



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***18 MARCH 2021***

**CROFTING COMMISSION MEETING (TEAMS)  
18 MARCH 2021 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>BOARD MINUTES FROM 4 FEBRUARY 2021 (<i>already published</i>)</b> | <i>Minutes</i> | <i>For info</i>       |
| <b>4</b>  | <b>MATTERS ARISING FROM PREVIOUS MINUTES</b>                         | <i>Oral</i>    | <i>Standing Item</i>  |
| <b>5</b>  | <b>REPORT FROM THE WOMEN AND BOARDS STWG</b>                         | <i>Paper</i>   | <i>For info</i>       |
| <b>6</b>  | <b>GRAZINGS REGISTRATION REPORT</b>                                  | <i>Paper</i>   | <i>For discussion</i> |
| <b>7</b>  | <b>LAND MATCHING SERVICE</b>   | <i>Paper</i>   | <i>For discussion</i> |
| <b>8</b>  | <b>STRATEGIC RISK REGISTER – QUARTERLY REVIEW</b>                    | <i>Paper</i>   | <i>For info</i>       |
| <b>9</b>  | <b>DRAFT BUSINESS PLAN 2021-2022</b>                                 | <i>Paper</i>   | <i>For decision</i>   |
| <b>10</b> | <b>VACANT CROFTS</b>   | <i>Paper</i>   | <i>For discussion</i> |
| <b>11</b> | <b>PEATLAND RESTORATION</b>  | <i>Paper</i>   | <i>For discussion</i> |
| <b>12</b> | <b>‘ROUND THE TABLE’ UPDATES FROM COMMISSIONERS</b>                  | <i>Oral</i>    | <i>Standing Item</i>  |
| <b>13</b> | <b>REPORTS FROM HEADS OF TEAMS</b>                                   |                |                       |
|           | <i>(a) IS Team</i>   | <i>Oral</i>    | <i>For info</i>       |
|           | <i>(b) RALU &amp; Reg Support</i>                                    | <i>Oral</i>    | <i>For info</i>       |
|           | <i>(c) Operations &amp; Workforce</i>                                | <i>Oral</i>    | <i>For info</i>       |
|           | <i>(d) Grazings &amp; Policy</i>                                     | <i>Oral</i>    | <i>For info</i>       |
|           | <i>(e) Crofting Development</i>                                      | <i>Oral</i>    | <i>For info</i>       |
| <b>14</b> | <b>UPDATE FROM THE APPLICATION FORMS REDESIGN STWG</b>               | <i>Oral</i>    | <i>For info</i>       |
| <b>15</b> | <b>DATE OF NEXT MEETING</b><br>13 May 2021 – Teams                   |                |                       |
| <b>16</b> | <b>ANY URGENT BUSINESS</b>   |                |                       |
| <b>17</b> | <b>EXCLUSION OF THE PRESS AND PUBLIC</b>                             |                |                       |

# APOLOGIES – ORAL

**DECLARATION OF INTERESTS – ORAL**

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING BY TEAMS ON 4 FEBRUARY 2021

|          |                   |                                     |
|----------|-------------------|-------------------------------------|
| Present: | Rod Mackenzie     | Convener                            |
|          | Andy Holt         | Commissioner                        |
|          | Mairi Mackenzie   | Vice Convener                       |
|          | Malcolm Mathieson | Commissioner                        |
|          | Iain Maciver      | Commissioner                        |
|          | David Campbell    | Commissioner (joined 9:50)          |
|          | Billy Neilson     | Commissioner                        |
|          | Cyril Annal       | Commissioner (until lunchtime)      |
|          | James Scott       | Commissioner                        |
|          | Bill Barron       | Chief Executive                     |
|          | David Findlay     | Commissioner solicitor              |
|          | Mary Ross         | Head of Operations & Workforce      |
|          | Aaron Ramsay      | Head of Digital & Improvement       |
|          | Joseph Kerr       | Head of Regulatory Support          |
|          | John Toal         | Head of Policy                      |
|          | Heather Mack      | Head of Development                 |
|          | Jane Thomas       | Head of Compliance and minute taker |
|          | Neil MacDonald    | Head of Finance                     |
|          | Gordon Jackson    | Sponsor Division                    |

Various assessors/staff and members of the public attended

### **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting in Gaelic, followed by a welcome in English, explaining that Commissioner Campbell would be a little late. A particular welcome was given to members of staff, the public and Assessors who joined the meeting.

### **2 DECLARATION OF INTERESTS**

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

### **3 BOARD MINUTES OF 3 DECEMBER 2020**

The Minute of the Meeting of 3 December 2020 had been approved by email and published on the website. It was brought to the meeting for information only. There were no questions.

### **4 MATTERS ARISING FROM PREVIOUS MEETING**

The Commission solicitor set out that at the previous board meeting, it was agreed that in future the issue of late objections would be reconsidered and in particular whether the same objector could object more than once and after the statutory 28-day period. It was agreed that a previous paper from 2015 on what constituted a “good reason” would be revisited and circulated to Commissioners and consideration would be given as to whether it is appropriate to reconsider the matter with regard to future cases.

## **5 AUDIT & FINANCE COMMITTEE REPORT**

### **(a) Update from Malcolm Mathieson**

Vice Chair of the committee explained a meeting had been held on 27 January. It had been a very full meeting, with many issues feeding into the Board's discussion today and the Strategy Day on 5 February. He highlighted a paper from the Commission solicitor, which was very interesting but, due to the full agenda, the committee had not had time to discuss properly. This would be returned to at the AFC meeting in April and then come to the Board.

The committee had been pleased to note a positive internal audit report and thanked management for maintaining good governance work in difficult circumstances. The Convener wished to add his thanks to the SMT. It was also positive to note that approval has been given to carry forward underspend for this year.

The Vice Chair urged all Commissioners to complete the self-assessment questionnaire which they would shortly be receiving, as this gives the best picture of trends across years.

He reported that some completion dates on the Audit Progress Report had not been met but it had been agreed that SMT will take another look at these and amend forward if necessary, given the extra pressures on management in the current year.

### **(b) Draft Minute from 4 November 2020 and 27 January 2021**

There was nothing to add on this.

### **(c) Q3 Performance Indicators**

It was noted that most of the KPIs with a red status relate to Duties and Grazings work, which has been disrupted over the last year as a result of the COVID-19 restrictions. The CEO pointed out that management had also taken on board an audit suggestion to make sure the RAG status of each item is appropriate.

In answer to a request from Commissioner Annal, management agreed to send him a link to the Orkney and Caithness parishes on the RoC, which are publicly available.

### **(d) Annual Improvement Plan**

This is an audit recommendation which management have followed up. The committee found it an interesting document, especially given the pressures of the current year. CEO confirmed it would be completed on an annual basis.

## **6 ROUND TABLE COMMISSIONER UPDATES**

Commissioner Holt began by informing the Board that he had attended two Zoom meetings, with the Cross- Party Group and the Shetland Agricultural Forum.

The Convener's work with the Marts allows him to continue to see a lot of crofters but he reflected that the Commission has a lot of catching up to do on engagement, once the restrictions are lifted. There will need to be a programme of Roadshows, to help the Commission show an external face. However, Tier 3 meetings are going well by video-link and should be continued in this way.

Commissioner Neilson agreed that not being able to get out and about meeting people is difficult. He had had conversations with 3 crofters, who raised questions about the annual notice and why it did not include more descriptive questions. It was confirmed that this issue is due to be reported on at the next Board meeting.

Commissioner Mathieson agreed that it is difficult not being able to travel but that he had taken calls from several crofters complaining about neglected crofts, but who were not willing to bring their complaints to the Commission, as they did not want to be identified. He agreed that the way Tier 3 meetings are organised is very efficient and should be continued.

Vice Convener Mackenzie reported that, as part of her work on the Women on Board STWG, she had taken part in a Q&A session with the Highland Women's Business Network the previous evening. This had been very interesting and well received, with lots of follow-up contact from participants. She would like to see this model used for more promotion work ahead of the elections. It was also good to be out with the Communications Manager in December, recording the work, led by women, in Elphin, (the Green Bowl initiative) and it was good to see one of the women at the Board meeting today, who was to be congratulated for being recognised as 'Young Crofter of the Year'.

Vice Convener Mackenzie said she would be interested in seeing a repeat of the survey work completed a couple of years ago along with the Crofting Census, to see what the impact of Agri-tourism is on crofts, especially with the growing popularity of the NC500.

The Convener wished to congratulate Mrs Mackenzie on her selection as a committee member of the SG Hill & Upland committee, which is engaged in very important work.

Commissioner Scott reported that he had attended a Moorland Forum meeting, which had looked at management of uplands, the results of which may have an impact on crofting. Changes to the way muirburn is handled, for instance, could have a knock-on effect on livestock and when deciding on changes to the way large upland landscapes are managed it is important to beware of unintended consequences.

Commissioner Maciver agreed that Tier 3 meetings are going well. He continued to receive calls from crofters and attended the cross-party group meeting. He agreed with the Convener that it will be good to begin a programme of Roadshows when restrictions are eased.

Commissioner Annal had nothing to add.

Commissioner Campbell agreed with previous speakers that engagement is more difficult in the present circumstances but not impossible. He had received negative comments about having to return the Crofting Census forms to an address in England. While he understood the explanation, he stressed the need to build wealth in crofting communities by using the Commission's budget outside a 25-mile radius of Inverness. He wanted to see greater social impact of the organisation's spending power.

The Convener agreed that the negative publicity about the census was regrettable and urged everyone to complete it online, as it is very simple to do. He wished to look at the issue raised by Commissioner Campbell with the CEO.

The Vice Convener raised a question about why people with multiple crofts had received individual letters. The CEO confirmed this had been an error on the part of the contractor, for which the Commission had received a credit. It would not happen again. He also confirmed that the work contracted out was of a specialist nature and the Commission did investigate whether it could be completed by a local firm, but this was not possible.

## **7 REPORTS FROM HEADS OF TEAMS**

### **(a) IS team**

Head of Digital & Improvement reported that Crofting Census returns online were up by over 50% compared to last year but numbers of physical returns were lower, at this point. It was agreed more communications work would be done to encourage online returns.

It was hoped testing of the new version of CIS would begin this month. The work on the move to the Cloud and digital applications was delayed until the CIS work was complete, as the three strands of work are tied in together.

We are presently carrying out a one-month trial using Teams for phone calls, with 25 licenses. This is being reviewed by management next week. If we decide to go with this option, it will not come with a local area code. For this to work, the Commission could contract out an external switchboard, at a cost.

The Annual Review of Cyber Resilience will be discussed later but Head of Digital & Improvement reported that the firewall referred to is now in place. The team has been joined by a Temporary member of staff, who is currently carrying out census updates.

Commissioners expressed concern that the organisation does not appear to have equipped staff with the means of making phone calls as well as other organisations, such as Highland Council and NatureScot. It was agreed that Highland Council Planning dept would be contacted, to see if any lessons can be learnt.

### **(b) RALU & Regulatory Support**

Head of Regulatory Support started the update by explaining what has happened over the last couple of months in the RALU team. Notices had been due to go out in December, but the team realised this could create deadline difficulties connected to statutory deadlines for both the crofter and the Commission. Therefore, the Workplan has been adjusted to avoid that month and send letters in January instead. Notices are now being issued, with another dozen ready to go. The Commission prefers landlords to deal with letting in termination cases where possible but is happy to discuss this and there are several recent examples of such engagement, in Skye, Argyll and the Western Isles.

On Regulatory Support, there has been a change in policy which means that the Commission would not normally approve a sub-let or short-term let of more than 5 years; looking instead for a longer-term solution. Casework processing was changed after the last Board meeting, so this is now being put into practice, which has an effect on cases escalated to tier 2 and 3.

Commissioners then went on to discuss the feedback they get from crofters, who have the impression that the organisation is doing nothing to tackle the issue of vacant crofts, and concerns Commissioners have about the resourcing of the RALU team.

It was asserted that some of the work required to chase up people in breach of their duties is simple and straightforward and could be done by Temps and that the additional funding available this year should be used for that. The CEO explained that recruitment to the team was taking place, the team is being expanded and the level of straightforward work was debatable. It was accepted that temporary staff could be used to make phone calls to non-returners of the Crofting Census, and this is being arranged. The Convener asked for an opinion from one of the Assessors present, who confirmed that this was the kind of task Assessors could complete, on a voluntary basis, provided they made calls to people outside their own area. It was agreed this would be followed up and put into practice.



Commissioners wished to know whether information from the census is the only way to know if the trend in non-residency is going up or down, asking if this could be analysed against data on terminations and duties action. Given there is not a 100% return rate for the Annual Notice (Crofting Census) and a lower rate for returns of the Grazings Census, this analysis would only give a partial result. The CEO confirmed that management understands the high priority of all of the duties work, on neglect as well as residency and that is why the RALU team is being expanded.

### **(c) Operation & Workforce**

Head of Operations & Workforce gave the report, explaining that the further lockdown has had an impact on several staff, especially those with caring and home-schooling responsibilities. Connectivity issues are monitored but are much better than earlier. There is a new Temp in the team and no staff off on long-term sick leave, which is good.

When the latest lockdown was announced, the Commission had to quickly decide how to make arrangements to handle mail in and out, with no access to GGH at first and now only very restricted access. The mail handling has been temporarily contracted out, which caused minor delays at first because the new arrangements had to be put in place. Things are now proceeding and the mail coming through. Due to this, the regular monthly stats provided to Commissioners will be about a week late but should give the full January picture.

It was encouraging to see work being completed to push cases through to Tier 2 and to work on those cases which have been open for more than 12 months.

Head of Regulatory Support informed the Board that Registers of Scotland have agreed that the rectification process should be handled by RoS and not the Commission, and so we are moving to that situation.

