



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***BEAUFORT HOTEL, CULDUTHEL ROAD, INVERNESS***

***31 MARCH 2022***

**CROFTING COMMISSION MEETING  
BEAUFORT HOTEL, CULDUTHEL ROAD, INVERNESS  
31 MARCH 2022 AT 0900 hrs**

**AGENDA**

<b>1</b>	<b>APOLOGIES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>2</b>	<b>DECLARATION OF INTERESTS</b>	<i>Oral</i>	<i>Standing Item</i>
<b>3</b>	<b>MINUTES FROM 8 FEBRUARY 2021 <i>(already published)</i></b>	<i>Minutes</i>	<i>For info</i>
<b>4</b>	<b>REVIEW OF ACTION POINTS FROM PREVIOUS MEETING <i>(of 8 February 2022)</i></b>	<i>Paper</i>	<i>For info</i>
<b>5</b>	<b>MATTERS ARISING FROM PREVIOUS MINUTES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>6</b>	<b>REVISED CODE OF CONDUCT &amp; STANDING ORDERS</b>	<i>Paper</i>	<i>For info</i>
<b>7</b>	<b>COMMISSIONER DRAFT TRAINING PLAN</b>	<i>Paper</i>	<i>For discussion</i>
<b>8</b>	<b>UPDATE ON DELOITTE</b>	<i>Oral</i>	<i>Standing Item</i>
<b>9</b>	<b>TRENDS IN OUTSTANDING CASEWORK</b>	<i>Paper</i>	<i>For discussion</i>
<b>10</b>	<b>DIGITAL APPLICATIONS</b>	<i>Paper</i>	<i>Update</i>
<b>11</b>	<b>CIS UPDATE AND AUDIT PROGRESS</b>	<i>Paper</i>	<i>Update</i>
<b>12</b>	<b>STRATEGIC RISK REGISTER</b>	<i>Paper</i>	<i>For discussion</i>
<b>13</b>	<b>CROFTING COMMISSION POLICY PLAN 2022</b>	<i>Paper</i>	<i>For discussion</i>
<b>14</b>	<b>COMMISSION'S ATTENDANCE AT SHOWS 2022</b>	<i>Oral</i>	<i>For discussion</i>
<b>15</b>	<b>BUDGET 2022-2023</b>	<i>Paper</i>	<i>For info</i>
<b>16</b>	<b>UPDATE ON MEETINGS WITH SPONSOR DIVISION</b>	<i>Paper</i>	<i>Standing Item</i>
<b>17</b>	<b>DATE OF NEXT MEETING</b> 12 May 2022 – to be confirmed		
<b>18</b>	<b>ANY URGENT BUSINESS</b>		
<b>19</b>	<b>EXCLUSION OF THE PRESS AND PUBLIC</b>		

# APOLOGIES – ORAL

## **DECLARATION OF INTERESTS – ORAL**

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD BY 'TEAMS' AT 9AM, 8 FEBRUARY 2022

Present: Malcolm Mathieson Convener  
Mairi Mackenzie Vice Convener  
Andy Holt Commissioner  
Archie Macnab Commissioner  
Iain Maciver Commissioner  
David Campbell Commissioner\*(From Agenda item 5)  
Billy Neilson Commissioner  
Cyril Annal Commissioner

Bill Barron Chief Executive  
David Findlay Commission Solicitor  
Joseph Kerr Head of Regulatory Support  
Neil Macdonald Head of Finance  
Heather Mack Head of Operations: Regulation  
Aaron Ramsay Head of Digital & Improvement  
Finlay Beaton Head of Grazings & Planning

Members of staff, Scottish Government officials, and  
the public (Open Session)

### Minute Takers

Neil Macdonald Agenda items 1-12  
Heather Mack Agenda items 13-20  
Bill Barron Agenda item 21  
Aaron Ramsay Agenda items 22(a)-(h)

## **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting, including the staff, and members of the public observing, with a greeting in Gaelic, followed in English. Apologies were received from Commissioner James Scott and from Jane Thomas, Head of Business Support & Compliance.

## **2 DECLARATION OF INTERESTS**

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

## **3 BOARD MINUTES FROM 3 DECEMBER 2021**

The Board Minutes of 3 December 2021 had previously been circulated and approved, and subsequently published. They were brought to the meeting for information only.

#### 4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING 3 DECEMBER 2021

The majority of the Action Points have been completed, and the Chief Executive confirmed he was comfortable that the remaining two Actions would be discharged by March 2022.

#### 5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising.

#### 6 ANNUAL REVIEW OF STANDING ORDERS

The Standing Orders governing Commission meetings were reviewed by the Board on 3 December 2021. The Head of Business Support & Compliance had been asked to make several revisions.

The Board engaged in a robust discussion of the revised Standing Orders and proposed amendments. The Convener also referred to a detailed written submission from Commissioner Scott that was received prior to the meeting, that highlighted a number of recommendations including ensuring greater transparency regards the appointment of the Vice Chair of the Commission's Audit & Finance Committee.

The Convener highlighted that the aim of the review was to ensure that the Standing Orders were as unambiguous as possible to ensure the orderly and effective conduct of formal meetings of the Crofting Commission and of its constituted Audit & Finance Committee.

The changes proposed were accepted. In addition, the following recommendations were approved by either unanimous agreement or a majority consensus:

- **Section 2.6** – There was an in-depth discussion regards what constitutes an informal meeting between Commissioners, and a private meeting of the Board. For transparency purposes, it is important to distinguish between an informal catch-up between Commissioners and a specific private meeting of the Board. The consensus summarised by the Convener was that Section 2.6 should be adopted without adjustment and it was ultimately the Convener's responsibility and judgement to decide what should be recorded if a substantive discussion has taken place.
- **Section 2.8** – This section should also refer to Commission staff to ensure that there is not a two-tier system regards the submission of an agenda item. Agreed to amend third sentence from "*A Commissioner.....*" to "*Anybody.....*".
- **Section 2.9** – p "*(with the decision of the Chief Executive on the matter being final)*". Replace '*Chief Executive*' with '*Convener*'.
- **Section 2.9** – Concerns were raised within Commissioner Scott's written submission and by Commissioner Campbell that the scheduling of urgent business under '*Any Other Business*' should only be used in exceptional circumstances. A general discussion ensued and the Convener agreed that requests for an agenda item that are received 14 days prior to a meeting will be specifically detailed within the agenda, as per the current Standing Orders, rather than placing it under 'AOB'. Any urgent requests received after this timeline and approved for inclusion will whenever possible be added to the face of the agenda as an item, to ensure that Board Members are aware of issues in advance of a meeting.
- **Part 4 – Commission Committees:** It was agreed that there needs to be an unambiguous process regards appointing Members to the Audit & Finance Committee (AFC) and the selection of a Vice-Chair of the AFC. It was agreed that in future the Board would appoint a Commissioner to be Vice-Convener of the

Board and Vice-Chair of the AFC. Commissioner Mackenzie stated that this would be beneficial to whomever holds the role of Vice-Convener as they will have a clear understanding of AFC governance that will assist with future strategic decisions. The decision also provides transparency within the Board when considering the appointment of a Vice-Convener as the role will automatically include the expectation of 'heading up' the AFC. Advice should be sought to assure the Board that this decision does not contravene good governance principals.

#### **Footnote to Minute:**

*N.B. On circulation of the draft Minute, four Commissioners did not agree that the point raised on Part 4 of Standing Orders, on the position of the Vice Convener and membership of the Audit & Finance Committee, had been agreed as recorded. This issue will therefore be raised under Matters Arising at the public Board meeting on 31 March 2022.*

## **7 UPDATE ON MEETINGS WITH SPONSOR DIVISION**

The Convener referred to the paper provided by the Chief Executive to the Board, itemising recent meetings between the Commission and Sponsor Division. The Chief Executive directed the Board to the agenda items within the update regards meetings with the Cabinet Secretary and Sponsor. He noted that these meetings provided both support and also the scrutiny of the Scottish Government.

While acknowledging that the minutes issued from such meetings were drafted by Sponsor, Board Members raised concerns that there could be a substantial delay between meetings and receiving feedback. The Convener acknowledged that it had been his undertaking to provide a bullet point update to Commissioners after such meetings, and in the future would do so within 5 working days.

Commissioner Holt queried why the Scottish Government was not moving more swiftly to recruit suitable expertise for appointed Commissioner positions within the Board? The Convener confirmed that there were a number of governance steps that had to be completed to ensure that such appointments are fair and transparent. Along with Sponsor Branch, input is required from other departments such as the Public Bodies Unit. The appointment process was on schedule, and it is anticipated that candidates will have been identified by the middle of March, with interviews in early April, with the anticipation of post holder(s) being in place by May 2022.

The Chief Executive added that there was interplay between the crofting elections and Scottish Government appointments. Dependent upon the outcome of the democratic election process, skill sets had to be balanced within the appointment process (for example ensuring a Gaelic speaker is represented within the Board).

In summary, the Convener advised the Board that the Cabinet Secretary is being incredibly supportive of the Commission.

## **8 AUDIT & FINANCE COMMITTEE REPORT**

### **(a) Update**

Commissioner Neilson, in his role as Vice-Chair of the AFC, provided a brief update to the Board. He confirmed that the AFC were satisfied with the level of detail being provided within papers. Overall External Audit (Deloitte LLP) and Internal Audit (Azets Ltd) were satisfied with progress to date, but the caveat being this is subject to the scrutiny of evidence within agreed audit plans.

Commissioner Neilson advised the Board that staff turnover remained a key risk to the Commission with regard to the efficient and effective use of resources.

**(b) Draft Minutes from 26 January 2022**

The Head of Finance summarised each of the agenda items contained within the draft AFC minute from 26 January 2022.

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

The Convener urged Commissioners to complete the 'Board Member Self-Assessment Questionnaire' timeously.

**9 CONVENER REPORT ON APPRAISALS**

The Convener advised that the initial documentation has been completed for all Board members. He emphasised that each appraisal was confidential, the detail of which is only available to the Commission Head of Compliance who secures the information. It has been an interesting but difficult process to date given the restraints of Covid.

In response to Commissioner Campbell's query whether the Convener viewed the process as complete, the Board was advised that it is the intention of the Convener to physically meet with individual Board members (where practicable) by the beginning of March 2022 to finalise the process.

**10 REVIEW OF QUARTER 3 – 2021/22 PERFORMANCE REPORT**

The Chief Executive introduced the Q3 Performance report and highlighted 'red' and 'amber' indicators to the Board. It has been a difficult year to date regards staff turnover, which is the primary reason for the readjustment of expectations.

The Board was advised that there will be a lead in time regards reducing the regulatory backlog. Plans were in place regards the recruitment and training of staff, with five A3 Regulatory Administrators arriving on Monday 14 February 2022 as the first stage of a material recruitment package.

The majority of Commissioners raised concerns regards the current position of the regulatory backlog, which can be broadly summarised as follows:

- While welcoming the initial recruitment, the Board is aware of the continuing stress levels on Commission staff, particularly as there will be a training lead in time before recruitment has any significant impact upon workloads.
- The Commission's focus should be primarily on managing the backlog of regulatory applications, and resource should be focused within this operational area from other areas of the Commission.
- The Board is aware of the stress within the crofting community regards the extended timelines to process applications, and also the associated reputational damage for the Commission.
- The Commission needs to ensure that new colleagues are provided with support as crofting regulation is complex.
- The Board has to be clear regards setting the priorities and direction of the Commission. Various Board members have pushed for a resource review in recent years, and while the Commission budget has been increased for 2022/23, the Board must ensure that it continues to have constructive dialogue with the Scottish Government. (The current regular meetings between the Convener and the Cabinet Secretary for Rural Affairs & Islands being an example).



- The independent workforce review of the Commission, undertaken in Quarter 3, details a medium to long term outlook regards managing applications, but the Board is concerned about the short to medium term, and how these pressures will be addressed.
- The Board will review the additional resource and Senior Management re-structure proposals detailed within the agenda and direct the Chief Executive and Convener as a matter of priority to submit a detailed business case to the Scottish Government to secure full access to the draft budget outlined by the Scottish Parliament for 2022/23.
- The Commission must manage the expectations of the crofting community.

The Convener summarised the discussion stating that the Commission has to move forwards. The independent staffing review has provided valuable information which is being acted upon. In addition, the Commission is focusing upon more streamlined working practices, such as the introduction of online regulatory applications. The Board is clear that the short-term priority of the Commission must be on managing casework response times and redeploying more resource from other areas of the Commission's operations as necessary to achieve this.

## **11 STRATEGIC RISK REGISTER**

The Chief Executive introduced a refreshed Strategic Risk Register which has incorporated Deloitte recommendations and current Scottish Government best practices regards how risks are captured.

The Convener summarised the presentation and the Board had no additional comment from what was covered within Agenda Item 10. The Chief Executive acknowledged the concerns of the Board and undertook to ensure that Commissioners are regularly updated regards regulatory application response times.

The Board noted the report.

## **12 INTERNAL AUDIT REPORT ON HOME WORKING**

The Chief Executive advised the Board that the audit was generally favourable.

There were a number of good practice points such as a governance group managing issues as they arose during uncertain times, the underpinning work to move IT processes to the cloud and a range of IT equipment available on request.

Areas identified for improvement include the development of a framework that can provide assurance to the Commission that home working challenges are being monitored. Sample testing by the audit manager reflected that staff were receiving support, but actions should be captured in a manner that is straightforward to scrutinise within an overall framework.

The Board discussed home and office working in relation to the wellbeing and performance of staff. The Chief Executive advised the Board that the future preference for the majority of colleagues was a hybrid working pattern between home and the office. This is an issue that the Commission is monitoring (along with other public bodies). It is a case of getting the balance right between working productively and offering terms and conditions to secure the highest calibre of staff as vacancies within the Scottish Government become more location neutral and therefore more attractive to existing colleagues and potential recruits.

The Board noted the report.

### **13 CENSUS DATA – HOW INPUT IS USED**

The Commission solicitor introduced the paper and gave an overview of how the data is used. The data is used directly by the Residency and Land Use team to take action in certain instances where duties are not met. It is also used for Commission records, and updates are valuable especially in cases such as where crofters have died. This has meant there has been improvements in data quality since the Annual Notice started.

Head of Digital gave an update on the current census which is live and has seen 4807 (35%) returns so far. If crofters have any difficulties with the digital return, they have the option of calling the Commission and this has been well received. The team have been making phone calls to crofters who have not returned their census for 3+ years and have adjusted their approach in response to feedback by extending calls into the evening and looking to update the area code.

There was some discussion from Commissioners about the length of time given to complete the census, with some views that it was too long.

### **14 EXTENDING THE SCHEME OF DELEGATION ON DDM**

Head of Regulatory Support presented the paper and explained that delegated decision making had been an evolving process since it first came in in 2015 as a pilot. The paper outlines the extension of the functions to delegation.

Registration forms are processed by the Commission for the Crofting Register held by Registers of Scotland. These require a decision as to whether they are forwarded, more information requested or refuse to forward. The Board agreed to the delegation to Tier 2.

Regarding duties enforcement, Head of Regulatory Support explained the proposal to delegate to officials. This is for instances when the person doesn't provide an undertaking to meet their duties or doesn't meet an agreed undertaking. Letting and division may then be considered in these cases. There were some queries and discussion from Commissioners and the Board agreed to the proposal.

For whole croft decroftings this is something the Board has been very consistent on, so it is logical for this to be delegated since the parameters are clear. Additional recent refusals which have been taken at Tier 3 will now be taken at Tier 2 following an update of the Commission guidance on this. The board agreed to these proposals.

### **15. RE-APPOINTMENT OF GRAZINGS COMMITTEES**

Head of Grazings and Planning introduced the paper and explained that the use of the provision in 47(3) Crofters (Scotland) Act 1993 had allowed the continuation of grazings committees over the period of the pandemic. He posed the question to Commissioners whether they want to continue with this option over the coming months. Several Commissioners commented that it had been valuable, but it is also good to get back to normal. There was agreement that it would be continued for now and will be reviewed again in April by Head of Grazings and Planning.

### **16. WORKFORCE PLAN**

This was discussed very briefly and the Convener noted that key questions would be considered in the private session of the meeting.

## **17. UPDATE ON DELOITTE RECOMMENDATIONS**

Head of Finance gave an oral update on the 41 recommendations that stemmed from the Deloitte audit report. He noted that there remained six outstanding actions. A brief discussion followed about it including what qualifies an action to be confirmed as done.

## **18. UPDATE ON AZETS REPORT ON CIS**

Head of Digital gave an update on action against the recommendations from the Azets audit report on CIS. He noted that there had been a considerable delay around appointing a product owner and this was because the post required someone with an in-depth knowledge of CIS and there had been difficulties in releasing from casework given the backlog issues.

## **19. DRAFT BUSINESS PLAN**

The Convener introduced the paper and noted that it was scheduled to come to the Board, but that it is really for the next Board to consider at the next meeting, after the elections. There was a brief discussion about the corporate outcomes and that the third one (crofting is regulated in a fair efficient and effective way) should take top priority. The Chief Executive noted that this outcome may be split into two in the next Corporate Plan, to cover both delivery and IT or other improvements.

## **20. DATE OF NEXT MEETING**

The Convener noted the date of the next meeting as 31 March 2022 and proposed that it be held as a face to face meeting. There was agreement from several Commissioners.

## **21 ANY URGENT BUSINESS**

Acknowledging that this item had been requested more than 14 days before the meeting and therefore should have been an agenda item in its own right, the Convener invited Commissioner Campbell to raise his concerns about reputational damage to the Crofting Commission.

Commissioner Campbell was very concerned that the Commission's automatic reply does not commit to responding to enquiries within 20 working days, but now only says that we will aim to respond in that timescale. He asked when this change had been made, and said that it put the Commission in a very poor light, if we could not even commit to answering queries within 4 weeks.

Several other Commissioners said that they agreed. Commissioners (including Commissioner Campbell) emphasised that this was not a criticism of the regulatory staff whose work under great pressure was much valued; but there was great frustration on the Board that response times to casework and enquiries were not much better. Commissioner Holt suggested that a news release would be an effective way to let all crofters know about the difficulties being encountered and the steps being taken to remedy the situation.

The Chief Executive explained that the change to the automatic response had been made in August, by which time the amount of live casework was making it unrealistic to commit to replying to all enquiries in that timescale; and since then, the position had only got worse, due to further staff turnover. The only real solution was the planned sustained increase to the capacity of the regulatory team, which will begin with the recruitment of

several new administrators next week. Meantime, he had discussed the problem with frontline staff who had emphasised that many general enquiries are complex and the time taken to investigate and answer them detracts from progressing casework itself. The Chief Executive believed that staff themselves were in the best position to judge how to prioritise their work, and that insisting on a strict 20-day deadline for responses would be counterproductive. When casework was more under control, a firmer commitment to 20 day responses to enquiries could be re-introduced.

The Head of Operations said that many general enquires did get responses well within 20 days and that she was in discussion with the Customer Services team to improve this as far as possible.

The Convener said that whenever management were considering changes to communications about the Commission's standard of service, these should be seen by the Board before they are implemented – because these can have a strong impact on the way the Commission is perceived.

The Chief Executive agreed to review the wording of the current automated response.

## **22 EXCLUSION OF THE PRESS AND PUBLIC**

The Convener thanked everyone for their participation and closed the meeting at 1640hrs.

## CROFTING COMMISSION MEETING

**31 March 2022**

Report by the Chief Executive

### Review of Action Points from 8 February 2022

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE
1 Item 6: 2.9	Change reference from CEO to Convener on the matter of the final decision on accepting an item under other business.	Jane	DONE
2 Item 6: (General)	To ensure Standing Orders include the Audit and Finance Committee either as part of this document, or as a separate document.	Jane	DONE
3 Item 6: (General)	To obtain advice on whether the vice convener of the Commission can also be vice chair of the AFC.	Jane	DONE
4 Item 6: 2.8	To amend the Standing Orders to ensure officials are subject to the same discipline and timescale (14 days) as Commissioners are for putting forward items for the agenda.	Jane	DONE
5 Open Session: AOB	To review the wording of the standard message to enquirers to the Commission in order to reflect Commissioner's concerns.	Bill	DONE
6 Item 22(d)	To prepare the Business Case to put forward to the Scottish Government based on the table in section 2 of the paper.	Bill	DONE

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

# CROFTING COMMISSION MEETING

## 31 March 2022

Report by the Chief Executive

### Revised Code of Conduct and Standing Orders

#### SUMMARY

**Board members are required to familiarise themselves with the Code of Conduct, as revised by Scottish Government in December 2021 and the associated Crofting Commission Standing Orders relating to Board meetings.**

#### BACKGROUND

A revised Code of Conduct for those who serve on the Board of public bodies in Scotland was issued by Scottish Ministers in December 2021. It builds on previous model codes but should be read and understood in full by all members of the Crofting Commission Board, to ensure compliance with all aspects of the Code.

#### CURRENT POSITION

The Code of Conduct at **Annex A** details the principles upon which members of public bodies must base their behaviour whilst they are Board members. As parts of the Code have been substantially revised, it is imperative that all Board members become familiar with the contents, no matter how long they have served on the Crofting Commission Board.

The Code of Conduct relates to all public bodies in Scotland. It should, however, be read in conjunction with the Crofting Commission's Standing Orders for Board meetings, at **Annex B**. Both are key governance documents for the organisation. Standing Orders are reviewed by the Board on an annual basis. The next review will take place in February 2023. Advice on adherence to either document can be sought from the Standards Officer. Both documents are included in the Induction Pack for Commissioners, which was circulated prior to the meeting.

Members receive regular Briefing Notes from the Standards Commission, to help reinforce the Code and a short training session with the Standards Commission is planned in the next few months.

Prior to the Board meeting, members have been asked to Register their Interests, as per section 4 of the Code and have been sent information on the Commission's Anti-Fraud/Conflict of Interest policy and asked to Declare Interests. The Standards Officer will assist with any questions Board members have relating to these policies.

To also help Board members understand the Standards Commission approach to the distinction between their strategic role and the operational work of the Crofting Commission, please see the Advice Note at **Annex C**.

<b>Impact:</b>	<b>Comments</b>
Financial	No financial implications.
Legal/Political	The Commission is required to adhere to Standing Orders as a Scottish Public Body. The Commission is required to comply with the Code of Conduct.
HR/staff resources	The Standards Officer is responsible for ensuring the Board adheres to the provisions set out in Standing Orders and to advise the Board on matters relating to the Code of Conduct and Conflict of Interest policies.

