



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

3 DECEMBER 2020

**CROFTING COMMISSION MEETING (TEAMS)
3 DECEMBER 2020 AT 0900 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 20 OCTOBER 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 | AUDIT & FINANCE COMMITTEE REPORT | | |
| | <i>(a) Update from Malcolm Mathieson</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) Draft Minutes from 4 November 2020</i> | <i>Minutes</i> | <i>For info</i> |
| | <i>(c) Q2 Key Performance Indicator Results</i> | <i>Paper</i> | <i>Standing Item</i> |
| 6 | 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS | <i>Oral</i> | <i>Standing Item</i> |
| 7 | STRATEGIC RISK REGISTER | <i>Paper</i> | <i>For info</i> |
| 8 | PROVISIONAL RECOMMENDATIONS FROM SHORT TERM WORKING GROUP ON RESIDENCY AND LAND USE | <i>Paper</i> | <i>For discussion</i> |
| 9 | REPORTS FROM HEADS OF TEAMS | | |
| | <i>(a) IS Team</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) RALU & Reg Support</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(c) Operations & Workforce</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(d) Grazings & Policy</i> | <i>Oral</i> | <i>For info</i> |
| 10 | REPORTS FROM SHORT TERM WORKING GROUPS | | |
| | <i>(a) Application Forms Redesign Group</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) Women and Board membership</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(c) Remote working and home working</i> | <i>Oral</i> | <i>For info</i> |
| 11 | REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES | <i>Paper</i> | <i>For info</i> |
| 12 | BUSINESS PLAN FOR 2021/22 | <i>Paper</i> | <i>For discussion</i> |
| 13 | CHANGE TO PROCEDURE – CASEWORK PAPERS | <i>Paper</i> | <i>For decision</i> |
| 14 | DATE OF NEXT MEETING
4 February 2021 – Teams | | |
| 15 | ANY URGENT BUSINESS | | |
| 16 | EXCLUSION OF THE PRESS AND PUBLIC | | |

APOLOGIES – ORAL

DECLARATION OF INTERESTS – ORAL

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD VIA MICROSOFT TEAMS ON 20 OCTOBER 2020

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Vice Convener
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal (until lunchtime)	Commissioner
	James Scott (until lunchtime)	Commissioner
	Bill Barron	Chief Executive
	Mary Ross	Head of Operations & Workforce
	Aaron Ramsay	Head of Digital & Improvement
	Joseph Kerr	Head of Regulatory Support
	John Toal	Head of Policy
	David Findlay	Commission solicitor
	Jane Thomas	Head of Compliance and minute taker
	G Jackson/Michael Nugent	Sponsor Division
	Members of the public and Assessors	

1 APOLOGIES AND WELCOME

There were apologies from Commissioner Campbell, who had suffered a bereavement. On behalf of the Commission, the Convener sent his condolences. There were also apologies from Neil Macdonald, Head of Finance, who was on leave.

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. The Standards Officer told members that it was coming up to the time of year for them to review their standing Declaration of Interests and an email would be sent out to them shortly.

3 BOARD MINUTE OF 24 AUGUST 2020

The Minute of the Meeting of 24 August 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

There were no Matters Arising from the previous meeting.

5 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS

Commissioner Mathieson began the round, relaying news of a meeting he had held with Commissioner Neilson and a crofter who is thinking about dividing a large croft, in order to create several new ones, for the benefit of the local community. Some of these will be woodland crofts. He had also spoken to a young couple who were having difficulty entering crofting, in part due to some owner-occupiers who appear reluctant to give up neglected crofts. This situation was not unique and reflects both the challenges of dealing with the problem of neglect and a lack of understanding of the powers of the Commission.

Commissioner Neilson agreed that the issue of purchasing crofts came up regularly and that there is demand. He also wished to record that he is pleased to be involved in a Short-Term Working Group relating to duties and enforcement and glad to see the meetings of these groups taking place.

Commissioner Holt referred to a similar situation of difficulties facing people wanting to get into crofting, coming up against the barrier of an absentee landlord of a vacant croft, which was no further forward. He found this frustrating and wanted to see action by the RALU team. The Convener shared this frustration and felt that the words, "no further forward" summed up the overall position. Commission solicitor explained that the owner or landlord of a vacant croft is not subject to the same Duties as a tenant or owner-occupier crofter but that the Commission can require the person to let the croft. The CEO noted the work that the RALU team had already been doing and hoped that in increasing its staffing, progress would be made on a wider range of cases.

Vice Convener Mackenzie agreed that she too meets people who believe the Commission will not terminate tenancies but she knows this is not the case and would like cases more widely publicised, to show that the Commission does take action.

Commissioner Maciver reported that livestock sales have been buoyant in his area, the Marts deserving a lot of credit for the way they have adapted to the virus restrictions, with a lot of stock staying in the islands. On the question of demand, raised earlier, he worried that people are being denied a future in crofting because of inflated prices.

The Convener agreed, saying he has had a lot more interaction with crofters over the last two months, online and with sales results good. He stressed the need to invest in people, as well as livestock.

Commissioner Annal asked why people in Orkney are trying to create new crofts, when decrofting is not allowed. It was pointed out that this is not the case. Decrofting applications can be made for a Reasonable Purpose.

6 CROFTING & CLIMATE CHANGE: PRESENTATION

Commission solicitor introduced Professor Stewart Angus of NatureScot, explaining that the idea for today's talk went back to the external Board meeting in 2019 and that the Professor's research on the eco-systems of the Uists was of great significance to crofting communities.

Professor Angus explained that, while his presentation focused on south Uist, he would also touch on the situation in Tiree and Sanday and that, although Nature Scot's remit centres on the environmental impact of climate change, the adverse impact in a place like south Uist goes far beyond that.

He explained that global changes can have a disproportionate effect on a country the size of Scotland and that land level rise is being outpaced by rises in sea level across the whole country. The situation in the Uists is extreme, so if ways can be found to address the issues there, then lessons can be learnt that will help in other areas.

Professor Angus then went through a selection of datasets to show the situation, highlighting the importance of the kelp forests and the dune ridge as well as the series of old canals and stone drains built in the eighteenth century.

He explained the invasion of saline water and its impact on the water table was of particular concern to crofting, so everyone needs to work together to help manage the situation for the future. Land will be lost to the sea and this will be croft land, so crofters need a role in planning and adapting. A Resilience Strategy has been drafted and plans are underway and input from the Commission is welcomed.

The Convener thanked Professor Angus for his fascinating presentation (which would be emailed to Commissioners), reflecting on the scale of the problem and how useful it had been to see it in context. It was hoped the new outward-facing role for staff in the Western Isles would provide the Commission with opportunities to work with partner agencies on these issues.

7 REPORTS FROM HEADS OF TEAMS

(a) IS Team

Head of Digital & Improvement gave an update, focusing on three things: CIS, the move to the Cloud and the Firewall.

On the first issue, things are going more or less to plan, with testing still expected to take place in January, and the new version of CIS to go live in February. On the move to the Cloud, we have hit a problem with the compatibility of the Commission laptops and the new environment, and we are working on a solution to this. A more challenging issue has arisen about testing and CIS, so it has been agreed to dovetail the move to the Cloud with the release of the new version of CIS. This causes a slight delay but reduces risk.

On the Firewall update, things seem to have gone very well. The next step is further security testing.

After questioning from Commissioners on CIS, Head of Digital & Improvement explained that the new release would change lots of things in the background and allow GDPR changes to take effect. He was reminded that a Data Privacy Impact Assessment is still required for the move to the Cloud.

(b) RALU & Regulatory Support

Head of Regulatory Support spoke about work at the Tier 2 and 3 level, with a Tier 3 meeting due to take place on 21 October. He explained that of four recent cases discussed at Tier 2, there had been positive responses from the crofters, which has meant they have not had to be escalated to Tier 3. The policy change on 10-year sublets has led to 3 cases at Tier 2, one of which has been escalated. Triaging is being developed further and working successfully.

A group has been set up to consider application forms and the move online, which Commissioner Neilson has joined. The focus is on assignment to begin with. The group is looking at the questions being asked on the form and meeting on a weekly basis, to keep up momentum.

Head of Regulatory Support also reported that more regular meetings are being held with RPID PAOs, which is good and that a new SLA is almost ready. There will be a paper coming to the Board in December on a new procedure for dealing with objections and the role of the RPID report.

On RALU, there have been two proposals on Skye which will see crofts going to new occupants and a meeting set up with an estate, to consider ways to deal with vacant crofts and unresolved successions, as well as the creation of new crofts.

(c) Operations & Workforce

Head of Operations & Workforce explained that, after the initial period, the Regulatory Team has settled well into working from home. There are still some connectivity issues, but these are very individualised and being worked through with the IS team. Several staff who were off on medium/long-term sick leave are now back and attendance is better than for several years.

Several members of the team are helping on STWGs, with a balance between experienced and newer staff.

There are no reported delays to Registration cases and regular meetings are taking place with RoS.

There has been an increase in applications received but not to the level of this time last year. An analysis of cases older than 12 months has been carried out, with 66 of these cases requiring further Commission action to move them on, though this includes several where we are waiting for RPID reports. An increase in the B1 level staff resource may be required in the next couple of months but this is being kept under review.

The CEO confirmed that more staff would be put into the Regulatory team if this was required to avoid a build-up of cases.

(d) Grazings & Policy

Head of Policy noted the recent draft of the National Development Plan for crofting and what this says about the importance of common grazings. He reflected that grazings are given prominence in the plan and wondered about the impact that removing the distinctive Grazings Section from the Commission structure had when the development role was established in the early 00s.

After tensions in the relationship between the Commission and grazings committees in 2014-2016 in particular, bridges have been built, the Regulation Template has been well received, as have meetings held in crofting communities. By way of measurement, in 2002, there were over 600 committees in office, but 15 years later that had fallen by a third. Lots of things contributed to this but the focus of the Commission was a factor, and this is one of the reasons for trying pro-actively in the last year or so to address this decline. As a result, numbers of committees in office increased by almost 80, to 495 at the end of March 2020 but that pro-active work of direct engagement is on hold due to current meeting restrictions.