Head of Operations & Workforce detailed some of the on-going work to support staff well-being, which includes working closely with the Staff Engagement Group, organising events online such as meditation, yoga, mindfulness, visits from HR Wellbeing officers, surveys of staff and ensuring conversations are taking place regularly between line managers and staff, which should always include a discussion on well-being. A Well-Being page is also being developed on Teams. Commissioners expressed thanks for all of the work being focused in this way, as they appreciate working in the current circumstances is difficult for many.

### **(d) Grazings & Policy**

Head of Grazings & Policy reported that the initiative to allow committees to remain in office (remitting to the Commission) if they could not arrange relevant shareholder meetings due to COVID restrictions has been a success. This needs to continue until restrictions in movement are relaxed. The priority for the team at the moment is to consider Regulations submitted by grazings committees, to help get them finalised and approved. Training is also seen as a top priority, with grazings clerks having been surveyed. Two training sessions were delivered in December, assisted by FAS funding, with a good relationship built up between the team and FAS officers. More training is planned, looking at conflict management and mediation for committees, with Assessors helping to trial this, working with Mediation Scotland.

There is a negative impact on this small team caused by the lockdown, but their work is being assisted with help from an admin temp. It should be remembered that the team also handles Planning tasks for the Commission, not because there is a connection with Grazings work but because the individual expertise lies in the team. This does not, however, mean there is the capacity to cover this function fully.

## **8 REPORTS FROM SHORT-TERM WORKING GROUPS**

### **(a) Application Forms**

Head of Regulatory Support reported on the work of the group, which has been going through all relevant application processes in preparation for moving to submitting applications online. 34 different functions have been identified but these include Notifications as well as applications. The group decided to prioritise applications where individuals will already be on our systems, for instance owner-occupier crofters and tenants. This gives us 26 types to consider but some grouping of types may be possible.

A group, including Commissioner Neilson, meets every week and has broken forms down, to identify and create individual modules; the aim being to pre-populate the new forms as much as possible and have tick boxes, to reduce the amount of free text. Nine forms have been partially completed. These are with the IS Team to draft as digital forms. So, the focus for the group is now on Guidance associated with these forms. There will always be an opportunity for people to complete a hard copy if necessary and a pilot will trial the new forms, with assignment and sub-let almost ready. Assessors will be involved, and the exercise promoted on social media. Commissioner Campbell offered to complete some dummy applications, as he is used to the current process. Both Commissioner Campbell and Maciver will be invited to provide feedback to the group as part of the testing stage.

Head of Digital & Improvement explained what is happening on the digital side of the project, with a digital template being created, working with a contractor, going through the customer flow, which can be technically complex. There are issues, for instance, with the division of crofts and signatures. Engagement with SG's digital team is helpful, on design, readability and the new building required for the website.

It was emphasised that this represents a large project, being progressed by a small number of staff. There will be a phased release of new forms, and an App will be considered once we can see how the forms work on the website.

Commissioners hoped there would be a move to 100% digital forms in the long-term, with enough lead-in time, in order to free up resources. Sponsor Division were asked to provide information on whether all cattle movements are now notified online and what the stats are for IACSS forms.

### **(b) Women & Boards**

Head of Compliance explained that there will be a final report from the group coming to the March Board meeting. The group has focused on agreeing a wide range of practical ways to encourage women to come forward for appointment and/or election to the Board and has populated a useful stakeholder list, which allows the Commission to push messages out to interest groups. A questionnaire to go out to stakeholders and be made available on the website and social media has been developed and will be circulated to SMT and the Board next week.

Vice Convener Mackenzie, who chairs the group, felt that events such as the one she took part in the previous evening are of benefit, with around 20 women attending. There are plans in the pipeline for more filming, highlighting women engaged in active crofting.

## 9 RALUT PRIORITIES

Commission solicitor led the discussion, which was the culmination of the work of the STWG. The paper under discussion identifies 12 priorities, with the Board being asked to select which of these to focus on.

Having considered the matter further, the Commission agreed that a case can be made that crofting duties apply equally to grazings shares that form part of a croft tenancy and a stand-alone grazing rights (where the croft land is purchased). If there is an obvious breach of duty, in a case which has been decided at Tier 3, there should be an automatic route for action, with Head of Regulatory Support agreeing and explaining the paper sets out the types of work that could be taken up and the steps needed.

Head of Grazings & Policy will be bringing a paper to the March Board on Vacant Crofts, so this needs to be kept in mind. One of the problems is that the statutory process set out in the 1993 Act is proscriptive.

To clarify what is meant by 'Short-term' or 'Long-term' on the list of priorities in the board paper, the Head of Regulatory Support explained, some things can be classed 'short-term' where work has already been identified but needs more resources to complete, where other things may have been mapped out as long-term because of the number of steps needed to complete them.

It was suggested that it would be better to wait until the Board has considered the paper on and had an agreed position in relation to Vacant Crofts before writing to landlords.

It was agreed that communicating with conveying solicitors should be encouraged, to ensure they inform buyers of crofting duties and that new owner-occupier crofters and assignees should receive a guidance letter. It was also agreed that one of the first priorities of the new WI officers could be to work with estates, landowners, and townships on crofting duties issues.

Commissioners wished to see extra resources being put into the RALU team, on top of the current recruitment. The CEO urged caution as he did not believe the budget would stretch to this. The Vice Chair of the Audit & Finance committee disagreed, with several other Commissioners calling for more posts to be created for the team straightway, using the underspend from 2020/21 and the 2021/22 budget, feeling that this will stimulate a reaction, otherwise it was a lost opportunity. Commissioners felt this is an area where a difference could be made and is a clear priority and they want to see action.

The Convener said this was a strategic direction from the Board to the CEO. The CEO accepted it was the wish of the Board to prioritise duties work but it was also a top priority to improve IT systems and to provide better customer service, which meant addressing any delays in regulatory work and the Board also wanted to see increased grazings work. When extra funding for an expanded role had been announced, there was no certainty that it would be consolidated into next year's budget. As CEO, he had mapped out a plan to recruit 6-8 posts, but the Board had wanted to be more cautious at the time, so it was agreed to recruit 5 new posts, 2 of which would go into the RALU team. One of these posts was filled in October and the other is being recruited now. The planning is in place and he accepted the Board had not seen the outcomes yet but stressed the team is being built up, with today's paper aimed at helping Commissioners decide which of the 12 items to prioritise.

Commissioners were not satisfied that carrying forward around £50k of the expanded role funding addressed the issue. They wanted to see the funds used now to boost the RALU team. The CEO explained that the funds carried forward may be needed to complete some of the short-term projects which are already underway.

The Convener requested a meeting to conclude this discussion on the budget and support for the RALU team, to take place within 10 days.

The RALU team manager asked Commissioners not to overlook what has already been achieved, given the very time intensive process involved in duties work. When asked which of the 12 priorities he would focus on, he chose 1, 2(1) and 4, with the Commission solicitor reflecting that item 5(7) should also be included. These all require extra resources. The Board agreed to prioritise items 1, 2(1) and 4. The next step would be to draw up a statement on how to proceed, which the Commission solicitor will lead on with input from Commissioner Neilson, who co-Chaired the working group, and the Head of Regulatory Support.

It was further agreed that all RALU team staff are to be given phones.

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| <b>Decision</b> | <b><i>The Commission will prioritise RALU work on items 1, 2(1) and 4 as outlined in the paper and the solicitor will draw up a Statement on how to proceed.</i></b> |
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## 10 NEXT STEPS ON GRAZINGS

Head of Grazings & Policy introduced the paper, which had been written in the context of capacity building for communities, arguing that common grazings are an integral part of crofting. There has been decline in the number of committees over the last 20 years and the paper draws on two pieces of research and survey work with grazings clerks, suggesting that an independent survey of grazings now would be valuable, as the picture we have is incomplete.

It was suggested that to use its powers in a modern context, the Commission should invest in the communities themselves and provide a proper register of common grazings to help identify areas, such as Eday in Orkney, where people are forgetting that the land is common grazings. The Commission could leave a legacy by starting this process of identification, helping communities to see grazings as an opportunity they could benefit from.

Another locus the Commission has is connected to the structure of the management of grazings, where help can be given to set up committees and support them, helping them to deliver public goods. By collaborating there are benefits, as a trial in the Western Isles shows.

Commissioners discussed the links to Agri-environment schemes, which do not always work in favour of areas such as common grazings. There was a discussion on the merits of supporting active crofters with livestock which needs to be tempered by an appreciation of the different uses for the land, and also the impact that absenteeism has on the ability to manage large areas of common grazings.

Some Commissioners felt that there have been deep societal changes that have impacted common grazings and may be difficult to reverse. The momentum is with the likes of rewilding and there are difficulties in restoring previous livestock systems and management, and also the social elements that were once associated with that. A pragmatic approach is needed.

The CEO asked whether the Commission should start by focusing on areas where there is already interest and develop practical assistance such as a toolkit for communities, and engage in the funding debates around support schemes, to help them better suit common grazings.

Head of Grazings & Policy reflected that in the discussion on the previous paper, Commissioners had forcefully pressed for duties work to be properly resourced, but this is hard work too, just as working with grazings is. The Commission seemed to be saying that thinking about common grazings was too difficult, but it was possible to do something just as difficult on absenteeism and neglect. The result if no action is taken will be a loss of croft land. Identifying it would be a positive step.

There was a discussion on whether we are talking about conservation or preservation and the role played by apportionment. There was also a call from the Grazings Manager not to be too pessimistic and to consider what the team has achieved over the last year or so, with more committees in office and lively interest in the training workshops. It was felt there is potential as well as barriers and the Commission does not have to focus on one thing; it could have a multi-streamed plan.

Head of Grazings & Policy drew the Board's attention to the Recommendations in the paper. Commissioners agreed the recommendations.

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| <b>Decision</b> | <b><i>The Board agreed the full set of recommendations outlined in the paper.</i></b> |
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## **11 DATE OF NEXT MEETING**

The next meeting of the Commission will take place via Teams on 18 March 2021.

## **12 AOB**

There were no urgent items. The public meeting was closed at 15:43, the Convener especially thanking staff and Assessors who had joined to view the meeting and contributed.

## **13 EXCLUSION OF PRESS AND PUBLIC**

The Convener then closed the meeting, at 16:35, thanking everyone for their contributions throughout the day.

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

# **CROFTING COMMISSION MEETING**

**18 March 2021**

Report by the Chief Executive

## **Final Report – STWG Women on Board**

### **SUMMARY**

**The STWG has focused on a range of practical steps which can be taken to encourage greater engagement on the Board by women, has compiled information relevant to the completion of a public report under the Gender Representation Act and puts forward a series of Recommendations to the Board in this paper.**

### **BACKGROUND**

Under the Gender Representation on Public Boards (Scotland) Act 2018, the Scottish Government introduced a gender representation objective that 50% of Appointed members to public Boards should be women, with a deadline of 31 December 2022 to achieve this. In the case of the Crofting Commission, the Act implies that the gender representation objective would be satisfied if at least one of the Appointed Commissioners were female.

There will be one new Appointment to the Commission Board in 2022. And in addition, there will be elections to the Commission Board in the same year.

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

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

The public body likewise must report on steps taken to encourage women to apply for vacancies. The report must be accessible to the public and can be made in another document (for example, an Annual Report). The report will have to be prepared according to Guidance to be issued by Scottish Government and be made public by April 2021, and thereafter updated every two years.

### **CURRENT POSITION**

With a reporting deadline of April 2021, the Commission decided in the summer of 2020 to take steps to demonstrate its commitment to increasing female representation on the Board and a Short-Term Working Group was established. The group consists of 3 female officers from the Commission, 2 female Assessors and 2 Commissioners. It was decided at the outset that the group would work pro-actively on both encouraging women to apply for appointment vacancies and also to stand for election to the Board.

The STWG has met on three occasions and agreed a range of practical actions (see **Annex A** Action List) and has compiled a Stakeholder’s list, which facilitates speedy dissemination of information to a broad network of interest groups. This has allowed, for example, invitations to be issued to attend video Board meetings, which are now built into the Commission’s processes. By increasing the visibility of Board meetings, it is hoped proceedings are demystified, as well as broadening an understanding of the work of the Commission.

The STWG has also established contact with the relevant officers in the Public Appointments office and has the timeline and associated flowchart covering the appointments procedure, which allows us the plan campaigns to tie in with the official process. The same has also been established for the elections process.

Head of Compliance has held meetings with officers from the Public Appointments office and worked through the Good Practice guidance issued by the SG Equality & Diversity Unit (see **Annex B**) to ensure the Commission makes best use of positive opportunities.