**RECOMMENDATION**

**Board members are required to familiarise themselves with and adhere to the contents of the Code of Conduct and Standing Orders.**

Date            16 February 2022

Author           Jane Thomas, Standards Officer and Head of Compliance/Board Support





**CROFTING COMMISSION**  
**COIMISEAN NA CROITEARACHD**

# **CROFTING COMMISSION**

# **MODEL CODE OF CONDUCT**

**VERSION 2**

Last Review: March 2022  
Next Review: March 2023

## CONTENTS

### Section 1: Introduction to the Model Code of Conduct

My Responsibilities

Enforcement

### Section 2: Key Principles of the Model Code of Conduct

### Section 3: General Conduct

Respect and Courtesy

Remuneration, Allowances and Expenses

Gifts and Hospitality

Confidentiality

Use of Public Body Resources

Dealing with my Public Body and Preferential Treatment

Appointments to Outside Organisations

### Section 4: Registration of Interests

Category One: Remuneration

Category Two: Other Roles

Category Three: Contracts

Category Four: Election Expenses

Category Five: Houses, Land and Buildings

Category Six: Interest in Shares and Securities

Category Seven: Gifts and Hospitality

Category Eight: Non-Financial Interests

Category Nine: Close Family Members

### Section 5: Declaration of Interests

Stage 1: Connection

Stage 2: Interest

Stage 3: Participation

### Section 6: Lobbying and Access

## ANNEXES

Annex A Breaches of the Code

Annex B Definitions

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## Section 1: Introduction To The Model Code Of Conduct

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1.1 This Code has been issued by the Scottish Ministers, with the approval of the Scottish Parliament, as required by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(the “Act”\)](#).

1.2 The purpose of the Code is to set out the conduct expected of those who serve on the boards of public bodies in Scotland.

1.3 The Code has been developed in line with the nine key principles of public life in Scotland. The principles are listed in [Section 2](#) and set out how the provisions of the Code should be interpreted and applied in practice.

### My Responsibilities

1.4 I understand that the public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties. I will always seek to meet those expectations by ensuring that I conduct myself in accordance with the Code.

1.5 I will comply with the substantive provisions of this Code, being sections 3 to 6 inclusive, in all situations and at all times where I am acting as a board member of my public body, have referred to myself as a board member or could objectively be considered to be acting as a board member.

1.6 I will comply with the substantive provisions of this Code, being sections 3 to 6 inclusive, in all my dealings with the public, employees and fellow board members, whether formal or informal.

1.7 I understand that it is my personal responsibility to be familiar with the provisions of this Code and that I must also comply with the law and my public body’s rules, standing orders and regulations. I will also ensure that I am familiar with any guidance or advice notes issued by the Standards Commission for Scotland (“Standards Commission”) and my public body, and endeavour to take part in any training offered on the Code.

1.8 I will not, at any time, advocate or encourage any action contrary to this Code.

1.9 I understand that no written information, whether in the Code itself or the associated Guidance or Advice Notes issued by the Standards Commission, can provide for all circumstances. If I am uncertain about how the Code applies, I will seek advice from the Standards Officer of my public body, failing whom the Chair or Chief Executive of my public body. I note that I may also choose to seek external legal advice on how to interpret the provisions of the Code.

### Enforcement

1.10 [Part 2 of the Act](#) sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission finds that there has been a breach of the Code. More information on how complaints are dealt with and the sanctions available can be found at [Annex A](#).

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## Section 2: Key Principles Of The Model Code Of Conduct

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2.1 The Code has been based on the following key principles of public life. I will behave in accordance with these principles and understand that they should be used for guidance and interpreting the provisions in the Code.

2.2 I note that a breach of one or more of the key principles does not in itself amount to a breach of the Code. I note that, for a breach of the Code to be found, there must also be a contravention of one or more of the provisions in sections 3 to 6 inclusive of the Code.

The key principles are:

### **Duty**

I have a duty to uphold the law and act in accordance with the law and the public trust placed in me. I have a duty to act in the interests of the public body of which I am a member and in accordance with the core functions and duties of that body.

### **Selflessness**

I have a duty to take decisions solely in terms of public interest. I must not act in order to gain financial or other material benefit for myself, family or friends.

### **Integrity**

I must not place myself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence me in the performance of my duties.

### **Objectivity**

I must make decisions solely on merit and in a way that is consistent with the functions of my public body when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

### **Accountability and Stewardship**

I am accountable to the public for my decisions and actions. I have a duty to consider issues on their merits, taking account of the views of others and I must ensure that my public body uses its resources prudently and in accordance with the law.

### **Openness**

I have a duty to be as open as possible about my decisions and actions, giving reasons for my decisions and restricting information only when the wider public interest clearly demands.

### **Honesty**

I have a duty to act honestly. I must declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

I have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of my public body and its members in conducting public business.

**Respect**

I must respect all other board members and all employees of my public body and the role they play, treating them with courtesy at all times. Similarly, I must respect members of the public when performing my duties as a board member.

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## Section 3: General Conduct

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### Respect and Courtesy

3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.

3.4 I accept that disrespect, bullying and harassment can be:

- a) a one-off incident,
- b) part of a cumulative course of conduct; or
- c) a pattern of behaviour.

3.5 I understand that how, and in what context, I exhibit certain behaviours can be as important as what I communicate, given that disrespect, bullying and harassment can be physical, verbal and non-verbal conduct.

3.6 I accept that it is my responsibility to understand what constitutes bullying and harassment and I will utilise resources, including the Standards Commission's guidance and advice notes, my public body's policies and training material (where appropriate) to ensure that my knowledge and understanding is up to date.

3.7 Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and Executive Team.

3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.

3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

3.10 I will respect and comply with rulings from the Chair during meetings of:

- a) my public body, its committees; and
- b) any outside organisations that I have been appointed or nominated to by my public body or on which I represent my public body.

3.11 I will respect the principle of collective decision-making and corporate responsibility. This means that once the Board has made a decision, I will support that decision, even if I did not agree with it or vote for it.

### **Remuneration, Allowances and Expenses**

3.12 I will comply with the rules, and the policies of my public body, on the payment of remuneration, allowances and expenses.

### **Gifts and Hospitality**

3.13 I understand that I may be offered gifts (including money raised via crowdfunding or sponsorship), hospitality, material benefits or services (“gift or hospitality”) that may be reasonably regarded by a member of the public with knowledge of the relevant facts as placing me under an improper obligation or being capable of influencing my judgement.

3.14 I will never **ask for** or **seek** any gift or hospitality.

3.15 I will refuse any gift or hospitality, unless it is:

- a) a minor item or token of modest intrinsic value offered on an infrequent basis;
- b) a gift being offered to my public body;
- c) hospitality which would reasonably be associated with my duties as a board member; or
- d) hospitality which has been approved in advance by my public body.

3.16 I will consider whether there could be a reasonable perception that any gift or hospitality received by a person or body connected to me could or would influence my judgement.

3.17 I will not allow the promise of money or other financial advantage to induce me to act improperly in my role as a board member. I accept that the money or advantage (including any gift or hospitality) does not have to be given to me directly. The offer of monies or advantages to others, including community groups, may amount to bribery, if the intention is to induce me to improperly perform a function.

3.18 I will never accept any gift or hospitality from any individual or applicant who is awaiting a decision from, or seeking to do business with, my public body.

3.19 If I consider that declining an offer of a gift would cause offence, I will accept it and hand it over to my public body at the earliest possible opportunity and ask for it to be registered.

3.20 I will promptly advise my public body’s Standards Officer if I am offered (but refuse) any gift or hospitality of any significant value and / or if I am offered any gift or hospitality from the same source on a repeated basis, so that my public body can monitor this.

3.21 I will familiarise myself with the terms of the [Bribery Act 2010](#), which provides for offences of bribing another person and offences relating to being bribed.

## **Confidentiality**

3.22 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I should assume it is not given.

3.23 I accept that confidential information can include discussions, documents, and information which is not yet public or never intended to be public, and information deemed confidential by statute.

3.24 I will only use confidential information to undertake my duties as a board member. I will not use it in any way for personal advantage or to discredit my public body (even if my personal view is that the information should be publicly available).

3.25 I note that these confidentiality requirements do not apply to protected whistleblowing disclosures made to the prescribed persons and bodies as identified in statute.

## **Use of Public Body Resources**

3.26 I will only use my public body's resources, including employee assistance, facilities, stationery and IT equipment, for carrying out duties on behalf of the public body, in accordance with its relevant policies.

3.27 I will not use, or in any way enable others to use, my public body's resources:

- a) imprudently (without thinking about the implications or consequences);
- b) unlawfully;
- c) for any political activities or matters relating to these; or
- d) improperly.

## **Dealing with my Public Body and Preferential Treatment**

3.28 I will not use, or attempt to use, my position or influence as a board member to:

- a) improperly confer on or secure for myself, or others, an advantage;
- b) avoid a disadvantage for myself, or create a disadvantage for others or
- c) improperly seek preferential treatment or access for myself or others.

3.29 I will avoid any action which could lead members of the public to believe that preferential treatment or access is being sought.

3.30 I will advise employees of any connection, as defined at [Section 5](#), I may have to a matter, when seeking information or advice or responding to a request for information or advice from them.



## **Appointments to Outside Organisations**

3.31 If I am appointed, or nominated by my public body, as a member of another body or organisation, I will abide by the rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of that body or organisation.

3.32 I accept that if I am a director or trustee (or equivalent) of a company or a charity, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my public body.

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## Section 4: Registration Of Interests

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4.1 The following paragraphs set out what I have to register when I am appointed and whenever my circumstances change. The register covers my current term of appointment.

4.2 I understand that regulations made by the Scottish Ministers describe the detail and timescale for registering interests; including a requirement that a board member must register their registrable interests within one month of becoming a board member, and register any changes to those interests within one month of those changes having occurred.

4.3 The interests which I am required to register are those set out in the following paragraphs. Other than as required by paragraph 4.23, I understand it is not necessary to register the interests of my spouse or cohabitee.

### Category One: Remuneration

4.4 I will register any work for which I receive, or expect to receive, payment. I have a registrable interest where I receive remuneration by virtue of being:

- a) employed;
- b) self-employed;
- c) the holder of an office;
- d) a director of an undertaking;
- e) a partner in a firm;
- f) appointed or nominated by my public body to another body; or
- g) engaged in a trade, profession or vocation or any other work.

4.5 I understand that in relation to 4.4 above, the amount of remuneration does not require to be registered. I understand that any remuneration received as a board member of this specific public body does not have to be registered.

4.6 I understand that if a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under Category Two, "Other Roles".

4.7 I must register any allowances I receive in relation to membership of any organisation under Category One.

4.8 When registering employment as an employee, I must give the full name of the employer, the nature of its business, and the nature of the post I hold in the organisation.

4.9 When registering remuneration from the categories listed in paragraph 4.4 (b) to (g) above, I must provide the full name and give details of the nature of the business, organisation, undertaking, partnership or other body, as appropriate. I recognise that some other employments may be incompatible with my role as board member of my public body in terms of paragraph [6.7](#) of this Code.

4.10 Where I otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and how often it is undertaken.

4.11 When registering a directorship, it is necessary to provide the registered name and registered number of the undertaking in which the directorship is held and provide information about the nature of its business.

4.12 I understand that registration of a pension is not required as this falls outside the scope of the category.

### **Category Two: Other Roles**

4.13 I will register any unremunerated directorships where the body in question is a subsidiary or parent company of an undertaking in which I hold a remunerated directorship.

4.14 I will register the registered name and registered number of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which I am a director and from which I receive remuneration.

### **Category Three: Contracts**

4.15 I have a registerable interest where I (or a firm in which I am a partner, or an undertaking in which I am a director or in which I have shares of a value as described in paragraph 4.20 below) have made a contract with my public body:

- a) under which goods or services are to be provided, or works are to be executed; and
- b) which has not been fully discharged.

4.16 I will register a description of the contract, including its duration, but excluding the value.

### **Category Four: Election Expenses**

4.17 If I have been elected to my public body, then I will register a description of, and statement of, any assistance towards election expenses relating to election to my public body.

### **Category Five: Houses, Land and Buildings**

4.18 I have a registrable interest where I own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of my public body.

4.19 I accept that, when deciding whether or not I need to register any interest I have in houses, land or buildings, the test to be applied is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as being so significant that it could potentially affect my responsibilities to my public body and to the public, or could influence my actions, speeches or decision-making.

### **Category Six: Interest in Shares and Securities**

4.20 I have a registerable interest where:

- a) I own or have an interest in more than 1% of the issued share capital of the company or other body; or
- b) Where, at the relevant date, the market value of any shares and securities (in any one specific company or body) that I own or have an interest in is greater than £25,000.

### **Category Seven: Gifts and Hospitality**

4.21 I understand the requirements of paragraphs [3.13 to 3.21](#) regarding gifts and hospitality. As I will not accept any gifts or hospitality, other than under the limited circumstances allowed, I understand there is no longer the need to register any.

### **Category Eight: Non-Financial Interests**

4.22 I may also have other interests and I understand it is equally important that relevant interests such as membership or holding office in other public bodies, companies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described. In this context, I understand non-financial interests are those which members of the public with knowledge of the relevant facts might reasonably think could influence my actions, speeches, votes or decision-making in my public body (this includes its Committees and memberships of other organisations to which I have been appointed or nominated by my public body).

### **Category Nine: Close Family Members**

4.23 I will register the interests of any close family member who has transactions with my public body or is likely to have transactions or do business with it.

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## **Section 5: Declaration Of Interests**

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### **Stage 1: Connection**

5.1 For each particular matter I am involved in as a board member, I will first consider whether I have a connection to that matter.

5.2 I understand that a connection is any link between the matter being considered and me, or a person or body I am associated with. This could be a family relationship or a social or professional contact.

5.3 A connection includes anything that I have registered as an interest.

5.4 A connection does not include being a member of a body to which I have been appointed or nominated by my public body as a representative of my public body, unless:

- a) The matter being considered by my public body is quasi-judicial or regulatory; or
- b) I have a personal conflict by reason of my actions, my connections or my legal obligations.

### **Stage 2: Interest**

5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.

### **Stage 3: Participation**

5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.

5.7 I will consider whether it is appropriate for transparency reasons to state publicly where I have a connection, which I do not consider amounts to an interest.

5.8 I note that I can apply to the Standards Commission and ask it to grant a dispensation to allow me to take part in the discussion and decision-making on a matter where I would otherwise have to declare an interest and withdraw (as a result of having a connection to the matter that would fall within the objective test). I note that such an application must be made in advance of any meetings where the dispensation is sought and that I cannot take part in any discussion or decision-making on the matter in question unless, and until, the application is granted.

5.9 I note that public confidence in a public body is damaged by the perception that decisions taken by that body are substantially influenced by factors other than the public interest. I will not accept a role or appointment if doing so means I will have to declare interests frequently at meetings in respect of my role as a board member. Similarly, if any appointment or nomination to another body would give rise to objective concern because of my existing personal involvement or affiliations, I will not accept the appointment or nomination.

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## Section 6: Lobbying And Access

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6.1 I understand that a wide range of people will seek access to me as a board member and will try to lobby me, including individuals, organisations and companies. I must distinguish between:

- a) any role I have in dealing with enquiries from the public;
- b) any community engagement where I am working with individuals and organisations to encourage their participation and involvement, and;
- c) lobbying, which is where I am approached by any individual or organisation who is seeking to influence me for financial gain or advantage, particularly those who are seeking to do business with my public body (for example contracts/procurement).

6.2 In deciding whether, and if so how, to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to influence my, or my public body's, decision-making role.

6.3 I will not, in relation to contact with any person or organisation that lobbies, do anything which contravenes this Code or any other relevant rule of my public body or any statutory provision.

6.4 I will not, in relation to contact with any person or organisation that lobbies, act in any way which could bring discredit upon my public body.

6.5 If I have concerns about the approach or methods used by any person or organisation in their contacts with me, I will seek the guidance of the Chair, Chief Executive or Standards Officer of my public body.

6.6 The public must be assured that no person or organisation will gain better access to, or treatment by, me as a result of employing a company or individual to lobby on a fee basis on their behalf. I will not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which I accord any other person or organisation who lobbies or approaches me. I will ensure that those lobbying on a fee basis on behalf of clients are not given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming.

6.7 Before taking any action as a result of being lobbied, I will seek to satisfy myself about the identity of the person or organisation that is lobbying and the motive for lobbying. I understand I may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that I understand the basis on which I am being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code and the [Lobbying \(Scotland\) Act 2016](#).

6.8 I will not accept any paid work:

- a) which would involve me lobbying on behalf of any person or organisation or any clients of a person or organisation.
- b) to provide services as a strategist, adviser or consultant, for example, advising on how to influence my public body and its members. This does not prohibit me from being remunerated for activity which may arise because of, or relate to, membership of my public body, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

## **Annex A: Breaches Of The Code**

### **Introduction**

1. [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (“the Act”) provided for a framework to encourage and, where necessary, enforce high ethical standards in public life.
2. The Act provided for the introduction of new codes of conduct for local authority councillors and members of relevant public bodies, imposing on councils and relevant public bodies a duty to help their members comply with the relevant code.
3. The Act and the subsequent Scottish Parliamentary Commissions and Commissioners etc. Act 2010 established the [Standards Commission for Scotland](#) (“Standards Commission”) and the post of [Commissioner for Ethical Standards in Public Life in Scotland](#) (“ESC”).
4. The Standards Commission and ESC are separate and independent, each with distinct functions. Complaints of breaches of a public body’s Code of Conduct are investigated by the ESC and adjudicated upon by the Standards Commission.
5. The first Model Code of Conduct came into force in 2002. The Code has since been reviewed and re-issued in 2014. The 2021 Code has been issued by the Scottish Ministers following consultation, and with the approval of the Scottish Parliament, as required by the Act.

### **Investigation of Complaints**

6. The ESC is responsible for investigating complaints about members of devolved public bodies. It is not, however, mandatory to report a complaint about a potential breach of the Code to the ESC. It may be more appropriate in some circumstances for attempts to be made to resolve the matter informally at a local level.
7. On conclusion of the investigation, the ESC will send a report to the Standards Commission.

### **Hearings**

8. On receipt of a report from the ESC, the Standards Commission can choose to:
  - Do nothing;
  - Direct the ESC to carry out further investigations; or
  - Hold a Hearing.
9. Hearings are held (usually in public) to determine whether the member concerned has breached their public body’s Code of Conduct. The Hearing Panel comprises of three members of the Standards Commission. The ESC will present evidence and/or make submissions at the Hearing about the investigation and any conclusions as to whether the member has contravened the Code. The member is entitled to attend or be represented at the Hearing and can also present evidence and make



submissions. Both parties can call witnesses. Once it has heard all the evidence and submissions, the Hearing Panel will make a determination about whether or not it is satisfied, on the balance of probabilities, that there has been a contravention of the Code by the member. If the Hearing Panel decides that a member has breached their public body's Code, it is obliged to impose a sanction.

## Sanctions

10. The sanctions that can be imposed following a finding of a breach of the Code are as follows:

- **Censure:** A censure is a formal record of the Standards Commission's severe and public disapproval of the member concerned.
- **Suspension:** This can be a full or partial suspension (for up to one year). A full suspension means that the member is suspended from attending all meetings of the public body. Partial suspension means that the member is suspended from attending some of the meetings of the public body. The Commission can direct that any remuneration or allowance the member receives as a result of their membership of the public body be reduced or not paid during a period of suspension.
- **Disqualification:** Disqualification means that the member is removed from membership of the body and disqualified (for a period not exceeding five years), from membership of the body. Where a member is also a member of another devolved public body (as defined in the Act), the Commission may also remove or disqualify that person in respect of that membership. Full details of the sanctions are set out in section 19 of the Act.

## Interim Suspensions

11. Section 21 of the Act provides the Standards Commission with the power to impose an interim suspension on a member on receipt of an interim report from the ESC about an ongoing investigation. In making a decision about whether or not to impose an interim suspension, a Panel comprising of three Members of the Standards Commission will review the interim report and any representations received from the member and will consider whether it is satisfied:

- That the further conduct of the ESC's investigation is likely to be prejudiced if such an action is not taken (for example if there are concerns that the member may try to interfere with evidence or witnesses); or
- That it is otherwise in the public interest to take such a measure. A policy outlining how the Standards Commission makes any decision under Section 21 and the procedures it will follow in doing so, should any such a report be received from the ESC can be found [here](#).

12. The decision to impose an interim suspension is not, and should not be seen as, a finding on the merits of any complaint or the validity of any allegations against a member of a devolved public body, nor should it be viewed as a disciplinary measure.

## Annex B: Definitions

**“Bullying”** is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted.

**"Chair"** includes Board Convener or any other individual discharging a similar function to that of a Chair or Convener under alternative decision-making structures.

**“Code”** is the code of conduct for members of your devolved public body, which is based on the Model Code of Conduct for members of devolved public bodies in Scotland.

**"Cohabitee"** includes any person who is living with you in a relationship similar to that of a partner, civil partner, or spouse.

**“Confidential Information”** includes:

- any information passed on to the public body by a Government department (even if it is not clearly marked as confidential) which does not allow the disclosure of that information to the public;
- information of which the law prohibits disclosure (under statute or by the order of a Court);
- any legal advice provided to the public body; or
- any other information which would reasonably be considered a breach of confidence should it be made public.

**"Election expenses"** means expenses incurred, whether before, during or after the election, on account of, or in respect of, the conduct or management of the election.

**“Employee”** includes individuals employed:

- directly by the public body;
- as contractors by the public body, or
- by a contractor to work on the public body’s premises.

**“Gifts”** a gift can include any item or service received free of charge, or which may be offered or promised at a discounted rate or on terms not available to the general public. Gifts include benefits such as relief from indebtedness, loan concessions, or provision of property, services or facilities at a cost below that generally charged to members of the public. It can also include gifts received directly or gifts received by any company in which the recipient holds a controlling interest in, or by a partnership of which the recipient is a partner.

**“Harassment”** is any unwelcome behaviour or conduct which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable. Harassment can be experienced directly or indirectly and can occur as an isolated incident or as a course of persistent behaviour.

**“Hospitality”** includes the offer or promise of food, drink, accommodation, entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.

**“Relevant Date”** Where a board member had an interest in shares at the date on which the member was appointed as a member, the relevant date is – (a) that date; and (b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

**“Public body”** means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**“Remuneration”** includes any salary, wage, share of profits, fee, other monetary benefit or benefit in kind.

**“Securities”** a security is a certificate or other financial instrument that has monetary value and can be traded. Securities includes equity and debt securities, such as stocks bonds and debentures.

**“Undertaking”** means:

- a) a body corporate or partnership; or
- b) an unincorporated association carrying on a trade or business, with or without a view to a profit.