However, the team continue to contact clerks and develop information materials to assist committees and have responded to over 200 individual enquiries relating to grazings since April. As agreed by the Commission, committees coming to the end of their term of office are given the opportunity to return to office, by Commission appointment. To date, over 100 have been contacted and over 50% have taken up the offer. It has been suggested that possibly online support and training could be provided to clerks and this is being looked at.

8 REPORTS FROM STWGs

(a) Residency & Land Use

This item was introduced by the Commission solicitor, who explained that three meetings of the group had been held so far. The next stage is to draw up a list of recommendations for the Board to consider. One of the RPID SAOs attended the last meeting, which was helpful. It was useful in the context of information gathering and the hope is that the Commission will be able to access some aerial images, which may help to identify areas of neglect. This should help the Commission to target action in areas of the worst cases of neglect.

The group is hopeful that the new officers appointed in the Western Isles will help with duties work on the ground by being visible and outward facing.

(b) Women & Board Membership

Vice Convener Mackenzie chairs this group and gave an update. The group has met twice, with the next meeting scheduled for late November. The background to the formation of the group was explained and the aim of looking not only at encouraging more women to apply for Appointment vacancies but also more women to stand for election in 2022. The statistics from 2012 onwards show that there has consistently been a split of roughly 83% of applications from men and only 17% from women, so the group will work towards increasing the percentage of women coming forward to sit on the Board.

The Vice Convener explained that a stakeholder list has been populated, various blogs and articles planned, and engagement made with women's networks. One reflection was that once there is more female representation on the Board, more will follow, as there will be more role models for women to identify with. All of the Board members were encouraged to think of women who might be interested in sitting on the Board, as a direct approach was seen as good practice by the SG Equalities Unit.

(c) Remote working/home working

The CEO summarised the work of the group so far, explaining that four meetings in total are planned before a report is made available to the Board. The group has quite a varied membership and the reflection on home working so far has been largely positive, with some challenges acknowledged. Going forward, after the pandemic is over, management will have to decide which posts and staff to deploy centrally in an office and the extent to which others can be based at home. This will have to be done fairly and according to business needs. The initial conclusion is though that an element of homeworking is here to stay.

On location/remote-working, the group is more cautious as it is felt that it is important for staff to be able to meet up in one location, as a hub or centre and that a totally disbursed workforce would not provide optimal business efficiency or the best welfare for staff.

9 RECRUITMENT & PROMOTING THE INTERESTS OF CROFTING

The CEO wished to place on record the position on recruitment. He explained that the business cases for the two outward-facing posts are being brought to the SMT for approval and that the location for the remote posts is not being constrained. The post-holders will have a broad remit and will require help in prioritising actions.

Commissioners questioned why recruitment was taking so long. The CEO responded by explaining the context and timing and the current pressures on management. It was agreed that when the adverts for the vacancies are ready, they will be displayed together. It was also confirmed that the vacancies are FTEs, so job shares are possible.

10 DATES FOR BOARD MEETINGS 2021

Commissioners were asked to consider a series of dates for the Board meetings in 2021. It was confirmed that it is likely that the February meeting will be held by video link and that, even when face-to-face meetings are possible, Commissioners will be able to choose to join them remotely, rather than having to travel.

The reason for asking the Board to agree dates so far in advance was both to allow lots of notice but also to dovetail with the AFC meetings. Commissioners agreed that school holiday periods should be avoided in the meeting dates put forward for 2022.

The dates for 2021 were approved and the Convener confirmed that the Strategy day scheduled for 4 Dec 2020 could be cancelled. Strategy Days would be held as and when necessary, going forward.

11 DATE OF NEXT MEETING

The next meeting of the Commission will take place via Teams on 3 December 2020.

13 ANY URGENT BUSINESS

Commissioner Neilson had asked for a discussion on the information gathered during the annual census, wondering if an additional question could be added to the Annual Notice, on how land is being used.

It was pointed out that it is now too late in the planning cycle to add questions to the census form for this year. Head of Digital & Improvement explained the timeline, with the cut-off for changes to the form being September. It was agreed to have a Board discussion on the census in March 2021.

14 EXCLUSION OF PRESS AND PUBLIC

The Convener then thanked everyone for their input and closed the meeting at 16:45.

MATTERS ARISING FROM PREVIOUS MINUTES – ORAL

CROFTING COMMISSION PERFORMANCE REPORT

QUARTER 2 – OCTOBER 2020

Our Outcome		1. CROFTS ARE OCCUPIED AND MANAGED		RAG Status	Page
Key Milestones	1/1	May 2020 – Review all 2019 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		AMBER	5
	1/2	August 2020 - Write to 2019 census respondents who have advised us for the first time they are in breach of one or more of their duties, setting out their options for resolving their breach of duty at their own hand		RED	5
	1/3	Sept 2020 - Write to a selection of crofters who have never responded to the census and whose address indicates a breach of residency setting out their options for resolving their breach of duty at their own hand		AMBER	5
	1/4	Sept 2020 - Develop options for Commissioners and Assessors to be pro-actively involved in ensuring crofts are occupied and managed, potentially focusing on the resident non-user of their croft.		GREEN	6
	1/5	Ongoing - Follow-up action on the 2018 census returners advising of first time breaches, re-iterating options for resolving their breach of duty and escalating to the serving of notices as appropriate		GREEN	6
	1/6	Ongoing - Follow-up action on all 2017 and 2018 returners who were in breach on more than one occasion, to progress cases through the section 26C to 26H enforcement provisions if they have failed to resolve the situation at their own hand.		GREEN	6
Performance Measures	1.1	Reduce number of vacant crofts		GREEN	7
	1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected		AMBER	8
	1.3	Number of RALU breaches resolved by a crofter in breach of their residency duty by taking up residence on their croft		AMBER	8
	1.4	Number of RALU breaches resolved by assignation of the croft, or sale of an owner-occupied croft		GREEN	9
	1.5	Number of RALU breaches resolved by sublet, or by short-term lease of an owner-occupied croft		AMBER	9
	1.6	Number of RALU breaches concluded by tenancy terminations, approval of letting proposals etc		GREEN	10

SUMMARY

Our Outcome		2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE		RAG Status	Page
Key Milestones	2/1	Ongoing - Contact all Grazings Committees whose terms are about to end, encouraging them to arrange election of a new Grazings Committee		GREEN	11
	2/2	Ongoing - Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification		GREEN	11
	2/3	Ongoing – Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.		AMBER	11
	2/4	Ongoing – Encourage grazings committees to adopt the revised template for grazings regulations.		AMBER	11
Performance Measures	2.1	Increase in number of common grazings with a Committee in office		AMBER	12
	2.2	Increase in number of grazings committees who have adopted the new template regulations		GREEN	12
	2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings		GREEN	13
	2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.		GREEN	13
	2.5	Develop and assist with training and other events for grazings committees and the management of common grazings		AMBER	14

Our Outcome		3. CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY			
			RAG Status	Page	
Key Milestones	3/1	May 2020 – Next build of the Crofting Information System released and upskilling delivered		RED	15
	3/2	June 2020 – Extend to other regulatory functions (currently decrofting and division) the triaging process for identifying potentially contentious cases at an earlier stage of the process to manage customer expectations in relation to the time taken to process their case and potential outcome.		AMBER	15
	3/3	June 2020 – Review website to minimise the number of incorrect forms received		GREEN	15
	3/4	June 2020 – Confirm and roll out system to measure customer satisfaction on Regulatory Applications		GREEN	16
	3/5	July 2020 – Establish a consistent MI suite for all areas of the Commission for the annual report, leading with Regulatory.		GREEN	16
	3/6	Sept 2020 - Undertake review of “Division by Tenant” process (section 9)		GREEN	16
	3/7	Sept 2020 – Confirm with Sponsor funding availability for progressing online applications, and agree what direction this work will take between the options presented with planning in place.		ACHIEVED	16
	3/8	Dec 2020 – Undertake review of “Letting of vacant crofts” process (section 23(3))		GREEN	16
	3/9	Dec 2020 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented		AMBER	17
Performance Measures	3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)		GREEN	18
	3.2	Decrease in number of regulatory cases outstanding after 12 months		GREEN	19
	3.3	Customer satisfaction rates		GREEN	19
	3.4	Decrease in number of general enquiries		GREEN	20
	3.5	Reduce number of applications rejected because of use of an incorrect form		AMBER	20

Our Outcome		4. THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS			
			RAG Status	Page	
Key Milestones	4/1	May 2020 – Advise Scottish Government of our views concerning their forthcoming National Development Plan for Crofting.		GREEN	21
	4/2	June 2020 – Joint Board level meeting with Land Commission Board members		AMBER	21
	4/3	August 2020 – Have a formal Commission presence at 6 agricultural shows across the Highlands and Islands.		RED	21
	4/4	Sept 2020 - Publish a Commission paper on the Future of Crofting		RED	21
	4/5	Nov 2020 – Commission paper on how crofting can maximise its contribution to protecting biodiversity and mitigating climate change.		ACHIEVED	21
Performance Measures		<i>There are no Key Performance Measures for this Outcome</i>			

Our Outcome		5. OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE			
			RAG Status	Page	
Key Milestones	5/1	April 2020 – Complete implementation of 2019 Staff Survey action plan.		ACHIEVED	22
	5/2	May 2020 – Implement automated retention schedule procedures within revised CIS.		RED	22
	5/3	June 2020 – Expand succession planning for key posts as set out in the Workforce Plan.		AMBER	22
	5/4	Oct 2020 – Produce an internal plan for staff deployment and development, as set out in the Workforce Plan.		AMBER	22
	5/5	Mar 2021 - Conduct 2021 Staff Survey		GREEN	22
Performance Measures	5.1	Increase in staff engagement rating		AMBER	23
	5.2	Corporate carbon emissions		GREEN	23

DETAILED PROGRESS REPORTS

The following sections provide a detailed report on both the milestones and performance measures for each Outcome.

