

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT 0900hrs BY TEAMS ON 18 MARCH 2021

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	James Scott	Commissioner
	Bill Barron	Chief Executive
	Aaron Ramsay	Head of Digital & Improvement
	David Findlay	Commission solicitor
	John Toal	Head of Policy
	Joseph Kerr	Head of Regulatory Support
	Mary Ross	Head of Operations & Workforce
	Heather Mack	Head of Development
	Neil Macdonald	Head of Finance
	Jane Thomas	Head of Compliance and minute taker
	Betty Mackenzie	Communications Manager
	Aileen Rore	Sponsor Division
	Gordon Jackson	Sponsor Division

Assessors, members of the public and staff joined as observers.

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. Apologies were received from Commissioner Annal.

2 DECLARATION OF INTERESTS

There were no declarations of interest in the public part of the meeting.

3 BOARD MINUTES FROM 4 FEBRUARY 2021

The Minutes had previously been approved and published and were presented for information.

4 MATTERS ARISING

There were no Matters Arising.

5 REPORT FROM THE WOMEN & BOARDS STWG

Head of Compliance introduced the paper, providing the background context. As a Scottish public body, the Commission has a duty to report on work completed to comply with the Gender Representation Act, aimed at a 50% representation of women in appointed positions on Boards by December 2022. The first report is due to be made public in April 2021.

The paper represented a Final Report to the Board from the STWG set up in 2020. The focus of the group has been to agree practical measures that can be taken to encourage more women to come forward to sit on the Board, whether by applying for Appointed positions or to seek election.

Vice Convener Mackenzie took the Board through the Recommendations set out in the paper, explaining that she has now been involved in three panel discussions with networking opportunities and has been delighted with the positive response from women interested in crofting and what the Board is doing.

It was agreed that the questionnaire distributed by the STWG should receive further promotion on social media and that anyone who can add value to the Board should be encouraged to stand. Overall, Commissioners supported the idea that trying to increase the pool of candidates could only be a good thing, whether this was women or other under-represented groups, such as young people. It was agreed that staff should organise an Open Day at GGH (or virtually, if this is not possible) to welcome people to come along and learn about the Commission, ahead of the elections next year and Commissioner Scott offered to write a blog, from the perspective of a younger member of the Board.

The Recommendations were agreed.

Decision	<i>The Board accepted the Recommendations in the paper.</i>
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6 GRAZINGS REGISTRATION PROJECT

Head of Development introduced the paper, which has been researched over the last couple of months, with discussions taking place with staff, stakeholders and both committees and landlords of a sample of registered grazings. Issues highlighted included the time it takes to reach a collective understanding and get this down and agreed on paper, and the time taken to sort out mismatches in shareholder details. The emphasis was placed on seeing this as a long-term project.

Commissioners understood how difficult this work is but also how important it could be in townships, affecting people on a daily basis. It appears that the SLC is broadly sympathetic to the way the Commission has conducted itself over registrations. The rights of crofting land would be augmented by registration and this would enable neglect of this land to be more easily identified.

Commissioners considered the scale of the challenge, with only around a third of grazings registered to date and the costs associated with delivery far exceeding the funds released by Scottish Government. Active work on the project was halted around 4 years ago because of a lack of resources and there was a concern that re-visiting the work could not be done without moving resources from an area the Board has already prioritised. There was, therefore, a call for the CEO to go back to government to consider how to adequately fund the work.

One of the issues highlighted is that only the Crofting Commission can register a grazings. Consideration could be given to the idea of widening the category of those able to register a common grazing. However, this would require legislative change.

Commissioners rejected the first Recommendation in the paper but asked that the issue be brought back in 6-7 months, during which time discussions on resourcing it should take place with Scottish Government.

Decision	<i>Recommendation 1 is rejected. On Recommendation 2, the Board will re-visit the position in 6-7 months' time, after discussions have taken place with SG.</i>
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7 LAND MATCHING SERVICE

Head of Development introduced the paper, explaining that there is a land-matching service available in the farming sector and the idea has been floated that something similar should be developed for crofting. The Commission does have some data on unused croft land, which could be a useful starting point.

Commissioners wondered how successful such a project would be, given market forces and the values placed not just on the sale of crofts but also on tenancies. There was also discussion on the need to ensure that policy decisions are not compromised, for instance the agreed policy on sublets.