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**CROFTING COMMISSION**  
**COIMISEAN NA CROITEARACHD**

# **CROFTING COMMISSION**

## **STANDING ORDERS** **Relating to the Conduct of Meetings**

**VERSION 1.4**

Last Review: February 2022  
Next Review: February 2023

**CONTENTS**

PART 1: PRELIMINARIES ..... 1

PART 2: CALLING MEETINGS ..... 1

    Place of Meetings ..... 2

    Meeting Agenda ..... 2

    Urgent Business ..... 3

PART 3: ATTENDANCE AT MEETINGS..... 3

    Chair..... 3

    Quorum ..... 3

    Members of the Public..... 4

    Conduct of Meetings ..... 4

    Sederunt..... 4

    Order of Business/Adjournment ..... 4

    Declarations of Interest ..... 4

    Commission Decisions and Voting ..... 5

    Recording Dissent from Decision ..... 6

    Minutes of Commission Meetings..... 6

PART 4: COMMISSION COMMITTEES..... 6

    Committees ..... 6

    Minutes of Committees..... 7

PART 5: MISCELLANEOUS..... 7

    Non-attendance at Meetings ..... 7

    Delegation of Powers ..... 8

    Members’ Code of Conduct..... 8

## PART 1: PRELIMINARIES

- 1.1. The purpose of these Standing Orders is to ensure the orderly and effective conduct of formal meetings of the Crofting Commission and that of its constituted committees.
- 1.2. These Standing Orders apply and are effective from 24 June 2015.
- 1.3. The Standing Orders will be reviewed on an annual basis. Any amendments must be agreed by a majority of members present at a meeting of the Crofting Commission.

Amendment to these Standing Orders (other than at an annual review) shall be made only by resolution of which 14 days' notice has been given.

- 1.4. The Standing Orders may be amended by resolution carried by a majority of members present at a meeting of the Commission.
- 1.5. Where the word "**Convener**" is used in the Standing Orders, it includes any interim Convener appointed by the Scottish Ministers.
- 1.6. Where the word "**Chair**" is used in the Standing Orders in connection with a specific individual, it includes, as appropriate, the Convener (or any interim Convener) or any person appointed in terms of Standing Order 3.1 in place of the Convener to chair any meeting of the Commission or any of its committees.

## PART 2: CALLING MEETINGS

- 2.1. Generally, Notice of a meeting of the Commission will be given to every member of the Commission by, or on behalf of, the Chief Executive, at least 7 days prior to the date of the meeting. The Notice will be in written form and will provide the place, date and time of the meeting. The Notice will be delivered by post, fax or any accepted form of electronic communication to a member's usual place of residence or to any other address provided in writing by a member to the Chief Executive.
- 2.2. **Public Notice** of a meeting of the Commission will normally be given by posting a Notice on the Crofting Commission website at least 4 days before the meeting.

The Notice of Meeting will include:

- a) The date, time and place of the meeting, and
  - b) Information on the availability of the Agenda and accompanying reports.
- 2.3. **Public Notice** will not be required where a **Special Meeting** is convened to deal with a matter of a particularly sensitive or urgent nature.

- 2.4. The Chief Executive will call a **Special Meeting** of the Commission when required to do so by the Convener of the Commission. A Special Meeting will also be called by the Chief Executive if in receipt of a written request stating the business of the meeting from another Member of the Commission and seconded by a majority of the Commission. The meeting will be held within 21 days of the receipt of the requisition by the Chief Executive.
- 2.5. Where a Special Meeting is called under Standing Order 2.4, the Chief Executive may call the meeting without giving the 7 days' notice normally required at 2.1 above where there is particular urgency, provided every effort is made to contact Members to give as much notice as possible prior to the meeting.
- 2.6. The Convener may wish to consult with the Board by holding an informal private meeting, for Board members only. He/she must inform the Chief Executive that such a meeting has taken place and the general nature of the discussion. Though no formal Minute will be taken, if there has been a substantive discussion involving a majority of the Board members, which could lead to an item being submitted to a future Board meeting, the Convener should draft a contemporaneous Note of the discussion, including who attended and forward this to the Chief Executive for saving. No Board decisions can be taken outside formal Board meetings.

## **Place of Meetings**

- 2.7. Board Meetings of the Commission and meetings of its Committees will normally be held at the Crofting Commission headquarters, Inverness, on the days fixed by the Commission or by the Convener in consultation with the Chief Executive. Meetings may also be held at an alternative location or via video-link, tele-conference or other digital means. If this is the case, this will be clearly stated on the public Agenda and noted in the subsequent Minute of the meeting. Where practicably possible, the Commission will also hold at least one public meeting a year outwith Inverness in another part of the Crofting Counties, in addition to public Board meetings in Inverness.

## **Meeting Agenda**

- 2.8. The Convener or Chief Executive will generally determine the agenda for a meeting of the Commission, but the decision of the Convener as to content of the agenda for such a meeting will be final. The agenda will be provided along with the Notice of Meeting. Anyone wishing to submit an item for the agenda of a Commission meeting must generally ensure that it is submitted in writing at least 14 days prior to the day of the meeting concerned, and by 5pm on the final day available. The agenda item must be communicated in writing to the Convener and copied to the Chief Executive. Where anyone submits an item for the agenda fewer than 14 days prior to the day of the meeting concerned, he or she must provide a reasonable explanation as to why the item was submitted fewer than 14 days prior to the day of the meeting concerned. The Convener and the Chief Executive will make reasonable endeavours to include any such submitted item on the agenda for a meeting of the Commission, but the decision of the Convener as to whether or not to include the item on the agenda will be final, seeking the advice of the Standards Officer as necessary. This is without prejudice to Standing Order 3.7 governing Commission decisions and voting.



## **Urgent Business**

- 2.9. No business other than that specified on the agenda will be transacted at the meeting, other than that which the Convener or the Chief Executive has accepted as urgent in advance of the meeting (with the decision of the Convener on the matter being final). Any such accepted urgent items will be dealt with under the Any Other Business (AOB) agenda item. The circumstances for including such urgent business shall be recorded in the minute of the meeting.

## **PART 3: ATTENDANCE AT MEETINGS**

### **Chair**

- 3.1. The Convener must, if present, chair meetings of the Commission and any of their committees. If the Convener is not available to chair a meeting of the Commission or a committee, the Convener is to appoint another member of the Commission to chair the meeting.

Where the Commission has nominated a Vice-Convener, he or she may chair meetings in the absence of the Convener where the Convener has not nominated another member of the Commission to chair proceedings. Where both the Convener and Vice-Convener are absent and no member has been nominated, the Chief Executive will preside over the nomination of another member to chair from the members present.

Members of the press and the public are entitled to attend meetings of the Commission. However, the Commission may decide or determine (in terms of Standing Order 3.7) that matters of a confidential or sensitive nature should be considered without the press or the public in attendance. The agenda for a meeting of the Commission may contain items that are marked in advance for consideration in the exclusion of press and public, but any decision or determination of the Commission (in terms of Standing Order 3.7) as to whether or not a matter is confidential or sensitive and is to be considered in the exclusion of press or public will be conclusive of the matter.

### **Quorum**

- 3.2. A meeting of the Commission must consist of at least five members. Where there are three or more elected members, the quorum must include no fewer than three such members.

Meetings shall, subject to the presence of a quorum, start at the time set out in the Notice of the meeting. If a quorum is not present, the Convener may allow ten minutes before adjourning the meeting and fixing a time, then or afterwards, for it to take place. Where the Convener is not present and no other member has been nominated to chair the meeting, the Chief Executive, in consultation with members present, may adjourn the meeting or record that owing to the lack of quorum, no business could be transacted.

Whenever it is drawn to the attention of the Convener that a quorum may not be present, the Convener will halt proceedings to establish the situation, and only continue should the Commission be quorate.

No item of business can be transacted at a meeting of the Commission unless there is a quorum present.

## **Members of the Public**

- 3.3. The majority of Board Meetings will be held in public, with members of the public able to attend in person, for physical meetings or online for virtual meetings (or a combination of both). Members of the public attend as observers only and cannot participate in the debate, unless expressly requested to do so by the Convener.

The Convener will make this position clear at the start of each Board Meeting where there are members of the public in attendance.

## **Conduct of Meetings**

- 3.4. The person in the Chair must be respected by all members at a meeting of the Commission. The Chair has the authority to rule on any points of order or matters of procedure. It is the responsibility of the person chairing the meeting to ensure that members obtain a fair hearing and that order is preserved. In the event of any disorder, the Chair may adjourn the meeting for a suitable period.

In the event of any member failing to respect the authority of the person in the Chair or being guilty of obstructive or offensive conduct, the Chair may seek an apology or have a short adjournment. If necessary, a motion may be moved to suspend the member for the remainder of the meeting. The member will then be required to leave the meeting.

## **Sederunt**

- 3.5. The Chief Executive or another officer will record the names of the members present at each meeting of the Commission, as well as those who have submitted apologies for their absence.

## **Order of Business/Adjournment**

- 3.6. The business of the meeting of the Commission will normally be conducted in the order set on the agenda. However, where the members consent, the order may be altered for the benefit of the meeting. The Chair may, with the consent of the members, also adjourn the meeting to another time and date and place, if necessary. In the event of any disorder, the Chair has absolute discretion to adjourn the meeting, and his or her quitting the Chair in the event of such disorder will bring the meeting to an end.

## **Declarations of Interest**

- 3.7. A member of the Commission, or any officer working on behalf of the Commission, who has a direct or indirect interest in a matter being considered at a meeting of the Commission or a committee of the Commission, must disclose the nature of the interest to the meeting. Members who are crofters are not excluded from taking part in discussions relating to crofting.

Any disclosure of interest must be recorded in the minutes of the meeting.

Anyone declaring an interest should not take part in any deliberation of the matter, unless that is confined to general principles, as opposed to the specifics of the case. Such deliberation on general principles should only be with the consent of the other members.

Anyone declaring an interest must not take part in any decision of the Commission or of any committee of the Commission in respect of the matter to which the disclosure relates. Consideration should also be given to removal from the room while the matter is being discussed and determined. Any removal from the room following a declaration of an interest, and at what stage in proceedings, should also be recorded in the minute of the meeting.

## **Commission Decisions and Voting**

- 3.8. Whenever possible the Commission will seek to make decisions by reasoned debate and consensus. Only in situations where it is not possible to reach a conclusion in this manner will voting be required.

Where it is clearly understood what the members are voting on, formal motions from members will not be necessary.

Where an item of business that requires a decision has been given full consideration, and all members have had the opportunity to make their contribution, any member may propose a motion and seek a seconder. Any amendments to the motion must also be proposed and seconded. A member cannot move or second both the motion and amendment, or likewise more than one amendment.

Any motion or amendment to a motion must be written down and read out prior to any vote being taken.

Once moved and seconded, a motion or amendment will not be withdrawn without the consent of the mover or seconder.

Where there is a vote between the motion and amendment, the vote for the amendment will be taken first. If there is more than one amendment, the vote may be taken against each amendment, before being taken against the motion or, if determined by the Chair, each may be taken individually against the motion.

The vote of the Commission will normally be taken verbally or by a show of hands. If any member objects to the vote being taken in this manner, and a majority of those present and entitled to vote agree, the vote will be taken by ballot.

The person chairing a meeting of the Commission or any committee of the Commission has a casting vote.

For the avoidance of doubt, Standing Order 3.7 shall not apply to the provision of instructions to a solicitor (whether an in-house solicitor or an external firm of solicitors) unless the Chief Executive brings a particular matter for decision on which a specific instruction is required to be given to a solicitor/ solicitors acting on behalf of the Commission. The Chief Executive is required to set out the nature of the instruction that is sought or required before any decision is made to provide such an instruction.

## **Recording Dissent from Decision**

- 3.9. A member may have his or her dissent to a decision of the Commission recorded, provided that such a member requests immediately (or as soon as reasonably possible) after the item is disposed of that such dissent is recorded.

Once a decision has been reached, all members have a corporate responsibility to recognise and accept the decision as that of the Crofting Commission. Corporate responsibility entails that members must adhere to and accept such a decision until it is otherwise altered.

## **Minutes of Commission Meetings**

- 3.10. A minute of a meeting of the Commission will be taken on behalf of the Commission. The minutes will record the names of members in attendance and those apologising for their absence, and the business transacted at the meeting. A draft copy of the minutes will be circulated to members by email, for comment and suggested amendment. A final version of the minutes will then be circulated to members as the approved minute of the meeting and will be made available to the public on the Crofting Commission's website. A copy of the approved Minute will be available to members at the next Board meeting, for information and reference.

In between the dates of Board Meetings, to assist with administration and the efficient use of Commission time and resources, the Convener and Chief Executive may determine that routine papers can be circulated electronically or by post for Commissioners' comment, approval or rejection. It will be incumbent upon each Commissioner to respond within the agreed period of time, unless the Commissioner has already intimated his or her non availability. Where a Commissioner has not received an e-mail, it is permissible to request that the matter is discussed at a meeting of the Commission.

In the event that the Commissioners responding to the emailed/posted paper confirm their approval of any Recommendation(s) made in the paper, this will be accepted as the Decision of the Commission, with immediate effect. In order for the Commission to act with transparency, any Decision agreed in this way will be intimated at the next Public Board Meeting, to allow the Decision to be recorded in the Minute of the meeting and therefore made public.

In the event of a paper not receiving approval by a majority or if a Commissioner raises an unacceptable risk to the Commission relating to the paper, it will be remitted in the first instance to the Convener and/or Chief Executive, before deferral to the next meeting of the Board for full deliberation and decision.

## **PART 4: COMMISSION COMMITTEES**

### **Committees**

- 4.1. The Commission must establish –
- a) an audit committee; and
  - b) such other committees as it considers appropriate.

The Commission may combine its audit and financial obligations, to provide an Audit & Finance Committee. This committee and any other committee of the Commission must comply with any directions given to it by the Commission. The Commission may appoint individuals who are not members of the Commission to its committees. However, no committee may consist solely of non-Commission members.

Where the Board appoints a Vice Convener, this person will automatically hold the post of Vice Chair of the audit committee.

The provisions of the Standing Orders, with the obvious exception of what constitutes a quorum, will apply to committees as the Commission considers appropriate. Other sub-committees and working groups need not operate to the same formal level. Such groups will not have any delegated authority and will report back to the Commission or make recommendations for Commission approval.

Decisions of a committee will not take effect until these decisions have been reported to the Commission, and been approved by the Commission, unless falling within the following category:

- a) A matter included in the delegation to or remitted with powers to the committee;
- b) Any matter that the committee considers to be urgent, which although not included in the annual budget does not entail major expenditure and has the approval of the Chief Executive and the Convener, and complies with the delegated responsibilities afforded to the Chief Executive of the Commission;
- c) Any routine matter that does not involve a change in policy.

## **Minutes of Committees**

4.2. The minutes of meetings of such committees will be made available to all members. In addition, a report explaining the deliberations of each committee will be provided at a meeting of the Commission.

The minutes of meetings of committees will be submitted to the next meeting of the Commission by the Chair of the committee (a) for confirmation in respect of business delegated or remitted with powers and (b) for approval in respect of matters referred. Any matter arising from the minutes should be addressed by a member of the committee who was present at the relevant meeting. The Commission will consider such matters and take decisions with immediate effect.

## **PART 5: MISCELLANEOUS**

### **Non-attendance at Meetings**

5.1. Members should tender their apologies to the Convener and to the Chief Executive, if possible in writing (by letter or electronically) as soon as practically possible, once they become aware they will be unable to attend a meeting.

If a Member of the Commission has been absent from meetings of the Commission for a period of six months without the permission of the Convener,

the Chief Executive will draw the matter to the attention of the Scottish Ministers, to consider removing the Member by giving him or her notice in writing. This is in line with Schedule 1 of the Crofting Acts.

## **Delegation of Powers**

- 5.2. The Crofting Reform (Scotland) Act 2010, Schedule 1, Section 15(1) provides for the Commission to delegate its functions to: any of its Members; any of its committees; its Chief Executive; any person whose services are provided to it by the Scottish Ministers; and any of its employees. The Commission will have the ability to determine the type of functions it can delegate and the extent to which these functions can be carried out on its behalf. Section 15(2) specifies that the Commission continue to have responsibility for the exercise of its functions even after a function has been delegated.

The Chief Executive has the power to refer for further consideration by the Commission, by way of a Notice of Referral, any decision taken which may be considered by the Sponsor Division as giving rise to or likely to give rise to a contravention of a statute or any Code of Practice, or maladministration. This Standing Order is without prejudice to the Chief Executive's role as Accountable Officer.

## **Members' Code of Conduct**

- 5.3. All members of the Commission will be bound by the provisions of the Commission's [Code of Conduct](#), approved by the Standards Commission for Scotland.



INTEGRITY IN PUBLIC LIFE

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## ADVICE NOTE FOR MEMBERS ON DISTINGUISHING BETWEEN THEIR STRATEGIC ROLE AND ANY OPERATIONAL WORK

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### 1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to help board members distinguish between strategic and operational matters in order to comply with their Codes of Conduct.
- 1.2 Public bodies listed at [Schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) are required to adopt codes of conduct for their members, based on the Model Code of Conduct for Members of Devolved Public Bodies (the Code).
- 1.3 This Advice Note suggests issues members may wish to consider in order to help them to undertake their strategic and scrutiny roles effectively, while still complying with the provisions of the Code regarding relations with employees and operational management.
- 1.4 Members have a personal responsibility to observe and comply with the provisions in the Code. This Advice Note is intended to assist them in interpreting the Code in order to do so. The Advice Note should, therefore, be read in conjunction with the Code and the Standards Commission's Guidance.
- 1.5 As a general rule, the role of members is to scrutinise and hold employees to account for the delivery of the public body's services and in meeting its strategic objectives. In doing so, members are required to provide strategic leadership and oversight. This involves setting strategy and policy, scrutinising overall performance against strategic aims, and making major decisions that concern their public body as a whole.
- 1.6 By comparison, operational management is the planning, organising and execution involved in day to day activities and service delivery. This is normally the role and responsibility of employees. Members risk losing sight of their strategic role if they become too focused, either individually or as a board, on matters that are operational in nature.
- 1.7 Members also have a role in promoting their public body's values and in ensuring a positive and collaborative culture. Members should try to develop a constructive and respectful partnership with employees. In order to do so, members should take time to understand the roles of individual employees and how these differ from their own role.
- 1.8 The line between strategic and operational matters is not always distinct, as strategic objective setting and policy setting is underpinned by operational work. In addition, some operational matters will have strategic ramifications for an organisation in terms of service delivery and risk management. What may be strategic and what may be operational can also vary between different public bodies, depending on their size and the sector in which they operate.

- 1.9 It should be noted that it may be appropriate for Chairs to be more involved in certain operational matters, such as the signing-off of press releases, than other members. In addition, some members are required to become involved in operational management or decision-making by virtue of:
- their letter or contract of appointment;
  - a statutory provision;
  - their job description;
  - having been invited to do so by the public body's Chair or Chief Executive; and / or
  - having been directed to do so by their sponsor body or a Minister / Cabinet Secretary.
- 1.10 Difficulties can arise, however, when members become inappropriately involved in operational matters that are, or should be, the sole responsibility of employees (see Section 4 below). The aim of this Advice Note, therefore, is to help members to avoid doing so.

## 2. Relevant Provisions in the Code

- 2.1 The Code contains provisions relating to the differences between the responsibilities of members and employees. Specific applicable paragraphs in the Code include:

- 3.7 Except where it is written into my role as Board member, and / or at the invitation of the Chief Executive, I will not become involved in operational management of my public body. I acknowledge and understand that operational management is the responsibility of the Chief Executive and the Executive Team.
- 3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public. I will raise any concerns I have on such matters in private with senior management as appropriate.
- 3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees of my public body or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.

## 3. Strategic and Operational Management

- 3.1 The work of a public body is a team effort, in which the role and work of members is balanced with, and complemented by, the role and work of employees. As a member, your key role is to determine policy and scrutinise the organisation's performance against its strategic aims. In general, the role of a member is to:
- provide strategic leadership;
  - ensure the public body meets its strategic aims and statutory obligations;
  - ensure the public body puts the needs of its service users at the forefront of any decision-making;
  - hold the Chief Executive and senior management team to account by scrutinising the way in which services are delivered and the implementation of policies and procedures;
  - make or approve decisions that are key to how the public body operates; and
  - ensure financial stewardship is achieved through the efficient, economic and effective use of resources.
- 3.2 Your scrutiny role should be undertaken with a view to making recommendations for improvement and should not normally be used to direct, instruct or pressure an individual employee to make or change a specific operational decision. You may also be involved in determining the steps needed to deal with changes that are likely to impact on the strategic aims and objectives of your public



body. Your duty is also to help ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control.

- 3.3 Public bodies will normally have a Scheme of Delegation, which outlines which individual, committee or team is empowered to make certain decisions (including on expenditure). You should ensure you are aware of what decisions are to be taken by which employees, and the level at which they are made. You should note that there will also be many operational decisions, routinely and appropriately taken by employees, that will not necessarily be listed exhaustively in such a scheme.
- 3.4 Some decisions may have both operational and strategic elements, particularly if they concern expenditure that does not fall within existing budgets. Those decisions may be taken jointly by members and employees; or by employees following consultation with certain members (such as members of an Audit & Risk or Human Resources Committees). This enables employees to have appropriate engagement with, and to obtain steer from, members.
- 3.5 Members may also become involved in operational matters that have strategic implications in terms of how it should deploy its resources and / or ones that carry a significant risk to the status or reputation of the public body, or its ability to provide services effectively.
- 3.6 As noted under paragraph 1.8 above, members may be required to become involved in operational management or decision-making by virtue of:
- their letter or contract of appointment (n.b. the terms of these will vary from body to body);
  - a statutory provision;
  - their job description;
  - having been invited to do so by the public body's Chair or Chief Executive; and / or
  - having been directed to do so by their sponsor body, Minister or Cabinet Secretary.
- 3.7 Examples of operational decisions that can be made by members, in terms of the categories listed in paragraph 3.6, include making decisions on:
- casework or complaints;
  - regulatory or quasi-judicial applications; and
  - the appointment of senior employees.
- 3.8 Before accepting or embarking upon such a decision-making role, you should make sure you are clear as to what it will involve and that you understand how to identify, and appropriately manage, any conflicts of interest. You should ensure that you do not stray beyond the boundaries of what you have been asked or are expected to do by, for example, insisting on becoming involved in the drafting of the contract of employment for a new employee that you have helped appoint.
- 3.9 Examples of appropriate operational involvement by members, in terms of the categories listed in paragraph 3.6, would include:
- a member of a health board being asked to conduct a ward round or quality assessment to ensure patient safety guidelines were being met;
  - a member with human resources experience being asked, by the public body's Chair or Chief Executive, to assist with a difficult staffing issue; and
  - the Chair signing off a press release or response to a media enquiry on a high profile or potentially contentious issue.
- 3.10 In addition, as a member, you may also be asked by service users and stakeholders of your public body for information about or assistance with operational matters. More information on this is outlined under see Section 5 below.
- 3.11 These concurrent obligations can sometimes make it difficult for members to distinguish between operational and strategic matters and to understand the extent to which they should get involved in certain issues and decisions, which can lead to difficulties as outlined below.