The pro-active work begun by the STWG includes the drafting and circulation of a Questionnaire (see **Annex C for information**) to survey women on possible barriers to participation and how these might be mitigated, articles, blogs and films featuring members of the group, as well as training and direct approaches to individuals. This work will continue and will have a dual aspect with, on the one hand, officer led liaison with Scottish Government, to maximise publicity and information sharing and, on the other hand, networking, informal engagement, and promotion led by other members of the group.

| <b>Impact:</b>     | <b>Comments</b>   |
|--------------------|---|
| Financial          | N/A   |
| Legal/Political    | Duty to submit public report on activity by April 2021 under Gender Representation Act 2018 |
| HR/staff resources | Impact – Head of Compliance (as Equality & Diversity Lead Officer)                          |

**RECOMMENDATION**

**The group recommends the following actions to the Board:**

- **Each Commissioner to identify any suitable candidates and impress upon them the importance of having their voice heard as a Commissioner**
- **To support the ongoing promotion of the role of Commissioner via social media, mainstream media and through networking**
- **To encourage Assessors to consider standing for election, with a personal letter from the Convener**
- **Think about reaching out to other under-represented groups, not just women**
- **Take every opportunity to encourage women or minority group crofters (or others) to get involved, whether that is as an Assessor or in a Commissioner role**
- **Showcase innovative or inspiring work on crofts using social media**
- **Invite women or people from under-represented groups to attend Board meetings.**

Date            23 February 2021

Author           Jane Thomas, Head of Compliance & Board Support



**ACTION LIST STWG – WOMEN ON BOARDS – (from meetings on 13/8/20, 8/10/20 and 26 November)**

| <b>ACTION</b>  | <b>OWNER</b> | <b>DEADLINE</b>   | <b>COMMENTS</b>   |
|--|--------------|-------------------|---|
| Create list of stakeholders and circulate  | Jane         | August            | DONE Circulated by email  |
| Check with Public Appointments Office how many applications were received for Appointment vacancies and how many were from women | Jane         | August            | Done. There were 19 applications- 3 from women, 16 from men (16%/84%). Gives us a baseline.   |
| What can we take from Women in Agriculture final report  | Jane         | August            | DONE Circulated   |
| Arrange for Commissioner Campbell to write article and create blog   | Betty        | Autumn and Spring | Perhaps prepare 2 pieces to appear in October and March. Jane liaise with Betty, (don't focus on appointments only but on elections too). March 2021 for the article and Sept 2021 for the blog. Blog actually completed in February 2021.  |
| Arrange video, filming informal discussion giving a window on the Board, involving Mairi, David, Alison, and Catherine           | Betty        | Spring            | Jane and Betty to discuss, with a view to filming in-house but, if external resource required, get it done in this year's spend. Ideally film in early spring 2021. In hand.  |
| Get in touch with Sponsor Division re idea of specific co-optee to consider women in crofting – is this a possibility?           | Jane         | August            | DONE Appointed positions cannot be increased because max number of Board is 9 and 6 of these cover electoral areas but we could encourage more female observers at Board meetings and there is nothing to prevent current or future Board giving lead to a Commissioner to carry out research on 'women in crofting'. |
| Carry out research to identify small business networks for women in areas other than Highland.                                   | Jane         | August            | Done – added to Stakeholder list and contact made.  |
| Confirm appointment dates to Donna and firm up arrangements for Mairi's Q&A and article for Highland Business women's newsletter | Jane/Mairi   | Autumn/winter     | Use experience of working with Highland women's business group as model we can use with other networks (e.g. Siobhan at FAS) and use feedback from the group.<br><br>Confirm dates for Mairi's Q&A and when article will appear in newsletter. Presentation is on 3 Feb 2021.   |
| Confirm dates to deliver workshop on Unconscious Bias and use feedback to help group aims  | Jane         | Nov               | DONE Workshop delivered   |

| <b>ACTION</b>  | <b>OWNER</b> | <b>DEADLINE</b> | <b>COMMENTS</b>   |
|--|--------------|-----------------|---|
| Re-send questionnaire on barriers women face which could put them off applying to join a Board   | Jane         | Feb             | Questionnaire was presented to Board but questions needed to be re-worked. Revised draft sent to group. Revisions agreed and questionnaire prepared for distribution in February.   |
| Make stakeholders aware of dates of Board meetings and how to join   | Jane         | Oct onwards     | DONE The more women who can see the Board in action, the easier it is to promote vacancies. Stakeholders are being invited to Board meetings.   |
| When compiling articles etc for regular publications or pushing out good news stories on website, use our platforms to inform stakeholders | Betty        | Oct onwards     | DONE – EXAMPLE? Green Bowl article. Articles in preparation for Farming North and The Crofter   |
| Find out gender breakdown in CC at B2 and above  | Jane         | Oct             | DONE Feed this back to group and see if it can be part of story. There are 10 men in Grade B2 and above and 10 women.   |
| Make sure Public Appointments Body and Sponsor Division have single point of contact in CC   | Jane         | Oct             | DONE Contact now to ensure STWG/CC can feed into production of publicity material etc for elections and appointments. Find out when we'd expect to be contacted.  |
| Encourage direct approaches to women who may think of applying to become members of Board  | STWG         | Oct towards     | DONE Mairi mentioned this at Oct Board meeting, to encourage all Board members to directly approach any women they may know of who could be interested in joining the Board. At least one Board member who attended Unconscious Bias training has approached 2 people. Mention at each Board meeting. |

**ANNEX B**  
**for Paper No 5**

| <b>SG EQUALITY UNIT GOOD PRACTICE SUGGESTIONS – GENDER BALANCE</b>   | <b>ACTION</b>   | <b>COMMENTS</b>   |
|--|---|---|
| Network with Women’s groups  | Stakeholder list established and contact made   | Q&A presentation given, newsletter article to be prepared                                   |
| Proactively invite members of women’s groups and/or female members of stakeholder groups to Board meetings   | Actioned and now part of normal Board meeting schedule  | There has been an increase in numbers of women attending Board meetings                     |
| Make sure management and Board members are aware of the duties under the Act   | Actioned – the Board and SMT are aware, a paper was presented to the Board in 2020                                  | STWG established and reporting to the Board   |
| Raise awareness of what the Commission does and target these sessions for women’s groups on stakeholder list   | Done via presentation to business women’s group, articles and blogs either delivered or in pipeline                 | Deliver via talks, articles, films, blogs   |
| Make sure there is a key contact in SG so the organisation is included in information on the Appointments process, e.g. make sure the organisation knows in advance when promotional material will be published and that it can disseminate it too (same goes for elections) | Key contacts established and timeline received  |   |
| Can the organisation have input into the design of the publicity materials for appointments and elections?   | Key contacts established and a positive response to the Commission’s interest and input                             |   |
| Once vacancies/elections announced, make members of the STWG available to answer queries/have informal discussions with potential applicants – make this part of the offer when networking   | Commissioner members of the STWG have agreed to play this role  |   |
| Encourage direct approaches to potential applicants  | Everyone on STWG has been asked to think of potential individuals and make direct approaches                        | Members of the Board have also been asked to make direct approaches to potential candidates |
| Identify potential barriers that may drive down applications from women, For instance, the Equality Unit says organisations should consider the needs of women with children and whether caring needs in general act as a barrier.   | Questionnaire revised and distributed to stakeholder list and promoted via website and social media                 | Compliance Hub to collate results   |
| Carry out training for Board members, such as Unconscious Bias training  | Unconscious Bias training delivered by Changing the Chemistry. STWG and Board invited to participate as well as CEO | Changing the Chemistry will conduct a follow-up piece of research with group shortly.       |

## WOMEN AND THE CROFTING COMMISSION BOARD

The Board of the Crofting Commission comprises 9 Commissioners; 6 elected members and 3 appointed by Scottish Ministers. Commissioners receive remuneration of £8,789 per year. New elections will take place in 2022 and one new Appointed Commissioner will also be chosen in 2022. This short survey has been designed to seek information on women's thoughts about joining the Crofting Commission Board.

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

We would be most grateful if you would complete the survey, to help us make the Board a welcoming place for women. Your responses will be anonymous but if you would like to contact me directly, with more information or insights, please do so at:

[Compliancehub@crofting.gov.scot](mailto:Compliancehub@crofting.gov.scot) .

The deadline for completing the survey is 30 April 2021.

### QUESTIONS

1. Board meetings are mainly held in Inverness, but since March 2020 they have been held by video-link. Going forward, it is likely that Commissioners will have the option (once it is safe to do so) of travelling to meetings in Inverness or attending meetings via a remote link. Which would be easier for you?

Attend via remote link

Travel to Inverness

A combination of both

2. Meetings are held on a weekday and generally last for most of the day. Would this create a problem for you?

No

Yes

If Yes, please explain:

3. There are usually 7 Board meetings a year, at roughly 6-week intervals (we try to avoid January, April, and July).

Would committing to attend this many meetings be difficult for you? No

Yes

If Yes, are there particular times of year that are more difficult than others? Please specify.

- 4 In addition to Board meetings, Commissioners are also required to attend occasional Strategy days, and other ad hoc meetings. Some of these (perhaps 3 or 4 a year) are usually external meetings, such as Roadshows or Hearings, held at various locations in the crofting counties. Perhaps once or twice a year, this may require an overnight stay (in normal times).

Could this create a problem for you? No   
Yes

If Yes, please specify:

- 5 If you have caring responsibilities or a work pattern that would make it difficult to attend meetings that require time off work, is there anything we could do to reduce this barrier?

Would attending by remote link help? No   
Yes

- 6 One of the key roles of a Crofting Commissioner is to contribute to discussions and Decisions on complex cases. Training in this is provided but it requires Board members to take the time to read through case papers and sit in on casework meetings, on a rota basis. Reading through papers prior to Board meetings is also required, so Commissioners need the space and time for this.

Could this be a challenge or a barrier for you and, if so, is there anything we could do to reduce the difficulty?

No   
Yes

If Yes, please specify:

- 7 Do you have any ideas which you think could make the way the work of the Board is organised easier for women, so that more women would come forward for selection?

This survey asks a limited number of questions. If you think there are other issues not included here, which make it difficult for women to come forward to sit on the Board, please get in touch, so that these can be explored and hopefully resolved. We are keen to hear your ideas.

Jane Thomas, on behalf of the Crofting Commission

# **CROFTING COMMISSION MEETING**

**18 March 2021**

Report by the Chief Executive

## **Report on Commission Grazings Registration**

### **SUMMARY**

Registration of common grazings in the map based Crofting Register provides security for this vast area of crofting land. It offers benefits to shareholders, owners and surrounding land users. Registration of grazings in the Crofting Register can only be done by the Commission. A project to undertake registrations completed approximately a third of registrations and revealed a range of issues in the process. A key issue was the difficulties around defining boundaries that may not have been captured before. There were also other issues which meant that the consultation process prior to registration was lengthy, such as out of date shareholder details coming to light. The question of how much consultation to do initially needs to be balanced with the possibility of rectifications, which became commonplace.

The challenges can be overcome to allow registration of grazings to restart, which will result in long term benefits to crofting grazings land. A slow approach to this work would be appropriate since there are limits to how quickly preparation of grazings for registration can progress. Consideration should be given to how this work should be prioritised alongside other Commission objectives and timescales for restarting it.

### **INTRODUCTION**

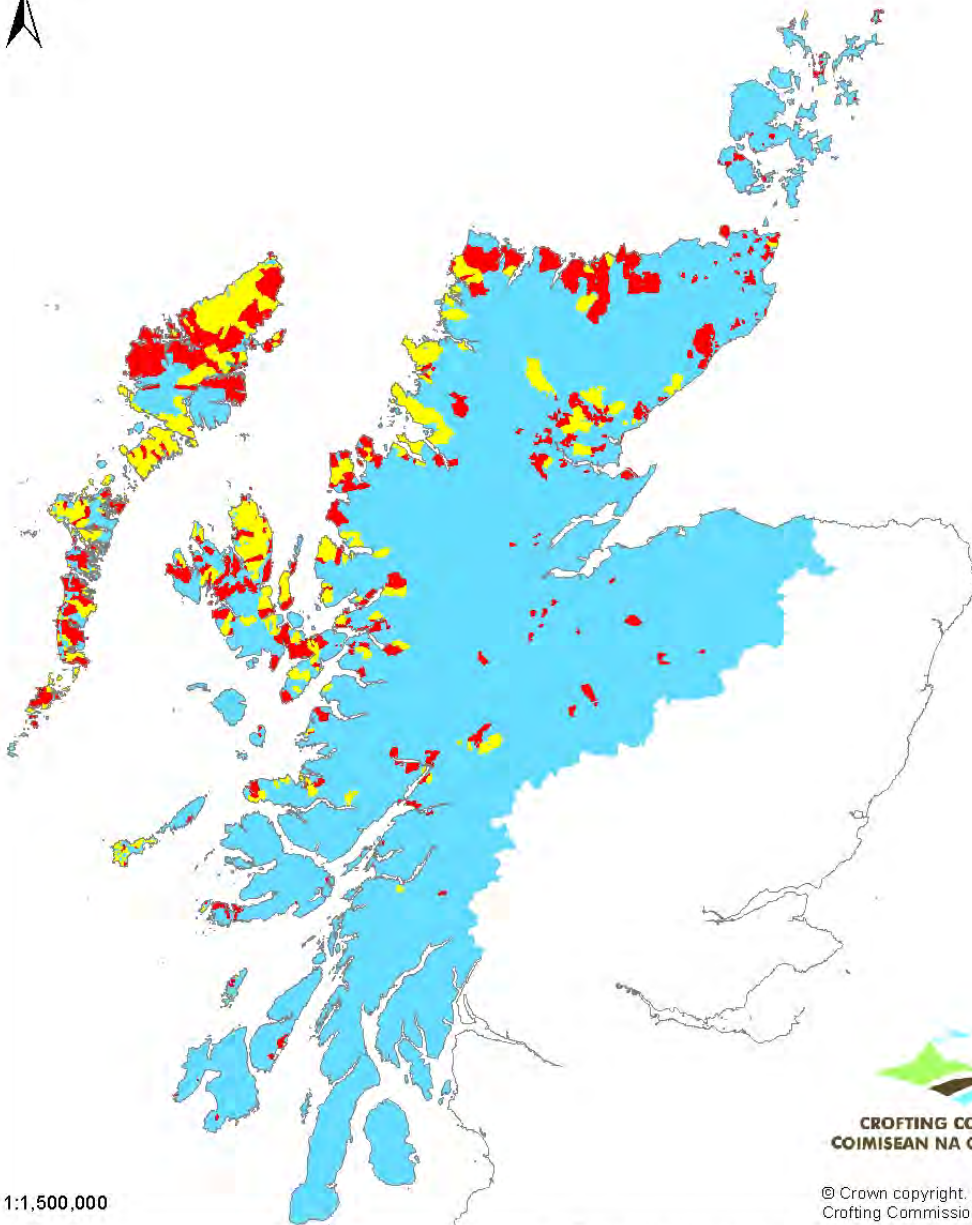
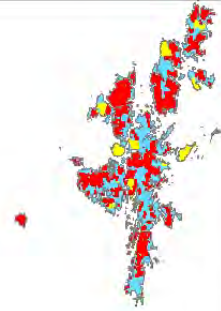
The Crofting Register was established in 2012 by the Keeper of the Registers of Scotland to provide a definitive geographical boundary for crofts, common grazings and land held in runrig. Crofts are usually registered by the crofter whereas common grazings can only be registered by the Crofting Commission. From 2012 to 2016 a project ran by the Crofting Commission to register common grazings resulted in the registration of 335 common grazings and runrig. This left over 600 common grazing and runrig unregistered on the map based Crofting Register and at present the Crofting Commission are not undertaking these. The below map shows the distribution of Common Grazings across the crofting counties and gives a visual of the registered and unregistered common grazings.