Some Commissioners wondered if it is possible to take a more informal approach, putting would-be entrants in touch with crofters who are not working their crofts, giving people an opportunity to try crofting without altering anyone's status. The experience of the HICES scheme was referred to and questions on whether it is possible to use the Annual Notice to extend purposeful use to 'growing season' lets.

It was agreed that Succession and croft turnover involved very sensitive, cultural issues, which had to be considered, alongside the desire to see more young people engaged in crofting.

There was concern that directly leading a Land Matching project could compromise the Commission's position as the Regulator of crofting and that it is more appropriate for stakeholders such as the SCF to be the lead. The Commission did not want to stand in the way of seeing the project develop to help population retention and activity and it was agreed to work with partners on ideas to help encourage the turnover of croft land.

8 STRATEGIC RISK REGISTER

The CEO explained that the register comes to the Board on a quarterly basis, so that a check can be made on key risk areas. He explained that several areas show the risk as static, but this does not mean no work or progress is being made. On Residency and Grazings, for instance, it is expected that work will move forward in 2021/22. On Workforce, Covid lockdown has resulted in challenges for staff but the situation is being managed.

On the Future of Crofting, this has been a time of flux but 2021/22 should see more stability. Regulatory casework productivity has been hit by the January lockdown, but extra resources are being put into this area and we are making headway on cases over 12 months old. Commissioners stressed that targets need to be made clear, so that the Board can assess the level management are planning to get to, within the next few months, with the extra resources. It was agreed that these will be included in the Business Plan.

9 DRAFT BUSINESS PLAN 2021-2022

The CEO explained that it has not been possible to use the 2020/21 Business Plan as envisaged because of the dual factors of the Covid restrictions and the expanded role impacting on the Commission through the year. He explained that when planning the draft plan for 2021/22, the five Outcomes seemed to stand up well and, acting upon a recommendation from external audit, more targets have been included.

He explained that delays in recruiting new staff affected some targets and milestones and that some targets are challenging but wanted to gauge whether the draft represented what the Board wishes to see.

Commissioners want to see definitive target times added, for instance on 3.1 and 3.3. CEO confirmed that once the end of year figures are available at the beginning of April, the draft plan can be finalised and presented to the AFC and then onwards to the Board for approval. Commissioners wanted the opportunity to view the staff structure, with the new positions included, so that they could make suggestions. It was agreed that the plan should reflect the positive position on reductions in the Board's carbon footprint. The decision to continue to hold Tier 3 meetings by video link, for instance, will have a positive impact, which should be captured. And on 4b it was agreed that the key is to find ways of dealing with the issue, rather than carrying out further investigations.

10 VACANT CROFTS

Head of Policy & Grazings introduced the paper, explaining that there had been a paper in June 2020 and that the context of the 1976 Act and the Right to Buy must be kept in mind because of its impact. The 2010 Act created parity for owner-occupier crofters but did not include all crofters. The Commission's Policy Plan says that the organisation can use its discretion in re-letting but it does not provide details on this. It is the will of Parliament that all crofts should be occupied and worked but the Commission has always been mindful to allow for individual circumstances.

It is important to be able to identify crofts, when situations arise that the Commission is not aware of. So, a Notice, similar to the Crofting Census but not used every year, could be helpful in identifying changes. The options detailed in the paper provide the Board with suggestions aimed at using its discretion to enable access to new entrants.

It is important to understand that the crofts in question are not subject to the same provisions governing Duties cases. It was confirmed that the Commission can take information from any source and use this to act if it decides to. It is the croft being Vacant that allows the Commission to take action.

The Commission agreed that there are different types of vacant crofts; for example there are 'ordinary' vacant crofts where the Commission should require the landlord to let the croft and there are those small pockets of croft land, where there are multiple owners. The latter are often very small and could not be let to form a workable croft. They are anomalies which should be removed from crofting, with a change in the law, or a Special Instrument. The Commission could still retain some discretion in these cases and has proved through the Tier 2 and 3 system that it can use discretion successfully.

It was agreed that if the Commission wants to head in this direction, a Policy is needed. It was agreed that discretion should be used so that active crofters were not targeted in any enforcement action. Head of Regulatory Support agreed that work could be carried out to ascertain which vacant crofts were truly vacant and which comprised tiny pockets of land on crofts, where the 'main' croft is still being worked. It was agreed that this should be done, to break down the categories and include this in the 2021/22 Business Plan.

The Recommendations in the paper were approved.