## 4. Matters to consider

- 4.1 Becoming inappropriately involved in operational management and / or operational decision-making can be a breach of the Code. It can also damage your relationship with employees and have a detrimental effect on how they perform their duties. If you become too focused on operational matters, you risk losing sight of the 'bigger picture' and / or may have less time to focus your strategic and scrutiny role.
- 4.2 Some illustrations of how a member might become inappropriately involved in an operational matter can be found at Annex A of this document.
- 4.3 Some real examples where the Standards Commission has found councillors to have become inappropriately involved in operational matters and to have breached the equivalent provisions in the Councillors' Code of Conduct are provided at Annex B of this document. Other illustrations can be found in the Standards Commission's Guidance on the Model Code of Conduct, which can be found at: <https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>.
- 4.4 You should remember that you have, or may be perceived as having, a position of power over employees, particularly if they are junior members of staff. This means that they may feel pressured into taking a particular action or decision or to focus on the matter you are concerned with over other work, even if they have tasks that should be completed as a higher priority.
- 4.5 You may wish to represent the views of a service user on an individual matter, such as a service delivery issue, but you should be aware that employees may feel pressured by a member challenging their actions or appearing critical of some aspect of their work. This is especially the case with junior employees, who may not be used to dealing directly with members. Any concerns about performance should be raised in private with the employee's line manager.
- 4.6 You should consider, in the first instance, whether any matter you are seeking to become involved in or have asked to be involved in is strategic or operational in nature. If a matter is operational in nature, you should then consider whether this is a matter in which you are required to become involved, in terms of one of the categories listed under paragraph 1.8 above. At all times, you should consider whether the extent of your involvement in operational matters is appropriate. For example, it may be sufficient for you to ask for confirmation that certain human resource related policies and procedures are in place. It may not be necessary or appropriate for you to insist on reviewing or approving the contents of such policies.
- 4.7 You have a right to receive good quality information from employees on which to base your decisions and undertake your scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. You are entitled to ask questions about operational matters at board meetings and to seek assurances from employees that actions have or are to be taken. You should be careful, however, about the level of detail you are seeking. You should always question whether the amount and nature of the information you are seeking is necessary and proportionate.
- 4.8 If you do not consider you are receiving the information you require to assure yourself that you are in a position to make informed decisions, you should raise the issue with your public body's Chair or Chief Executive.
- 4.9 In dealing with employees and members of the public (including service users and stakeholders of the public body), you should always consider both what you are expressing and the way you are expressing it. You should also consider how your conduct could be perceived. You should be able to undertake a scrutiny role in a constructive, respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.

- 4.10 You should bear in mind that any concerns about the behaviour, performance or conduct of an employee should be raised privately with the appropriate senior manager. You should also be careful about how you provide positive feedback to employees. For example, you could note in a board meeting that a report before you is well-written and comprehensive and ask for thanks to be passed on to the author. However, approaching an employee at their desk in an open plan environment and praising them on their work may not necessarily be appropriate. This is because you will not always know the extent of anyone else's involvement in the matter. It could be that they took a disproportionate amount of time to produce the one report that you are praising, or that a manager had to intervene and redraft the majority of it.
- 4.11 You should not become involved in any issues relating to individual employee's pay or terms and conditions of employment (except to the extent you are permitted to do so while serving on a committee delegated to deal with such a task or as otherwise required under one of the categories listed at paragraph 1.8). Similarly, the recruitment of staff is an operational matter and should be left to employees, unless you have specifically been asked to sit on a Panel to appoint a senior member of staff.
- 4.12 You should consider:
- whether you are acting in accordance with the provisions in the Code;
  - whether you are asking an employee to do something that could compromise them or prevent them from undertaking their duties properly and appropriately, including being unable to complete other tasks;
  - whether the nature and amount of any information you are seeking is necessary and proportionate;
  - whether you are asking an employee to act against instructions of management;
  - whether you are bringing any undue influence to bear on an employee to take a certain action, particularly if it is contrary to the law or your public body's policies and procedures (bearing in mind that you may well be perceived by employees as being in a position of power);
  - the nature of an employee's role and their seniority;
  - whether your actions could impact on the mutual bond of trust between members and employees;
  - whether you are asking an employee to do something that compromises them or could compromise them (including exposing them to disciplinary measures);
  - whether your actions result in an employee feeling pressured or threatened or adversely impact on their health; and
  - that while you are entitled to freedom of expression under Article 10 of the European Convention on Human Rights, the right is not absolute. It does not provide any protection if you are simply engaging in gratuitous, offensive or abusive personal attacks on employees, or are harassing, bullying or threatening employees in the course of their employment. The Standards Commission has produced a separate Advice Note for Members on the Application of Article 10 of the ECHR, which can be found at:  
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 4.13 You should note that even if your conduct may not amount to a breach of the Code, it may that other consequences could arise from it, such as exposing your public body to legal action or to a grievance from an employee.
- 4.14 If you sit on any committee of your public body (such as a Human Resources Committee or an Audit and Risk Committee) you should make sure you are familiar with the committee's standing orders and procedures, and the extent of its powers and remit.

- 4.15 If you are asked to become involved in an operational matter, you need to be clear about whether you are simply being asked to assist a service user or stakeholder in respect of how to access the appropriate service or employee, or whether you are being lobbied.
- 4.16 As a member, you have a duty to act in the public interest and undertake a scrutiny role to ensure your public body uses its resources prudently and in accordance with law. Robust challenge and involvement from members in driving improvement of performance at a corporate level, linked to the public body's priorities, is a key element of a commitment to delivering '[Best Value](#)'. You should always bear in mind the need for your public body to continually secure best value in the performance of its functions. This duty applies to every member as well as to employees. In undertaking your scrutiny role, you are obliged to make sure service user and community views are taken into account and that your public body responds to these.
- 4.17 You should note, however, that you are a board member of your public body, with a duty to act in the interests of your public body as a whole and to remember that you are representing it at all times. At the same time, you also need to be aware of any separate responsibilities you may have as a member of an external organisation such as any charity, Health and Social Care Integration Joint Board or Regional Transport Partnership to which you have been nominated or appointed by your public body.

## 5. Assisting Service Users and Stakeholders

- 5.1 If you are approached by a service user or stakeholder for assistance, you should ensure you manage their expectations in terms of the extent to which you can help. For example, you should advise a service user who has sought help with a case that while you can seek information on their behalf, you cannot overturn a decision and that they will need to follow the appropriate procedures for doing so. You should also advise the service user that you cannot seek legal advice from the public body on their behalf or pass on any legal advice provided to the public body.
- 5.2 You should not pursue any casework that is likely to come before you to make a decision, as doing so risks creating a perception that that you have allowed the service user special access to the decision-maker and have allowed them to bypass employees and any formal process your public body has in place. Again, you should explain why you cannot do so to any service user who has asked for assistance.
- 5.3 In order to avoid becoming inappropriately involved in operational matters and to prevent any conflicts arising, you should consider exactly what you are being asked to do on behalf of a service user. There should be no difficulty if you have managed the service user's expectations appropriately and are simply:
- advising employees of any issues raised or representations made;
  - helping service users or stakeholders make their views known to the relevant and appropriate employee;
  - seeking factual information on progress on behalf of a service user or stakeholder; and / or
  - advising a service user or stakeholder about whom they should contact and the correct procedure to follow.
- 5.4 Where appropriate, you should advise a senior employee of any issues you have noted or been advised about that concern a specific service user or stakeholder so that the matter can be passed to the relevant team or department to record and deal with as appropriate. You should bear in mind that employees are accountable to their own line managers and, even if you think you have identified an employee who you think is best placed to answer your query, you will not have knowledge of their workload and / or whether they have been asked to prioritise any other tasks.
- 5.5 While you are entitled to ask employees to keep you updated on the matter, you should avoid providing directions or taking any action that could be perceived as you providing directions on how employees should deal with or resolve the issue. For example, while you can suggest matters

that employees may wish to consider, you should be careful that you are doing so in a way that makes it clear that the decision about how they deal with the issue and what action should be taken is a matter for them. Again, you should note that more junior employees may feel compelled to act in accordance with your suggestion, regardless of whether this is compatible with any direction given by a line manager or an internal procedure.

- 5.6 If you record or keep a note of any issues raised or advice you give to a service user, you should be careful to do so in a manner that is compatible with your public body's protocols and policies on the processing of personal data.
- 5.7 If you have been asked by a service user to help with concerns they have about your public body's services or any decision it has made and / or you have identified a mistake or problem, you can ask employees to review what has happened, and what is being done to resolve the issue and / or what is being done to prevent it happening again. You should ensure the service user is aware, however, that asking a member for help is not a substitute for any formal complaint process. If appropriate, you should recommend the service user make use of your public body's formal complaints procedure, as this enables common patterns of complaint to be identified, and enables a complainer to escalate their complaint to the [Scottish Public Services Ombudsman](#), if they wish to do so. You should also make service users aware that if a decision has been made in accordance with your public body's policy, it may not be appropriate for it to be reviewed.
- 5.8 You should decline to get involved if you are approached by any employee in respect of any matters relating to their employment with your public body. You should advise the employee concerned to contact their line manager, trade union or follow the appropriate internal procedures for raising any such issues. The exception to this would be any disclosure made by an employee that could fall within the terms of [The Public Interest Disclosure Act 1998](#). The Act allows individuals to disclose certain issues to particular external parties (known as 'prescribed' individuals or bodies) where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual making the disclosure to be penalised in some way. This is known as 'whistleblowing'. You should familiarise yourself with the types of matters that should be reported and your public body's reporting procedures.
- 5.9 While you may have some experience in a particular field, you should never assume or should be wary of assuming that you have more knowledge than employees who receive specific training and who should have a good, and up to date, awareness of your public body's policies and procedures relating to the tasks they are performing, as well as the current legal framework they are operating in. Employees may also have access to more relevant and material information that has influenced the way they approach the issue.
- 5.10 If you consider an employee is not providing you with information to which you have a right to access, you should raise your concerns with the appropriate senior manager.
- 5.11 If you are concerned that a service user is making or has made a fraudulent claim, you may be obliged to report the matter. You should, therefore, ensure that your service users are aware that not all information they provide to you can be kept confidential.

## 6. Further Sources of Information

- 6.1 The Standards Commission has published guidance and advice notes on how to interpret, and act in accordance with, the provisions in the Code, including those relating to relationships with employees. This guidance can be found on the Standards Commission's website at: [www.standardscommissionscotland.org.uk/guidance/guidance-notes](http://www.standardscommissionscotland.org.uk/guidance/guidance-notes).
- 6.2 The Standards Commission also publishes written decisions of Hearings on its website. These can be found at: [www.standardscommissionscotland.org.uk/cases/case-list](http://www.standardscommissionscotland.org.uk/cases/case-list).

- 6.3 The Scottish Government’s publication “On Board: a guide for members of statutory boards” contains useful information and guidance for members of the boards of public bodies in Scotland, and can be found at: <https://www.gov.scot/publications/board-guide-members-statutory-boards/>.
- 6.4 If you have any queries or concerns about how to interpret or act in accordance with the provisions in the Code, you should seek assistance from the public body’s Chair, Chief Executive, or Standards Officer. Further information can also be obtained from the Standards Commission via email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk).



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## ANNEX A: EXAMPLES OF WHEN A MEMBER BECOMES INAPPROPRIATELY INVOLVED IN AN OPERATIONAL MATTER

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It should be noted (as outlined) under paragraph 1.7 above), that what may be strategic and what may be operational can vary between different public bodies, depending on their size and the sector in which they operate. There are, however, many examples of areas where members may inappropriately seek to get involved in operational matters, including where a member:

- becomes involved in an individual staffing matter.
- insists on attending an operational meeting with an outside body, or an internal employee working group where members are not normally present.
- insists on reviewing internal policies and suggests minor grammatical or formatting changes and / or insists on approving the content of policies that concern operational matters. For example, it may be sufficient to agree that the public body should have a policy on flexible or hybrid working for staff, without approving the detail of such a policy.
- insists that their public body's policy is varied to benefit an individual service user.
- tries to overturn a casework decision that has been delegated to employees to make.
- seeks to become involved in the drafting of an internal process document being put in place to support a wider policy.
- demands that the contents of a report or its recommendations are changed when being consulted on it as a Chair of a committee.
- asks a junior member of staff to undertake a certain task, without their line manager's knowledge or consent.
- demands to sign off responses to all media enquiries and public communications regardless of content or context.
- tries to direct or alter the evaluation of a tender, grant application, or any other evaluation.
- seeks access to confidential internal human resources reports about individual employees.
- seeks to negotiate directly with trade unions and, in doing so, undermines agreed collective bargaining and the employees involved.
- seeks to alter and approve an operational plan.

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## ANNEX B: HEARING EXAMPLES

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A councillor became involved in a social care case on behalf of a constituent. This involved making suggestions and judgements about matters such as where his constituent should be housed, contact between the constituent and her children, and the rehabilitation of one child.

The Hearing Panel found that the councillor was not simply articulating his constituent's concerns but was instead inappropriately trying to use his role to engage in, and exert influence over, direct operational management.

While the Hearing Panel acknowledged the councillor had a responsibility to represent his constituent, it considered in so doing, he had lost sight of his other responsibilities as a councillor and his obligation under the Code to respect the different roles of councillors and officers. The councillor pursued the interests of his constituent without any objective consideration of the children's interests or the paramount duty the Council had to ensure their safety and welfare, and despite not being qualified to make decisions to judgements in this regard.

The Hearing Panel found that the councillor had an expectation that actions should be taken in response to his engagement. The Hearing Panel considered that while his involvement may not have had any effect on the outcome of decisions, this had clearly been his intention.

The Hearing Panel noted that the councillor failed to accept that he had an inherent influence in his role as an elected member. The Hearing Panel considered it was disingenuous to suggest it was open to officers to simply ignore his enquiries and requirements. The Hearing Panel further considered that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers had felt obliged to respond.

The Hearing Panel concluded that the councillor's involvement in direct operational management and questioning of the professional judgement of officers amounted to a contravention of the Code. The councillor was suspended from all meetings of the Council for six months.

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Before being elected, a councillor had been a spokesperson for a lobbying group who were opposed to a refurbishment of a school on its existing site. The councillor stood down from the position after the election, but had continued to receive and send emails to members of the group, which included two of his close relatives. The councillor had, however, failed to declare his involvement as a non-financial interest and had failed to declare the non-financial interests of the close relatives, at meetings where a planning application in respect of the school was considered.

The Hearing Panel noted that the councillor's pre-election position as spokesperson for the group; his post-election public support for a new build site and his opposition to the refurbishment of the existing school; and the fact that he had continued to exchange emails about the matter meant that his involvement with the group had continued after his election as a councillor. The Hearing Panel concluded that, essentially, the councillor could be perceived as advocating for a cause. He should have declared his involvement and that of his relatives as non-financial interests, refrained from taking part in the planning decision and withdrawn from the room. The Hearing Panel found that the councillor had breached the Code. The councillor was suspended from a planning committee of the Council for two months.



A councillor became involved in a dispute with his neighbour over the erection of a garden structure, which the councillor felt overshadowed his own garden. The councillor contacted key senior officers involved with planning and requested information or actions that would not be available to an ordinary member of the public. On one occasion, the councillor attempted to call-in his neighbour's planning application.

The Hearing Panel found that the councillor had used his position as a councillor to seek information not normally available to members of the public from senior officers of the Council, and attempted to exert influence in asking that the matter be dealt with urgently.

The Hearing Panel noted that although there was no evidence that the councillor attempted to put pressure on officers to reach a particular outcome in respect of the planning application, nor that his actions had any bearing on the decision that was ultimately made, officers may have felt under pressure to comply with such a request.

The Hearing Panel determined that the councillor's actions in requesting information not normally available to members of the public, in asking officers to deal with the matter urgently, and in failing to distinguish between himself as a potential objector and his role as a councillor when attempting to call-in the application, amounted to attempts to seek preferential treatment, and constituted a breach the Code. The councillor was censured.

# CROFTING COMMISSION MEETING

31 March 2022

Report by the Chief Executive

## Commissioner Training Plan

### SUMMARY

The Board is asked to consider the Training Plan at Annex A and to advise on the selection of training to be prioritised in 2022/23.

### BACKGROUND

A comprehensive training programme was put in place for Commissioners in 2017 and has been added to each year. A newly proposed training plan to cover the period 2022/23 is detailed on the table at **Annex A**. It is suggested that the Board as constituted from 18 March 2022 is given an opportunity to consider which training should be prioritised, with a view to a full 5-year Programme being developed later in 2022.

### CURRENT POSITION

Following the Wider Scope external audit in 2021, the Deloitte Report recommended at 2.9 that the Commissioner training plan should be subject to Board approval and updated annually. The Board should further set out clearly how the training plan has been decided upon.

The Board of Commissioners considered the 5-Year training Plan at their meeting on 3 December 2021.

Several members had expressed concern at the amount of training delivered in the first year after elections, reflecting the time required for new Board members to begin to understand their role. This has been borne in mind when drafting the table at **Annex A**.

The Board is asked to consider the items included at **Annex A** and indicate whether they agree that these items should be covered in Year 1 (2022/23), bearing in mind the need to ensure there is clarity around roles and responsibilities at an early stage in the life cycle of the Board. Some items included in the table are mandatory. These are highlighted in yellow.

Following this, management will commence arrangements to deliver the training and return to the Board later in 2022 with draft proposals for a full 5-year training plan, which will be reviewed on an annual basis.

<b>Impact:</b>	<b>Comments</b>
Financial	A proportion of training can be delivered in-house. In addition, there is a separate training budget to cover the Board.
Legal/Political	Some of the training detailed is mandatory.
HR/staff resources	Several members of staff are engaged in either delivering training or arranging its delivery.

**RECOMMENDATION**

**Board members are asked to confirm the Training Plan at Annex A as the elements of training to be prioritised for the Board in 2022/23.**

Date            14 February 2022

Author           Jane Thomas Head of Compliance & Business Support

## TRAINING FOR COMMISSIONERS, 2022/23

Context: Some new Commissioners will join in March 2022  
2 new Commissioners in be appointed in May/ June 2022  
New Convener likely to be appointed in the Autumn 2022

Key training events in March/April/May for new and returning Commissioners are required, followed by a more substantial programme of training to commence in July. This will include an Induction Day in June/July, as soon as possible after the new Appointed Commissioners join.

Theme	Initial training March – May	Training plan from July 2022 – March 2023
Role of a Board member	<ul style="list-style-type: none"> <li>Session with John Kerr on 31 March, covering interface with Scottish Govt</li> <li>Briefing on Deloitte issues (31 March)</li> <li>Discussion on Policy Plan (31 March)</li> <li>All Board members must complete the Public Bodies Unit's (PBU's) 'On Board' online module before May and any new members should attend the Induction session delivered by PBU in late May.</li> </ul>	<ul style="list-style-type: none"> <li>On Board training with David Nicholl</li> <li>Corporate Plan and Business Plans</li> <li>New appointed Commissioners to complete the Public Bodies Unit's (PBU's) 'On Board' online module and attend the Induction session delivered by PBU</li> </ul>
Role of the Commission	<p>Introductory sessions on 31 March covering:</p> <ul style="list-style-type: none"> <li>Regulatory backlog</li> <li>IS team projects</li> </ul> <p>Briefing for new Commissioners on</p> <ul style="list-style-type: none"> <li>Principles in Regulatory decision making (Joseph)</li> </ul>	<p>Repeat of the previous session for new Commissioners plus</p> <ul style="list-style-type: none"> <li>Briefing by Finlay on Grazings</li> <li>Briefing by Arthur on Development</li> <li>Sessions with David F on Crofting legislation</li> <li>Sessions with David F and Joseph on issues for potential legislative change</li> </ul>

Theme	Initial training March – May	Training plan from July 2022 – March 2023
Governance essentials toolkit	<ul style="list-style-type: none"> <li>Briefing for new commissioners on declaring interests</li> <li>Session on information security and information handling</li> <li>Briefing on T&amp;S system</li> </ul>	Repeat of the previous sessions for new Commissioners plus: <ul style="list-style-type: none"> <li>Performance appraisal system for Commissioners</li> <li>Equality and diversity</li> <li>Finance (both for AFC members and lighter touch for other Commissioners)</li> <li>Risk</li> <li>Compliance (Fol, Complaints, GDPR)</li> <li>Ethical standards delivered by the Standards Commission</li> </ul>
Media	<ul style="list-style-type: none"> <li>Induction Pack for Commissioners, including the media protocol, will be circulated during w/c 21 March</li> </ul>	<ul style="list-style-type: none"> <li>Media training for new Convener and other Commissioners</li> </ul>
IT	<ul style="list-style-type: none"> <li>Protocols on acceptable use of IT, circulated late March or early April</li> <li>Training in use of IT – tailored to the individual as necessary</li> </ul>	Repeat of previous sessions for new Commissioners
Meet the staff	<ul style="list-style-type: none"> <li>New Commissioners invited to meet staff in early April</li> </ul>	<ul style="list-style-type: none"> <li>New Commissioners invited to meet staff in June/July</li> </ul>
Meet the Cabinet Secretary		<ul style="list-style-type: none"> <li>Meeting between Cabinet Secretary and full Board in late Summer / Autumn 2022</li> </ul>

**UPDATE ON DELOITTE - ORAL**

# CROFTING COMMISSION MEETING

31 March 2022

Report by the Chief Executive

## Trends in Outstanding Casework

### SUMMARY

Outstanding regulatory casework has been slowly increasing since 2020 and has seen rapid increases since July 2021. The primary reason for the increase over the last year has been considerable losses of experienced staff, which alongside the lengthy training timescales for new staff, has had a very negative impact. Reasons for the longer trend are explored and actions which have been taken to mitigate the backlog are outlined. The plans to recover the position in the medium and long term are explained, which are based on the recommendations of the Glen Shuraig Report (November 2021).

### Background

The Commission has been experiencing increases in the numbers of outstanding cases for several months. The monthly statistics for case progression show most applications and notifications until decision and give a good representation of the relative change over time of outstanding cases as shown in Figure 1.