Our Outcome 1. CROFTS ARE OCCUPIED AND MANAGED By ensuring crofters are compliant with their Duties and by working with crofting communities and stakeholders, we can increase the number of crofts that are occupied and well managed.				
Milestone	Covid Effect	RAG Status	Responsible Manager	Details
1/1 May 2020 – Review all 2019 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		AMBER	Joseph Kerr	The RALUT Manager completed a DPIA to enable the census forms to be obtained from GGH and stored with him. He is in the process of creating a spreadsheet identifying the breach notifications to help plan and prioritise the work of the team.
1/2 August 2020 - Write to 2019 census respondents who have advised us for the first time they are in breach of one or more of their duties, setting out their options for resolving their breach of duty at their own hand.		RED	Joseph Kerr	The RALUT have been working with reduced resources through the continuing secondment of a member of RALUT to provide resilience to the pro-active regulatory casework team, long term sickness absence within the team, and a reduction in productivity due to home working. They now have a member of staff returned from absence and have a new member of staff appointed to the work of the team who is undergoing training. They will not however have the resilience to progress this milestone until the new year when we would already be in a new census year cycle. The team will therefore focus on progressing existing cases and in dealing with new cases arising written information of suspected breaches of duty provided section 26A of the 1993 Act.
1/3 Sept 2020 - Write to a selection of crofters who have never responded to the census and whose address indicates a breach of residency setting out their options for resolving their breach of duty at their own hand		AMBER	Joseph Kerr	This task will be undertaken later in the reporting year when team resources allow.

<p>1/4 Sept 2020 - Develop options for Commissioners and Assessors to be pro-actively involved in ensuring crofts are occupied and managed, potentially focusing on the resident non-user of their croft.</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>This will be considered within the wider context of the Short Term Working Group on Duties who met twice in the second quarter and will form part of the recommendations going forward to the Board in December.</p>
<p>1/5 Ongoing - Follow-up action on the 2018 census returners advising of first time breaches, re-iterating options for resolving their breach of duty and escalating to the serving of notices as appropriate</p>	<p>The RALUT have been significantly impacted by covid-19 due to loss of output by staff being on Special Leave or on reduced productivity due to limitations imposed by the HWE</p>	<p>GREEN</p>	<p>Joseph Kerr</p>	<p>Ongoing. However, following a change of policy by the Board the team will no longer be re-iterating options. If the breach has not been resolved the case will progress to the issue of a section 26C(1) suspected breach of duty notice.</p>
<p>1/6 Ongoing - Follow-up action on all 2017 and 2018 returners who were in breach on more than one occasion, to progress cases through the section 26C to 26H enforcement provisions if they have failed to resolve the situation at their own hand.</p>	<p>The RALUT have been significantly impacted by covid-19 due to loss of output by staff being on Special Leave or on reduced productivity due to limitations imposed by the HWE</p>	<p>GREEN</p>	<p>Joseph Kerr</p>	<p>Ongoing</p>

PERFORMANCE MEASURES -

Number	Aim	Baseline	Target/Indicator	Measure
1.1	Reduce number of vacant crofts	144 in March 2019	Reduce by 5%	Figure will be taken from the Register of Crofts. 'Vacant' will be defined tightly, as those not only legally vacant but also having no <i>de facto</i> owner occupier.

PROGRESS:

The team have been involved in meetings with Commissioners in relation to engaging with identified estates to have vacant crofts let. Following those meetings the team are currently engaging with these estates with a view to progressing a number of cases to the letting application/proposal process stage. In the first half of the year the Team have also served notice on landlords of 3 vacant crofts requiring letting proposals (1 has been approved and the let effected, 1 has been approved and the letting will be effected on 28 November 2020 and in the final case we are currently waiting for letting for the landlords proposals). In terms of taking on the letting of the croft at the Commission's own hands under sections 23(5B) and (5C) the team progressed the letting of a vacant croft in Lewis, where the tenancy had been previously terminated under the section 11 unresolved succession provisions. They are also currently arranging for a selection interview for a vacant croft tenancy for candidates who successfully passed the sift, which will take place in the next quarter.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected	77	Initiate RALU correspondence with 100 new cases	Records of administrative action. Those contacted will include all those whose 2019 census indicated a possible breach for the first time, a selection of census non-respondents, and other cases generated by e.g. notifications or regulatory casework

PROGRESS

For the reason provided in page 6 the Commission will not be progressing the 2019 census cases at this time. They are however initiating correspondence with crofters who have been identified as being suspected of being in breach of duty following written information received under section 26A of the 1993 Act. The team received information on 3 such cases in the first half of the year which they are currently progressing.

Q1	Q2	Q3	Q4
GREEN	AMBER		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.3	Number of RALU breaches resolved by a crofter in breach of their residency duty taking up residence on their croft	32	Maintain or increase the number in 2019-20	Records of administrative action

PROGRESS

There have been no reported cases being resolved by the crofter taking up residence. The Team have however processed 4 applications for consent to be absent of which 3 were approved and one was refused. In addition, the Team processed and approved 2 applications for extensions of consent for absence.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure								
1.4	Number of RALU breaches resolved by assignation of the croft, or sale of an owner-occupied croft	28	Maintain or increase the number in 2019-20	Records of administrative action								
<p><u>PROGRESS:</u></p> <p>4 crofters resolved their breach by assigning in the first half of the year.</p> <p>Covid Effect</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Joseph Kerr</p>					Q1	Q2	Q3	Q4	AMBER	GREEN		
Q1	Q2	Q3	Q4									
AMBER	GREEN											

Number	Aim	Baseline	Target/Indicator	Measure								
1.5	Number of RALU breaches resolved by sublet, or by short-term lease of an owner-occupied croft	88	Maintain or increase the number in 2019-20	Records of administrative action								
<p><u>PROGRESS</u></p> <p>7 crofters resolved their breach of by subletting in the first half of the year. The Commission changed their policy on subletting during the first half of the year in that they will not normally approve sublets or short term lets for a term of more than 5 years. As a result, we can anticipate a greater number of modifications and refusals of applications for terms longer than 5 years moving forward.</p> <p>Covid Effect</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>AMBER</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Joseph Kerr</p>					Q1	Q2	Q3	Q4	AMBER	AMBER		
Q1	Q2	Q3	Q4									
AMBER	AMBER											

Number	Aim	Baseline	Target/Indicator	Measure
1.6	Number of RALU breaches concluded by tenancy terminations, approval of letting proposals etc	6	Maintain or increase the number in 2019-20	Records of administrative action

PROGRESS

The Commission issued 1 tenancy termination Order in the first half of the year. There were a further 2 decisions to terminate tenancies made at Tier 3 which will result in 2 further termination Orders being issued in October, and a further case which will be escalated to tier 3 for a decision in the next quarter.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	GREEN		

Responsible Manager: Joseph Kerr

Our Outcome 2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE

Shared management and productive use of common grazings are important for the sustainability of crofting. The Commission works with grazings committees and crofting communities, providing both guidance and support, to ensure the effective management and use of common grazings.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
2/1 Ongoing - Contact all Grazings Committees whose terms are about to end, encouraging them to arrange election of a new Grazings Committee		GREEN	John Toal	Grazings Committees are still being contacted and advised that if willing to serve another term that the Commission is prepared to appoint the same members in terms of section 47(3) of Crofters(Scotland) Act 1993. There are currently 477 committees in office.
2/2 Ongoing - Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification.		GREEN	John Toal	The guidance continues to be the main reference point and will be used for smaller items of guidance and training initiatives over the coming year
2/3 Ongoing – Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.		AMBER	John Toal	The primary purpose of this is to enable shareholders to meet and appoint a grazings committee. It is not possible to do this at present.
2/4 Ongoing -Encourage grazings committees to adopt the revised template for grazings regulations.		AMBER	John Toal	Grazings Committee have been unable to meet during this quarter.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure								
2.1	Increase in number of common grazings with a Committee in office	485 Grazings Committees in office on 31 March 2020	The number of Grazings Committees in office	Administrative records								
PROGRESS												
<p>Measures put in place to enable the appointment of existing committees going out of office has allowed some committees to return and continue the management of common grazings. Currently there are 470 grazings committees in office. To date not all committees are taking up the option of the Commission appointing the same members for another term.</p> <p>Covid Effect It is difficult for shareholders in a common grazings that does not have an existing committee to appoint a committee due to covid 19 restrictions.</p>												
<table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>AMBER</td> <td></td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	AMBER	AMBER		
Q1	Q2	Q3	Q4									
AMBER	AMBER											
Responsible Manager: John Toal												

Number	Aim	Baseline	Target/Indicator	Measure								
2.2	Increase in number of grazings committees who have adopted the new template regulations	6 in 2019-20	Commission approvals of new regulations submitted by committees based on the template.	Number of new grazings regulations approved which are based on the new template.								
PROGRESS												
<p>Covid Effect It has not been possible for possible for grazings committees to meet during this period. Consequently, there have been no new requests in this period. However, there are 10 already submitted at various stages of progress, although some will still require further consultation with grazings committees.</p>												
<table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	GREEN	GREEN		
Q1	Q2	Q3	Q4									
GREEN	GREEN											
Responsible Manager: John Toal												

Number	Aim	Baseline	Target/Indicator	Measure
2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings	33 in 2019-20	The numbers of townships where grazings issues have been assisted, progressed, or resolved, following Commission engagement.	Records of administrative action. (Note that this covers different types of Commission intervention: getting Committees into office; resolving medium size queries; and helping to address deeper divisions.)

PROGRESS

8 cases have been recorded.