Decision	<i>The Recommendations in the paper were approved without amendment.</i>
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11 PEATLAND RESTORATION

Commission solicitor introduced the paper, explaining that it looks at the legalities around peatland restoration and some of the funding aspects of development. It is important to bear in mind that crofters have limited rights, with significant cases being decided last year in the Court of Session. Conservation activity needs to be carried out in collaboration with the landlord because it affects the landlord's interest. If developments are led by the landlord, agreement would usually have been reached with the shareholders of a common grazings and/or crofters involved. A landlord could use Purposeful Use or Grazings provisions in the Act. Crofting rights may be suspended by a restoration project, such as grazing or peat-cutting rights. The actual work would be done by contractors.

Funding for restoration work may come from government sources and third parties might buy contracts to off-set carbon emissions. Most schemes in Scotland are likely to go forward via Peatland Action. There are options for the Commission to facilitate collaborations between landlords and grazings committees, particularly via the new development posts in the Western Isles. Scottish Ministers estates and community landlords could be a starting point.

Concern was expressed that projects could be going ahead which could negatively impact crofters, without them gaining any benefits and that there could be speculative developments which could impact crofting communities for generations, as the work will be very long-term.

It was agreed to work collaboratively in the Western Isles as a starting point, providing crofters with information. The recommendations in the paper were agreed.

Decision	<i>The Recommendations in the paper were approved.</i>
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12 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS

The Convener began the round of updates, describing the Tier 3 meetings as a good way to conduct casework, which should continue into the future. On 15 March, he had attended the COHI meeting with the CEO, which had included a good discussion on crofting and stressed the importance of developments in infrastructure and connectivity in rural areas.

Commissioner Neilson had been working with the online forms group and 'virtually' touring the Western Isles for QMS.

Commissioner Mathieson had attended the recent meeting of the Cross-Party group.

Commissioner Maciver reported the usual pattern of approaches from local crofters, who he had asked to contact officers. It is frustrating not to be able to make an announcement about the Western isles-based jobs, as the recruitment process has not been completed. CEO agreed and regretted how long things like background checks are taking but confirmed there will be publicity once everyone is in post.

Commissioner Campbell drew attention to the difficulties and delays that can be caused by Intestate Succession and hoped that staff would bear this in mind and do everything they can to encourage crofters to think about Succession, as this needs constant promotion.

Vice Convener Mackenzie had attended meetings of the Hill and Upland committee and is looking forward to getting out with the Communications Manager as soon as possible, to do more filming of case studies to showcase the good work going on, on crofts.

Commissioner Holt had attended a Tier 3 meeting and an SCF meeting on access to crofts, which he found very educational.

13 REPORTS FROM HEADS OF TEAMS

(a) IS Team

Head of Digital & Improvement explained that the issue with the Annual Notice returns had been resolved, with the forms now with the contractor and running at about the same level as last year and with around a 50% increase in the number of electronic returns. It is hoped this trend can be focused on for the next crofting census.

It was confirmed that there will be a thorough wash-up at the end of the census period, to go over all the issues that have arisen this year, learn appropriate lessons and plan for next year.

The exercise to call a selected number of census form non-returners was completed, with thanks to the Assessors who took part. This was a very limited exercise, but the results were interesting and suggest that an expanded exercise would be worthwhile next year.

The ability to use Teams for calls to customers has been rolled out to all the selected staff, as agreed with the Board and a more extensive system is being organised for the Customer Service team, with a hunt group to take calls. This should provide better customer service. Voice messages are being organised in English and Gaelic and the new system will be in operation shortly.

Annual cyber testing has been carried out. A report is awaited but nothing significant was noted during the security tests. The website refresh is progressing to its final stages. This will be tested internally and should be completed within the next fortnight.

External testing and consultation on the website accessibility will begin after the refresh is completed. Quotes have been received from contractors. This should be finished in early April. The online applications project is progressing. This represents a major piece of work, which is building towards being signed off by SG Digital First. The project can be reviewed internally by self-assessment.

After the Special Board meeting on 4 March, discussions have begun to try to identify project manager resources for IT projects, to see if a secondment from SG is possible. The B1 grade vacancy in IS/GIS has been advertised, with the sift of applications taking place next week. There has been a good response.

On CIS, progress towards the next release is being made and, in answer to a question on staff involvement, it was confirmed that staff are involved on an improvement group, looking at future development of CIS.

