward for selection to the Board.

Prior to the 2016/17 election consultation, SG held meetings with NFUS and SCF to discuss how to encourage people from under-represented groups to stand in the election to the Board, particularly young people, and women. Marketing material was produced to promote the elections to women, young people, and people from minority backgrounds.

Though there are obvious crossovers between the desire to see greater numbers of women coming forward for election, the immediate focus of the Board needs to be on promoting Appointments as an attractive opportunity for women. As stated above, we await detailed Guidance on reporting from Scottish Government but, with a reporting deadline of April next year, it is suggested that the Commission takes steps now to demonstrate its commitment to increasing female representation on the Board, which should be of benefit going forward to the elections, as well as ensuring compliance with the Gender Representation Act.

The Commission has reached out to women Assessors, with invitations to observe Board meetings and the current temporary switch to the use of digital Board meetings may provide an opportunity for more women to access meetings, to understand how the business of the Board is undertaken.

Annex A provides a draft of a Questionnaire designed to be sent out to stakeholders and promoted on the Commission website, with links on social media, to gather information from women on what may be barriers to entry for them. This is one example, aimed at engaging with a female crofting or land manager audience but many more could be developed. To facilitate this, it is suggested that a short-term working group is set up, comprising a Commissioner, an Assessor, the Commission Equality & Diversity lead officer, and the Communications Manager.

<p>RECOMMENDATION</p> <p>Commissioners are asked to consider whether the questionnaire at Annex A can be prepared for distribution and whether to establish a short-term working group to encourage women to come forward for Appointment (and election) to the Board.</p>
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Date 26 May 2020

Author Jane Thomas, Head of Compliance (Equality & Diversity lead)

WOMEN AND THE CROFTING COMMISSION BOARD

The Board of the Crofting Commission comprises 9 Commissioners; 6 elected members and 3 appointed by Scottish Ministers. Commissioners receive remuneration of £8,789 per year. New elections will take place in 2022 and one new Appointed Commissioner will also be chosen in 2022. We would very much welcome women to come forward, to ensure the Board represents your experience of crofting.

We recognise women are often juggling a variety of responsibilities and this may make it more difficult to commit to sitting on a Board based in Inverness. So, ahead of the election period, we want to understand what some of those barriers are and see if we can make changes to help overcome them.

I would be very grateful if you could complete this short survey, which focuses on the way Board meetings are arranged. Your responses will be anonymous but if you would like to contact me directly, with more information or insights, please do so at compliancehub@crofting.gov.scot

The deadline for completing the survey is **XXXX**.

QUESTIONS

1. Board meetings are mainly held in Inverness, with one Board meeting a year generally held in a different location in the crofting counties. Commissioners are reimbursed travel and subsistence expenses. Would it be difficult for you to travel to Inverness?

Answer options – Yes, No, Sometimes.

2. There are usually 7 Board meetings a year, at roughly 6-week intervals (we try to avoid December, January, April and July). Would committing to attend this many meetings be difficult for you?

Answer options – Yes, No, Sometimes.

3. Are there particular times of year when attending meetings would be more difficult, for instance school holiday times?

Answer options – Yes, (if so, please indicate when), No.

4. Meetings are held during the week, generally starting at 9.30am and last until around 3.30pm. Would it be easier for you if meetings were held at alternative times, in the evening or at weekends, for instance?

Answer options – Yes, (if so, please indicate more suitable alternatives), No.

5. Several times a year, Commissioners meet for Strategy days, the day after a Board meeting. This requires anyone travelling a distance from Inverness to stay overnight. Would this create a problem for you?

Answer options – Yes, No, Sometimes.

6. The Commission would like to make more use of remote access, using videoconferencing for instance, so that Commissioners did not have to travel to Inverness but could 'dial in' to meetings. Would this help you to take part in Board meetings?

Answer options – Yes, No, maybe.

7. If you have caring responsibilities that make it difficult for you to commit to attending meetings away from home, is there anything we could do to reduce this barrier?

Answer options – Yes (if so, please indicate what would help you), No.

8. Does your working pattern make it difficult to commit to attending meetings, for example would it be hard to get the time off work?

Answer options – Yes, No, sometimes.

9. Would you like to sit in on a Board meeting, to see what goes on, before making a commitment to put yourself forward as a Commissioner? This can be done remotely via a Skype invitation or other electronic means.

Answer options – Yes, No.

10. Do you have any ideas which you think would make the way Board meetings are organised easier for women, so that more women would come forward for selection?

Answer options – comments box.

DATE OF NEXT MEETING – MONDAY 24 AUGUST 2020

ANY URGENT BUSINESS – ORAL