Covid Effect

While there has been little opportunity for grazings committees to meet during this period, this does not necessarily entail that disputes will not arise in relation to committees and their management of common grazings.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure
2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	14 in 2019-20	Number of townships researched	Records of administrative action

PROGRESS

Three common grazings have had their shareholding situation updated during this period

Covid Effect

Less likely to be requested by committees but still possible for there to be circumstances in which they will be requested.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure
2.5	Develop and assist with training and other events for grazings committees and the management of common grazings	9 in 2019-20	Number of events	Records of administrative action
<u>PROGRESS</u>				
Covid Effect				
There is less likelihood of continuing the interactive training events for grazings committees that were initiated last year. However, recent discussions have taken place with SAC who have been encouraged to use FAS funding for common grazings development. Consideration is being given to different on-line and digital training and events that should be beneficial to common grazings and those responsible for their management.				
Q1	Q2	Q3	Q4	
AMBER	AMBER			
Responsible Manager: John Toal				

Our Outcome 3. CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY

We are committed to providing a quality and professional service to all our customers, especially those that make regulatory applications to us or who send us applications for registration of their croft, for us to review and forward to the Registers of Scotland. We are committed to fairness in all our decision-making, and we monitor turnaround times for all the different types of process.

We are also committed to continuous improvement of our internal processes, to deliver consistent and fair decision making that is compliant with legislation, and that also delivers value for the public purse. By changing and expanding how we deliver our services to customers, we can provide a faster, more consistent and more informative service to our customers, thereby improving customer satisfaction and confidence.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
3/1 May 2020 – Next build of the Crofting Information System released and upskilling delivered	IS Team have needed to spend much time addressing connectivity issues for Home Working	RED	Aaron Ramsay	We have taken steps to reduce the calls on the system architect’s time, to allow him to complete the work required to prepare the new CIS system for testing. However, the original schedule has obviously been missed and the next revision of CIS is due to reach a testing phase in January 2021, with a full final build hoped for February 2021.
3/2 June 2020 – Extend to other regulatory functions (currently decrofting and division) the triaging process for identifying potentially contentious cases at an earlier stage of the process to manage customer expectations in relation to the time taken to process their case and potential outcome.		AMBER	Joseph	Subletting (section 27) and short term letting (section 29A) were identified as the two regulatory functions most suited for inclusion in the triage process. A number of tasks Were completed including a review of the delegated parameters, updating the check lists and the creation of a triage letters and leaflets in relation to both functions. Anticipate that this will go live in October.
3/3 June 2020 – Review website to minimise the number of incorrect forms received		GREEN	Mary Ross	Application and Notification Forms are reviewed and updated on an annual basis. The original target date has not been met but plans are in place to review all forms in the current Financial Year, as part of the introduction of interactive pdfs.

3/4 June 2020 – Confirm and roll out system to measure customer satisfaction on Regulatory Applications	Suspension of the customer satisfaction forms at end of March 2020 due to centralised issuing of mail.	GREEN	Mary Ross	Customer Service Forms issued for a four month period up to March 2020. A small sample of completed forms were received and all of the forms received were positive.
3/5 July 2020 – Establish a consistent MI suite for all areas of the Commission for the annual report, leading with Regulatory.		GREEN	Aaron Ramsay/Mary Ross	Case Progression Report is being produced and issued on a monthly basis. Report is available to show the cases that have been received more than 12 months ago but have not yet been discharged. Work has commenced on an exercise to investigate and prioritise these cases.
3/6 Sept 2020 - Undertake review of “Division by Tenant” process (section 9)		GREEN	Joseph Kerr	This will be undertaken in conjunction with the work of the sub-group of the short term working group looking at the conversion of the Commission regulatory application forms to a pdf format. The sub-group meets on a weekly basis.
3/7 Sept 2020 – Confirm with Sponsor funding availability for progressing online applications, and agree what direction this work will take between the options presented with planning in place.		ACHIEVED	Aaron Ramsay	This will be delivered as one of the one-off projects funded with the additional resources provided by the SG in the current year. The option of a full online website was evaluated and decided that it carried too much risk and cost potential, however the option of modernising the PDFs to make them more digital would give a substantial proportion of the benefits. This work is now underway with an aspiration to revise all the non-notification application types by End of March 2021.
3/8 Dec 2020 – Undertake review of “Letting of vacant crofts” process (section 23(3))		GREEN	Joseph Kerr	This will be undertaken in conjunction with the work of the sub-group of the short term working group looking at the conversion of the Commission regulatory application forms to a pdf format. The sub-group meets on a weekly basis.

3/9 Dec 2020 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented	A pause to this work due to Registers of Scotland staff initially not being able to work remotely.	AMBER	Mary Ross	Improvements have been discussed with Registers of Scotland. This task is ongoing. . A group is to be established to take this forward including the issue of online payments.
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PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)	Figures for 2019/20: Assignment 8 weeks Decrofting CHS 8 Decrofting Part 13.3 Letting by Landlord 9.4 Owner Occupier Letting 11.4	Reduce median turnaround times for the main regulatory functions	Time taken from application to notification of decision, <i>for cases where no registration is required</i>

PROGRESS

Covid Effect

Following a slight dip in turnaround times at the last quarterly report, the latest report shows that the turnaround times have stabilised. Pressure of work remains high, with new applications being received continuing to increase.

Q1	Q2	Q3	Q4
AMBER	GREEN		

	Approx Number of cases per year	Median weeks (2019-20)	Median weeks (2020-21 to date)
Assignment	c125	8	8
Decrofting Croft House Site	c50	8	7.4
Decrofting Part Croft	c100	13.3	16.7
Letting by Landlord	13	9.4	8.9
Letting by Owner Occupier	c10	11.4	-11.9

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.2	Decrease in number of regulatory cases outstanding after 12 months	Not available	Reduce number of cases still live after 12 months	Number of live regulatory cases (of all types, including those involving registration) on 31 March, which are more than 12 months since first received by the Commission

PROGRESS

Covid Effect

A report has been produced allowing the Regulatory Team to identify and investigate the cases which have not been discharged within 12 months. At the end of August there were 122 cases showing, however 56 of these cases were being delayed due to external purposes, where we are awaiting information from the applicant, agent or third party. The remainder need Commission action and staff have been asked to prioritise these cases. It should be noted that these cases are complex and may take a number of weeks to reach conclusion.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.3	Customer satisfaction rates	Not available	% of respondents reporting satisfaction to the CC enquiries	The customer satisfaction system was launched towards the end of 2019-20 but no baseline can be calculated from the limited data available so far

PROGRESS

Covid Effect

Customer Service Forms are now being issued to applicants for all decision types. A small sample of completed forms have been received and all of the forms received were positive.

Q1	Q2	Q3	Q4
AMBER	GREEN		

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.4	Decrease in number of general enquiries	2,394 in 2019-20	Reduce number	Number of general enquiries received

PROGRESS

Covid Effect

There was a slight decrease from the number of enquiries received during 2019/20 compared to 2018/19. A further reduction is expected following the uploading of the apportionment orders to the online Register of Crofts.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.5	Reduce number of applications rejected because of use of an incorrect form	48 forms were rejected in 2018/19 due to selecting an incorrect type	Reduction in incorrect form types submitted	Customers are better guided to choose correct application form type, reducing rejected applications and saving resource

PROGRESS

Covid Effect

No update yet. A CIS report will need to be developed to extract this information.

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Mary Ross

Our Outcome

4. THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS

The Commission has a responsibility to promote the interests of crofting, and to advise the Scottish Government about crofting issues. We welcome collaborative initiatives with other organisations in order to contribute towards the sustainable development of crofting

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
4/1 May 2020 – Advise Scottish Government of our views concerning their forthcoming National Development Plan for Crofting.	SG’s timescale for this publication has been put back by a few months	GREEN	Bill Barron	We have continued to engage with SG over the contents of the National Development Plan.
4/2 June 2020 – Joint Board level meeting with Land Commission Board members	pressure on how many matters can be included on Board agendas	AMBER	David Finlay	This has been postponed – no new date set yet.
4/3 August 2020 – Have a formal Commission presence at 6 agricultural shows across the Highlands and Islands.	All shows have been cancelled	RED	Bill Barron	It will not be possible to achieve this Milestone in 2020/21.
4/4 Sept 2020 - Publish a Commission paper on the Future of Crofting	March Mtg postponed and papers’ schedule disrupted	RED	Bill Barron / David Findlay/ John Toal	It is not feasible to deliver this in the current year. Instead, Commission staff have contributed to (a) the Law Society’s review of aspects of crofting law; (b) the Scottish Government’s National Development Plan; and (c) the Commission’s implementation of its expanded role of promoting the interests of crofting.
4/5 Nov 2020 – Commission paper on how crofting can maximise its contribution to protecting biodiversity and mitigating climate change.		ACHIEVED	David Finlay	Paper and presentation at October 2020 Board meeting.

There are no Performance Measures for Outcome 4

Our Outcome 5. OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE

By ensuring that our staff and Board Members have appropriate training and continued investment, we can develop a high-performing workforce. We will ensure that our organisation fulfils its legal requirements and contributes to the Scottish Government’s broader objectives for Scotland.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
5/1 April 2020 – Complete implementation of 2019 Staff Survey action plan.		ACHIEVED	Bill Barron	All actions have been fully or partially completed, and any outstanding points are to be built into a new Plan based on the 2020 survey. CEO reported to all staff about progress against the Plan on 13 October 2020.
5/2 May 2020 – Implement automated retention schedule procedures within revised CIS.		RED	Jane Thomas	This requirement has not been met because there has been no implementation of the next version of CIS. The delay is related to the extra work required of the Systems Architect due to the COVID-19 crisis.
5/3 June 2020 – Expand succession planning for key posts as set out in the Workforce Plan.		AMBER	Bill Barron	Not fully actioned, but staffing decisions take account of the long term effect on succession and resilience. In addition, the recruitment in the Western Isles should enable us to enhance resilience by recruiting at least one more gaelic speaker and perhaps another officer with experience of livestock. Temporary moves to cover a maternity leave have also helped spread experience.
5/4 Oct 2020 – Produce an internal plan for staff deployment and development, as set out in the Workforce Plan.		AMBER	Mary Ross	No update yet.
5/5 Mar 2021 - Conduct 2021 Staff Survey		GREEN	Bill Barron	The intention remains to conduct the 2021 survey in March 2021. In the meantime the 2020 survey was delayed from the spring and has been run in August 2020.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure								
5.1	Increase in staff engagement rating	51% in Spring 2019	Increase to 55%	Average scores for a set of fixed questions in the annual staff survey								
<p><u>PROGRESS</u></p> <p>Covid Effect</p> <p>Issue of staff survey delayed due to Covid-19. Survey was issued in August 2020 and the results are currently being analysed.</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>AMBER</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Mary Ross</p>					Q1	Q2	Q3	Q4	AMBER	AMBER		
Q1	Q2	Q3	Q4									
AMBER	AMBER											