Common grazings have been registered in the Register of Crofts since 1955 and this registration alongside the crofting legislation has meant common grazings are secured for future generations. Registration of the exact boundaries of grazings land brings even more security of rights to this land and is of particular importance in this digital age. It brings greater recognition to common grazings and its shareholders.

## Common Grazings Registrations Progress

|  | Total | Extent ( Ha) |
|--|-------|--------------|
|  Registered Common Grazings   | 335   | 225,149      |
|  Unregistered Common Grazings | 565*  | 320,961      |
|  Crofting Counties            |       |              |

\* final figures to be established



1:1,500,000



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

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Crofting Commission, 100006080, 2021.

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When the Register of Crofts was created in 1955 several holdings that could have qualified as crofts were not registered and so this land has lost the unique protection of crofting legislation. This demonstrates the importance of registration to crofting. Furthermore, there remains a lack of clarity over common grazings in the Register of Crofts. As described in a recent paper to the Board (Common Grazings: The Forgotten Land, Feb 2021) there is uncertainty about what constitutes a common grazing. Whilst the Commission know the majority of definite common grazings it does not have a definitive list. Completion of grazing registration in the Crofting Register will need to tackle this uncertainty and thereby establish a definitive list of grazings within crofting tenure.

Grazings committees and landlords from registered common grazings have reported the benefits of map based registration. For example on Annat Grazings in Torridon, there was an instance where there was potential for dispute regarding a proposed building site and the grazings clerk reported that the registration maps helped avoid this by providing clarity and fairness. The free public access to the register is of particular value and means that transfers of land are not held up due to the requirement to check the status of the land. Conflict can and does arise over boundaries between croft land and so as depicted by the proverb 'good fences make good neighbours' (Robert Frost), the benefits of clarity over boundaries can be huge.

However, there has been difficulties surrounding registration. Expectations for how quickly registrations would progress were not met by some way. Challenges primarily arose due to issues in establishing correct boundaries and difficulties in reconciling shareholder details that differed between the Commission and committees.

## **BIGGEST CHALLENGE**

### **Putting a collective understanding on to paper**

Registering a grazings boundary involves defining the collective understanding of the boundary. Identifying the correct boundary often takes significant time, discussion, sometimes disagreement and considerable back and forth between grazings committees, landlords and the Crofting Commission. In some cases the registration stalled entirely due to disagreement within grazings committees, between neighbouring grazings and between the landlord and the grazings committee. For example in the case of Garrynamonie Common Grazings a boundary conflict arose which resulted in considerable time and input by the Commission.

Despite the difficulties agreement was eventually reached in many cases and the boundaries did get defined resulting in registration. The project registered very few grazings in the first year and the majority of the grazings were registered in the final year that the project was running, which demonstrates the necessity of allowing sufficient time for the process of preparing a grazings for registration.

This issue is also reflected in the number of rectifications that were seen following registration and that are still needed despite several years passing since the last registration. Despite the initial consultation, neighbour notification and advertisement, problems with the registration still come to light long after a grazings is registered. Whilst rectifications add to the administrative burden on the Commission and ROS they provide a valuable way for grazings to be updated in order to make the registration as correct and fair as possible. The problems flagged up by repeated numbers of rectifications show the importance of getting the registration as correct as possible to start with.

The time taken to prepare grazings for registration is needed in order to give all parties enough time to discuss the issues. Committees and landlords of registered grazings have reported the benefits of being given sufficient time and support from the Commission to do the important



pre-registration work. Increasing resources to speed the registration process up may have some impact but this will be limited as the parties involved will always need time to discuss and agree boundaries. A balance must be found to allow sufficient consultation to ensure the initial registration is accurate whilst also using resources as efficiently as possible.

## **OTHER ISSUES AND CONSIDERATIONS**

### **Out of date shareholder information in the Register of Crofts**

The information on grazings shareholders within the Register of Crofts is limited for several reasons. The main reason is how well the Commission has been kept up to date of shareholder changes. Other issues include lack of staff resource to investigate and chase up issues as well as ongoing development of the CIS system to accommodate all the update processes. Fixing these issues takes staff resource and time as regulatory applications may need to be submitted and processed in order to put the change in place officially.

During preparation of grazings for registration staff with specialist knowledge are often required to investigate discrepancies. A lack of resource for this specialised work meant that some grazings registrations stalled during the project. For effective use of staff resources in future registrations it is important to have the right balance of expertise for shareholder investigations, mapping and administration.

### **Engagement with grazings shareholders and owners**

Grazings that present a particular challenge to registration include those which do not have a grazings committee in office (currently over 500) and those grazings which are unregulated (currently over 150). No unregulated grazings were registered during the project and few grazings without committees. In the few instances the Commission did engage grazings without committees it involved more input by Commission staff. For grazings without committees in Tiree the Commission arranged for maps to be displayed publicly and staff visited the area and held public meetings to allow shareholders and other individuals a chance to engage with the Commission. A challenge in respect of one of the Tiree grazings resulted in the Land Court finding no expenses due or by the Commission, which brings confidence to the Commission in dealing with future registrations of grazings without a committee in office.

Registration of grazings without committees is not specifically defined in the legislation and emphasis is on the Commission to consult with shareholders in a way that is deemed appropriate. Virtual meetings are commonplace now and they could offer a cost-effective way to allow the Commission to give shareholders and others the chance to input into this process. Another consideration might be that the incentive of the registration could be used to help encourage grazings to form committees, which would tie in with other Commission objectives.

### **Efficient mapping**

Mapping was conducted for the project by preparing maps on GIS software and sending out large paper maps in the post to committees and owners. This is a good way for these different parties to engage with the mapping information, however there are some drawbacks including high use of printing and posting, which has financial and environmental implications. Also the paper maps are at a fixed scale so it is harder to see specific areas of the map in more detail, which potentially meant that small scale errors were missed leading to more rectifications. A different approach using an online map could help overcome some of these difficulties and would enable easier sharing of the map with multiple people. However, it would make it more difficult for shareholders or landlords to mark changes onto the map and it also might prevent engagement from individuals that are limited by the technology. An approach like this could

be useful in certain circumstances, such as where a wider group of people are being consulted, or alongside a paper copy map which could be sent for the first and final maps only, rather than for every iteration of changes.

An issue that may become more of a problem in future is updates to the Ordnance Survey (OS) base map. This mapping is continually updated due to changes in real life features or updates to improve the standard of the mapping. Many common grazings boundaries sit on the lowest level of OS accuracy (1:10,000) and a future upgrade of this mapping by OS could mean grazings boundaries are put out of sync with the base map. The legislation does not allow for the Crofting Register to be updated with the OS base map unlike the Land Register.

Other ways to improve mapping efficiency could include work more closely with the RPID drawing office and more collaboration with Registers of Scotland to utilise map data that already exists on the Land Register.

### **Overlap of the registers**

The 2010 Act dictates the information that should be held in the Crofting Register, which is primarily the geographical boundaries. Several other items of information are required including shareholder names, addresses and croft status, which is a duplication of information held in the Register of Crofts. This duplication has led to issues including instances of a mismatch of information between the two registers and confusion with respect to the differences between the statuses used to define croft type between the two registers. There is also an administrative cost in maintaining this information in two registers. There have been suggestions that on the Crofting Register the crofter details could be kept with the croft only, which would mean the grazings share references the croft and not the shareholder.

Longer term there have been discussions around the Register of Crofts ultimately being retired and the Crofting Register taking over entirely. This would eliminate some of the issues surrounding overlap of the registers although some inefficiencies would remain, including the need for two sets of applications, initially to the Commission and secondly to the Registers of Scotland. Whilst there are two registers in place it would be advantageous to remove duplications and instead use better virtual links between the two registers. This would be a way to make admin efficiencies and improve the user experience.

### **Rectifications**

Rectification of a registered grazing can only be done by the Commission. Rectifications were higher than expected following registrations during and after the project. Frustrations have been reported from committees and owners regarding guidance and time taken to do these. To do these the Commission initially followed a similar approach to the pre-registration consultation, however this proved too resource intensive. Now the Commission asks whoever is seeking the rectification to provide all maps and evidence of agreement from relevant parties. For a limited time, the Commission adopted a policy to only process rectifications where it could be demonstrated that the Commission made a mistake. However, a wider view of 'mistake' as referred to in the legislation, is now taken, which is in the interests of ensuring accuracy.

Rectifications within the 9 month challenge period results in the challenge period being reset and means notifications should be re-issued. However, rectification after the challenge period does not reset the challenge period, which is an inconsistency in the legislation. This can be mitigated by the Commission ensuring that they are satisfied with the proposed rectifications the agreement of them from the committee, landlord as well as adjacent occupiers and owners.

Another issue brought to light has been where resumptions are sought on registered grazings that fall partially or entirely outside of the registered area. In these cases, a rectification is needed before the area can be resumed. This implies that areas may have been missed off registrations that aren't currently used as part of the grazings but still technically are such as road verges or areas around buildings. This is a concern and again demonstrates the importance of a thorough consultation period.

A consultation wider than just the committee and owner could help minimise the rectifications and challenges. For this to be effective, it would need to be carefully structured to ensure that contributions from other parties are time bound and that it was secondary to the main process as specified in the legislation, whereby the committee and landlord are consulted. In the case of disagreement there may be the option to make a section 53 reference to the Land Court to determining the boundary before proceeding with the registration.

## HOW TO PROGRESS GRAZINGS REGISTRATIONS

The issues presented above indicate that a gradual approach to grazings registration may be most appropriate. A relatively slow pace to this work would give sufficient time for all the issues with boundaries and shareholders to be resolved. It would also mean that resources put into this work are kept to a minimum and the knock-on effects to other teams are small.

Suggested structure to progress grazings registrations:

- 1 B1 Grazings Officer
- 0.75 B1 GIS Mapper
- 0.5 A3 Administrator
- 0.2 B2 Manager

|   |                 |
|---|-----------------|
| Staff costs   | £97,050         |
| Other costs (ROS fees, advertisements, printing, GIS license) | £5,000          |
| <b>Total</b>  | <b>£102,050</b> |

The above costs reflect the full cost to the Commission. In practice there may be scope for flexible use of existing resources where there are overlaps with similar work already taking place in the Commission. The spending required would be at a similar level to other recent additions to the Commission staff compliment such as the two B1s to RALU (£82,000 + management requirements) and the two B2s to development (£98,000 + management requirements).

Keeping registrations to a small number of specialist staff should also mean better continuity for committees and landlords engaging in the process. This will hopefully minimise the frustrations that were reported by grazing committee members in Sleat and Ferrindonald surrounding communication and administration issues.

Based on the level of resources given above we can expect 10-25 grazings to be registered a year (based on the rate of registration and staff level in the previous project as well as the fact that the remaining grazings include more challenging grazings to register). This would likely mean over 30 years to complete all the registrations so there would need to be a long-term commitment to this work.

There would also need to be a lead in time factored in before grazings registrations can be expected. This is due to the time taken to prepare grazings for registration and the need to create new workflows as the old ones are on an out-of-date system, as well as adapting processes where appropriate. Establishing a definitive list of common grazings should also be tackled as an early part of this body of work.

Efficiencies could be found, for example by registering grazings that have recently had new regulations drawn up or by looking at adjacent grazings contemporaneously. There could also be consideration given to addressing grazings that the Commission would like to see better used and thereby engage the shareholders and get a better picture of the situation. This could build up a dialog and act as a springboard for Commission staff to encourage more effective use of grazing land.

## CONCLUSION

Registration of grazings in the Crofting Register is an important step for crofting. It brings greater security of rights to grazings, which comprise the largest area of crofting land and nearly 7% of Scotland's total land mass. The long term value of registration is clear and tangible benefits have been reported by committees and landlords.

Some of the issues surrounding grazings registration have been explored and considered going forward. These have highlighted that the process for registration takes time and so a low level to this approach is recommended with 2 or 3 key staff rather than a large team.

Using technology and learning from experience could help improve the efficiency of the work. Of particular importance is having an effective consultation process to ensure the register contains accurate data and to minimise issues and further work later on.

| Impact:            | Comments   |
|--------------------|--|
| Financial          | Resources to restart this work would be in the region of £102,050 / year   |
| Legal/Political    | If the Commission do not restart this work or give a date to review this decision, there will be pressure from government and other organisations. |
| HR/staff resources | In addition to the core staff required there will be some knock on effects to other teams.   |

## RECOMMENDATIONS

1. **It is recommended that the Commission considers the importance of this work amongst its various priorities and whether to make a commitment to restart this work.**
2. **If the Commission does not wish to restart grazings registrations at this time a date should be given for the decision to be revisited.**

Date            26 February 2021

Author         Heather Mack, Head of Development

# CROFTING COMMISSION MEETING

18 March 2021

Report by the Chief Executive

## A Land Matching Service for Crofting

### SUMMARY

The demand for farming and crofting opportunities for new entrants has led to the creation of a Scottish Land Matching Service. The Crofting Commission has been asked by the Scottish Government to create a similar service tailored to crofting. This would involve identifying crofts that aren't fully used and offer a service to match them up with an aspiring crofter. To incentivise this the service could offer independent advice and cover the costs of the resulting regulatory application. Good promotion of the service would also be important. Using a contractor to undertake the main part of the work of contacting potential users of the service is recommended. Estimated costs for a year pilot project are presented.