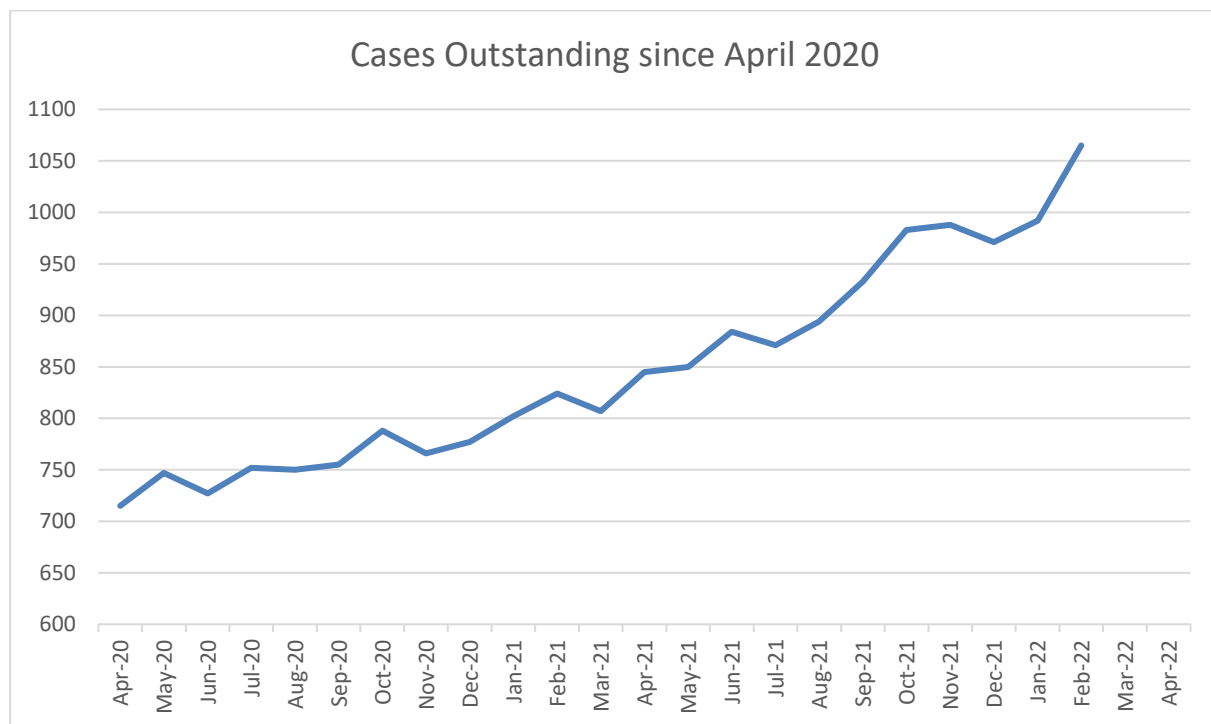


Figure 1 – Numbers of cases outstanding since April 2020.

Figure 1 shows that outstanding cases have been increasing since April 2020 and in particular have gone up at a worrying rate since July 2021.

Applications received has fluctuated over the last 4 years as can be seen in Figure 2. This shows a sudden drop in applications received and discharged between April and June 2020 and since this time applications discharged stays below applications received. Once applications received recovered after the initial drop associated with the pandemic it increased further, but no higher than the levels we saw pre-pandemic. Given this, the numbers of applications received does not appear to be the primary reason for the increase in outstanding cases, although increasing applications may have had an impact across shorter timescales or for particular types of cases.

Applications discharged doesn't appear to fully recover back to the pre pandemic levels.

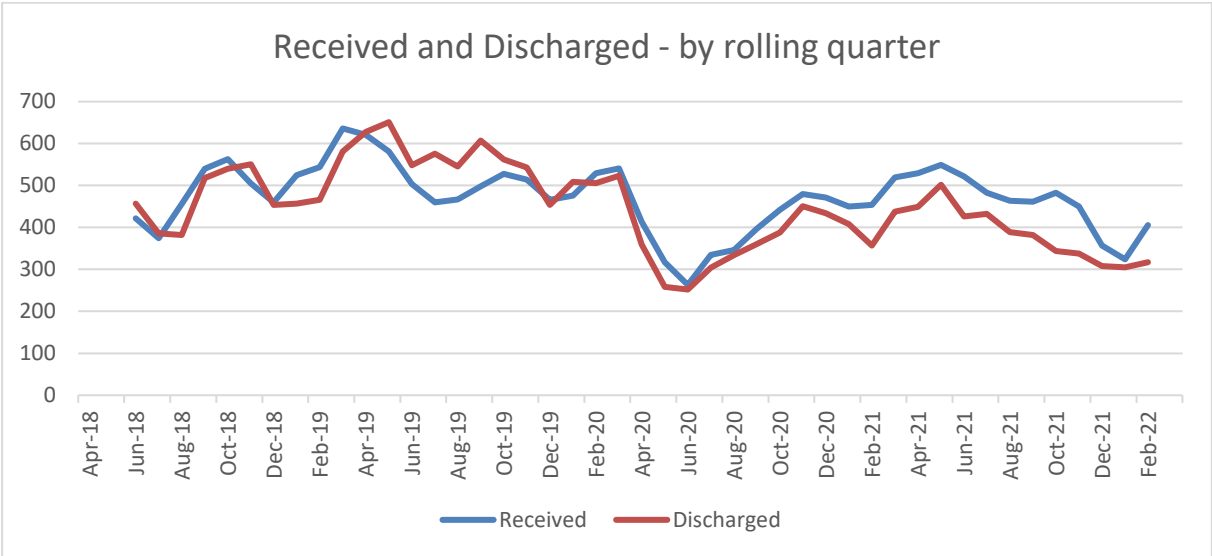


Figure 2 – Numbers of cases received and discharged since April 2018. This is shown by rolling quarter which means that each data point represents the total for that month and the two previous months. This smooths out fluctuations so that overall trends can be more easily picked out.

**Why has there been an increase in outstanding cases?**

*Losses of experienced staff*

The increase in outstanding cases for the period of financial year 2021-22 (807 to 1065) can be closely linked with the losses of experienced staff (Table 1). Several experienced staff members left the organisation in the 2021-22 period over the summer, autumn and winter 2021-22. In particular, two B1s left in July 2021, one B1 left in November 2021 and two B1s left in January 2022, which can be seen clearly reflected in Figure 1 where it shows a sharp increase in outstanding cases between July and October 2021 and from January to February 2022.

The loss of experienced staff is so impactful because of the considerable time required to recruit and in particular to train new staff. The training period is around 12 to 18 months for A3s new to the organisation and they typically take 9-12 months to be trained in most functions and a further 6 months to consolidate. B1 training for experienced A3s takes around a year and is considerably longer for those new to the organisation. This is because of the number of different case types to learn, the complexity of the legislation and the system and process learning.



Table 1 – Numbers of staff that have left the Regulatory Team over the last four years.

Year	
2018-2019	Two B1s left the team (one to another team) Three A3s left the team
2019-2020	One B2 moved to another team One B1 left the team on TRS (temporary responsibility supplement) Two A3s left the organisation
2020-2021	No staff left the regulatory team
2021-2022	Two B2's left the organisation Five B1's left the organisation Two A3's left the organisation Three A3s were promoted to B1 within the team Three A3s were promoted to B1 within the team on TRS

The numbers of staff that have left the team have been particularly high this year and as shown in Table 1 is by far the highest level of staff losses from the team for the last 4 years.

### *Earlier effects of the pandemic*

The 2020-21 period was notable in that no staff left the organisation, however the outstanding cases did rise during this period from 715 to 807 indicating that other factors were contributing to this trend. This was the period that the Commission had to adapt to home working and the impacts of the pandemic and lockdowns. With the sudden move to home working in March 2020 there was a drop off in output, followed by a slow rise (Figure 2 shown by the red line), reflecting the adaptation to home working in addition to other factors affecting individuals during the pandemic such as caring responsibilities.

Several processes had to change after the move to home working such as how the mail was handled and accessed. In particular, incoming and outgoing mail was badly disrupted in both April 2020 and January 2021, resulting in reduced numbers of cases discharged in both months. Some staff experienced difficulties with connectivity for a range of reasons which in some cases took months to resolve. Processes such as creating new decrofting directions were forced to change and a new remote way of doing this needed to be implemented and staff trained.

### *Increased complexity of the regulatory task*

The reasons for the longer term trend that can be seen in Figure 1 is likely to be a combination of factors. The regulatory team has been stretched for some time and in particular work has increased as more crofts have become registered in the map based Register of Crofts since 2012. The Commission processes all of these first registration applications, which includes checking their validity and checking them against data held in the Register of Crofts. Whilst there is a dedicated team for some of these applications, there has still been a considerable increase in work to other teams including Regulation, Regulatory Support and GIS. In addition to first registration applications, other applications must be submitted in relation to updates to the Register of Crofts such as when a decision has been taken on a regulatory application (Form G) or a subsequent event affects the registered croft (Form B). Further to this, croft registration brings to light many issues when the croft is registered and especially as more crofts become registered. This includes discrepancies between neighbouring crofts, instances where the Commission has not been kept informed of changes of owner, decrofting directions showing slightly different boundaries to what is on the ground and what needs to be registered. All of these issues means extra time and work for staff to resolve them before the croft can be registered.

In addition to steps added to accommodate home working, steps have also been added for other processes, such as tagging decrofting directions for the visually impaired, enabling directions to be loaded onto ROC Online, and several checklists for GDPR purposes. All of these steps have been added for good reasons but they all add to the time taken for cases. Changes like this are typically implemented by other teams such as regulatory support or IS and the lack of capacity within the regulatory team has meant few efficiencies have been put in place to counteract. Anecdotally processes are noticeably longer than they were 2-3 years ago and the numbers of cases escalated to Regulatory support has also noticeably increased, the latter of which may be more linked to increasing registration issues. Changes in policy also have had an impact such as the change to the policy around subletting has meant more of these cases have to be taken at Tier 2 or 3 which means they are slower and more time consuming. Increases in Residency and Land Use work has also resulted in more work for the regulatory team as they need to process applications that result from the investigation case by RALU.

#### *Other pressures on regulatory staff time*

An increase in customer enquiries reaching the regulatory team has been seen in recent months, which is a result of the loss of experienced staff from the customer services team. Staff have been involved in short term working groups such as online applications and CIS testing, which also takes time away from processing cases. Given the range of issues discussed that have contributed to casework, it is not possible to isolate staff productivity as a result of home working as a single factor and anecdotally this is not reduced by home working and in some cases has clear positive effects.

The regulatory team has been feeling stretched for some time and this has meant that any issues with staff such as sick leave or staff leaving has been difficult to absorb by the rest of the team and so has led to increases in the outstanding cases. Even prior to the pandemic staff have reported feeling considerably stretched with the level of work and frustrated at the lack of measures being added to improve the situation, indicating that the issue has been here for some years. The combination of various pressures including the pandemic, the backlog, challenging audit reports and several colleagues leaving certainly affected team morale over the last couple of years.

Staff have felt for several years that the team needs additional staff and the workforce review (Glen Shuraig, November 2021) confirmed that the staffing allocation for the regulatory team is inadequate (see below).

#### **What has been the impact of the increases in outstanding work?**

The increase in outstanding work has meant more pressure is put on members of the team as cases that are in progress need to be allocated somewhere if a staff member leaves or goes on sick leave. Increased delays have meant more applicants chasing up applications and complaints and so more work for staff in the form of emails and phone calls. The difficulties associated with the backlog has been felt by all teams across the organisation and the loan of multiple staff to assist has meant it has affected many other aspects of the Commission's work.

The issue of so many staff changes this year has meant that cases have had to be passed between different staff members. This is not ideal because it takes time for staff to familiarise themselves with any new case, adds to the overall time spent on the case and may affect the customer service provided.

The cumulative effects on staff of the backlog and all the other issues over the last couple of years are worrying. The impact of the difficulties may have contributed to the decision by some staff to leave the organisation.

## What measures have been put in place to tackle the issues?

### *Maximising the resources for the regulatory team*

Various measures have been put in place to try and deal with the backlog situation. Staff resource has been brought in from several other teams to help and these are summarised in Table 2.

Table 2 – Resource that has been borrowed from other teams to help address the backlog of cases.

<b>Resource from outside regulatory team</b>	<b>Work</b>	<b>Time</b>
Grazings team	A3 casework	One staff member between May 21 and January 22 for 3 days a week
	Regulatory enquiries	Ad hoc from February 22
IS team	B2 management	One staff member between October and December, full time
		One staff member (TRS) between January and April 22, full time
Residency & Land Use team	A3 and some B1 casework	Four staff members between November and April 22, 1 or 2 days a week
Registration team	Informing customers of delays	November 21 to present
Regulatory Support Team	B1 casework	One staff member from October 2021 to March 2022, 2 days a week
Development team	Recruitment and enquiries	Ad hoc from January 2021

Overtime has been offered and taken up by a few staff, which has helped progress some work. Key management roles including the B2 Operational Delivery Manager post and the B3 Head of Operations post have been filled as quickly as possible by experienced staff, when they have been vacant due to staff that have left or moved roles or due to sick leave.

Ongoing management of casework has been very intense and time consuming in recent months because of staff leaving and moving roles. This has been done proactively by experienced B2s in the role. In addition to staff from other teams helping, movement of staff internally into the regulatory team from other teams has taken place. This has lots of advantages as it means that staff can be trained more quickly and there is less of a delay from recruitment. Temporary promotion opportunities (TRS) have been utilised to ensure that key roles are filled and this also helps staff development.

### *Recruitment*

Recruitment is needed when posts are vacated, and this has been particularly challenging due to the freeze in recruitment for a period late 2021 to early 2022 prior to Scottish Government implementing a new recruitment system. This was part of the reason for the decision to go ahead and recruit several A3s via agency contracts. Recruitment has been difficult even prior to this due to the length of the process and some recruitment exercises not coming back with any successful candidates. Time has since been put into refreshing the job descriptions and creating a new process to advertise Crofting Commission vacancies more pro-actively in addition to the Scottish Government platform. Recruitment has also been done carefully to ensure that staff recruited are of the calibre required to ensure that they take to the role which has a high degree of learning and complexity.

## *Training*

Training is a fundamental part of the strategy to build a stronger team in addition to recruitment. The training programme for new staff has been invested in and developed over the last couple of years and further capacity will be added with the new B2 posts as shown in Figure 3. The staff directly and indirectly involved in training have done an excellent job and the organisation is already reaping the benefits of this. Going forward, the training element will be critical to reducing the numbers of outstanding cases to a manageable level.

## *Keeping crofters and agents informed*

Initially emails to agents and solicitors were sent in summer 2021 to advise of the increasing timescales for cases. An additional step was introduced in November 2021 to send an additional acknowledgement to applicants to explain and apologise for the anticipated delays with their application. Any applications that had not yet been acknowledged at this time were also sent this message. The usual process is to acknowledge an application when it has been validated and because of the queues of cases, this time period had extended significantly. There has also been messaging agreed and added to the website, social media and email auto replies.

## **Looking ahead**

In November 2021, Glen Shuraig Consulting presented a report to the Crofting Commission about the staffing requirements. Chief among their recommendations was that the regulatory casework is very vulnerable to staff losses, and that action needed to be taken to protect against the risk of turnover. Glen Shuraig recommended that the number of frontline regulatory caseworkers should increase from 18½ to 26½. This substantial increase can be seen as having two distinct though related purposes: to increase the size of the frontline team; and to protect against future turnover by ensuring that there is a steady flow of new colleagues in training. The Commission considered the report and endorsed these recommendations for immediate implementation with the support of the Scottish Government.

The Glen Shuraig report made clear that increasing staffing was required to address the backlog, but because of the time required for recruitment and training, the situation will take time to improve. Recruitment of additional posts for the regulatory team is key to this and will have a huge positive impact once staff are trained. The regulatory team and the new posts expected in 2022 are shown in Figure 3. Some of this recruitment has already taken place and the team has had several new A3s start in February and March 2022.

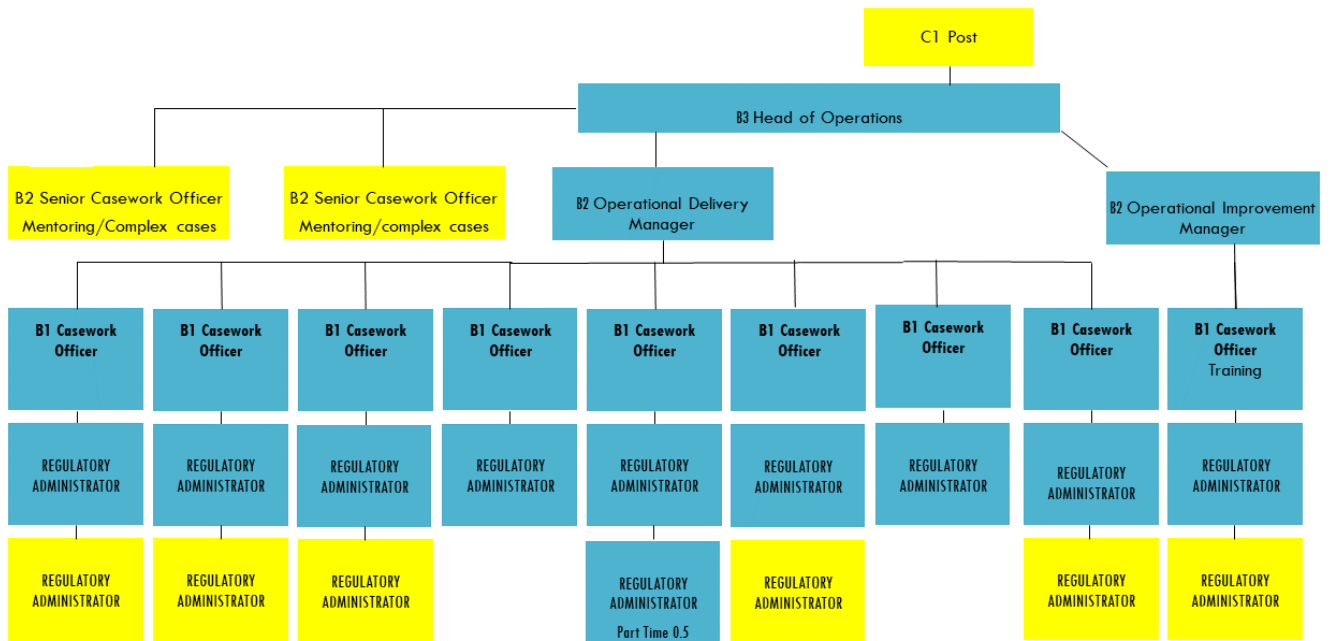


Figure 3 – Chart showing the staff for the regulatory team. Blue boxes indicate the structure of the team as of 2021 and the yellow boxes indicate additional posts to be added during 2022, though some of this is subject to the Scottish Government’s response to the Commission’s Business Case. The current staffing of the team as of March 2022 consists of 8.4 B1s FTE (full time equivalent) and 13.3 A3s FTE.

The additional A3 and B1 resource will be crucial to bring the numbers of outstanding work down to a more manageable level. This will take some months due to the time taken to recruit and train the staff. The model that was included in the Commission workforce review by Glen Shuraig gives an indication of how long it will take to bring the cases down to a sustainable level with the additional posts that have been created.

Glen Shuraig estimated that if there were no backlog at all, and all cases were progressing without delays, at any one time there would be about 600 live cases in progress. This represents an estimate of the size of the pipeline when there is no backlog.

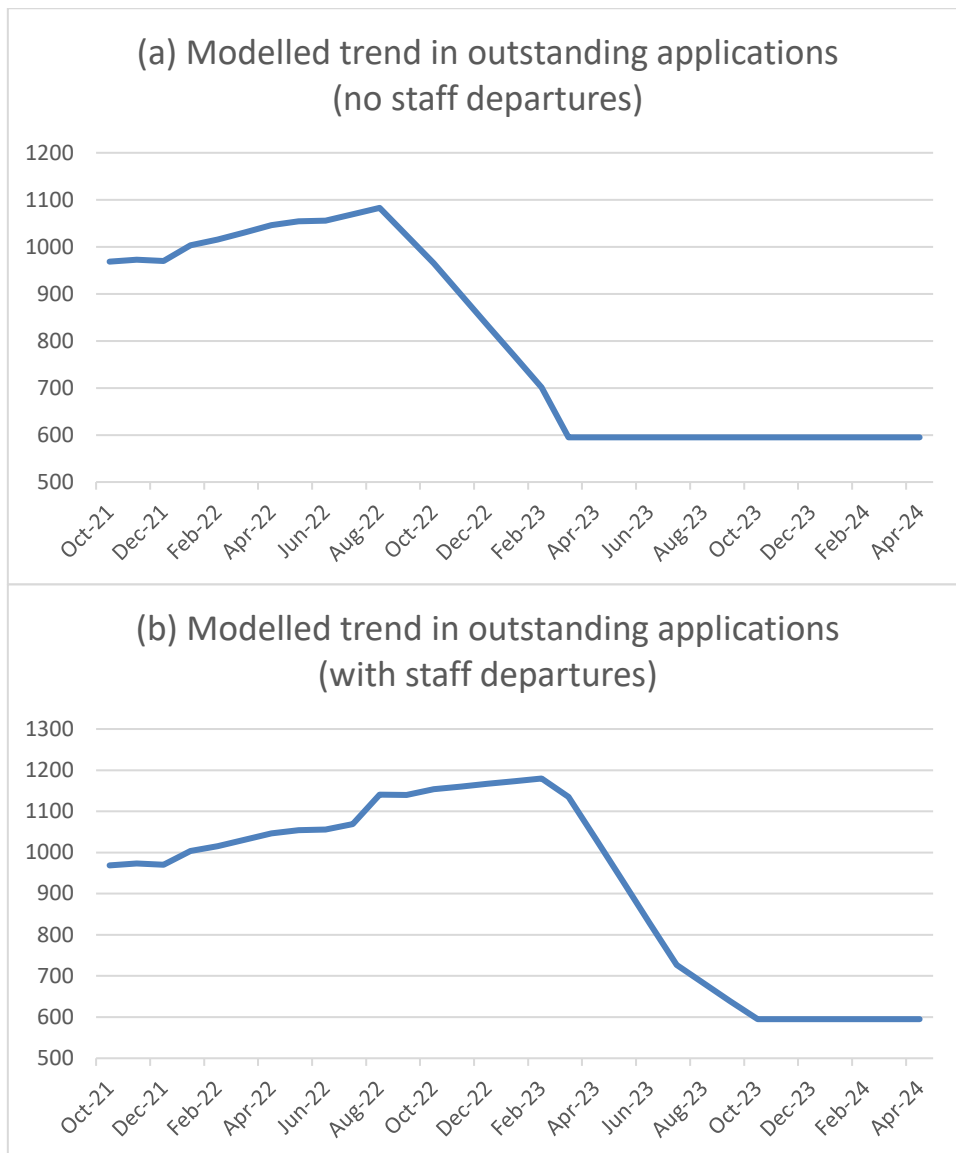


Figure 4 – Predicted change in outstanding applications based on model from the Crofting Commission workforce review, 2021, Glen Shuraig Consulting Ltd. Based on the assumption of an intake of seven staff in March 2022 and three staff in October 2022. (a) Recovery with no departures of staff from team in 22-23; and (b) Recovery with departures of four staff (B1 and A3 level) from the team in 22-23, replaced with inexperienced recruits.