Number	Aim	Baseline	Target/Indicator	Measure								
5.2	Corporate carbon emissions	15.2tCO2e in 2019/20	Maintain or reduce	Emissions from business travel by staff and commissioners								
<p><u>PROGRESS</u></p> <p>The Commission has calculated and submitted its Public Sector Report on Compliance with Climate Change Duties 2020 to the Scottish Government ahead of the 30 November deadline. It reflects overall carbon emissions of 15.2tCO2e (15.5tCO2e 2018/19). This represents a minor improvement on 2018/19. Overall flight travel reduced while car mileage has increased.</p> <p>When the figure for 2020/21 is eventually known, it will have fallen sharply because of Covid-19 restrictions on travel. As we only report on the figure one year in arrears, i.e. we would show the figure for 2019/20 in our annual report on 2020/21 this will take a while to filter through, but reference will be included within the narrative regards expectations.</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Bill Barron</p>					Q1	Q2	Q3	Q4	GREEN	GREEN		
Q1	Q2	Q3	Q4									
GREEN	GREEN											

'ROUND THE TABLE' – ORAL UPDATE

Strategic Risk Register (SRR)

		20-25	High																
		10-16	Medium																
		4-9	Low																
		1-3	Very Low																
Risk No	Corporate Outcome	Risk Description (what is the thing that could jeopardise the outcome being achieved?)	Potential Consequences	Untreated Score (how bad if we were doing nothing at all)			Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)	Current Control Actions in place	Current Score			Risk Movement	Additional Planned Actions	Achievable Score (once all our current plans are implemented)			Owner	Last updated	
				Impact	Likelihood	Total			Impact	Likelihood	Total			Impact	Likelihood	Total			
001	Crofts are occupied and managed	Not enough momentum and political will can be gained to see an improvement, and/or an increase in legal challenges slows process. Resources have been reallocated away from the RALU team since October 2019 and this has been exacerbated by the impacts of Covid-19.	Crofting will continue to decline with land not being managed and communities shrinking Reputational - seen to not be doing enough to address or conversely could be perceived as being too heavy handed. Managing Expectations - could expend a lot of resources but with little overall impact, crofting may continue to decline anyway. Financial - increased legal challenges could not only impact the resources but also have financial implications	4	5	20	An appropriate balance is found which sees real delivery on this outcome that is viewed in a positive light without any significant adverse affect on the resources and costs of the organisation.	Systematic approach for dealing with those who confirm through the census that they are in breach of duties. Established process for investigating breaches reported under section 26A of the 1993 Act. Resolving outstanding successions to croft tenancies. Videos made featuring Convenor and staff explaining the requirement to comply with statutory duties residence and land use duties and explaining options for resolving any breach. Increased staff resources within the RALU Team in September 2020 by the addition of one B1 Casework Officer who is currently receiving training on the work of the team.	4	4	16	Static	Priorities for expanding the RALU work have been discussed by a Short Tem Working Group. Targeted action with those who have repeatedly failed to return the census. Selected follow-up of resident non-users of their crofts Escalate knowledge from regulatory casework into enforcement action when appropriate. Consideration being given to the appropriate use of sublets; short term lets and consents to be absent, as short/medium term resolutions of absentee cases. It has been agreed to recruit an additional B1 Casework Officer to the RALU Team who will be based in the Western Isles. Envisage the new post will be in place in early 2021.	4	3	12	Head of Regulatory Support	Nov-20	
002	Common grazings are regulated and shared management practices are encouraged.	Changes in crofting practices and support see a continued decline and move away from common grazings being utilised and managed. Covid-19 pandemic causes difficulties to arrange meetings and form grazings committees. Covid19: reduction in resource capacity due to caring responsibilities and other aspects of home working	Common grazings will see a continued decline in use and management.	3	5	15	Grazing committees are enabled to generate a recovery in the productive communal use of common grazing land.	Template grazings regulations made available. Grazings guidance published February 2019. Direct support provided to grazings committees/ townships that encounter problems. Support and encouragement to get grazings committees back into office. Training for grazings clerks/committees. Survey of clerks being carried out to assess need and interest in training for digital meetings. New policy agreed to enable appointment back to office of outgoing grazings committees by Commission under powers of section 47(3) of the 1993 Act.	3	4	12	Static	Working for the improvement of schemes and support mechanisms that will help the maintenance and management of common grazings and encourage greater shareholder involvement and beneficial use of grazings. Examine existing records to provide a more accurate assessment of the number of common grazings recorded by the Commission. Further streamlining of delegated decision making. Consideration of whether the Commission's power to appoint a committee or constable under section 47(3) of the Crofting Act might be used to better effect in future to ensure that more grazings have a recognised structure for their management and maintenance.	3	3	9	Head of Policy	Nov-20	
003	Crofting is regulated in a fair, efficient and effective way	Volume and complexity of casework exceeds CC's ability to deliver high standards of customer service due to budgetary constraints - currently exacerbated by the effects of Covid-19.	Reputational - decline in performance either in quality of decision making or turnaround times. Resources - staff may feel under increasing pressure and stress may become an issue. Sponsor Relationship - decline in performance may lead to tension between the Commission, Sponsor Branch and the Cabinet Secretary.	5	5	25	Continued process improvement supported by use of digital service delivery provide enough capacity to absorb future budget pressures whilst maintaining good service provision. Additional temporary resources to be made available during pandemic to mitigate the effects of home working, since March 2020 the number of applications received remains higher than the number of applications being discharged. Daily support for staff to progress work by way of Skype and Teams during Covid-19 period.	Provision of Register of Crofts Online, including Decrofting directions hosted publicly. Ongoing process reviews Monitoring of turnaround times through KPI quarterly report to provide early warning of issues. During Covid-19, weekly monitoring of application/notification receipt and allocation of applications/ notifications to staff. Attention being given to cases that have been outstanding longer than 12 months but have not yet reached conclusion. Regular Financial Forecasting which includes scenario planning for future More flexible handling of General Enquiries IS team providing technical support as homeworking issues arise. From 1st May 2020 all new decrofting directions and apportionment orders are added to the ROC online as they are completed	5	5	25	Increasing	Additional A3 resource to be brought into the team, using agency staff initially (until the budgetary position for 21/22 becomes clearer). A range of short term projects being taken forward in 20/21 to improve various aspects of our efficiency, especially regarding IT New version of CIS expected early 2021 Further expansion of information available through ROC Online with historic apportionment orders prior to May 2020 being added. Ongoing work with RoS to improve registration processes Full review of application forms to make them more fit for purpose, with planning ongoing to facilitate a full digital return to remove the requirements for manual duplication of work entering into the CIS Revision to Crofting website to improve application form selection to reduce applications on incorrect forms planned Limited trial of digital payments headed up by head of finance with a limited number of trusted agents. If successful this will lay the groundwork to examine digital payments for all Further review of MI products, including scoping missing requirements. Realisation of benefits from SG improvement work group.	5	4	20	Head of Operations & Workforce Head of Digital & Improvement	Oct-20	

20-25		High		Strategic Risk Register (SRR)														
10-16		Medium																
4-9		Low																
1-3		Very Low																
Risk No	Corporate Outcome	Risk Description (what is the thing that could jeopardise the outcome being achieved?)	Potential Consequences	Untreated Score (how bad if we were doing nothing at all)			Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)	Current Control Actions in place	Current Score			Risk Movement	Additional Planned Actions	Achievable Score (once all our current plans are implemented)			Owner	Last updated
				Impact	Likelihood	Total			Impact	Likelihood	Total			Impact	Likelihood	Total		
004	We inform and support the future of active crofting	Conflicts arise due to clash between the crofting system, the modern environment and economy and different stakeholder agendas. Failure on the part of the Commission to agree any collective view on supporting the future of active crofting.	Crofting legislation and other systems don't improve. SG, SCF and NFUS have low regard for the Commission.	4	3	12	Commission positions on key issues for the future of crofting are developed, involving discussion with partner organisations. Commission implements an effective 'development' role, including the outward facing posts in the Western Isles	Additional funding provided to the Commission to expand our role of developing and promoting crofting Input provided to SG drafts of the National Development Plan Regular meetings between Convener/CEO and key stakeholders. Participation in Cross Party Group on Crofting and Crofting Stakeholder Forum. Web presence and videos. Input given to Law Society review of aspects of crofting law	4	2	8	Static - but the focus has changed from the 'future of crofting' work to the National Development Plan and the Commission's expanded role	Recruit external facing posts in the Western Isles and work with the postholders and partner organisations to implement a new stream of Commission work Draw conclusions from CC "future of crofting" discussions and consider whether to issue a public statement about the issues needing to be addressed Promote the interests of crofting in further engagement with SG about support for crofting.	4	2	8	CEO/ Solicitor/ Head of Policy	Nov-20
005	Our workforce have the right skills and motivation to perform well and our governance processes are best practice	Inability to recruit and/or retain good/experienced staff, because of budget constraints or for other reasons. Loss of valuable crofting knowledge. Resources - staff may feel under increasing pressure and stress may become an issue.	Impact on any of the above corporate outcomes, as a result of one or more teams being short of experienced staff. Loss of valuable crofting knowledge. Resources - staff may feel under increasing pressure and stress may become an issue.	4	4	16	A staffing structure which allows delivery of all key outcomes within budget set by SG. Training and succession plans in place to provide career development opportunities and processes in place to ensure resilience in terms of knowledge management.	Workforce plan to support training and succession planning. Prompt recruitment when necessary to fill posts. Staff Survey conducted in August 2020. Representations made to SG about future budgets. Regulatory allocation of work moved to pooled work model to assist with fair distribution of work. Training Officers in place and training material being reviewed and made more accessible.	4	4	16	Static	Workforce plan to be integrated with financial planning, and used as an ongoing tool. Workforce Plan to be updated to take into account current circumstances relating to the addition work resulting from additional funding and the ongoing pandemic. Review and continue to progress workforce plan action plan. Actions for 2020 Staff Survey developed and implemented.	3	3	9	Head of Operations & Workforce	Oct-20
006	All aspects of the Commission's objectives	Covid-19 and the closure of Great Glen House has hampered delivery of the Commission's work as a result of: loss of staff availability through caring responsibilities and other home working constraints; IT connectivity challenges; lack of access to GGH facilities such as postal services, printing, meeting rooms		5	5	25	All Commission processes operating adequately by means of remote working combined with occasional GGH access.	Business Continuity Plan activated initially, lessons learned log complied. Health & Safety committee strengthened, new policies developed and H&S monitoring in place, both for staff in the office and for those working at home. IT equipment and office equipment supplied to staff's homes, and adjustments made to system and firewall to permit more efficient access. Additional server purchased to enhance performance, and much individual advice given to staff about resolving connectivity issues. Teams used regularly for meetings including Board and AFC meetings. Partial reopening of GGH agreed with NatureScot and implemented from the start of November 2020. Throughput of regulatory work being monitored weekly. Bespoke continuity plans in place for Finance team.	4	5	20	New	Continual improvement to the performance of remote working and staff's experience of home working. Plans for gradual further return to GGH being developed in discussion with Nature Scot Short Term Working Group on Home Working and Remote Working considering the long term strategy Solution needed to how staff can make phone calls to crofters and other customers when required	3	5	15	CEO	Nov-20