### BACKGROUND

The Scottish Government set up a Scottish Land Matching Service ([SLMS](#)) in 2019. This was in response to concerns raised in several reports about insufficient opportunities for new entrants due to limited availability of agricultural land and limited access to capital funding. It is a free service to link up those who are looking for an opportunity on a farm with those who are able to offer such an opportunity. The service uses a database, advice and guidance to those who register, enables introductions and ongoing support for any partnerships that are made through the service. It is supported by numerous organisations and has close links with the Farming Opportunities for New Entrants (FONE) group. Following on from the success of this service Scottish Government would like to develop a land matching service tailored to crofting to enable more new entrant crofters.

### CROFTS THAT COULD CREATE OPPORTUNITIES

There are likely to be thousands of crofts that could offer opportunities in a land matching service for crofting. The question is how to make them aware of the service and motivate them to participate. The SLMS has highlighted the value of communications about the service and in the importance of taking time to build rapport with potential users of the service. This could be done for crofting by working with other organisations to help with the promotion and putting a communications plan in place early on. Positive examples of crofters that have benefitted from creating a new entrant opportunity on their croft would be a valuable part of the promotion strategy. The service should be framed as an opportunity for crofters in which they can get independent advice, community benefits and potentially an incentive for participation in the service.

In addition to crofters volunteering their interest, specific groups of crofters could be approached by the service. The Commission has excellent data on crofts thanks to its Register of Crofts and annual Crofting Census. This information allows identification of crofters that do not cultivate their crofts and could be invited to participate in the service. A recent paper to the board on Duties (February 2021) highlighted several groups of crofters that are not meeting their duties. One of these is 'resident non-cultivator' crofters, which are crofters that still live on or near the croft but are not cultivating the croft or putting it to another purposeful use.

|                                  |                   |
|----------------------------------|-------------------|
| Resident non-cultivator crofters | 192 (2018 census) |
|----------------------------------|-------------------|

The Commission could also consider prioritising areas that would most benefit from new entrant crofters, such as townships with the highest proportions of crofts not meeting their duties. Other avenues may include crofters that do not use their grazings share, which is over 2000 (2018 Commission survey).

## **HOW THIS WOULD WORK FOR CROFTING**

Crofting legislation would allow for several options for an existing crofter to provide an opportunity for a new entrant. These include:

- Sublet/Short term let
- Assignment
- Division and assignment
- Apportionment, division and assignment

An informal partnership could also be possible. This could be appropriate initially with a view to establish a formal arrangement after a suitable time period. This may be particularly helpful for instances where crofters are matched with individuals they do not know. This lead in time would allow the two parties to get to know each other and undertake work on the croft jointly as well as make connections in the township. This would give a chance to develop the relationship and ensure that the parties are happy to proceed with a more formal approach.

A community approach may also be valuable. Where a crofter is willing to create an opportunity for a new entrant the township could be involved more widely, for example by mentoring from an experienced crofter or helping with accommodation. Also, the provision of extra land or shares to sublet could help ensure a viable business for the new entrant crofter, especially in areas where crofts are relatively small.

Launching a crofting land matching service as a pilot project would be an ideal way to develop the service at a smaller scale and allow the Commission to learn the best approach. It will also allow the service to gather examples of successful matches which will help the ongoing promotion of the service. A specific geographical location could be considered for a pilot project such as the Western Isles.

## **ASPIRING CROFTERS**

The Commission does not hold a list of aspiring crofters. Other organisations already hold this information so a collaborative approach would save resources and be mutually beneficial. An aspiring crofter could be matched up with a crofter offering an opportunity based on their skills and location. A requirement for them to develop a business plan for the croft could form part of an initial stage of the process.

## INCENTIVE

In a previous scheme ran by the Commission and financed by the network of Local Enterprise Companies (LECs) a financial incentive was offered to the crofter and the incoming crofter. Something similar could increase uptake of the scheme although it might not be appropriate for crofters who are in breach of their duties.

The Commission could consider meeting the application costs for crofters creating an opportunity for a new entrant found through the service. This would be sublets, short term lets, assignments, as well as divisions followed by an assignment. This could include ROS fees, mapping costs and advertisement costs. The costs incurred could be claimed back after the application is completed whether it is successful or not.

A wider approach that may also be worth consideration is funding of the ROS fees for all assignments to new entrants. This could be adopted for a limited period and may result in assignments to new entrants happening sooner than they would have otherwise. However, this would be associated with significant costs and increase regulatory applications to be processed by staff.

## WHAT RESOURCES ARE NEEDED FOR THE PROJECT?

The work to contact crofters that could participate in the scheme, match them, and follow up may be best suited to an external contractor with experience of crofting and its regulation. This would mean the Commission keeps some distance, as the regulator that may ultimately investigate breaches of duty and be required to make decisions on regulatory applications. They could also offer independent advice to the crofter. The scheme would benefit from someone with excellent interpersonal skills to build rapport with the crofter and encourage participation.

Finances required for a year pilot scheme:

|   |   |
|---|---|
| Contractor costs*   | £30,000   |
| Travel & Subsistence  | £3,000  |
| Promotional costs   | £5,000  |
| Incentive funding, to cover costs associated with the regulatory applications | £10,000   |
| <i>Regulatory A3 (0.5)**</i>  | <i>£15,500</i>  |
| <b>Total</b>  | <b>£48,000</b><br><i>(or £63,500 including Regulatory A3)</i> |

\*This would cover a contractor working on a part time basis (0.6)

\*\*Once the project is underway extra support may be required to deal with the regulatory applications generated. Assuming 40 applications a year are generated from the service an extra 0.5 A3 regulatory staff member would be required.

| Impact:            | Comments   |
|--------------------|--|
| Financial          | Costs for a year pilot project would be in the region of £48,000 + extra regulatory staff costs. Funding is expected from outside the core Commission budget.        |
| Legal/Political    | Scottish Government have stated that they are looking to launch a land matching service for crofting.  |
| HR/staff resources | The additional regulatory applications generated by the service would put some additional pressure on teams within the Commission, particularly the regulatory team. |

## **RECOMMENDATION**

- 1. The Commission should discuss the best way that a land matching service for crofting could be piloted. In particular how participation from existing crofters can be encouraged.**
- 2. The Commission should decide whether to take on this project and if willing then funding options should be explored with central Scottish Government.**

Date            26 February 2021

Author         Heather Mack, Head of Development



## Strategic Risk Register (SRR)

| 20-25   |   | High  |   |   |            |       |  |  |               |            |       |               |   |   |            |       |                            |              |
|---------|---|---|---|---|------------|-------|--|--|---------------|------------|-------|---------------|---|---|------------|-------|----------------------------|--------------|
| 10-16   |   | Medium  |   |   |            |       |  |  |               |            |       |               |   |   |            |       |                            |              |
| 4-9     |   | Low   |   |   |            |       |  |  |               |            |       |               |   |   |            |       |                            |              |
| 1-3     |   | Very Low  |   |   |            |       |  |  |               |            |       |               |   |   |            |       |                            |              |
| Risk No | Corporate Outcome   | Risk Description (what is the thing that could jeopardise the outcome being achieved?)  | Potential Consequences  | Untreated Score (how bad if we were doing nothing at all) |            |       | Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)  | Current Control Actions in place   | Current Score |            |       | Risk Movement | Additional Planned Actions  | Achievable Score (once all our current plans are implemented) |            |       | Owner                      | Last updated |
|         |   |   |   | Impact  | Likelihood | Total |  |  | Impact        | Likelihood | Total |               |   | Impact  | Likelihood | Total |                            |              |
| 001     | Crofts are occupied and managed   | Not enough momentum and political will can be gained to see an improvement, and/or an increase in legal challenges slows process.<br><br>Resources have been reallocated away from the RALU team since October 2019 and this has been exacerbated by the impacts of Covid-19.   | Crofting will continue to decline with land not being managed and communities shrinking<br>Reputational - seen to not be doing enough to address or conversely could be perceived as being too heavy handed.<br><br>Managing Expectations - could expend a lot of resources but with little overall impact, crofting may continue to decline anyway.<br><br>Financial - increased legal challenges could not only impact the resources but also have financial implications | 4   | 5          | 20    | An appropriate balance is found which sees real delivery on this outcome that is viewed in a positive light without any significant adverse affect on the resources and costs of the organisation. | Systematic approach for dealing with those who confirm through the census that they are in breach of duties.<br>Established process for investigating breaches reported under section 26A of the 1993 Act.<br><br>Resolving outstanding successions to croft tenancies.<br><br>Videos made featuring Convenor and staff explaining the requirement to comply with statutory duties residence and land use duties and explaining options for resolving any breach.<br><b>Increased staff resources within the RALU Team in September 2020 by the addition of one B1 Casework Officer who is currently receiving training on the work of the team.</b><br><br>In October/November 2020 processes were streamlined to escalate cases at an earlier stage to the statutory enforcement provisions at Sections 26C(1) to (5) of the 1993 Act. | 4             | 4          | 16    | Static        | In December 2020 and February 2021 the Board accepted and prioritised the 12 recommendations of the Short Term Working Group on expanding the work of the RALU Team, early priorities being initiating action on non-census returners, owner-occupier crofters and referrals from casework where information relating to a possible breach of duty emerges during the course of processing of a regulatory application.<br><br>Targeted action with those who have repeatedly failed to return the census.<br><br>Selected follow-up of resident non-users of their crofts<br><br>Escalate knowledge from regulatory casework into enforcement action when appropriate.<br><br>Consideration being given to the appropriate use of sublets; short term lets and consents to be absent, as short/medium term resolutions of absentee cases.<br><b>It has been agreed to recruit an additional B1 Casework Officer to the RALU Team who will be based in the Western Isles. Recruitment taking place spring 2021.</b> | 4   | 3          | 12    | Head of Regulatory Support | Feb-21       |
| 002     | Common grazings are regulated and shared management practices are encouraged. | Changes in crofting practices and support see a continued decline and move away from common grazings being utilised and managed.<br><br>Covid-19 pandemic causes difficulties to arrange meetings and form grazings committees.<br><br>Covid19: reduction in resource capacity due to caring responsibilities and other aspects of home working | Common grazings will see a continued decline in use and management.   | 3   | 5          | 15    | Grazing committees are enabled to generate a recovery in the productive communal use of common grazing land.   | Template grazings regulations made available.<br><br>Grazings guidance published February 2019.<br><br>Direct support provided to grazings committees/ townships that encounter problems.<br><br>Support and encouragement to get grazings committees back into office.<br><br>Training for grazings clerks/committees. Survey of clerks being carried out to assess need and interest in training for digital meetings.<br><br>New policy agreed to enable appointment back to office of outgoing grazings committees by Commission under powers of section 47(3) of the 1993 Act.  | 3             | 4          | 12    | Static        | Agreed recommendations from Commission Meeting of February 2021.<br>Improve register of common grazings.<br>Invest in developing skills and capacity in crofting areas to support and retain the basic structures for managing common grazings.<br><br>Ensure that the particular needs of common grazings are recognised within future support systems.  | 3   | 3          | 9     | Head of Policy             | Feb-21       |

|         |  | <b>Strategic Risk Register (SRR)</b>   |  |   |            |       |   |   |               |            |       |   |  |   |            |       |   |              |
|---------|--|--|--|---|------------|-------|---|---|---------------|------------|-------|---|--|---|------------|-------|---|--------------|
| 20-25   | High   |  |  |   |            |       |   |   |               |            |       |   |  |   |            |       |   |              |
| 10-16   | Medium   |  |  |   |            |       |   |   |               |            |       |   |  |   |            |       |   |              |
| 4-9     | Low  |  |  |   |            |       |   |   |               |            |       |   |  |   |            |       |   |              |
| 1-3     | Very Low   |  |  |   |            |       |   |   |               |            |       |   |  |   |            |       |   |              |
| Risk No | Corporate Outcome  | Risk Description (what is the thing that could jeopardise the outcome being achieved?)   | Potential Consequences   | Untreated Score (how bad if we were doing nothing at all) |            |       | Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)   | Current Control Actions in place  | Current Score |            |       | Risk Movement   | Additional Planned Actions   | Achievable Score (once all our current plans are implemented) |            |       | Owner   | Last updated |
|         |  |  |  | Impact  | Likelihood | Total |   |   | Impact        | Likelihood | Total |   |  | Impact  | Likelihood | Total |   |              |
| 003     | Crofting is regulated in a fair, efficient and effective way | Volume and complexity of casework exceeds CC's ability to deliver high standards of customer service due to budgetary constraints - currently exacerbated by the effects of Covid-19.  | Reputational - decline in performance either in quality of decision making or turnaround times.<br><br>Resources - staff may feel under increasing pressure and stress may become an issue.<br><br>Sponsor Relationship - decline in performance may lead to tension between the Commission, Sponsor Branch and the Cabinet Secretary. | 5   | 5          | 25    | Continued process improvement supported by use of digital service delivery provide enough capacity to absorb future budget pressures whilst maintaining good service provision. Additional temporary resources to be made available during pandemic to mitigate the effects of home working, since March 2020 the number of applications received remains higher than the number of applications being discharged. Daily support for staff to progress work by way of Skype and Teams during Covid-19 period. | Additional permanent post added to regulatory team as part of new money from summer 2020.<br><br>Provision of Register of Crofts Online, including Decrofting directions hosted publicly.<br><br>Ongoing process reviews<br><br>Monitoring of turnaround times through KPI quarterly report to provide early warning of issues. During Covid-19, weekly monitoring of application/notification receipt and allocation of applications/ notifications to staff. Attention being given to cases that have been outstanding longer than 12 months but have not yet reached conclusion.<br><br>IS team providing technical support as homeworking issues arise. | 5             | 5          | 25    | Increasing  | Additional FTA post being added to regulatory team for 2021/22.<br><br>A range of short term projects being taken forward in 20/21 to improve various aspects of our efficiency, especially regarding IT<br><br>New version of CIS expected early 2021<br><br>Ongoing work with RoS to improve registration processes<br><br>Full review of application forms to make them more fit for purpose, with planning ongoing to facilitate a full digital return to remove the requirements for manual duplication of work entering into the CIS<br><br>Limited trial of digital payments headed up by head of finance with a limited number of trusted agents. If successful this will lay the groundwork to examine digital payments for all<br><br>A wider analysis of casework that has not yet reached conclusion, with a view to progressing these applications/notification to an end. Further review of MI products, including scoping missing requirements. | 5   | 4          | 20    | Head of Operations & Workforce<br><br>Head of Digital & Improvement | Mar-21       |
| 004     | We inform and support the future of active crofting          | Conflicts arise due to clash between the crofting system, the modern environment and economy and different stakeholder agendas. <b>Failure on the part of the Commission to agree any collective view on supporting the future of active crofting.</b> | Crofting legislation and other systems don't improve.<br><br>SG, SCF and NFUS have low regard for the Commission.  | 4   | 3          | 12    | Commission positions on key issues for the future of crofting are developed, involving discussion with partner organisations.<br><br>Commission implements an effective 'development' role, including the outward facing posts in the Western Isles   | <b>Additional funding provided to the Commission to expand our role of developing and promoting crofting. Two development officers being recruited to the Commission in Spring 2021</b><br><br><b>Input provided to SG drafts of the National Development Plan</b><br><br>Regular meetings between Convener/CEO and key stakeholders.<br><br>Participation in Cross Party Group on Crofting and Crofting Stakeholder Forum.<br><br>Web presence and videos.<br><br>Input given to Law Society review of aspects of crofting law   | 4             | 2          | 8     | Static - but the focus has changed from the 'future of crofting' work to the National Development Plan and the Commission's expanded role | Work with development officers and partner organisations to implement a new stream of Commission work<br><br>Promote the interests of crofting in further engagement with SG about support for crofting.   | 4   | 2          | 8     | CEO/<br>Solicitor/<br>Head of Policy                                | Mar-21       |