Glen Shuraig’s model suggests that in the best case scenario, with all the additional staff recruited and no staff departures from the team for the upcoming year, a reduction to a level of around 600 cases can be expected by about March 2023 (Figure 4(a)). Comparatively if four staff leave the team in the year 2022-23 there will be a reduction down to a level of around 600 cases by October 2023 (Figure 4(b)). Staff departures from the team are much more impactful whilst there is a backlog and once the outstanding cases reach a more manageable level, there will be greater resilience.

The additional B2 and C1 resource will also be critical to share the load of making improvements to processes and building more efficiencies and improvements. The additional B2 posts for complex cases and mentoring will help reduce pressure on the trainers and the Regulatory Support Team and will help minimise bottlenecks that arise from complex cases. The team increase in numbers will be considerable and there will be a lot of work getting organised into a new structure that works well.

The key issue of staff turnover is something that will need further consideration and monitoring. The high caseloads and dealing with difficult customer enquiries that has been the case for some years should improve once the outstanding cases are down to a more sustainable level. The increased resource in the team will provide a boost to staff morale and the real benefits of more manageable workloads and ability to provide a better service to crofters. The increased time for staff to make processes better and more user friendly and for their own development should all help reduce frustrations and encourage staff retention in the team.

<b>Impact:</b>	<b>Comments</b>
Financial	Increased costs associated with expanding the Regulatory team.
Legal/Political	Implications of casework delays include impacts on crofters and reputation issues for the Commission.
HR/staff resources	Increases in outstanding casework have meant increased pressure on staff. Recruitment and training of a larger team requires a lot of work from existing staff. Knock on effects will be felt in other teams when outputs from the regulatory team change.

**RECOMMENDATION**

**That the Board note the issues surrounding the increase in outstanding casework, and note what steps have been taken in response to it and the larger team structure that is currently being recruited and trained.**

Date            8 March 2022

Author         Heather Mack, Head of Operations

# CROFTING COMMISSION MEETING

31 March 2022

Report by the Head of Digital

## Digital Applications update – current state of play

### SUMMARY

**This paper forms an official update on the Digital Applications project and covers progress on both the digital system itself and associated paper form redesign.**

### Background

The Crofting Commission (CC) embarked on a project to convert all of its application forms into a digital process that functioned online in order to realise the benefits this would bring, both for the client and the organisation. This project not only looked to bring the application process online, but also to redesign the forms themselves for those who could not or would not use the digital process, with a key goal to refresh the information gathered and make the application process more accessible.

This paper forms an update of the current state of play with the digital application project, as well as the redesign of the paper forms themselves.

### Digital application system

The digital application system is divided into two technical elements; the applications themselves, and the administration system that lies behind it. This update will address each in turn, covering current state and future plans.

#### The digital applications

The application types have been split into two tranches of work, the first looking at the core applications and the second<sup>1</sup> to look at notifications. The first tranche is further split down into two groups, 58A application types and non 58A application types. This division is due to the similarity of the applications in each grouping to each other, and through this the amount of questions and technology which is transferable.

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<sup>1</sup> The exception to this is the notification for a change of details which was developed initially as a proof of concept and was completed to a workable state before any application type was started.



The Commission had a goal to go live with the initial tranche of digital applications, along with the notification for change of details, before Christmas 2021, however this launch was initially delayed due to some concerns around potential fraud risks to crofters. These risks were linked to the accessible nature of a digital system, and planned changes around the signature process for digital applications whereby no signature is collected at the start of the process as they would be in the paper format. Although the Commission looked into viable digital signature options, legal advice from the Commission solicitor was that within a court of law there was no current digital signature available to the Commission, including Adobe, which had a “legal standing”.

The result of this thinking was the identification that Assignment and Letting applications likely carried a higher risk of potential fraud than other application types as they often involved high value financial transactions which were parallel to (but separate from) the Commission’s processes. It was agreed to therefore restrict these two application types to only solicitors and professional agents which had undergone a limited vetting process by the Commission and been added to the system as a “recognised organisation”, an organisation with a history with the Commission or another method of verifying their professional status.

On the back of these changes a soft launch of the Assignment and subletting types went live at the end of January 2022, initially restricted to professional organisations who have worked with Commission officials during the development and testing of the system, and then later to a wider public audience with the above restrictions for Assignations included.

A full overview of the digital system was delivered to approximately 40 representatives from known solicitors and agents, which was warmly received. To date the Commission has had one live application of each type, and the system indicates more than 10 are in progress to the date of this paper. It was anticipated that the initial uptake would be slow however this has allowed good scope for full technical testing and review of the submitted applications. The review includes a Commission wide review of the new initiation document, a redacted sample of which is included in **Annex A**.

The Commission aimed to go live with three additional 58A application types in the digital system by the end of February 2022, however the culminated effect of absence, the census going digital for the first time, a push on development of the Crofting Information System (CIS), the Commissioner elections, and delays due to the fraud concerns raised have combined with Regulatory workload pressures to make this unachievable. The Commission is currently aiming to deliver the following application types into the live digital system through March and April 2022, resource demands allowing:

- Short term let
- Letting of a grazing share
- Letting by an owner occupier crofter
- Subletting of a grazing share

These will then be followed by Assignment of a grazing share and the first Decrofting application types in April to May 2022.

The notification type for change of details is currently being held back due to an anticipated impact of Regulatory case loads when it goes live.

To further promote the digital system the Commission has also ordered promotional mugs which will be sent to the first professional organisation to submit a digital application of each type, and for those others who submit a digital application through the period of March 2022. These are designed to remind and reinforce the use of the digital system, and samples can be found in **Annex B** and **Annex C**.

## The digital applications account portal

The second element of the digital applications system is the online account portal. This is the technology which acts as the front end to the applications. From the earliest conception of the system feedback has been taken into account from a wide range of stakeholders to ensure that the application system delivered a high degree of user satisfaction with the functionality and interface. This developed into a need for a full account portal to be built to facilitate the digital applications.

This system is in live BETA (soft launch but continuing to evolve). It is available to both the public and professional organisations, though at the same time it is being iterated to meet the demands of users as they are identified. Currently the system works as follows:

- Anyone can create an account and start an application – users need only a valid email address
- The Commission has the ability to specify the domains (for example crofting.gov.scot) that are treated as recognised organisations:
  - Any account created from an address connected to a known domain is automatically associated to it
- The account allows a dashboard to track applications (see screen shot at **Annex D**)
- The account portal allows organisations to perform key tasks such as the creation of admins, suspending of accounts, and transferring cases across members
- This also allows professional organisations to have their details complete automatically on relevant questions, and optionally to allow members to be searchable during the application process to be nominated as an additional party to the application

The digital applications are fuelled by a redesigned application wizard which is implemented in both the Commission's main website and the account portal. This wizard directs applicants to the correct form for the holding and stakeholder applying, and also guides users to the digital route option if it is live.

All digital applications are submitted live to the CIS when complete, which includes automatic creation of the case, adding stakeholders to the case, and attaching the initiation document and any supporting evidence.

This part of the digital applications project is considered complete and is live in public BETA.

## **Paper PDF redesign**

The work underway to redesign the paper forms is split into two separate parts; the work done internally within the Commission Regulatory Support and Regulation teams to physically rework the questions, and then the redesign work which is done between an external contractor and Commission officials. The first stage of this work feeds the digital system, and so the workflow runs as follows:

1. The existing PDF application is reviewed and all questions are reworked to make them more accessible and remove potential areas of ambiguity, splitting forms into modular questions.
2. The digital application process uses these modules to create a corresponding digital journey.
3. The new questions are then sent to the contractor to make them into new application documents, which involves several proofing stages. This stage involves IS, Regulation and Regulatory Support staff.

Due to the nature of this workflow, the redesign of the PDF forms comes in at the end, and as such is the last stage on the process. To date the Assignment application form has been fully redesigned and undergone five revisions during the proofing stage. This form is awaiting final sign off before being made live. Work is now progressing on the Subletting form.

However due to pressures in the Regulatory and Regulatory Support teams this work will also not progress through March and will be picked up again in April 2022.

**Next steps**

The Commission is now firming up the complete end to end process for Regulatory colleagues to follow on receipt of the digital applications. This will cover the low-level detail of changes to letters and the CIS workflow steps needed to process the case.

The Commission is also reviewing the ability to add a legally valid digital signature to the application process, to allow the need for physical signatures to be removed altogether, and for the restrictions to Assignment and Letting applications to be removed. One potential option for this in the future is the Scottish Government identity service which is expected to enter a testing phase in Summer 2022, however details of technical issues and costs are not yet known.

The Commission are also working with colleagues at Registers of Scotland (Ros) to look at the potential to digitize the corresponding RoS forms as well, however this forms part of a larger piece of work to look at amendments to secondary legislation governing this.

<p><b>RECOMMENDATION</b></p> <p><b>For information only at this time.</b></p>
---

Date            4 March 2022

Author            Aaron Ramsay, Head of Digital & Improvement

**Annex****Annex A** – sample initiation document

Overleaf is a fully redacted sample of a live initiation document from a Subletting application received via the digital system.

<b>Website Reference CCOA141</b>	
<b>Application Type</b>	Subletting
<b>Case Number</b>	[REDACTED]
<b>Date Started</b>	[REDACTED]
<b>Holding</b>	[REDACTED]
<b>Individual</b>	[REDACTED]
<b>Stakeholder Type</b>	Tenant

<b>Privacy Policy</b>	<b>To Be Completed by</b> [REDACTED]
Confirmed to have read and understood the privacy notice.	Yes

<b>Initiating Applicant</b>	<b>To Be Completed by</b> [REDACTED]
<b>Initiating User</b>	Holder of Power of Attorney
<b>Name</b>	[REDACTED]
<b>Address</b>	[REDACTED]
<b>Main Telephone</b>	[REDACTED]
<b>Email</b>	[REDACTED]

<b>Add Subtenant</b>	<b>To Be Completed by</b> [REDACTED]
Second Applicant Email?	[REDACTED]

<b>What do I need to do before I apply?</b>	<b>To Be Completed by</b> [REDACTED]
Make arrangements for your application to be advertised?	Yes
Notify your landlord(s) of the application in writing?	Yes
If applicable, prepare and provide a map of the croft boundary.	Yes

<b>Important Information</b>	<b>To Be Completed by</b> [REDACTED]
Viewed Important Information?	Yes

<b>Check Croft Details</b>	<b>To Be Completed by</b> [REDACTED]
Checked Croft Details?	I confirm the details are correct

<b>Tenant Details</b>	<b>To Be Completed by</b> [REDACTED]	
	<b>Current Details</b>	<b>New (Updated) Details</b>
<b>Surname</b>	[REDACTED]	[REDACTED]
<b>Forename(s)</b>	[REDACTED]	[REDACTED]
<b>Title</b>	[REDACTED]	[REDACTED]
<b>Date of Birth</b>	[REDACTED]	[REDACTED]
<b>Address 1</b>	[REDACTED]	[REDACTED]
<b>Address 2</b>	[REDACTED]	[REDACTED]
<b>Address 3</b>	[REDACTED]	[REDACTED]
<b>Address 4</b>	[REDACTED]	[REDACTED]
<b>Address 5</b>	[REDACTED]	[REDACTED]
<b>Address 6</b>	[REDACTED]	[REDACTED]
<b>Postcode</b>	[REDACTED]	[REDACTED]

Main Telephone		
Alternate Telephone		
Email		
Lives within 32km of the Croft?		

<b>Proposed Subtenant Residency</b>	<b>To Be Completed by</b>
Does the subtenant currently live on or within 32km of the croft?	Yes

<b>Landlord(s) and/or Owner(s) of Common Grazing</b>	<b>To Be Completed by</b>
Details from ROC	Landlord
	Address
	Postcode
Changes to Details	None

<b>Proposed Subtenant Residence Details</b>	<b>To Be Completed by</b>
Surname	
Forename(s)	
Title	
Address	
Postcode	
Reside within 32km?	

<b>Subletting Details</b>	<b>To Be Completed by</b>			
Is the application to sublet the whole croft?	Yes			
Attachments				
Map- .jpg	2.2MB			
How long are you applying to sublet for (in years)?	10			
Please provide reasons for the sublet and the duration applied for				
Is there a croft house and garden on the croft?	No			
Are any of the following grazing shares to be included in the ?				
Source	Common Grazing	SubArea	Shares/Souming	Included?
From ROC	- Apportionments only			yes
From ROC	Common Grazings		20 Sheep	yes

<b>Current Land Use</b>	<b>To Be Completed by</b>
Used for Cropping Activities?	No
Used for Stock Management Purposes?	No
Any Non-Cultivation Use	

Buildings		To Be Completed by
Are there any buildings on the croft?	No	

Fixed Equipment		To Be Completed by
Is there any fixed equipment on the croft?	No	

Additional Information		To Be Completed by
Additional Information	[REDACTED] has completed a period of sublet without issue and maintained the area at all times	
Other~ [REDACTED].jpg	2.6MB	
Other~ [REDACTED].jpg	2MB	
Other~ [REDACTED].jpg	2.6MB	
Other~ [REDACTED].jpg	2.2MB	
Other~ [REDACTED].jpg	2.2MB	
Other~ [REDACTED].jpg	2.7MB	
Other~ [REDACTED].jpg	2.2MB	

Privacy Policy		To Be Completed by
Confirmed to have read and understood the privacy notice.	Yes	

Proposed Subtenant Details		To Be Completed by
Surname		
Forename(s)		
Title		
Date of Birth		
Address		
Postcode		
Main Telephone		
Alternate Telephone		
Email		

Proposed Subtenant Solicitor/Agent Details		To Be Completed by
Initiating User		

Proposed Subtenant Residency		To Be Completed by
Does the subtenant currently live on or within 32km of the croft?	Yes	

Proposed Land Use		To Be Completed by
Used for Cropping	No	
Used for Stock Management	No	
Proposed Maintenance		
Repair/Renew Fencing	Yes	
Ditching	Yes	
Drainage	No	
Spraying/Remove Weeds	Yes	
Any Non-Cultivation Use		
Has Associated Grazing Share?	Yes	
Intended Use of Share(s)		
Graze Sheep	Yes	

Proposed Subtenant's Skills and Experience		To Be Completed by	
Does the proposed tenant have any crofting experience?	Extensive		
Skills and Experience		Length of Practical Experience	Qualifications Obtained
Animal Husbandry		More than 5 Years	40 plus years experience
Land Management		More than 5 Years	40 plus years experience
Horticulture		More than 5 Years	40 plus years experience
Farm Machinery		More than 5 Years	40 plus years experience
Other Experience	All crofting activities inc livestock, maintenance	More than 5 Years	40 plus years experience



Other Non-Agricultural		More than 5 Years	City and guilds
Do they intend to undertake any training to help carry out their plans for the croft?	No		
Is the proposed tenant currently the owner, owner-occupier crofter, tenant or subtenant of any other croft or agricultural land?	Yes		


Agricultural Code No	Type	Name	Area	CGR?	Status
				Yes	Tenant
				Yes	Tenant
				Yes	Owner-Occupier Crofter
				Yes	Owner-Occupier Crofter
				No	Tenant
				Yes	Owner-Occupier Crofter
				No	Tenant

How do they cultivate or otherwise use this other land?			
Grass: Forage		0 ha	
Grass: Grazing		150 ha	
Cereals		0 ha	
Vegetables		0 ha	
Soft Fruits		0 ha	
Apiary/Bee Keeping		0 ha	
Tree Planting/Woodland		0 ha	
Other Horticulture		0 ha	
Number of Sheep		250	
Does the proposed tenant currently participate in or intend to take part in any crofting activities?	Yes		
Livestock Gatherings	Already Participates		
Sharing of Machinery	No		
Crofting Community Projects	No		
Other		No	No

Wider Interests	To Be Completed by
Utilising the services of local contractors and/or suppliers	Yes
Supporting and using local infrastructure facilities (eg the use of local shops, bus service, community hall, nursery/school)	Yes
Contributing to the social and cultural benefits associated with crofting	Yes
Bringing wider skills and experience which will benefit the community (eg the proposed crofter and/or family members may be mechanics, builders, teachers, midwives, nurses, vets etc)	Yes

Additional Information	To Be Completed by
Additional Information	This is an extension of a previous sublet
No Attachments	

Proposed Subtenant/Agent Declaration	To Be Completed by
To the best of my knowledge, the information I have given in this application is correct.	<input checked="" type="checkbox"/>
I am aware of the duties which a crofter is required to comply with relating to residence and land use.	<input checked="" type="checkbox"/>

I have read and understood the Commission's Privacy Notice.	
I agree to communication via email regarding this application.	Yes

<b>Public Notification</b>	<b>To Be Completed by</b>
Name of Newspaper	
Date Published	

<b>Tenant/Agent Declaration</b>	<b>To Be Completed by</b>
I have given the croft landlord(s)/owner of common grazings written notification of this application.	<input checked="" type="checkbox"/>
I have advertised this application for consent to sublet the tenancy in a newspaper circulating in the local area.	<input checked="" type="checkbox"/>
I have enclosed a map of the croft and the area which is to be sublet (if applicable).	<input checked="" type="checkbox"/>
I understand that should this application be approved, it will be my responsibility for ensuring that the subtenant adheres to the statutory conditions of tenure.	<input checked="" type="checkbox"/>
I have read and understood the Commission's Privacy Notice.	<input checked="" type="checkbox"/>
To the best of my knowledge, the information I have given in this application is correct.	<input checked="" type="checkbox"/>
I agree to communication via email regarding this application.	Yes

**Annex B** – images of promotional material being sent to the first professional organisation to submit a digital application of each type



**Annex C** – images of promotional material being sent to all professional organisations to submit a digital application through the end of March 2022 (excluding those eligible for the promotion in Annex B)



## Annex D – example of the digital applications account portal (redacted)

Online Applications | Crofting C x +  
 https://account.crofting.scotland.gov.uk/dashboard/

Admin Crofting Commission Aaron Ramsay Log Out

### Your Dashboard

Filter Results:

Date Started	Status	Applicant 1	Applicant 2	Application Type	Holding	Individual	<a href="#">start new application</a>
Please note this portal is currently limited to Subletting applications, although <a href="#">recognised organisations</a> can use it to make Assignment applications.							
17/02/2022	In Progress	You		Subletting of Grazing Shares(s)			<a href="#">view</a>
17/02/2022	In Progress	You	You	Short Term Let			<a href="#">view</a>
17/02/2022	In Progress	You	You	Letting Grazing Share(s)			<a href="#">view</a>
17/02/2022	In Progress	You	You	Letting by Owner-Occupier Crofter			<a href="#">view</a>
10/02/2022	New	You		Letting by Owner-Occupier Crofter			<a href="#">view</a>
10/02/2022	New	You		Letting Grazing Share(s)			<a href="#">view</a>
10/02/2022	New	You		Letting Grazing Share(s)			<a href="#">view</a>
07/02/2022	In Progress	You		Subletting			<a href="#">view</a>
07/02/2022	In Progress	You	You	Assignment			<a href="#">view</a>
06/02/2022	In Progress	You	You	Letting by Owner-Occupier Crofter			<a href="#">view</a>
31/01/2022	Submitted 07/02/2022	You	You	Subletting			<a href="#">view</a>
28/01/2022	Submitted 28/01/2022	You	G Jones	Assignment			<a href="#">view</a>
27/01/2022	Submitted 28/01/2022	You	You	Subletting			<a href="#">view</a>

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# CROFTING COMMISSION MEETING

## 31 March 2022

Report by the Chief Executive

### CIS update and Audit progress

#### SUMMARY

This paper forms an official update on the development of CIS and the progress towards implementing the recommendations of the Azets audit on governance of the system.

#### BACKGROUND

In Spring 2021, the Crofting Commission (CC) had an audit by Azets which focused on the development of CIS, and in particular the Governance arrangements in place. This audit identified a series of weaknesses and recommended a range of actions to address these. This paper will give an update on the current CIS development, as well as the progress towards addressing the actions raised by Azets during the audit.

#### Ongoing CIS development

Work on build 1063 of the Crofting Information System (CIS) has been progressing, though it has taken a set back due to the absence of the developer for a period of roughly 1.5 months. The build is due to complete and enter system testing by the w/c 14 March 2022, at which point work will move into the next phase of the development around debugging and the development of training material. At a high level the development cycle has traditionally run through key stages as follows:

1. Change planning
2. Development
3. Technical testing
4. Debugging
5. User testing
6. Debugging
7. Training delivered (if needed)
8. Release

The current build is moving from stage 2 to stage 3. Guidelines for anticipated timescales for each stage are noted below, though these are subject to unforeseen events and staff availability:

Stage	Anticipated dates
Technical testing & initial debugging	14/03 – 27/06
Training material developed	25/04 – 06/06
User testing and debugging (including training material)	Jun 22
End user training	Jul 22
Final release	Jul/Aug 22

## Future development

Build 1063 will be the last build done using the V Model system that the Commission has employed historically, instead moving to an Agile development process in the future. The primary differences between the two are that under Agile, suggestions for changes to the system are much easier for the end user to make, and the development cycle is designed to be much shorter and more transparent. Some organisations using Agile will aim for a new release as often as every two to four weeks. Such a short release window would depend on the changes requested, and may only be part of a larger feature change, however a rapid turnaround of new releases lessens the burden on testing and training, and demonstrates active development of the system to staff in a visible way.

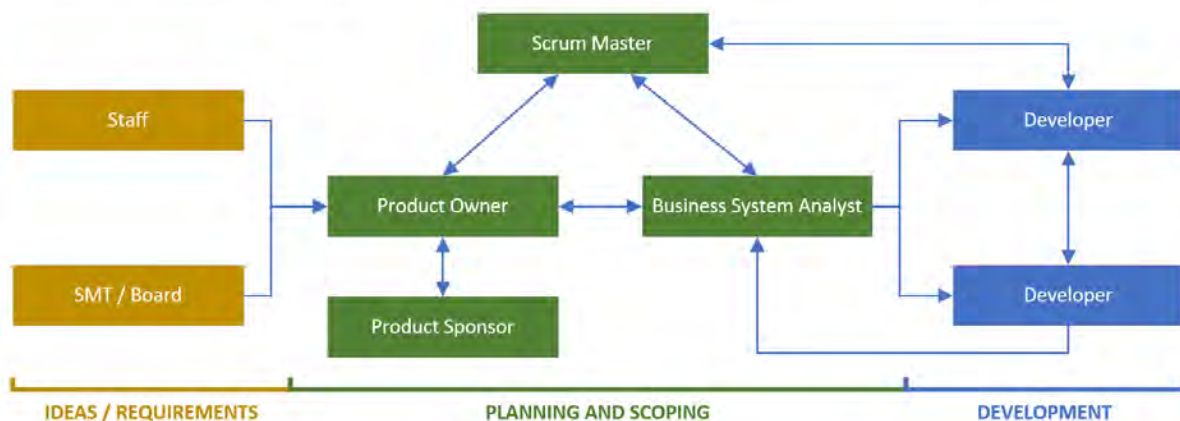
The exact rate of future releases of CIS will be designed to suit the Commission, taking into account both the level of need and our capacity to deliver the changes securely. However, a key goal after the release of build 1063 will be to implement a more rapid development cycle that has more controlled changes, and so to avoid the large backlogs of change requests that have occurred in the past.