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CROFTING COMMISSION MEETING

3 December 2020

Report by the Chief Executive

Recommendations of the Short Term Working Group on Duties

SUMMARY

For the Board to discuss and consider the recommendations of the Short Term Working Group on Duties.

BACKGROUND

It has been a consistent call of the Crofting Commission's Board that action to promote croft residency and active land use should be high on the Commission's list of priorities. The Board has responded to the Commission's enhanced budget allocation by indicating that some of this new allocation should be used to promote residency and active land use and build upon the existing work of the Commission's residency and land use team. A working group comprising several Commissioners, assessors and officials was set up in July 2020 to examine how the Crofting Commission could take forward its work in this area. The Group was chaired jointly by Billy Neilson (Commissioner) and David Findlay (Commission solicitor).

CURRENT POSITION

There have been three meetings of the group in July, August, and October. The paper at **Annex A** sets out the draft recommendations of the group for the Board's considerations. The paper is at the draft stage at the moment as a further meeting of the Duties Working Group is scheduled to be held on 23 November 2020 where these recommendations will be discussed and finalised. We will provide an update to the Board on any significant changes to the recommendations emerge as a result of the November meeting.

Impact:	Comments
Financial	<p>There will be costs involved in taking on additional resources to expand the work of the RALU Team. There may also be additional costs involved in identifying, investigating, and enforcing compliance in relation to breaches of duty in relation to failure to cultivate and maintain, and neglect and also in analysing any aerial data supplied from RPID. It is important to be aware that a medium to long term financial commitment is required for this due to the length of time it takes to process duties cases and to achieve outcomes/change behaviours.</p>
Legal/Political	<p>Implementing the proposals will mean the Commission expanding the work of the Team in terms of:</p> <ul style="list-style-type: none"> • Increased use of the section 26A to 26J enforcement provisions relating to breaches of duties by owner-occupiers; • Increased use of the section 26A to 26H enforcement provisions relating to breaches of by tenants. <p>There is an increased risk of obtaining more appeals to the Scottish Land Court in respect of disputed breaches of duty. There are also some uncertainties regarding the legislation.</p> <p>A longer term investment in duties work will over time result in enhanced residency on crofts and more active use of crofts, both of which will strengthen crofting. It will also result in new entrants to crofting, though some of the work will involve assignments, sublets and individuals taking steps to resolve breaches of duty.</p>
HR/staff resources	<p>In recognition of the expansion of the work of the RALU Team, there will be a requirement to recruit an additional B1 to be based in the Western Isles.</p>

RECOMMENDATION

For the Board to consider whether to accept and implement the recommendations of the Short Term Working Group on Duties set out in the paper at Annex A.

Date 13 November 2020

Author David Findlay, Solicitor

Recommendations of the Short Term Working Group on Duties

1. The residency and land use team will target non-returners of the annual notice, once they have received information from the Commission's IS team, with greatest priority being given to those who have repeatedly failed to return a notice and whose contact addresses would clearly indicate that they were in breach of the duty to be ordinarily resident.
2. The team will place equal focus on owner-occupier crofters as croft tenants, as the scheme of the 1993 Act is that both tenants and owner-occupier crofters are subject to crofting duties. Unfortunately, owners and "landlords" of vacant crofts are not subject to crofting duties. It is recommended that the board considers its policies on the letting of vacant crofts, which is far from straightforward where the owner physically (if not legally) occupies the croft and works it. In particular, it is recommended that the Commission develops a strategy requiring owners and landlords of vacant crofts, or parts of crofts, to let the croft where the owner or landlord has little physical connection with, and makes little use of, the croft.
3. Although the timescales for carrying out duties work are largely determined by statute, and the period given in undertakings to take up residence or carry out works must be reasonable, it is considered that action in respect of suspected non-residence could be streamlined to progress more quickly to the stage of issuing a written notice of suspected breach of duty, whilst action in respect of suspected non-cultivation & maintenance, and misuse & neglect would require further investigations before the Commission could proceed with a notice of suspected breach of duty.
4. Officer resources will be dedicated to dealing with all referrals from casework (decrofting and division applications principally) so that where information relating to a possible breach of duty emerges during the course of an application, it will be investigated by the residency and land use team.
5. The residency and land use team will balance work on residency (absenteeism) and land use, recognising that whilst action on residency easier to target, any additional resource in the residency and land use team should target land use as well as non-residency.
6. The action on land use will focus mainly on failure to keep a croft in a fit state for cultivation, because legislation sets out that in determining this, regard is to be had to whether appropriate measures, including drainage, are routinely undertaken, "where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes and harmful weeds". This would require the Commission to establish:
 - a. that there is an issue with a croft being overrun with, for example, bracken or rushes, or being waterlogged as a result of drainage;
 - b. that it is requisite and practical to carry out measures to clear weeds etc.

The Commission will use aerial photography to be made available by RPID to assess where particular areas of land within townships would appear to be overrun with weeds, bracken, and rushes. It will use the Crofting Register and any other available mapping resources to determine whether any such land relates to a croft and who the crofter/owner-occupier crofter (or owner/landlord of the croft if vacant).

In the first instance, the Commission will liaise with RPID to obtain the use of the photographic data through a data sharing agreement.

7. Where a croft is in a state that it cannot be used for cultivation, it is a very visible sign both within the crofting community and to external observers that it is in a state of neglect. By contrast, it is difficult evidentially to prove neglect. Occasional grazing by sheep to keep weeds down would probably pass as “cultivation”. It is considered that the work of the Commission should focus on the more visible signs of neglect, due to failure to cultivate, rather than whether the requirements of GAEC are being complied with (which are difficult to prove evidentially).
8. One of the new posts in the Western Isles will engage with grazings committees, crofting communities, assessors, and crofting estates, including community owned crofting estates. One of the main aims of such engagement will be to work with others to explain the benefits of active land use and croft residency, and what can be done to support this. The new post will also refer specific cases of apparent non-residency, failure to cultivate & maintain and neglect & misuse of land to the residency and land use team for further investigation.
9. The Commission will explore with our Compliance Hub the possibility of sharing annual returns for a particular area with area assessors, who might then be able to advise of particular cases within his or her knowledge.
10. The Commission will also explore whether anyone providing information under Section 26A of a suspected breach of duty, should be provided with anonymity. [This point was made by several assessors who were part of the working group.]
11. The working group identified unused apportionments as an issue that merits further investigation. The group recommends that the board revisits its policies on granting apportionments and, in particular, considers whether more apportionments should be termed for a particular period (depending on the reasons why the apportionment is sought) and whether apportionments should be subject to reviews at fixed intervals. It is recognised that reviews of apportionments would require an increased staff resource.
12. Counsel’s advice regarding crofting duties and grazing rights is awaited. Future action by the team in respect of grazings shares that are not being used will await Counsel’s opinion.

REPORTS FROM HEADS OF TEAMS - ORAL

- (a) *IS Team***
- (b) *RALU & Reg Support***
- (c) *Operations & Workforce***
- (d) *Grazings & Policy***

REPORTS FROM SHORT TERM WORKING GROUPS - ORAL

- (a) *Application Forms Redesign Group***
- (b) *Women and Board membership***
- (c) *Remote working and home working***

CROFTING COMMISSION MEETING

3 December 2020

Report by the Chief Executive

Report on Progress Against Strategic Outcomes

SUMMARY

This paper invites the Board to consider an overview of progress against the aims set out in the Corporate Plan.

BACKGROUND

In February 2020, Scott-Moncrieff submitted a generally favourable review of Best Value in the Crofting Commission. However, the report recommended that *“In addition to the regular reporting of performance measures and milestones, management should report into the governance structure on the overall progress against the strategy, utilising the corporate outcomes as a basis for reporting.”* Management have accepted this recommendation and it is proposed to report the overall progress against the Corporate Strategy to the Board, every six months.

The Commission’s Corporate Strategy is set out in the Corporate Plan, which has to be produced every five years and must be agreed by the Cabinet Secretary before it is published. The current Plan, which runs to 2022, was initially approved in 2017, and revised in 2019 to better reflect the current Board’s priorities, including their emphases on residency and land use and on communications with crofters, including through assessors.

The Plan identifies a number of success factors for each outcome, and these are the basis for the attached report.

Of course, the Plan makes no mention of adapting to Covid-19 or of the expanded development role.