|         |   | <b>Strategic Risk Register (SRR)</b>   |   |        |   |       |  |               |            |       |               |   |        |   |       |                                |              |
|---------|---|--|---|--------|---|-------|--|---------------|------------|-------|---------------|---|--------|---|-------|--------------------------------|--------------|
|         |   |  |   |        |   |       |  |               |            |       |               |   |        | Achievable Score (once all our current plans are implemented) |       | Last updated                   |              |
|         |   | Untreated Score (how bad if we were doing nothing at all)  |   |        | Desired Outcome (to prevent the risk from materialising or from having too much adverse effect) |       |  | Current Score |            |       | Risk Movement |   |        |   |       |                                |              |
| Risk No | Corporate Outcome   | Risk Description (what is the thing that could jeopardise the outcome being achieved?)   | Potential Consequences  | Impact | Likelihood  | Total | Current Control Actions in place   | Impact        | Likelihood | Total |               | Additional Planned Actions  | Impact | Likelihood  | Total | Owner                          | Last updated |
| 20-25   | High  |  |   |        |   |       |  |               |            |       |               |   |        |   |       |                                |              |
| 10-16   | Medium  |  |   |        |   |       |  |               |            |       |               |   |        |   |       |                                |              |
| 4-9     | Low   |  |   |        |   |       |  |               |            |       |               |   |        |   |       |                                |              |
| 1-3     | Very Low  |  |   |        |   |       |  |               |            |       |               |   |        |   |       |                                |              |
| 005     | Our workforce have the right skills and motivation to perform well and our governance processes are best practice | Inability to recruit and/or retain good/experienced staff, because of budget constraints or for other reasons.   | Impact on any of the above corporate outcomes, as a result of one or more teams being short of experienced staff.<br><br>Loss of valuable crofting knowledge.<br><br>Resources - staff may feel under increasing pressure and stress may become an issue. | 4      | 4   | 16    | A staffing structure which allows delivery of all key outcomes within budget set by SG.<br><br>Training and succession plans in place to provide career development opportunities and processes in place to ensure resilience in terms of knowledge management.  | 4             | 4          | 16    | Static        | Workforce plan to be integrated with financial planning, and used as an ongoing tool. Workforce Plan to be updated to take into account current circumstances relating to the addition work resulting from additional funding and the ongoing pandemic. Review and continue to progress workforce plan action plan.<br><br>Actions for 2020 Staff Survey implemented.<br><br>SEG considering further wellbeing events.      | 3      | 3   | 9     | Head of Operations & Workforce | Feb-21       |
| 006     | All aspects of the Commission's objectives  | Covid-19 and the closure of Great Glen House has hampered delivery of the Commission's work as a result of: loss of staff availability through caring responsibilities and other home working constraints; IT connectivity challenges; lack of access to GGH facilities such as postal services, printing, meeting rooms |   | 5      | 5   | 25    | All Commission processes operating adequately by means of remote working combined with occasional GGH access.<br><br>Business Continuity Plan activated initially, lessons learned log compiled. Backup for key CC staff positions identified or under discussion.<br><br>Health & Safety committee strengthened, new policies developed and H&S monitoring in place, both for staff in the office and for those working at home.<br><br>IT equipment and office equipment supplied to staff's homes, and adjustments made to system and firewall to permit more efficient access. Additional server purchased to enhance performance, and much individual advice given to staff about resolving connectivity issues. Teams used regularly for meetings including Board and AFC meetings.<br><br>Partial reopening of GGH agreed with NatureScot and implemented from the start of November 2020, but reversed following new lockdown of Jan 2021.<br><br>Bespoke continuity plans in place for Finance team.<br><br>Short Term Working Group on home working and remote working has reported to SMT and the Board<br><br>Teams licenses enhanced to allow all staff who need it the ability to make and receive phone calls through Teams | 4             | 5          | 20    | Static        | Continual improvement to the performance of remote working and staff's experience of home working.<br><br>Liaison with NatureScot regarding greater use of GGH when lockdown conditions permit. Long term strategy for remote and home working to be developed in response to the Short Term Working Group's report.<br><br>Solution needed to how staff can make phone calls to crofters and other customers when required | 3      | 5   | 15    | CEO                            | Mar-21       |

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# **DRAFT BUSINESS PLAN**

PLANA GNOTHACH

2021/22



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

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## FOREWORD

2020/21 was a critical year for the Crofting Commission, not only because of the coronavirus pandemic which disrupted our progress towards some of our goals, but also in Summer 2020, the Scottish Government invited us to take on an expanded role. We very much welcome the additional role and the associated resource which was provided in-year, and which has also been built into our core budget for 2021/22 (see Budget Information, page 18).

In the light of these new opportunities, the Board of the Crofting Commission revised its forward planning and this Business Plan for 2021/22 sets out a new and ambitious set of plans and objectives. Three aspects of the Commission's work have particularly been enhanced:

Under Outcome 1, we set out our plans for an expanded Residency and Land Use team, increased by 2 posts as a result of the additional funding from the Scottish Government. Crofts need to be used, and the Commission is determined to play its part in ensuring that they are.

Under Outcome 3, we set out plans for delivering facilities for online regulatory applications. This work is already under way, and will be delivered during the coming year. Alongside this, we will aim to improve turnaround times at least back to the levels we were achieving in 2019-20, before the pandemic.

Under outcome 4, we present a largely new set of ambitions based on a new workstream led by our development team. Although some of this work will initially be concentrated in the Western Isles, by demonstrating the effectiveness of these interventions we aim to create momentum for an active development function across all of the crofting counties.

Finally, during the coming year we will be preparing for the crofting elections in March 2022, when the crofting public will elect 6 commissioners to carry the work forward for the next 5 years. These are exciting times for crofting and the Commission, and we look forward to engaging with all who are interested in standing for election to the Board.

**Bill Barron – Chief Executive**

*March 2021*

## PURPOSE OF THE BUSINESS PLAN

Each year, our Business Plan sets out the Commission’s key objectives for the coming year. These are set out in the tables below, which describe our key intentions and aims. During the year, the Business Plan becomes a tool for monitoring our progress and to assist in managing our staff, finances and other resources, to achieve the desired outcomes.

Progress against this Plan will be reviewed regularly by the Senior Management Team and reported to the Audit & Finance Committee through our quarterly performance management reports. Regular reporting helps to ensure that we remain focussed on the priorities and have the right resources in the right place at the right time. Progress will be measured through our Key Performance Indicators of which our Board will receive regular progress updates.

The Corporate Outcomes highlighted in our Corporate Plan 2019 – 2022 are as follows:

|                      |  |
|----------------------|--|
| <b>Outcome One</b>   | <b>Crofts are occupied and managed</b>   |
| <b>Outcome Two</b>   | <b>Common grazings are regulated and shared management practices continue</b>  |
| <b>Outcome Three</b> | <b>Crofting is regulated in a fair, efficient and effective way</b>  |
| <b>Outcome Four</b>  | <b>The future of active crofting is supported by well-informed engagement with stakeholders</b>                      |
| <b>Outcome Five</b>  | <b>Our workforce has the right skills and motivation to perform well, our governance processes are best practice</b> |

## OUTCOME ONE – CROFTS ARE OCCUPIED AND MANAGED

By ensuring crofters are compliant with their Duties and by working with crofting communities and stakeholders, we can increase the number of crofts that are occupied and well managed.

### Narrative

Since 2017, we have been expanding our work to encourage – and where necessary enforce – the requirements for crofters to reside on or near their crofts and to cultivate and maintain the land.

It has been a consistent call of the Crofting Commission’s board that action to promote croft residency and active land use should be high on the Commission’s list of priorities. The board has responded to the Commission’s enhanced budget allocation by indicating that some of this new allocation should be used to promote residency and active land use and build upon the existing work of the Commission’s residency and land use team.

We will therefore continue to investigate reported breaches of duty, work with public and private crofting landlords, engage with croft tenants who report their own non-compliance through the crofting census or whose breach of duties comes to our attention through regulatory casework, and take action to resolve longstanding intestate succession cases where the tenancy has not been transferred within the statutory timescales.

Moving forward the team will place equal focus on owner-occupier crofters as croft tenants, as the intention of the 1993 Act is that both tenants and owner-occupier crofters are subject to crofting duties. In addition, we will be investigate individuals who have failed to return their census form but whose address details would indicate that they are not ordinarily resident on their crofts; and we will initiate correspondence with landlords of vacant crofts (or parts of crofts) who are not resident and/or do not cultivate the croft with a view to the seeking a solution either through the landlord taking action to ensure the croft is occupied and worked, or through the Commission taking action under the vacant croft provisions of the 1993 Act to ensure the croft is occupied by a tenant who will comply with the residence and land use duties.

Our approach will be supportive: we will help advise tenant and owner occupier crofters on the options open to them to resolve their breaches of duty; and likewise will work with landlords and help them understand how best to ensure that all crofts are managed in a positive way either through their own actions or by the Commission taking steps to ensure the croft is occupied and worked.



## Key Milestones

| Number | Date | Milestone   |
|--------|------|---|
| 1a     | TBC  | Create workflows, processes and supporting documentation to support investigations and engagement with landlords (owners of vacant crofts) who are suspected of not being resident and/or not cultivating their crofts.   |
| 1b     | TBC  | Review 2020 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.   |
| 1c     | TBC  | Write to a selection of 2020 census respondents who have advised us they are in breach of their duty to be ordinarily resident, obtaining their plans and intentions for resolving the breach and establishing whether there is a good reason not to issue a notice of suspected breach of duty under section 26C(1) of the 1993 Act. |
| 1d     | TBC  | Write to a selection of crofters and owner-occupier crofters who have not responded to the 2020 census and whose address would indicate they are in breach of the residence duty. Should correspondence confirm that they are in breach then the case would be followed up in terms of 1/3 above.                                     |
| 1e     | TBC  | Provide guidance to a selection of tenant and owner-occupier crofters who have indicated in their 2020 crofting census returns that they are complying with the duty to be ordinarily resident but who are not cultivating the croft, giving information about their options.   |
| 1f     | TBC  | Follow-up with a selection of resident crofters whose crofts are not in use to encourage and, where necessary enforce, the requirements for crofters to cultivate and maintain the land.  |

## Key Performance Measures

*NB – most baselines shown are for 2019-20, the last ‘normal’ year of operation. We may need to revise these baselines and the targets based on them, in the light of the final figures for 2020-21 and the prospects for the pandemic over the coming year.*

| Number | Aim   | Baseline in 2019-20                  | Target/Indicator                                | Measure  |
|--------|---|--------------------------------------|---|--|
| 1.1    | Number of formerly vacant crofts let by the landlord or the Commission following the Commission initiating action under the unresolved succession (section 11) or vacant croft (section 23) provisions of the 1993 Act. | TBC in 2020/21                       | Reduce by 5%                                    | [Figure will be taken from the Register of Crofts. ‘Vacant’ will be defined tightly, as those not only legally vacant but also having no <i>de facto</i> owner occupier. ]   |
| 1.2    | Initiate correspondence with more crofters where a breach of RALU duties is suspected   | 77                                   | Initiate RALU correspondence with 100 new cases | Records of administrative action. Those contacted will include all those whose 2019 census indicated a possible breach for the first time, a selection of census non-respondents, and other cases generated by e.g. notifications or regulatory casework |
| 1.3    | Initiate correspondence with landlords (owners of vacant croft) who are failing to reside on and/or cultivate their vacant crofts   | 2021/22 will establish baseline data | Initiate correspondence with 30 cases           | Records of administrative action   |
| 1.4    | Number of RALU breaches resolved by a crofter or an owner-occupier crofter in breach of their residency duty taking up residence on their croft   | 32                                   | Maintain or increase the number in 2019-20      | Records of administrative action   |
| 1.5    | Number of RALU breaches resolved by the assignation of the croft, or the letting or sale of an owner-occupied croft.  | 28                                   | Maintain or increase the number in 2019-20      | Records of administrative action   |

| Number | Aim  | Baseline in 2019-20 | Target/Indicator  | Measure                          |
|--------|--|---------------------|---|----------------------------------|
| 1.6    | Number of RALU breaches resolved by the Commission giving consent to the sublet of a tenanted croft, the short-term lease of an owner-occupied croft, or by a consent to be absent being given to a tenant or an owner-occupier crofter. | 88                  | No target (this is not a priority in its own right)           | Records of administrative action |
| 1.7    | Number of RALU breaches escalated to the issue of a Notice of suspected breach of duty (section 26C), or a Notice providing an Undertaking (section 26D).  | TBC in March 2021   | No target (this is an intermediate phase en route to KPI 1.8) |                                  |
| 1.8    | Number of RALU breaches concluded by tenancy terminations orders (section 26H), or approval of letting proposals submitted by owner-occupier crofters following a direction to do so (section 26J).                                      | 6                   | Maintain or increase the number in 2019-20                    | Records of administrative action |

## OUTCOME TWO – COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE

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

### Narrative

The bulk of the work of the Grazings Team is to support, develop and encourage common grazings committees in carrying out their duties. Over the next year we will prioritise communication between the Commission and grazings committees while also promoting the importance and effectiveness of having committees, where there are currently no committees in place. To progress this, we will continue to communicate with shareholders of grazings who have not returned committees to office and establish contact with shareholders whose grazings have not had a grazings committee for a number of years. In addition, we will provide and contribute to training and other events related to the formation of grazings committees and the management of common grazings.