### *New roles established*

The development cycle of the CIS has been bolstered with the addition of a dedicated Product Owner role<sup>1</sup> as recommended by Azets, and agreement by the Board to employ a second developer. These two new roles will combine with the Scrum Master and Business System Analyst roles, overseen by the Product Sponsor, to create a more conventional and controlled structure to aid development of the system, as shown in figure 1.

### *Agile development cycle*

Arrows show flow of information



This basic structure demonstrates the principle that all requirements must be sourced from staff or SMT/Board requirements, and from there requirements make their way through the development cycle until implementation. This is a simplified view that omits certain steps, such as the assessment and prioritisation of requirements and testing, however it gives an overview of the general stages of development under the Agile methodology the Commission is moving towards.

Recruitment of the second coder is underway, however the above model at figure 1 remains intact under the current one developer structure until they are employed.

<sup>1</sup> The Product Owner is a dedicated role, however it will not ordinarily be a full time position within the Commission. The current Product Owner is sourced from Regulatory staff and combines the role with processing casework. In the medium term the intention is that this may continue at a low level, so that the Product Owner retains up-to-date hands on knowledge of the user experience.

## Summary of audit recommendations and progress

Current progress on Azets audit actions. The Commission plans to invite Azets back in June/July 2022 to repeat the audit and measure progress made. January 2022 has been left in for a comparison to see progress since the last update. Dates are dependent on outcome of permanent Product Owner recruitment ongoing.

Action	Due date	Mar Status	Jan status	Owner
<b>Leadership and governance</b>				
Assign a product owner for CIS (Crofting Information System)	Nov 21	Complete	Complete	CEO
Assign a sponsor for CIS from SMT (Senior Management Team), if product owner is not an SMT member	Nov 21	Complete	Complete	CEO
Assign a scrum master	n/a	Complete	Complete	n/a
Establish a governance framework <sup>1</sup>	June 22	In progress	Pending	Product Owner / HoD
Source and carry out training for scrum master and product owner	Nov 21	Done	Partially done	HoD
<b>CIS strategy and engagement</b>				
A documented process for scoping future requirements for CIS changes to be produced	May 22	Pending	Pending	Product Owner
A full roadmap for future CIS releases is to be produced	May 22	Pending	Pending	Product Owner
<b>Risk, issue and defect management</b>				
Documentation to be produced covering all the roles and responsibilities related to CIS development	Mar 22	Drafted	Pending	HoD / Product Owner
A CIS risk register should be developed with clearly defined escalation routes to the CC (Crofting Commission) strategic and or operational risk registers	Apr 22	In progress	In progress	HoD
A review of the defects and issues process (bug logging) to be carried out	May 22	In progress	In progress	HoD / Business Analyst
<b>Release management and testing</b>				
A fully documented testing and release process is to be produced	May 22	In progress	Pending	HoD
Formal training to be supplied to all user acceptance testers	Sep 21	Complete	Complete	HoD
User testing terms of reference to be updated and a documented process to be produced and linked to the overall CIS governance framework	Apr 22	In progress	In progress	UAT manager
<b>Wider considerations</b>				
Further explore the alternative development options, specifically the co-development of the CIS with internal SG colleagues	Sep 22	Pending <sup>2</sup>	Pending <sup>3</sup>	HoD
Evaluate alternative options to CIS development in detail, including feasibility study and estimated costs for each other solution	Oct 22	Pending	Pending	HoD

<sup>1</sup> The actions in red text are considered the component elements of the action “**Establish a governance framework**”. Once these red items are complete then the higher action of creating a governance framework can conclude.

<sup>2</sup> Note: A CIS Working Group of two commissioners and 3 SMT members has recommended that the Commission should continue with internal CIS development until at least Autumn 2022. After that, a decision will be taken on which if any alternative arrangements need to be considered in detail. Purchasing a COTS product has been provisionally ruled out on cost basis (pending full discovery work), but co-production alternatives will be considered if necessary. The Board has accepted these recommendations.



**RECOMMENDATION**

**For information only at this time.**

Date           6 March 2022

Author        Aaron Ramsay, Head of Digital and Improvement

Risk ID	Risk Description	Controls in Place	Current Impact	Current Likelihood	Current Risk Score	Actions Planned	Controls Confidence Level	Target Impact	Target Likelihood	Target Risk Score	Target Date	Risk Owner
S1	Outcome 1: The Commission is seen as ineffective in tackling breaches of duty	New suite of RALU policies agreed by the Board. RALU team expanded to 6 B1s to deliver these policies in priority order. However, loans to Regulatory and a vacant post mean the team is currently half that size. However, the team did widen the scope of the duties work to include engaging with resident non-cultivators and owner-occupier crofter census returners.	25	5	125	Further expansion of RALU team, preferably to 7 B1s by October 2022. Corresponding expansion of enforcement activity. To extend the work of RALU to (i) engage with non-census returners (both tenants and owner-occupier crofters, and (ii) occupiers of vacant crofts who are not residing on or near the vacant croft or cultivating or using the vacant croft for another purposeful use.	Reasonable	25	2	50	Mar-23	Joseph Kerr
S2	Outcome 2: Active use of common grazings declines	Support and guidance, coupled with online training courses are being provided to members of grazing committees. Reminders are being sent out to committees whose term of office will expire guiding them on the process of appointing a new committee. We will begin carrying out special projects to target long term out of office situations. The Development team are making contact with every new committee which goes into office to promote activity/development and diversification opportunities. Regulations work will be reactive until staffing situation returns to normal level	50	4	200	The team remain below its staffing level and so are focusing on the appointment of new committees, especially with the changing Covid situation. A high number of queries are being received on various common grazings items and so focus is currently on providing timely responses to customers. An online Clerks surgery meeting is taking place once a month following a successful pilot. Regulations work will be required to be put on hold until the team returns to a full compliment. The Development team continue to work closely with a wide range of stakeholders. The team are now taking responsibility for specific areas within the crofting counties and are focusing on a number of development initiatives with landlords, committees, crofters and assessors.	Reasonable	25	2	50	Mar-23	Finlay Beaton
S3	Outcome 3: The regulatory backlog becomes unmanageable and continues to grow	Regulatory team has been expanded and training substantially enhanced through designated training officers. Staff loaned from other Commission teams, overtime is being offered and the case folders are being proactively managed and monitored. TRS used to fill gaps at B2 and B1 level. Seven new A3s have recently started and are undergoing training. Extra step to acknowledge receipt of applications and apologise for the anticipated delay.	50	4	200	Recruitment and training of eight new A3s on an agency basis and further recruitment for more regulatory team staff on permanent contracts. Ongoing monitoring of case progression including monthly figures to SMT, the board and Sponsor. Additional staff to help put in place improvements to processes and planned extension of DDM.	Reasonable	25	2	50	Dec-22	Heather Mack
S3a	Outcome 3: Commission is unable to deliver improvements to CIS and online applications in a secure and timely fashion	Online applications in soft launch with Assignations and Subletting live for use. Product Owner appointed to lead on direction of improvements to CIS from within Regulatory. User Acceptance Testers trained and ready to deliver testing, with a dedicated experienced UAT managed taken in on a 3 month contract to support initial script production	25	3	75	A slowed rollout of additional application types to digital system through April / May 2022. Collaboration between IS and regulation to implement consequential workflow changes. Completion of delivery and user acceptance testing of CIS 10.6.3 by May/June 2022.	Reasonable	25	1	25	Jun-22	Aaron Ramsay

Risk ID	Risk Description	Controls in Place	Current Impact	Current Likelihood	Current Risk Score	Actions Planned	Controls Confidence Level	Target Impact	Target Likelihood	Target Risk Score	Target Date	Risk Owner
S4	Outcome 4: It gets even harder for young people to access crofts	Website highlights the options available for those no longer wishing or able to use their crofts. RALU work expanded to tackle more breaches. For those crofts which do become available for the Commission to let, we adopt a proactive policy to prioritise new entrants. Building links between Grazings and Development Teams to increase the interest in and availability of crofts for new entrants.	10	4	40	Further expansion of RALU team and its work. Liaising with SG and community landlords, and other willing landlords, to improve adherence to duties by their crofting tenants. Build on links established with Development and Grazings team through the pilot project on "resident non-cultivators" in the Western Isles.	Limited	10	3	30	Mar-23	David Findlay
S5	Commission loses credibility because of Governance issues outlined in Deloitte report	38 of 41 Deloitte recommendations implemented. Governance action points by David Nicholl agreed. Framework Document revised and awaiting signoff. Glen Shuraig Report and SG draft budget point way to expanded staffing. Business Case for enhanced staffing submitted to SG in February 2022	10	3	30	Completion of delivery of Deloitte recommendations and David Nicholl recommendations. SG response to Business Case, awaited, to secure funding for agreed staff changes. Training programme for new commissioners which can also be a refresher for existing commissioners.	Substantial	10	1	10	Jun-22	Neil MacDonald
S5a	Serious errors in the delivery of the 2022 crofting elections lead to confusion in Board membership post-March	MiVoice appointed to provide Returning Officer and Returning Officer services. Timeline for all stages agreed and being monitored. Electoral roll derived from RoC in accordance with regulations and shared with MiVoice. Contests in every constituency, and postal election took place during Feb-March	25	2	50	Washup meeting planned with MiVoice and SG to record any lessons learned and plan ahead to 2027 elections.	Substantial	10	1	10	Mar-22	Jane Thomas

# CROFTING COMMISSION MEETING

31 March 2022

Report by the Chief Executive

## Crofting Commission Policy Plan 2022

### SUMMARY

This paper seeks to look at the Crofting Commission's new policy plan which has to be approved by the Scottish Ministers by September 2022 and asks some questions as to what is meant by a policy plan within the meaning of the Commission's fundamental statutory functions and duties.

### BACKGROUND

It is a legal requirement for the Commission to publish a Policy Plan. The current Plan was approved in 2017 and can be found on the Commission's [website](#).

The Commission must develop a new policy plan within the next few months, so that it can first go out to consultation and can thereafter be approved by the Scottish Ministers in September 2022.

### CURRENT POSITION

It is a statutory requirement that the Commission's existing policy plan, dating from October 2017, needs to be replaced by September 2022.

After that, the Commission is entitled to change/update its Policy Plan whenever it wishes, but each time it does so it is required to consult on the new text, and secure agreement from the Scottish Government. The practical consequence of this is that a Policy Plan should be designed to stand the test of time. Detail that might change frequently can instead be included in guidance notes on the Commission's website, which can be amended quickly whenever necessary.

### Introduction

Within 6 months of the Crofting Commissioner elections, the Crofting Commission must submit a plan to the Scottish Ministers for approval. The plan must set out the Commission's "policy on how they propose to exercise their functions". This is probably the most important document the Crofting Commission has to produce and gives notice to all interested parties – government, local authorities, Highlands and Islands Enterprise and other public bodies and crofters and crofting representative bodies – as to how the Commission intends to function from the point of view of policy.

A policy is defined as a course of action or principles of action adopted by an organisation setting out how it intends to operate and, in the case of a public body, how it intends to exercise its functions, including its statutory functions. The current policy plan deals with a lot of matters that are not policy but simply guidance and explanation, or paraphrasing, of the relevant legislation. However, it is suggested that such matters as guidance and explanation are best made available on the Commission's website separately from the policy plan, as this is not policy and gives a misleading impression as to what a policy plan is about.

Before making decisions with regard to particular policies, the Commission should first consider what statutory functions it carries out and, most importantly, how much discretion it has to decide how it exercises its functions. The policy plan can be as long or as short as the Commission considers fit, but it should give external interests as well as Commissioners and officials sufficient detail as to how the relevant functions are to be exercised. Ideally, the policy plan should set out the policies that inform Commission decision-making (where there is sufficient statutory discretion), whilst making it clear that every individual case has to be decided based on its merits.

The most important point to make is that the Crofting Commission is a creature of statute. Its functions are set out in legislation and it cannot act beyond the powers that are set out in legislation. Equally, as a public body, the Crofting Commission is subject to general public and administrative law which enforces the proper performance by public bodies of the duties which they have to the public. Public and administrative law principles apply all across the UK, though there are some differences as to the procedure and practice of public law within Scotland. A public body cannot adopt any policies that are contrary to general public law principles within the UK, such as the requirement to act reasonably and not to fetter its discretion.

The Crofting Commission has **general functions** that are set out in sections 1 and 2 of the Crofters (Scotland) Act 1993. Although section 2 of the 1993 Act refers to "particular powers and duties" of the Commission, there is in fact a lot of overlap between these powers and duties and the general functions set out in section 1(2) of the 1993 Act. It also has a lot of **specific functions** that are set out in the Crofters (Scotland) Act 1993 and the Crofting Reform (Scotland) Act 2010. Its functions could be set out broadly as including those that:

- involve a substantial amount of choice or discretion;
- involving very little in the way of discretion, because legislation prescribes a particular course of action the Commission must take;
- involves some discretion, such as where legislation requires a public body to balance various, sometimes competing, statutory factors.

The general functions of the Commission are reorganising and regulating crofting, promoting the interests of crofting and keeping matters relating to crofts and crofting conditions under review. The Commission is also required to collaborate with other bodies with regard to general economic development and social improvement of the crofting communities. As part of its general functions, the Commission is required to advise the Scottish Ministers on crofting matters.

The Commission is also required to exercise its statutory powers "in such manner as may seem to them in each case desirable".

The Commission should also be realistic as to what it can achieve within its limited resources. Any policy decision to target resources in any particular area must be sustainable within the Commission's budget, and cannot detract from the Commission's statutory functions.

## **Reorganising and regulating crofting**

The Commission's overarching responsibilities are to (i) reorganise and regulate crofting; (ii) promote the interests of crofting and (iii) keep under review matters relating to crofting. This should be the fundamental basis of any policy thinking. Although there is specific statutory provision for reorganisation schemes of crofting townships, the Commission also has some control over the organisation of crofting through its powers to consent to, or refuse, applications to divide crofts, approve the creation of new crofts, whether to take vacant land or owner-occupied croft land out of crofting tenure (decrofting), whether to apportion common grazings to an individual or a township, whether to intervene in the administration of a grazings by appointing a grazings committee or constable or requiring new regulations to be adhered to, whether to enlarge a croft, enlarge a common grazings, consent to the creation of a new common grazings.

With the exception of reorganisation schemes and Commission intervention in the administration of common grazings, much of the Commission's work with regard to other aspects of croft organisation is reactive. The Commission must await a relevant application, such as to create new crofts. This does not prevent the Commission from developing a policy, for instance, to collaborate with relevant persons or bodies to stimulate, for example, the creation of new crofts and/or a new common grazings. With regard to reorganisation schemes, the Commission has the power to identify for instance crofting townships that are in a state of disarray or disorganisation, but it should not underestimate the considerable practical difficulties involved in reorganising townships as well as the resources involved in carrying it out effectively.

There is obviously an overlap between the Commission's powers to reorganise crofting and its duties to regulate crofting. Many aspects of the organisation of crofts, crofting townships and common grazings is used in the catch-all term "regulation". The most emphatic aspect of Crofting Commission regulation is with regard to crofting duties, where individuals are subject to a scheme of regulation that could ultimately result in the individual ceasing to be the tenant of a croft through tenancy termination, or where an owner is forced to let a croft. There are also many other important aspects of regulation, many of which are triggered by a crofter making an application to do something, such as applications to register a croft (though most aspects of croft registration are dealt with by the registrar, Registers of Scotland), to assign a croft, sublet a croft and to let a croft.

In all cases where the Commission receives an application from a crofter to do something that requires Commission consent, or where the crofter is asking the Commission to do something (such as to decroft croft land or apportion common grazings), the Commission has no discretion to decide not to deal with such an application. It may have more or less discretion as to how it exercises its statutory functions depending on how much discretion is given by the relevant legislation.

The Commission also has a general function of promoting the interests of crofting. This could be interpreted in various ways, but one way of understanding this function is to see the Commission as playing a fundamental role in sustaining, developing and promoting the crofting system as a public good (backed up by public policy). On this view, the Crofting Commission is required to look at the interests not just of individual crofters or grazings committees, but also of crofting communities and townships – and, where the two interests are in tension, find an appropriate balance between the two.

There is a strong suggestion in section 1(2) that crofting as a system of land tenure is a public good that requires to be sustained and developed, and that it is the role of the Crofting Commission to ensure that this happens. That essentially is the "commission" of the Crofting Commission. The Commission could also recognise in its policy development that crofting is not a museum exhibit that is to be protected, but a complicated living system involving real individuals and communities.

The Commission is also entrusted with a function of reviewing matters relating to crofting. In this sense, the Commission is required to be reflective and to look in a detached way at how the crofting system is working, or not working, and keep Scottish Ministers advised on this. It is likely that the Scottish Ministers will require the advice of the Crofting Commission when it comes to such matters as law reform, even though the responsibility for legislation lies with the Scottish Ministers, not the Commission. The Commission could, for instance, have a policy of identifying various matters and issues with regard to a range of matters such as the existing legislation and how it is, or is not, working, or how financial assistance is or is not working for crofters, and keeping the Scottish Ministers advised on all these matters.

It is also evident from the general functions and the powers and duties of the Commission set out in sections 1 and 2 that the Commission is expected to collaborate and work with a range of public and private bodies, and in some cases individuals (such as for instance a landowner), in order to promote the interests of crofting and to improve the social and economic condition of crofting communities.

### **Basic policy principles**

There is an overlap between what the Commission would like to see as outcomes from its policies and those policies themselves. There are also a number of policy objectives that are explicitly set out in legislation. The Commission could consider the following as examples of general policies that are based on some of the general functions set out in legislation:

- increase the occupation of crofts and their active use – this could be implicit in both the general function of promoting the interests of crofts, and the specific functions in relation to crofting duties;
- increase opportunities for persons of all backgrounds who wish to acquire crofter status, whether through the creation of new crofts and/or the freeing up existing crofts that are not occupied or used – again, this could be seen as implicit in the general function of promoting the interests of crofts, collaborating with other bodies and persons (section 2(1)(b) and specific functions in relation to crofting duties;
- enhance the sustainability of crofting, whether through involvement in discussions about financial support, promoting appropriate diversification of crofting land use and targeting action on townships where there are serious problems regarding occupation or land use – this could be seen as an important part of the general function of keeping under review matters relating to crofting and also promoting the interests of the crofting system as a public good;
- reviving the use of common grazings by encouraging and promoting active participation by shareholders and the formation of grazings committees – this could be seen as involving all the Commission’s general functions, and using all the powers given to the Commission under the common grazings section of the legislation;
- supporting diversification of land use by grazings committees, including where this involves collaboration with the landlord – this could be seen as important in promoting the interests of crofting and in the collaborations the Commission is expected to have with other bodies and persons, which could include landlords, community landlords and various government agencies with an interest in diversification;
- keep Scottish Ministers advised with regard to how legislation is and is not working for crofters and crofting, and work with Scottish Ministers on any law reform projects.

## **Policy and exercise of discretion**

Public bodies are entitled to set an agreed policy. Any decision-making body must, however, ensure that decisions are not driven solely by policy, as this would result in the public body “fettering its discretion”. What this means is that when a public body makes a decision, it must exercise its discretion freely and take account of the individual circumstances of the case as well as any relevant legislation (and policy, if applicable). A public body, for example, including the Scottish government, could not adopt a rigid policy that it will not consider flexible working requests when the underlying employment legislation requires an employer to assess any request for flexible working on its merits and in terms of the factors set out in the legislation.

Equally, policies must not be inconsistent with legislation. If legislation permits a particular person to make an application to the public body, the public body cannot decide not to deal with the application because it considers extraneous factors to override any decision making – for example, that a crofter in breach of duty cannot apply to do things with his or her croft.

Where the Commission has statutory discretion, there is more scope for development of policy. However, such policy cannot override how any particular decision is made, but it can inform the decision-making process.

## **Specific policies in relation to specified statutory functions**

Once the Commission has developed a consensus as to the general principles it will apply in policy making and has also developed a consensus as to its general policies in terms of its general functions under legislation, the Commission can apply these principles and general policies to more specific policy making. How the Commission can apply policies in specific areas depends on the extent to which it has discretion.

**Apportionments** – here, the Commission has a large degree of discretion as to whether to promote generally a policy that favours individual crofters and their enterprises or a policy that favours communal workings and initiatives, or a mixture of the two.

**Crofters’ duties** – the Commission can decide whether to be reactive (responding only to “complaints”) or proactive, and use other sources of information such as the annual notice and information obtained from regulatory applications to inform work on crofting duties on residency and land use.

**Assignment** – the Commission could set out how it will approach all of the factors set out in legislation, whilst recognising that it must assess each application on its merits. For instance, the Commission could have a policy that it generally expects all new tenants to take up residence and use their crofts within 18 months of the date of approval.

**Decrofting** – the Commission does in fact have relatively little in the way of discretion when it comes to decrofting. The relevant legislation is quite complicated, but it is also very prescriptive as to the factors that the Commission has to take into account. The Commission must also assess the statutory factors against the circumstances of an individual case. It is not therefore open to the Commission to have a policy of “no or limited decrofting” or “pro-active decrofting”.

**Subletting** – the Commission has some discretion as to how it balances crofting duties (the duties on the crofter to be resident and to use the land) and subletting, which enables the crofter to allow someone else to carry out those duties.



**Reorganisation schemes** – the Commission has a lot of discretion here as to whether it proactively identifies townships where reorganisation schemes are required, and takes action to reorganise a township. (However, resource is a limiting factor, as all reorganisation schemes are very resource intensive.)

**Use of common grazings for other purposes** – what seems to be a fair amount of discretion has to be seen in the light of the recent case involving the Commission against various grazings committees on the Isle of Lewis. Nevertheless, there is some discretion here as to how actively the Commission promotes diversification of land use.

**New crofts** – there is some discretion here both in terms of stimulating applications for new crofts, and in having a policy that new crofts will generally be looked upon favourably.