PROGRESS AGAINST CORPORATE OUTCOMES

The attached report (**Annex A**) describes overall progress against the aims set out by the Board in the Corporate Plan. As this is the first such report, we have reflected on progress made throughout the term of this Board, as well as the latest 6 month period. We have attempted to give a general overview, mostly in text, to supplement the more detailed facts and figures contained in the quarterly KPI reports.

IMPACT

The priorities and aims set out in the Corporate Plan provide the context for the allocation of the Commission’s resources on an ongoing basis.

RECOMMENDATION

The Board is invited to comment on the report and give a steer on the priorities for the next 18 months.

Date 16 November 2020

Author Bill Barron, CEO

PROGRESS AGAINST CORPORATE PLAN OUTCOMES AND SUCCESS FACTORS

<i>Outcome and Success Factors from 2019 Corporate Plan</i>	<i>Overall Progress</i>
<p>Outcome 1: Crofts are occupied and managed</p> <ul style="list-style-type: none"> • We see reported breaches of duty being resolved successfully with a positive outcome • We see a reduction in the number of vacant crofts • We see higher rates of residency and cultivation of crofts • We see a high return rate on the annual Crofting Census 	<p>The KPI reports record the RALU Team’s success against this measure: in 2018-19, 32 absentees took up residency on their crofts, 28 assigned their crofts, 88 sublet them, and 6 breaches were resolved through termination by the Commission. This work continues, and the RALU Team has also been engaging with selected estates and landlords of vacant crofts. A recent Board decision to limit the use of sublets as a way of resolving breaches should help the RALU Team’s work to have more lasting beneficial impact.</p> <p>We do not have effective measures of the overall rates of residency and cultivation across the crofting counties, though we continue to see a relatively high proportion of census respondents self-reporting that they are complying with their duties. However, despite the increased activity by the RALU Team, it is not possible to have confidence, let alone evidence, of an overall improvement in residency and land use – it is perfectly possible that the Team’s gains in a few hundred crofts may be outweighed by reverses elsewhere. The Commission has therefore agreed to increase the RALU Team’s resources and to broaden its work.</p> <p>The response rate fell dramatically for the 2017 census (spring 2018), but has since recovered to the higher level seen in 2016 (76% response rate).</p>
<p>Outcome 2: Common grazings are regulated and shared management practices continue</p> <ul style="list-style-type: none"> • We see an increase in adoption of the new grazings regulations • We see an increase in the number of regulated common grazings • We see an increased number of common grazings registered on the Crofting Register 	<p>In 2019/20, proactive work by the grazings team secured a significant increase in the number of grazings committees in office, and they continue to focus on this despite the issues resulting from Covid restrictions in the crofting communities. Revision of grazings regulations in the light of the new template has been gradual but steady. The team continue to give practical assistance and advice to grazings committees and shareholders as necessary.</p> <p>The Commission has not made this a priority and only one additional grazings has been registered since 2016. The Commission is about to launch a review of this work</p>

<i>Outcome and Success Factors from 2019 Corporate Plan</i>	<i>Overall Progress</i>
<p>Outcome 3: Crofting is regulated in a fair, efficient and effective way</p> <ul style="list-style-type: none"> • We see improved turnaround times for Regulatory applications • We see improved quality of applications and improved Customer Satisfaction rates • When our decisions are challenged, the great majority of them will be upheld by the Land Court • We see an increase in services available to crofting communities and other stakeholders through digital delivery • Empowerment of staff to take decisions at the appropriate level, continues to enhance customer service 	<p>The improvement of the regulatory services to customers has been a consistent priority for the Board throughout its term, and especially since the ‘backlog’ difficulties of summer 2018. Considerable progress has been made on a number of fronts:</p> <ul style="list-style-type: none"> - The Tiered system of decision making is now well established and working well. - Priority has continually been given to the staffing of the regulatory team, and in the last year dedicated resources have been devoted to training. The number of cases being processed was at a high level in both 2018/19 and 2019/20, though it will decline this year because of the impact of Covid-19. Turnaround times have improved. - Improvements have been made to the processes for handling difficult cases. In particular, the publication of parameters and the triaging system have increased the overall speed of responses, by anticipating and resolving problems at an early stage. - The Register of Crofts went online in 2017 and details of decroftings were added in 2019. - The Legal and Regulatory Support team have worked hard to ensure decisions are soundly based in the law and explained in strong grounds. Only two appeals have gone against the Commission in the 3½ since the current Board took office. - An improvement project in autumn 2019 identified a number of smaller areas for improvement, which have been implemented. - The initial responses to the Customer Satisfaction questionnaire were very favourable. - We have continued to handle complaints and cries for help with sensitivity and skill. The number of complaints being upheld is currently very low. <p>The current priority is to build on these improvements through delivering interactive application forms and an improved release of CIS. Work on both of these is ongoing.</p>

<i>Outcome and Success Factors from 2019 Corporate Plan</i>	<i>Overall Progress</i>
<p>Outcome 4: The future of active crofting is supported by well-informed engagement with stakeholders</p> <ul style="list-style-type: none"> • We see an increase of collaborative working with Highlands and Islands Enterprise and other stakeholders, on joint initiatives • Crofters and others engage with Commissioners and assessors in an open and constructive debate about the future of crofting. • There is continued recognition of the value of crofting in sustaining biodiversity and reducing food miles 	<p>Perhaps the Commission's main achievement under this heading has been to restore our credibility. The current Board took office in 2017 at a time when the Commission was poorly regarded by many crofters and crofting organisations, and the new Board made it a priority to be open for dialogue with crofters, for example by attending shows and hosting public meetings. Staff and commissioners have played an active role in the Cross Party Group, the Crofting Stakeholder Forum, the Crofting Bill Group and the Law Society review of aspects of crofting law. We have had an active presence on social media, upholding the values of crofting and of the Commission. As a result, while we still incur criticism for some of our decisions, the Commission's voice now carries weight and respect.</p> <p>The resources recently provided by the Scottish Government for an expanded development role provide the opportunity for the Commission to progress Outcome 4 in new ways.</p> <p>However, there have also been disappointments. The Commission has not taken forward any substantial joint work with HIE or the Land Commission; It has proved difficult to maintain communications with assessors at the level we had intended; and the considerable work we put in to advising on a Phase 1 crofting Bill has been parked, along with the Government's progress towards that Bill. The Commission has not been much involved in the debates about the future of support payments, despite this being of huge significance for the future of crofting.</p> <p>The Commission has discussed how crofting can respond to the biodiversity and climate change crises, but arguably could take a stronger public lead on these issues.</p>

<i>Outcome and Success Factors from 2019 Corporate Plan</i>	<i>Overall Progress</i>
<p>Outcome 5: Our workforce has the right skills and motivation to perform well, and our governance processes are best practice</p> <ul style="list-style-type: none"> • We see proactive Workforce Planning used within the organisation • Continued investment in the development of staff and the Board • We see increased job satisfaction across the organisation • We see robust risk management in line with best practice 	<p>A Workforce Plan was approved by the AFC in January 2020, and most of the actions in it have been implemented. The one gap – succession planning – is to be addressed in the next 2 months.</p> <p>In 2020 there has been renewed emphasis on training for regulatory staff and for Commissioners.</p> <p>The overall barometer provided by the annual Staff Surveys showed improvements in spring 2018, a deterioration in spring 2019 (following the ‘backlog’ of the previous summer) and then a marked improvement in 2020. Action plans to address the problematic issues are agreed with staff each year.</p> <p>Our risk management policy and processes are now embedded and working well, and were supported by the Assurance Analysis late in 2019. Audit reports have continued to highlight much good practice within the Commission, in areas such as our finance processes, efficient use of resources, GDPR/Data protection, complaints handling, and our Annual Report.</p>

CROFTING COMMISSION MEETING

3 December 2020

Report by the Chief Executive

Business Plan for 2021-22

SUMMARY

This paper invites the Board to give an initial steer on the priorities for inclusion in the Business Plan for the coming year.

BACKGROUND

The Commission's aims and objectives, as agreed with the Scottish Ministers, are set out in a Corporate Plan, published at least every five years. Each year, a Business Plan sets out in more detail the specific aims and targets for the year in question, to help deliver the overall Corporate Plan.

The Corporate Plan for 2019-22 and the Business Plan for 2020-21 can both be accessed from the Commission's website at <https://www.crofting.scotland.gov.uk/about-us>.

CURRENT POSITION

Officials will prepare a draft 2021-22 Business Plan for consideration by the Board at its February meeting. In the light of that discussion, a revised Business Plan will be prepared for approval by the Board at its March meeting, so that the Plan can then be published in April or May.

Each year's Business Plan is an opportunity to fine-tune the Commission's direction, and to set a new set of specific KPIs, in the form of milestones and targets. For 2021-22, we would envisage changes from the 2020/21 Plan, for various reasons:-

- To take account of the impact of Covid-19, for the first time
- To include new aims and objectives for the expanded development role
- Azets (formerly Scott-Moncrieff) have reminded us of the need for KPIs to reflect the organisation's highest priorities and to be as specific as possible
- This Business Plan will take us up to the date of the next Crofting Elections and close to the end of the period covered by the current Corporate Plan.

IMPACT

Each year's Business Plan is a key tool for prioritising the resources of the Commission for the year ahead. SMT will continue to manage the resources of the Commission to achieve the aims set out in the Plan.

RECOMMENDATION

The Board is invited to advise on its priorities for the next 18 months, to inform the drafting of the Business Plan for 2021-22.

Date 16 November 2020

Author Bill Barron, CEO

CROFTING COMMISSION MEETING

3 December 2020

Report by the Chief Executive

CHANGE TO PROCEDURE OBJECTIONS, RPID REPORTS AND CASEWORK PAPERS

SUMMARY

To seek the Board's approval to implement changes to the processing of regulatory casework in relation to (a) applications for a decrofting direction and (b) applications for the Commission's approval or consent i.e. those cases which come under the statutory provisions set out at section 58A of the Crofters (Scotland) Act 1993

1. BACKGROUND

1.1 PROCEDURAL REVIEW

Officials have carried out a review of the following stages of the regulatory application process:

- Dealing with objections received
- Gathering further evidence on the application through commissioning a report from our RPID colleagues
- Serving a case paper prior to making a decision on the application.