We will continue to assist committees and shareholders to resolve difficulties and to operate within the requirements of legislation pertaining to common grazings. Committees will be specifically encouraged to adopt the revised template for grazings regulations to ensure compatibility with current crofting legislation. Ensuring that the shareholding situation and relevant souming share are established on common grazings will also receive continued attention. In addition, initial work will commence on examining individual grazings to establish what should and should not be included as common grazings on the Register of Crofts.

### Key Milestones

| Number | Date    | Milestone   |
|--------|---------|---|
| 2a     | Ongoing | Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee   |
| 2b     | Ongoing | Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification. |
| 2c     | Ongoing | Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.  |
| 2d     | Ongoing | Encourage grazings committees to adopt the revised template for grazings regulations  |

## Key Performance Measures

| Number | Aim  | Baseline   | Target/Indicator   | Measure   |
|--------|--|--|--|---|
| 2.1    | Increase in number of common grazings with a Committee in office   | TBC Grazings Committees in office on 31 March 2021 | Maintain the number of Grazings Committees in office (notwithstanding the pandemic)                            | Administrative records  |
| 2.2    | Increase in number of grazings committees who have adopted the new template regulations  | TBC by March 2021                                  | Increase by at least 10 Commission approvals of new regulations submitted by committees based on the template. | Number of new grazings regulations approved which are based on the new template.  |
| 2.3    | Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings | 33 in 2019-20                                      | No numerical target as this is in large part demand led.   | Records of administrative action. (Note that this covers different types of Commission intervention: getting Committees into office; resolving medium size queries; and helping to address deeper divisions.) |
| 2.4    | Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.  | 14 in 2019/20                                      | 10 more townships researched in 2021/22  | Records of administrative action  |
| 2.5    | Develop and assist with training and other events for grazings committees and the management of common grazings.   | 9 in 2019/20                                       | 5 events in 2021/22  | Records of administrative action  |

## **OUTCOME THREE – CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY**

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

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

### Narrative

In 2020/21, the pandemic and associated lockdowns caused some challenges for our regulatory services, affecting mail handling, connectivity and staff availability at certain points in the year, and we saw a gradual increase in the number of outstanding cases over the course of the year. A key aim for 2021/22 will be to process more casework than we receive, in order to recover a more stable position and improve turnaround times.

Facilities for on-line applications are under development, and will become available to customers during 2021/22.

We will also work with Registers of Scotland to reach agreement on any changes that are necessary to improve the way the two organisations handle croft registration work, especially where it interacts with crofting regulation applications.

## Key Milestones

| Number | Date      | Milestone  |
|--------|-----------|--|
| 3a     | July 2021 | Next build of the Crofting Information System released and upskilling delivered, and CIS migrated to the cloud |
| 3b     | Oct 2021  | Digital system implemented for decrofting and assignation applications   |
| 3c     | Nov 2021  | Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented     |
| 3d     | Mar 2022  | Majority of other application types available digitally  |

## Key Performance Measures

| Number | Aim   | Baseline  | Target/Indicator   | Measure   |
|--------|---|---|--|---|
| 3.1    | Decrease in median turnaround times (registered crofts, Tier 1 approvals) | Figures for 2019/20:<br><b>Update to 20-21</b><br>Assignation 8 weeks<br>Decrofting CHS 8<br>Decrofting Part 13.3<br>Letting by Landlord 9.4<br>Owner Occupier Letting 11.4 | Reduce median turnaround times for the main regulatory functions | Time taken from application to notification of decision, <i>for cases where no registration is required</i>       |
| 3.2    | Decrease in number of live regulatory cases at a point in time            | TBC on 31 March 2021  | Reduce to 732 (the level from June 2020)                         | Number of live regulatory cases on 31 March   |
| 3.3    | Decrease in number of regulatory cases outstanding after 12 months        | TBC on 31 March 2021  | Reduce number of cases still live after 12 months                | Number of live regulatory cases on 31 March, which are more than 12 months since first received by the Commission |
| 3.4    | Customer satisfaction rates   | 100% satisfaction reported from a limited number of responses in 2020-21  | At least 80% of responses positive                               | Proportion of respondents answering 5 or 4 on the 5-point scale for overall satisfaction                          |

## OUTCOME FOUR – THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS

The Commission has a responsibility to promote the interests of crofting, and to advise the Scottish Government about crofting issues. We welcome collaborative initiatives with other organisations in order to contribute towards the sustainable development of crofting. We will work in conjunction with the Scottish Government to take forward the actions set out in the Scottish Government’s National Development Plan for crofting.

### Narrative

We welcome the exciting addition of a development team to the Commission this year. This team will allow a renewed focus on promoting the interests of crofting and is well timed with the publication of the National Development Plan for crofting. In the coming year we will focus on building up understanding of some of the reasons behind key issues faced by crofting, using our knowledge base and links to organisations and crofters. This will enable us to take steps to address some of these issues. We will pilot a land matching service for crofting with the aim to make better use of underutilised crofts and meet some of the considerable demand for them. There will also be close collaboration with other organisations to work together on some of the issues including croft turnover, accessibility of croft land, future support schemes and peatland restoration and management.

### Key Milestones

| Number | Date         | Milestone   |
|--------|--------------|---|
| 4a     | August 2021  | Develop a signposting portal within Commission website in order to direct crofters and the public to relevant websites and information related to crofting. |
| 4b     | Sept 2021    | Produce information about choices for crofters who are considering passing on their croft.  |
| 4c     | October 2021 | Implement a pilot project for a land matching service for crofting.   |



| Number    | Date          | Milestone  |
|-----------|---------------|--|
| <b>4d</b> | December 2021 | Investigate reasons why crofts are not passed on (temporarily or permanently) when duties are not met and develop strategies to promote the value and processes surrounding croft turnover. Establish a cross-organisation working group via COHI (Convention of Highlands and Islands) to look at croft turnover and entry into crofting. |
| <b>4e</b> | Ongoing       | Consider the affordability and accessibility of croft land to aspiring crofters, particularly the legal, policy and financial factors that influence croft prices.   |
| <b>4f</b> | Ongoing       | Collaborate with other agencies and bodies to identify opportunities to reduce carbon emissions, increase carbon capture and enhance biodiversity within the crofting sector.  |
| <b>4g</b> | Ongoing       | Participate in discussions with stakeholders and SG on crofting interests and particularly the development of future support systems for crofting.   |

## Key Performance Measures

*There are no Key Performance Measures for this Outcome*

## **OUTCOME FIVE – OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, GOVERNANCE PROCESSES ARE BEST PRACTICE**

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

### **Narrative**

As a public body, we will fulfil the legal requirements and strive for best practice in our handling of information, our responsiveness to our customers, and our pursuit of clear communication, efficiency and value for money. In the coming year, we will continue to embed our processes for handling information and records in accordance with the requirements of GDPR and the Data Protection Act.

We will improve our assurance of customer satisfaction by ensuring that we have robust and effective mechanisms in place to resolve and address any complaints from customers. We will continue to respond timeously to all complaints and to learn lessons whenever a complaint is upheld.

We will implement the Workforce Plan we developed in 2019-20 and updated in 2020-21, seeking to improve the training, engagement and job satisfaction of our staff. Two particular priorities in the coming year will be succession planning and devising a policy on the location of our workforce.

Just as crofting contributes to environmentally sustainable food production and the protection of biodiversity, we as its regulator will continue to monitor our corporate carbon emissions and to implement measures to reduce them. Our KPI measure runs one year behind, so during 2021/22 we will report on the emissions from our business travel in 2020/21 – which is expected to be extremely low because of the effects of the pandemic.

## Key Milestones

| Number | Date       | Milestone   |
|--------|------------|---|
| 5a     | April 2021 | Publish a report about the steps taken by the Commission to encourage more female Board members   |
| 5b     | May 2021   | Develop and implement advance succession planning for key posts   |
| 5c     | July 2021  | Develop a Commission policy on the location of our workforce over the next period   |
| 5d     | July 2021  | Implement automated retention schedule procedures within revised CIS  |
| 5e     | Aug 2021   | Complete implementation of 2020 Staff Survey action plan  |
| 5f     | Dec 2021   | Highlight the opportunities for election to the Board, across the crofting counties and encouraging nominations from both women and men |

## Key Performance Measures

| Number | Aim  | Baseline             | Target/Indicator                                     | Measure  |
|--------|--|----------------------|--|--|
| 5.1    | Increase in staff engagement rating                  | 57% in Summer 2020   | Maintain or surpass the record high achieved in 2020 | Average scores for a set of fixed questions in the annual staff survey |
| 5.2    | Corporate carbon emissions                           | Xxx tCO2e in 2019/20 | Reduce by 90% in pandemic year 2020/21               | Emissions from business travel by staff and commissioners              |
| 5.3    | Redeploy efficiency savings within £3.2m core budget |                      | 3%   | Funding redeployed as a result of efficiencies in existing operations  |

## MEASURING SUCCESS

In our Corporate Plan 2019-22 we identified a set of high level performance indicators which are reflected in this Business Plan as shown:

| High Level Indicator   | Objective  | 2019/20 Business Plan |
|--|------------|-----------------------|
| Number of vacant crofts let                                    | Increasing | 1.1                   |
| Number of breaches of duty, resolved through Commission action | Increasing | 1.4, 1.5, 1.6, 1.8    |
| Number of regulated grazings with committee in office          | Increasing | 2.1                   |
| Regulatory application turnaround times                        | Decreasing | 3.1                   |
| Customer satisfaction rates                                    | Increasing | 3.4                   |
| Staff engagement rating  | Increasing | 5.1                   |
| Corporate carbon emissions                                     | Decreasing | 5.2                   |

## NATIONAL OUTCOMES

The outcomes of our Corporate Plan are aligned with those of others in the public sector to bring about delivery of the Scottish Government’s National Outcomes contained in the new National Performance Framework. We believe that we contribute to 4 of the National Outcomes:

- We value, enjoy, protect and enhance our environment.
- We live in communities that are inclusive, empowered, resilient and safe.
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- We respect, protect and fulfil human rights and live free from discrimination.

A summary of how we have contributed to each National Outcome is included in our Annual Report each year.

## BUDGET INFORMATION

We receive Grant-in-Aid funding from the Scottish Government. Public budget decisions which set our Grant-in-Aid allocation are made on an annual basis therefore we have confirmation of the funding allocation for 2021/22 only. The annual Business Plan will direct financial and staff resources into the priority areas identified in this Corporate Plan and agreed by the Board.

The Crofting Commission has been allocated grant in aid of £3.200m for 2021/22, around 79% of which will be directly allocated for staff salaries, and the remainder covers costs associated with Board members and the standard running costs of the organisation.

In terms of the Business Objectives for 2021/22, we can estimate the cost of delivery for each outcome. The table below indicates the number of FTEs estimated as working on each outcome and the approximate cost is based on the associated salaries for those FTEs, plus any other associated costs. Fixed running costs (for instance for our occupation of Great Glen House) are incorporated on a pro-rata basis per FTE.

In addition to this, there are other remuneration costs associated with historical pensions and the Board totalling approximately £150k.

| <b>Corporate Outcome</b>   | <b>FTEs</b> | <b>Approximate Cost</b> |
|--|-------------|-------------------------|
| <b>Crofts are occupied and managed</b>   | 7.0         | £380k                   |
| <b>Common grazings are regulated and shared management practices continue</b>  | 3.4         | £170k                   |
| <b>Crofting is regulated in a fair, efficient and effective way</b>  | 32.8        | £1,480k                 |
| <b>The future of active crofting is supported by well-informed engagement with stakeholders</b>                      | 7.4         | £520k                   |
| <b>Our workforce has the right skills and motivation to perform well, our governance processes are best practice</b> | 8.7         | £500k                   |

# CROFTING COMMISSION MEETING

18 March 2021

Report by the Chief Executive

## Vacant Crofts

### SUMMARY

**This paper follows up previous considerations of how the Commission might more systematically address the issue of vacant crofts. While legislation permits, it is considered that action would be better supported within a more specific policy context. This paper seeks to provide this, and while is also recognising some of the other issues, it is essentially giving a policy steer as to how appropriate action might be undertaken.**

### BACKGROUND

Amongst a range of other matters pertaining to the Commission's responsibilities for crofting duties, a Policy Paper to the Commission's June 2020 Meeting raised the issue of owner occupied crofts that are not covered in the legislation by section 19B of the Crofters (Scotland) Act 1993. Consequently, as indicated in the paper, these crofts are not subject to crofting duties legislation but are still subject to crofting legislation.