Commissioners stressed the need to bring someone in as quickly as possible to assist with project management and to bring in a contractor if necessary. Head of Digital & Improvement confirmed that testing for the new release of CIS will take place in April and then training and upskilling and delivery needs to be looked and care must be taken not to do anything that could interfere with the production of statistics for the Annual Report, which means that the new release will not go live until May.

It was confirmed that £70k of resource has been ring fenced within the 2021/22 budget to assist with the delivery of IS projects. The Convener and Vice Chair of the AFC committee expressed concern about delays in the implementation of CIS improvements and the Board requested sight of a timeline for the release and clear targets for implementation. The Board also want to see feedback from staff on CIS.

(b) RALU & Regulatory Support

Head of Regulatory Support gave an update on the work of the RALU team, reminding Commissioners of the situation outlined at the last Board meeting. Notices had been issued in February and quite a few Consent to be Absent applications have been received. Cases are being sent to Tier 3 and one Termination Order has recently been issued. The let of a croft in Lewis to a new entrant should be finalised this month, 5 reports of Breach of Duty have been received and good progress is being made on Skye. The team has also asked for legal advice on any potential impact Brexit might have, for residency cases.

On Regulatory Support, the maximum cases that can be coped with at Tier 2 is about 10 a week and that is what the team are currently working to. The recent policy change on sublets over 5 years has seen cases going to Tier 2, which can be escalated if necessary. Triage information has been revised on the website and Head of Regulatory Support wished to thank the Communications Manager for her help in creating a new leaflet.

Several changes to the way objections are dealt with were agreed by the Board in December and these are being worked through, including changes to templates for RPID reports.

(c) Operations & Workforce

Head of Operations & Workforce explained that there have been pressures caused by the second lockdown from January onwards. Several staff are coping with a variety of caring responsibilities, which has an impact on their productivity. However, adverts are now live to recruit extra staff, as recently agreed with the Board and an existing agency member of staff is being kept on until May.

Staff are working hard to progress cases, after delays in January. Monitoring of cases over 12 months old is carried out and the most significant delays are caused by external factors and blockages, so a plan needs to be developed to deal with these. The issue of revisions to Registration forms to allow for online payments is being taken forward with RoS.

(d) Grazings & Policy

Head of Policy & Grazings explained that this time last year there had been concerns about how grazings committees were going to fulfil duties regarding appointments, when they could not meet in person. Therefore, the Commission had approved interim arrangements, and these are working well.

Lots of enquiries continue to come into the team and these are dealt with. One thing to note is that not many new Regulations are coming in for approval, though some are in the pipeline. The template created to assist committees draw up their Regulations is a good tool, and they will be encouraged to use it.

It is good to report that training has continued, and a good working relationship established with FAS. The team themselves had training in agricultural land use and suggested an abridged version was created for staff in general. This was delivered last week to 25 staff, showing the high level of interest of staff. The team has recently been augmented by the addition of an agency member of staff to cover administrative tasks and this has been a great help.

And finally, Commissioners were thanked for the time they had given to comment on the consultation on animal transportation last month.

(e) Crofting Development

Head of Development gave a brief overview of what the team is engaged in, with one B2 officer based in the Western Isles now in post and another expected to take up a post in April. Meetings are beginning, with staff and stakeholders, to refine plans and prioritise tasks. This includes an initial meeting with Board members next week. There is also a survey on under-used land, which will be circulated to the Board shortly.

14 UPDATE FROM THE APPLICATION FORMS RE-DESIGN GROUP

Head of Regulatory Support explained that the working group has reviewed 9 application forms and identified multiple modules from these. As well as online forms, pdf versions also have to be created. Since the last Board meeting, activity has focused on the Guidance Notes and sub-letting and Assignment forms. It is hoped that the work on the pdfs will be completed by the end of next week and a meeting has been arranged to go over them with the print contractor. Decrofting is being looked at in April.

Commissioner Neilson wished to compliment staff on their input to this important project.

15 DATE OF NEXT MEETING

The next meeting will be held on 13 May 2021 by Teams.

16 ANY URGENT BUSINESS

There was no urgent business.

The public meeting closed at 15:00, with the Convener thanking staff, members of the public and Assessors for their interest in attending.

17 EXCLUSION OF THE PRESS AND PUBLIC

The Convener thanked everyone for their contributions to the meeting, which had a very full agenda today and closed the meeting at 15:35.