We are seeking to establish a clear distinction and separation between each of the above stages in the process.

1.2 LEGISLATIVE

Section 58A(4) of the Crofters (Scotland) Act 1993 ("the 1993 Act") clearly sets out that an objection has to be received "...**within 28 days after public notification of an application.**" Section 58A(5A) of the 1993 Act allows the Commission to accept an objection submitted after the end of the 28 day period "...**if they consider that there is a good reason why the objection is late.**"

We are aware that these statutory provisions do not relate to all types of regulatory applications. For instance, decrofting applications are not dealt with under section 58A, but some of the same principles would apply.

1.3 LAND COURT CASE

In a recent Land Court case, the Commission's decision on a subletting refusal was successfully appealed, partly on the basis that the Commission had accepted late objections, both directly from objectors and from information relating to objections in the RPID report, without giving the proposed subtenant an opportunity to comment on these.

The Court criticised the Commission for failing to provide the proposed subtenant with an opportunity to comment on what could be considered late objections, which were nevertheless incorporated within the final case paper made available to Commissioners for their decision.

This was further exacerbated by serving the case paper for comment on interested parties, which included the SGRPID report and the late submissions, which led to a new round of responses by the applicant and objections from the parties.

We failed to establish a clear distinction between the closing of the objection stage (and giving all parties a fair opportunity for comment in terms of the principles of natural justice), the SGRPID evidence gathering stage, and the serving of the case paper stage.

2. DEALING WITH OBJECTIONS RECEIVED

All objections will have to be submitted within the 28 days period. If an objection is submitted outwith the objection period, the would-be objector will have to provide a good reason why the objection is late. Unless the Commission consider under section 58A(5A) of the 1993 Act that there is a good reason why the objection is late, the objection will be returned.

All valid objections (and any late objections that have been accepted) will be served on the applicant, and if applicable the proposed tenant or subtenant, for comment and the objector will be able to comment on the applicant's response. The objector will, however, not be able to bring in new objections at this stage (unless he/she provides a good reason for these not being submitted within the initial 28 day objection period). Rather, it would be to allow the objector to clarify any point in his objection as a result of the comments made by the applicant. It would not allow the objector to provide additional grounds of objection, which would essentially be a new objection.

Should the Commission continue to receive comments from either party, then the case will be escalated by the Casework Officer to the Commission's Legal and Regulatory Support Team (LRST) which, with the advice and support of the Commission solicitor, will agree a plan, specific to the case, for bringing the exchange to a close.

Once both parties (applicant and objector) have had the opportunity to comment on the objection and the applicant's response to the objection, the Commission will bring the consideration of the objection stage of the process to a close.

The Commission's solicitor comments as follows:

*"It appears implicit on one view that subsections (4) to (5A) of section 58A permit one of the entitled categories of person in subsection (4)(a)-(c) to submit **an** objection, either (i) within the 28 days or (ii) after 28 days, but only with good reason.*

It could be argued that the purpose of subsection (5A) is not to permit multiple objections from a single objector, it is to permit an objector who has missed the 28 day deadline for whatever reason to make an objection after days.

On this basis, any person commenting on an application who has done so already by way of an objection under section 58A would have his or her comments considered only if they contain factual information that is directly relevant to the decision-making process (and it would be considered only if it is strictly relevant). Such information would be considered under section 58A(7)(h) as "any other matter which the Commission consider relevant" rather than under section 58A(7)(f) ("any objections").

However, the Land Court appeared to take a different view in the Mangersta decision and appeared to accept that a single party could make multiple objections. It is suggested that the Commission makes a reference under section 53 of the 1993 Act asking the Court for guidance on the topic of late objections, as this is a matter of some importance to the Commission in how it processes applications and also in how it makes sure that the objection process does not become unnecessarily protracted. This is in the interests of speeding up the processing of complex cases.”

3. GATHERING FURTHER EVIDENCE ON THE CASE FROM SGRPID

As the dealing with the objection stage of the casework process is now concluded, the Commission will therefore no longer be providing SGRPID with a copy of the objections and responses received with a view to interviewing and seeking further information from the objectors, although it may choose to provide a copy of the correspondence to SGRPID to help provide a background to the application.

Therefore, where an SGRPID report is required, the Commission will seek factual evidence from the Reporting Officer on aspects relating to the croft and the application, to assist them in the consideration of the application. All cases where objections have been received will be escalated to LRST to discuss how and whether the issues raised in the objections will be incorporated into the information sought from SGRPID in the requested report.

This will not, however, be an opportunity for the objector to re-enter the process. The objection stage of the process has been concluded. It is also not the role of the SGRPID officer to make a decision as to whether there is a good reason for accepting a late objection; that is the role for the Commission to determine under section 58A(5A).

Therefore if, in the course of compiling the report, the SGRPID officer is approached by a current objector, or indeed any individuals seeking to submit an objection at this stage, they will be instructed to advise the parties involved to write to the Commission directly providing the reason(s) for their objection not being submitted within the 28 day advertised period. The Commission can then consider whether there is a good reason to accept a late objection under section 58(5A). (Although section 58(5A) does not apply to decrofting applications, the Commission has previously adopted a similar policy for considering late objections received following the advertising of any part and whole croft decrofting applications we receive). The late objection will either be rejected and returned, or accepted. If accepted, the applicant will be provided with an explanation of why the Commission decided to accept the late objection, and will be provided with an opportunity to comment on the objection. Once again, any response received will be copied to the objector who will be given the opportunity to comment specifically on the applicant's or other interested party's response to his or her objection.

The SGRPID report will therefore be a document they prepare as our agents at the request of the Commission and will contain responses to questions posed by the Commission that it considers relevant to its consideration of the application. This report's contents should be objective, including where it relates to opinion on matters which are based on the agricultural expertise and the technical experience of the Reporting Officers.

4. SERVING A CASEPAPER PRIOR TO MAKING A DECISION ON A CASE

As we will already have served the objections and any responses at the objection stage of the process, we do not propose to re-serve these objections as part of a case paper.

At this stage we propose that the Commission should simply serve the SGRPID report, along with the application form and any supporting documentation (and any Commission information, such as from its Register of Crofts or GIS team) for comment, on the applicant and other interested parties (including the landlord and owner of the common grazings and any objectors).

Any comments will be restricted to the content of the SGRPID report; all parties will be advised that this will not be an opportunity to re-state objections or to bring in new objections.

The SGRPID report will not include any reference to any objections or responses received. This should therefore significantly reduce the comments received at this late stage of the process.

In effect, therefore, what we currently refer to as the case paper will become an internal document to be used to assist the management and progressing of the case, and to assist the consideration of the case at the relevant tier of decision making under the Commission's Scheme of Delegation. Nevertheless, all interested parties will have had the opportunity to comment on all the material that is presented to decision makers, and no content will be included in the case paper that parties have not had the opportunity to comment on.

5. APPORTIONMENTS

We are not proposing that these changes will be applied to apportionments due to the unique nature of the apportionment function, whereby granting an apportionment of common grazing land for the exclusive use of an individual deprives others of the right to graze their stock on the apportioned land.

6. SUMMARY

- All objections will have to be submitted within the 28 days period. If an objection is submitted outwith the objection period, the would-be objector will have to provide a good reason why the objection is late. Unless the Commission consider under section 58A(5A) of the 1993 Act that there is a good reason why the objection is late, the objection will be returned.
- Cases will be escalated by the Casework Officer to the Legal and Regulatory Support Team, where required and following receipt of valid objections, to agree a plan, specific for the case, for bringing the consideration of the objection stage to a conclusion;
- Cases will be escalated by the Casework Officer to the Legal and Regulatory Support Team, where objections have been received, to discuss how and whether the issues raised in the objections will be incorporated into the information sought from SGRPID in a requested report;
- In the further evidence gathering stage, SGRPID reporting officers will no longer engage with objectors and the report will not include reference to objections and any responses received;
- At the closure of the further evidence gathering stage, the Commission will only serve the SGRPID report and the application form (including any supplementary information provided e.g. a copy of planning consent) to interested parties who will be advised to restrict comments to the content of the SGRPID report;
- The Commission will no longer re-serve objections and applicant's responses with the application form and SGRPID report.

- The case paper will no longer be a document issued for external use. The case paper will become an internal document used to assist in the processing and management of the case, and in the consideration of the case at the relevant tier of decision making.

Impact:	Comments
Financial	<p>Potentially positive if they help to contribute to ensuring that the Commission's decisions and processes can be more easily defended against future appeals.</p> <p>A section 53 reference to the Land Court will have some financial implications, particularly whether the Commission's application is done fully "in house" or if the Court requires Counsel to put an opposing view before it.</p>
Legal/Political	<p>By establishing a clearer distinction between the closing of the objection stage (and giving all parties a fair opportunity for comment in terms of the principles of natural justice), the SGRPID evidence gathering stage, and the serving of the SGRPID report for comment prior to the case consideration stages of the casework process. We will be:</p> <ul style="list-style-type: none"> • Addressing concerns raised by the Court in a recent appeal case, and • Reducing the scope for parties to introduce new objections mid-way through the processing of a case.
HR/staff resources	<p>No resource changes have been identified or sought at this time. We will however monitor the impact of these changes on the potential increase in demands on the work of the Legal and Regulatory Support Team, which will have a more "hands on" role in advising whether information introduced mid-way through a case process or towards the end of the process is relevant and should be forwarded to parties for comment and thereafter made available to the decision makers. A section 53 reference would have obvious time commitments for the Commission solicitor.</p>

RECOMMENDATION:

To discuss and agree whether to adopt the changes to procedures set out in this paper and in particular the changes to current process listed in the Summary (section 6).

To discuss and agree whether to make a reference under section 53 of the 1993 Act asking the Court for guidance on the topic of late objections (see *italic* part of section 2 above)

Date 1 November 2020

Author Joseph Kerr, Head of Regulatory Support

DATE OF NEXT MEETING – 4 FEBRUARY 2021 (TEAMS)

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