**Proposals**

The Board is invited to consider the following proposals regarding the 2022 Policy Plan:

1. The new Policy Plan should explain in general terms the requirements of law, the limits on the Commission’s discretion, and the scope for policy choices by the Commission.
2. The Policy Plan should include a specific statement of the Commission’s policy aims, based on the above text headed “basic policy principles”.
3. It should then go on to identify which aspects of the Commission’s actions are tightly controlled by statute, and in which there is more discretion; and should set out, where helpful to do so, how the Commission intends to exercise its discretion for the next 5 years.
4. The scope of the Policy Plan should include all the outward-facing work of the Commission, not just regulation and duties work, but also grazings and development, and perhaps our role in the development of crofting policy and our input to planning applications.
5. It should probably not cover internal organisation issues such as IT developments, as this aspect of our work will change during the lifetime of any 5 year Policy Plan, and is therefore better served by non-statutory guidance.
6. Where it is useful, the detailed content of the 2017 Policy Plan, which included a compendium summarising law and policy for each regulatory application, should be retained in separate guidance documents but not be part of the new Policy Plan.

<b>Impact:</b>	<b>Comments</b>
Financial	Large potential financial impact as the policy plan will set out how the Commission wishes to exercise its various statutory functions.
Legal/Political	The policy plan is probably the most important document that the Commission must agree. It informs decision making at both a micro and macro level, from casework and crofter applications to major initiatives and strategies.
HR/staff resources	The drafting, consulting on, and finalising of the Policy Plan is a statutory requirement and will be resourced over the next 6 months.

**RECOMMENDATION**

**To use this paper as the basis for developing a new policy plan.**

Date 15 March 2022

Author David Findlay, Solicitor

**COMMISSIONERS ATTENDANCE AT SHOWS 2022 – ORAL**

# CROFTING COMMISSION MEETING

**31 March 2022**

Report by the Chief Executive

**2022-2023 Draft Budget**

## **SUMMARY**

**As advised at the Board meeting on 8 February, it was the intention to circulate the draft budget for final sign off/approval prior to the crofting elections on 18 March 2022.**

**As the business case for enhanced staffing of the Crofting Commission has been submitted to the Scottish Government, the Head of Finance has based the budget on the assumption of access to £3.9m funding for 2022/23.**

**The proposed allocation of funding between Staff and Non-Staff costs has not changed from the detail that was provided to the Audit & Finance Committee on 26 January.**

## **BACKGROUND**

An initial draft budget was presented to the Audit & Finance Committee at its 3 November 2021 meeting based upon an assumption of an award of £3.465M for 2022/23. In the subsequent Scottish Government's draft budget published on 9 December, the Commission's mainstream budget rose from £3.200m in 2021/22 to a provisional £3.900m in 2022/23. This increase was presumably informed by the 'Glen Shuraig' independent staffing report which had recommended an additional £463k in 2022/23 rising to £695k from 2023/24 onwards.

A subsequent draft budget was presented to the Audit & Finance Committee on 26 January 2022 which incorporated SMT and Board review during December 2021, followed by a Board meeting on 12 January 2022 to review and agree a strategic approach to the recruitment of additional staff and the associated reshaping of SMT, to be proposed to the Scottish Government.

The Board subsequently approved the re-structure of the SMT at its Board meeting on 8 February 2022.

A business case to support enhanced staffing and a restructure of the SMT was submitted to the Scottish Government on 22 February 2022.

	<b>Actual 2021/22 £1,000</b>	<b>November Draft 2022/23 £1,000</b>	<b>January Draft 2022/23 £1,000</b>
Grant in Aid: Board Remuneration and Staff costs	2,615	2,807	3,279
Non-staff operational & project costs	585	621	621
<b>Unallocated</b>		<b>37</b>	
<b>Total</b>	<b>3,200</b>	<b>3,465</b>	<b>3,900</b>
Non-Cash (Depreciation)	65	65	65

The Board should note that the November draft staff budget was based upon the assumption of a £850 underpin for salaries < £25k. 3% uprate for salaries >£25k to < £36k. 2% uprate for salaries > £36k. The increased national insurance employer contributions for 2022/23 of 1.25% was also factored into calculations.

The Scottish Government subsequently confirmed (*Public Sector Pay Policy 2022-23, published 9 December 2021*) that an **initial** pay award has been approved that provides a guaranteed cash underpin of £775 for all staff who earn £25,000 or less, and an increase of £700 for public sector workers who earn between £25,000 and £40,000, and £500 for those earning over £40,000. The Commission Finance Team has subsequently revisited each individual post and recalculated costs accordingly.

The Commission has also identified significant savings within non-staff operational costs when setting the 2022/23 draft budget. These include the intention to reduce our office space by a third and the reduced expense of facilitating a digital crofting census.

## **CURRENT POSITION**

The adjustments to the draft budget since November 2021 are all staff cost related. The Audit & Finance Committee was advised in November regards the assumptions made with regards to non-staff budget lines and this was also reviewed by the Board at its 'Budget, Priorities and Business Plan for 2022-23' strategy meeting held on 8 December 2021. The Head of Finance advised the Audit & Finance Committee on 26 January 2022 that no material adjustment is required to non-staff costs budget lines.

The Board considered the paper '*Staffing Proposals to put to the Scottish Government*' on the 12 January 2022 which provided options for enhancing the Commission's staffing structure. While the Board was in agreement regards the appointment of additional front-line staff, further information was requested regards the future structure of the Commission Senior Management Team.

This was subsequently considered and approved by the Board (private session) at the 8 February 2022 meeting.

The basis of the elements of the proposed **£3,900,000** budget are as follows:

Item	Budget basis	Risk
<p><b>Salaries (including Board)</b> 84.1% of cash budget</p>	<p>All current vacancies filled.</p> <p>Additional appointments (some staggered). Details contained within Business Case submitted to Scottish Government on 22 February 2022.</p>	<p>Staff turnover &amp; recruitment timing is unpredictable: the exact costs incurred during the year may vary.</p> <p>The exact staff skills required may change to ensure delivery of the Commission Corporate Plan.</p> <p>The Employer NI and Pension Uprates are estimates of Commission Finance Team as data is not currently available from Scottish Government.</p> <p>Cuts may require to be made if the Commission does not receive anticipated budget uprate.</p>
<p><b>Running costs – “fixed”</b> 14.87% of cash budget</p>	<p>Relatively predictable running costs to support the organisation as a whole.</p> <p>There is limited room for discretion from year to year.</p> <p>The margin for flexibility has been reduced with the cuts identified when setting previous year’s budget.</p>	<p>All these costs can vary to some degree year to year for reasons outside our control or where there are significant step changes to activity. An unpredictable factor for 2022/23 will be T&amp;S costs associated with the speed of recovery from the on-going pandemic.</p> <p>One specific uncertainty relates to legal costs which historically have varied significantly but have been relatively stable in recent years.</p> <p>These costs are viewed as low risk.</p>
<p><b>Running costs – “discretionary”</b> 0.00% of cash budget</p>	<p>Items which may vary from year to year</p> <p>These items are usually reported within the main running cost headings in the management accounts, but for clarity have been separated out in the attached budget report.</p>	<p>Largely dependent on ‘New Board’ decisions as the year progresses.</p> <p>No budget has been set for an Assessors Conference at this time.</p>

Item	Budget basis	Risk
<p><b>Running costs - Delivery of Crofting Census &amp; IS Link to Registers of Scotland</b></p> <p>0.52% of cash budget</p>	<p>These items are usually reported within the main running cost headings in the management accounts, but for clarity have been separated out in the attached budget report.</p>	<p>Costs may vary from year to year to some degree but are viewed as relatively predictable and low risk.</p> <p>Significant savings delivered with the move to a 'digital only' census.</p>
<p><b>Capital expenditure</b></p> <p>0.51% of cash budget</p>	<p>At present this is solely IT hardware.</p>	<p>Could be affected by unexpected equipment failure in any given year.</p>
<p><b>Depreciation</b></p> <p>Non-cash</p>	<p>The cost of capital items is written off through the accounts during their useful economic life. This is not part of the Scottish Government cash allocation.</p>	<p>Only varies significantly with major acquisition or disposal of equipment.</p>

## CROFTING COMMISSION 2022-23 BUDGET SUMMARY - £000s

## 2022-23 NOTES

	<b>BUDGET 2021-22</b>	<b>DRAFT BUDGET 2022-23</b>	
<b>Salaries/Remuneration</b>			
Commissioners	106	106	21/22 included Board transition in March
Former Commissioner pensions	13	13	
Staff Salaries	2496	3160	Pay award for 22/23 published but may be subject to change
<b>Total salaries</b>	<b>2615</b>	<b>3279</b>	

	<b>BUDGET 2021-22</b>	<b>DRAFT BUDGET 2022-23</b>	
<b>Core Running costs</b>			
<u>"Fixed" costs</u>			
Great Glen House - cost of occupation	184	145	
Great Glen House - supplies & services	37	40	
Legal fees		15	No budget set in 21/22 as offset by recovery of legal expenses
	-		
Information systems	134	155	
Training	10	19	
Communication	22	28	
Statutory Regulatory Advertising	34	35	
Travel & subsistence - staff	16	23	
Travel & subsistence - Commissioners	26	33	
Audit fees & bank charges	36	42	
Other running costs: -( highlighted with X in detail)	40	45	
<b>Subtotal</b>	<b>538</b>	<b>580</b>	

"Discretionary" costs

Assessors conferences/meetings	-	-
<b>Subtotal</b>	<b>-</b>	<b>-</b>

Census & RoS direct costs

Crofting Census Hard Cost of Delivery	34	18
Commission Service Link to RoS	3	3
<b>Subtotal</b>	<b>37</b>	<b>21</b>

**Capital expenditure**

Hardware	10	20
Software	-	-
<b>Subtotal</b>	<b>10</b>	<b>20</b>

<b>TOTAL</b>	<b>3200</b>	<b>3900</b>
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**Grant-in-Aid (Cash) allocation from Scottish Government**

<b>3200</b>	<b>3900</b>
<b>3200</b>	<b>3900</b>

**Non-cash items**

Depreciation		
Hardware	37	37
Software	28	28
	<b>65</b>	<b>65</b>

**Risk Appetite**

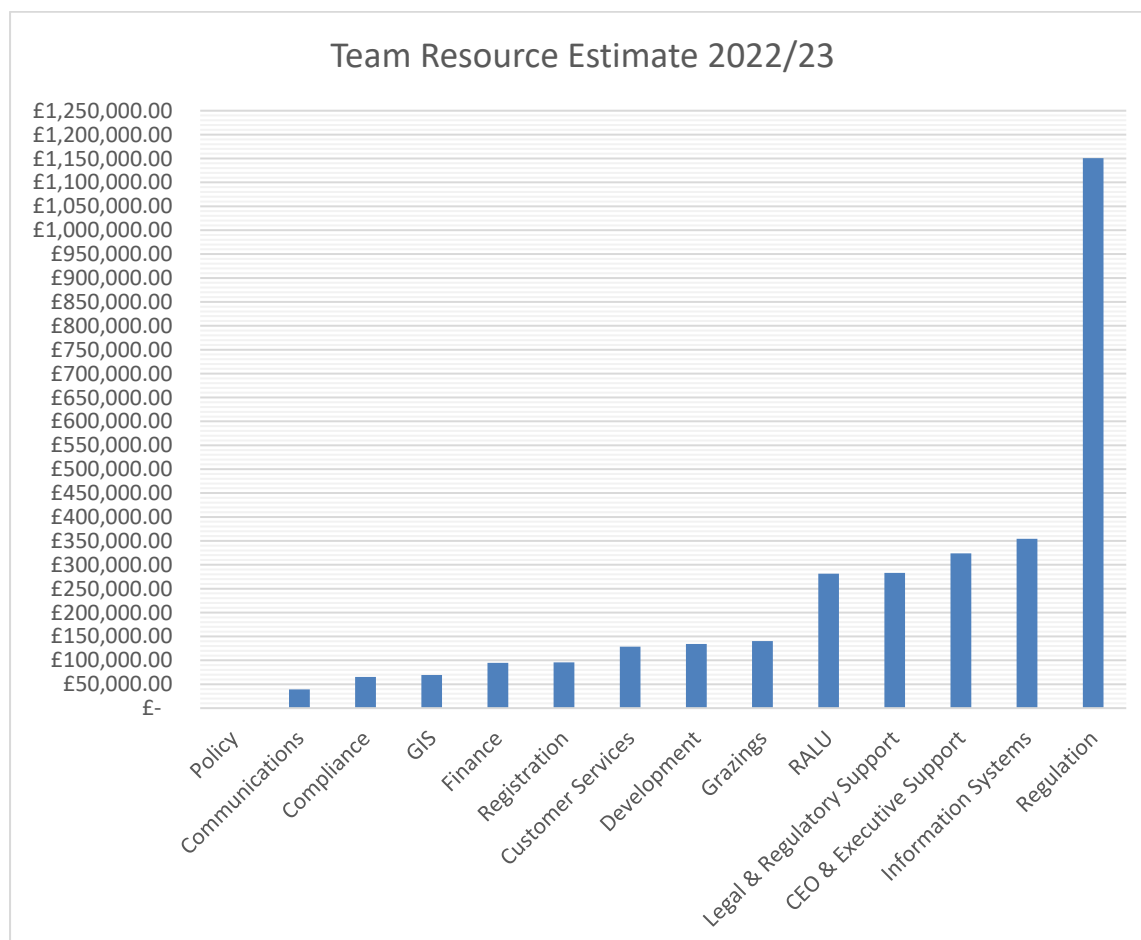
The budget allocation from Scottish Government is currently awarded on an annual basis. A multi-year approach to resource budgets, with the ability to retain operating efficiencies as a reserve would greatly assist the organisation in delivering its outcomes. The current 'use it or lose it' annual budget cycle is an inefficient and uncertain process with regard to managing relatively long lead in times for staff recruitment and investing in training.

However, the Board has adjusted its risk appetite from a complete risk averse position of breaching a budget allocation to a willingness to recruit on the basis that a specific post(s) may be funded by anticipated savings due to staff turnover.



## Salary Resource Analysis by Operational Area

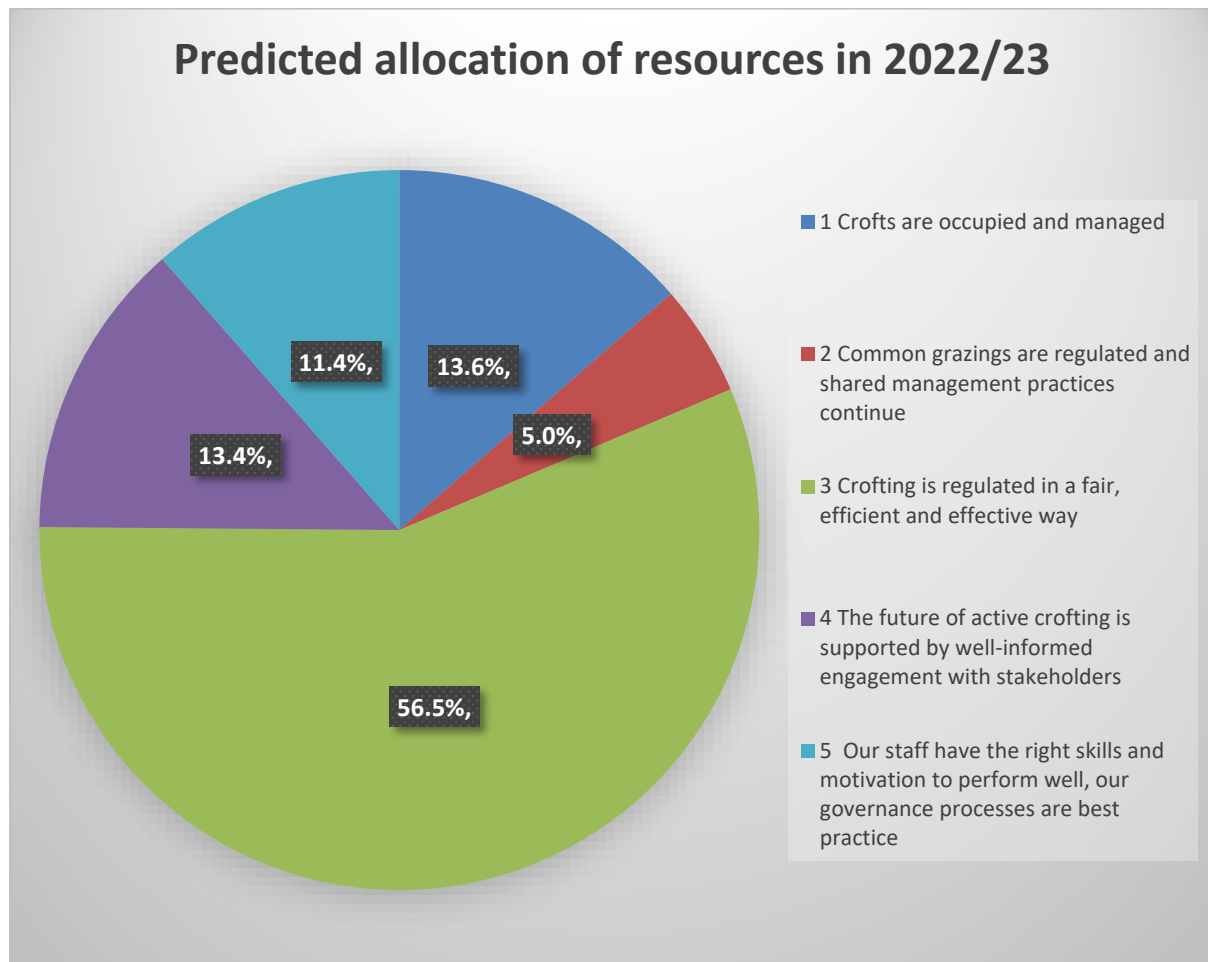
It should be noted that this reflects colleagues 'home' teams. There is considerable resource overlap between teams. In addition, the 'Director of Corporate Services' and 'Director of Crofting Regulation' (proposed SMT restructure) have been included within the 'CEO & Executive/Board Support' for the time being. The 'Policy' team is currently reflecting 'nil' resource as the Head of Policy recently retired. This function is currently being covered by the Development Function and CEO pending SMT restructure



Team	Full Time Equivalent	% of Staff Budget
Regulation	30.09	35.33
Information Systems	6.76	11.27
CEO & Executive/Board Support	5.39	10.25
Legal & Regulatory Support	4.50	9.23
RALU	7.66	8.96
Grazings	3.50	4.50
Development	3.00	4.90
Customer Services	3.90	4.09
Registration	3.25	2.93
Finance	1.85	3.01
GIS	1.65	2.20
Compliance	1.20	2.08
Communications	1.00	1.25
Policy	-	-
<b>Total</b>	<b>73.25</b>	<b>100.00</b>

## Linking Budget to the Corporate Plan

The following provides a broad estimate regards how resource would be allocated within the Commission's Corporate Plan Outcomes.



## RISKS

- 1. The Scottish Government Sponsor Branch has not confirmed the resource available to the Commission for 2022/23.** The Commission has submitted a business case to support the release of the full £3.9m Grant-in-Aid allocation detailed within the Parliamentary draft budget.
- 2. The Commission Finance Team underestimate the pay award for 2022/23.** While the Head of Finance is confident of the calculations adopted by the Commission, they are based upon uprate assumptions. The 2021/22 pay award was announced on 9 December 2021, but experience suggests that this can be subject to change. In addition, the Commission Finance Team has had to estimate Employer NI and Pension contribution costs as the Scottish Government Finance Pay Policy Team does not have the data at this time.

**RECOMMENDATION**

**Board Members are asked to consider:**

**Whether they are content to approve the draft budget subject to the Scottish Government releasing £3.9m as a Grant-in-Aid allocation for 2022/23.**

Date 4 March 2022

Author Neil Macdonald, Head of Finance, Crofting Commission

# **CROFTING COMMISSION MEETING**

**31 March 2022**

Report by the Chief Executive

## **Report on meetings with Sponsor Division**

### **SUMMARY**

**This paper lists meetings since the last Board meeting, which have involved both CEO and Sponsor Division.**

### **BACKGROUND**

Among other themes in the Deloitte report was the need to improve the reliability of communications between Sponsor, CEO/SMT, the Convener and the Board, to ensure that the Board as a whole were kept informed of all relevant developments. As part of this, a brief summary of recent meetings involving the CEO and Sponsor is included on the agenda for each Board meeting.

## RECENT MEETINGS INVOLVING CROFTING COMMISSION CEO AND SPONSOR/SCOTTISH GOVERNMENT (SG)

<b>Topic and Date</b>	<b>Commissioners attending</b>	<b>Lead SG officer(s)</b>	<b>Agenda items</b>	<b>Key outcomes</b>
Convener's meeting with Cabinet Secretary, 24 February 2022	Convener	Derek Wilson, Gordon Jackson	Convener and CEO talked through the Business Case for staffing enhancements, which we had submitted to Sponsor on 22 February. We also gave an update on the backlog.	SG to consider Business Case and respond to CC in due course
Crofting Law Reform catch up, 16 March 2022	None; this was a Sponsor meeting with the Commission solicitor and CEO	Gordon Jackson, Michael Nugent, Aileen Rore	Recap of the work of the 2017-2019 Crofting Bill team and the Law Society report on crofting law.	Sponsor will shortly be reconvening a small stakeholder group to take forward preparations for a Crofting Bill in the current parliamentary term. This was a preparatory meeting, largely a recap of previous work to check that Sponsor understood the thinking up to the point reached by the previous Bill team. However, it also gave the Solicitor and CEO a chance to explain the Board's concerns about issues such as joint tenancies and (depending on how it is implemented) standard securities on croft land. We also flagged up that it might be worth a further look at legal provisions on (a) enforcement of duties and (b) common grazings, given that the agenda on both has moved forward since 2019.
Crofting Stakeholder Forum, 22 March 2022	Convener	Derek Wilson, Gordon Jackson, Michael Nugent, Aileen Rore	Updates by SG on Crofting legislation and implementation of the National Development Plan; and by CC on Crofting Commission matters.	SG's plans for the next Bill are to pick up work from the previous Bill team and also the Law Society of Scotland recommendations; in addition they will consider <i>any other CC requests for legislative change that would help with our regulatory functions.</i>

### IMPACT

Regular provision of these reports will ensure that all Commissioners are informed of discussions between the CEO and the SG.

### RECOMMENDATION

The Board is invited to note this report.

Date 22 March 2022

Author Bill Barron, CEO

## **APPOINTMENT OF AUDIT & FINANCE COMMITTEE MEMBERS**

**DATE OF NEXT MEETING – THURSDAY 12 MAY 2022 – VENUE tbc**

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