It was subsequently recommended by the Commission's Land Use and Residency Short Term Working Group in December 2020 that the Commission should consider more specifically its policies on what are generally defined as "vacant crofts." In particular, it was recommended that the Commission consider ways of "requiring owners and landlords of vacant crofts, or parts of crofts, to let the croft where the owner or landlord has little physical connection with, and makes little use of, the croft."

This situation has developed since the Crofters Reform (Scotland) Act 1976 enabled crofters to purchase and become owners of their crofts. Upon purchase a croft technically became vacant as there no longer was a tenant in place. However, to provide a safeguard, the Crofters Commission generally guaranteed that if the owner occupied and worked the croft, they would not be required to let the croft to a tenant. In reality, it made little difference as croft owners were seldom asked for letting proposals irrespective of whether these conditions were being met. The Crofting Reform (Scotland) Act 2010 was supposed to resolve the situation by ensuring that both tenant and owner-occupier crofters had the same duties of residency and cultivation. However, a number of purchased crofts fall outwith these provisions of the Act and do not receive an annual notice and are not subject to the enforcement of crofting duties.

## CURRENT POSITION

The Commission has powers to seek reletting proposals for a vacant croft (section 23(5)) and where these are not provided or are unsatisfactory, the Commission must itself invite applications for the tenancy. These provisions have been used more in the traditional landlord – tenancy situation where crofts have become vacant, but can also be used for other vacant croft situations. The Commission has also used section 11(8) of the 1993 Act to terminate tenancies, declare the croft vacant and require letting proposals from the landlord following the failure of an executor to transfer the tenancy of the croft following the death of the crofter.

The Commission Policy Plan notes that the Commission may use its discretion where appropriate to require an owner occupier to let the croft to a tenant. While arguably, this allows the Commission to take such action it does not provide any more specific guidelines for when it should. As such, if only single isolated cases are considered out with any specific policy context, there could be issues as to why these are being singled out in an apparent arbitrary fashion. As a public body, the Commission is obliged to operate in a transparent, accountable, proportionate and consistent manner. Therefore, if it wishes to address the issue of vacant crofts it would be more appropriate to do this in a coherent and systematic way as opposed, perhaps, in reaction to a particular circumstance which could potentially elicit claims of bias.

It was clearly the intention of Parliament and is the Commission's intent that all crofts should be occupied and operated, in terms of residency and cultivation or some other purposeful use. While most crofts are covered by the statutory duties legislation that enforces this, there are some that are not. However, this was clearly accidental as opposed to intentional. As a consequence, the general principle should be that the Commission should seek to ensure that all crofts have a resident tenant or owner and that they are cultivated or put to some other purposeful use.

While accepting that the powers the Commission has to require the letting of those crofts not covered by the specifics of the crofting duties legislation is discretionary, it is arguable that in the overall context of having crofts occupied and cultivated it would be inconsistent not to use these. While there are potential complicating factors in some of these situations such as multiple ownership of different parts of crofts, in certain respects it can be less complicated to employ this part of crofting legislation.

## Proposed Approach & Policy Framework

It can be argued that the obvious policy is one that simply requires all vacant crofts to have a tenant. However, this can ignore some of the more complicated situations and the difficulties that may be involved in achieving this. It also might be considered disproportionate and failing to allow for mitigating circumstances, which can be considered within the duties' legislation. Most of all, it could be disruptive for individuals whose crofts are vacant because of a technicality or some previous arrangement but they actually occupy and cultivate their crofts.

The relevant legislation would have been primarily designed for the more traditional estate landlord system. Where such a landlord overlooked or was not minded to relet a croft that had become vacant, the Commission can require that this takes place. This would seem to be an obvious starting point and something that is not unfamiliar to the Commission. The Commission Policy Plan states: "*The Crofting Commission will work with crofting landlords and landowners and encourage them to let vacant crofts and to take action, where appropriate, to let crofts that are vacant as a result of a failure of succession.*" (**Crofting Commission Policy Plan; Paragraph 119**) The Plan goes on to state what would be expected in terms of letting proposals.

In these situations, and vacancies that occur as a result of duties action there appears to be sufficient scope in terms of legislation and policy for the Commission to operate as appropriate.

While the “vacant crofts” that are not included in this category are mentioned, it is in the context that the Commission would wish to ensure that the croft itself is not compromised by the letting of part of it unless there are benefits for crofting within that locality.

As it is the Commission’s intent to ensure that all crofts are occupied and cultivated, the Commission could adopt the same principle as that devised for those receiving an annual notice. Currently, the Commission may have little information on those owned crofts that are excluded from the owner-occupied crofts whose owners receive an annual notice. Under section 40(1) of the 1993 Act, the Commission is entitled to serve notice on the owner or occupier of any holding requiring that it be furnished with details of the extent, rent and tenure and “*with regard to such other matters relating to the ownership or occupation of the holding as the Commission may reasonably require for the execution of their functions...*” This indicates that the Commission has a right to make reasonable inquiry as to the occupation and use of a croft for those that do not receive an annual notice. In doing so, the Commission will be operating in manner that treats all crofts with a degree of consistency in terms of collating evidence on their occupancy and use. However, it is not suggested that the Commission need necessarily do this on an annual basis as is a legislative requirement for tenanted and owner-occupied crofts.

A notice of this nature would advise that it is the Commission’s policy to ensure that all crofts are occupied and worked unless there are mitigating circumstances. In this manner, croft owners are advised of the context and asked to provide relevant information on the croft’s occupancy and use. Consequently, the Commission should source information, some of which could be followed up on, but just importantly, those non respondents should also require further contact or investigation to ascertain what is the position on the croft.

In itself, this will be an important statement that indicates that all croft land is part of a regulated system and, as such, its occupancy and use are of primary importance within that system. It would be clear that all croft holdings, irrespective of their type of ownership, can, in some manner, be regulated to ensure that the objectives of croft residency and land use are delivered. The overall integrity of the system would be enhanced and, while these situations are probably more confined since the 2010 Act, the erosion of land from crofting and its non-recognition as croft land should be further arrested.

In a similar fashion, the Commission could write to all crofting estates with vacant tenancies reminding them of their obligations under the Act. In none of these instances will the Commission be immediately requiring reletting proposals but will be providing initial advice on crofting responsibilities. Consequently, this will provide a useful introduction and context for any follow up correspondence where necessary. In this manner, all are advised that the Commission ultimately may take appropriate action if matters are not appropriately resolved.

As already indicated, these are discretionary powers, and the Commission is not obliged to use them. However, the Commission can adopt similar practices to that in place for most crofts that are subject to duties enforcement requirements. As such they could investigate reports from the same sources that the Commission is obliged to accept in suspected breach of duties cases.

There would be no requirement to follow the same procedures and timescales as that set out for duties enforcement. Some of the same principles might be applied but there would no requirement to adopt some of the complexities contained within these part of the legislation. However, there are different variations of owned crofts and some of these may be difficult and resource demanding to follow through with. Situations where there are a number of individual owners of separate areas of a single croft can be problematic and it may be the case that the size of area may not merit being constituted as a separate croft. It is difficult to be set in out in



advance how exactly such situations should be handled as it may well depend upon the specifics of individual cases. Requiring the let of an individually owned part of a croft will divide a croft and that may be perfectly justifiable and pragmatic in a particular situation but may not be in others. However, while nothing is done to establish that this is croft land and subject to crofting legislation, the continual internal division of ownership can continue on vacant crofts that are not legally defined as owner-occupied crofts.

However, within this context there are certain scenarios that can be more specifically identified. Where there are multiple owners of different parts of a croft and the owners of some of these parts are not resident, if the area involved can make separate independent crofts, there is nothing to prevent the Commission requiring that they are let as such. Also, if it were the case that none of the owners are resident, the Commission could reasonably require that the croft be let as a single unit.

This particular issue was explored in detail within the Crofting Law Sump which is summarised in the following quotation: *The problem of multiple owners is derived from the splitting of the landlord/ landowner's interest. This becomes clearer if the croft unit has been identified in a formal way, e.g. by entry in the Register of Crofts or registration in the Crofting Register. The existence of multiple owners cannot affect the unitary nature of the croft. . For the avoidance of doubt, the term "multiple-owners" is used here to describe a situation where different owners hold separate title to distinct parts of a croft (see 4 below - Multiple-ownership of a croft).*

**Proposition:** *The only way to change the rightful occupancy of a croft is in a formal way supervised by the Commission, but, to resolve intractable problems, the Commission should be given powers of minor reorganisation. (See 14 below)*

While these minor powers of reorganisation were for future legislative reform, the Commission did undertake an exercise of this nature on a croft at Kilvaree in Argyll a number of years ago. While this was done with agreement of those owning the parcels of croft land and their own land agent, this proved to be very demanding upon Commission time and resources.

## **Rationale**

As already indicated, part of the justification for undertaking this approach will be to ensure consistency and demonstrate that all croft land is part of a regulated system. The fact that it does not fall within the categories that are controlled by specific crofting duties does not entail that these crofts should not be regulated for the benefit of crofting.

Recent digital meetings on difficulties in gaining access to crofts, hosted by the Scottish Crofting Foundation, have been inundated with interest. This indicates an obvious demand to enter crofting. This would tend to reinforce the need to ensure that crofts can be made available, particularly those that are neither occupied nor worked.

## **Priorities**

The Commission has discretion whether to undertake any activity in relation to vacant crofts. It is not a legislative requirement in the same way that it is for other crofts that are not occupied or worked. However, this is by accident rather than design and the consequences for the crofting are the same and, possibly, more damaging in some instances.

This is all part of the overall regulation of crofting and it is important to consider this in that context and it is one that has changed although it may not be that perceptible. The Committee of Inquiry on Crofting (Shucksmith Report) advised that some of the individual rights that legislation has provided for crofters as individuals may now be counterproductive to crofting as a whole. The change of emphasis provided by the 2010 Act to counteract this included a change of title from the Crofters to the Crofting Commission. To that extent the Commission's particular responsibility is to crofting and not firstly the service of individual needs. While this

is not to detract from the provision of efficient service, the common currency of referring to crofters in business-speak as clients or customers may be overlooking the fact that the main “client” is the crofting system. In that context, some of the provisions that are at the Commission’s discretion may be of more importance to crofting than some of those that are not.

**Resourcing**

The most recent figures indicate that there is an overall total of 1127 croft holdings that are identified as vacant crofts. It is understood that this figure includes instances where only part of the croft is vacant and other varying categories of what is generically described as a vacant croft. Part of any initial work would be to identify and group the categories and prepare for an initial notification to the respective parties. Classifying returns for follow-on work and following up non returns would also have to be factored in. That is all before the stage of requiring any reletting is reached. As already indicated, there are a number of potential complications in undertaking this work, however, that does not entail that it should not be done. A measured and controlled approach should ensure that it not over demanding on any resource. However, there is little doubt that the initial stages of identification, contacting and investigation will require dedicated time and resource.

| <b>Impact:</b>     | <b>Comments</b>   |
|--------------------|---|
| Financial          | Other than the cost of postage, which will include recorded delivery, there should not be any considerable financial implications   |
| Legal/Political    | <p>The relevant references in terms of crofting legislation are covered in the paper. There may be possible human rights arguments in relation to enjoyment of private property, but nothing beyond what is permitted in crofting legislation is being suggested.</p> <p>There is potential for exception to be taken to what may be perceived by some as interference with private property. However, as long as the rationale is well set out in the initial approach, it should be recognised that the Commission is being consistent in its approach to all croft land and is performing its primary function to regulate crofting and its system of land tenure.</p> |
| HR/staff resources | Will require a dedicated resource at the initial stages but thereafter, will require to be modulated in line with competing priorities and the demands of processes that have defined legislative requirements and timescales. However, overall this is a substantial task and will make further demands upon the Commission’s Residency and Land Use resources.  |

**RECOMMENDATION**

**It is recommended that the Commission adopt a policy as follows or in such other wording as is considered appropriate:**

**The Crofting Commission seeks to ensure that all croft holdings will be occupied and cultivated. Over and above the legislative requirements to administer crofting duties, the Commission will require the occupancy and management of vacant croft holdings. This process will entail that landlords of vacant crofts will be notified and advised of their responsibilities to relet vacant crofts. Other owners of croft land will also be notified that the land is part of a regulated system of tenure and where it is not occupied and worked as such, the Commission can and will require that it be let to someone who will fulfil these requirements.**

**In more detail this entails that:**

- **Where landlords have not discharged their responsibilities to relet vacant crofts, the Commission will give notice requiring proposals for relet and where these are not received or are not acceptable, the Commission itself will relet such crofts**
- **Owners of croft land who do not receive a section 40A notice on an annual basis will be contacted by the Commission and asked for details of their crofts as permitted by section 40(1) of the Crofters (Scotland) Act 1993, with particular reference to their occupation and cultivation**
- **Where the croft is not occupied or cultivated the Commission will, depending upon any mitigating circumstances, require that the croft is let by the owner, failing which the Commission itself will relet the croft**
- **Where parts of a croft holding are owned by different owners, the Commission may require letting of a part of a croft not occupied by an owner where that part can provide a sustainable unit in its own right**
- **Where none of the owners of parts of a croft reside on or cultivate the croft, the Commission will require that the croft is relet in the same manner as it would for owners of the whole croft**
- **Where the Commission does not receive a response to any notice issued under section 40(1), it will continue to investigate the ownership situation with a view to ensuring that any croft vacancies are let to a suitable croft tenant.**

Date            1 March 2021

Author         John Toal

# CROFTING COMMISSION MEETING

18 March 2021

Report by the Chief Executive

## Peatland Restoration on common grazings

### SUMMARY

This paper follows up previous considerations of peatland restoration by the Commission and addresses some of the difficult legal issues as well as suggestions for taking the matter forward.

### BACKGROUND AND INTRODUCTION

Discussions have taken place between the Crofting Commission and its Sponsor team regarding the possibility of peatland restoration projects taking place on common grazings and, to a lesser extent, on crofts. More than 20% of Scotland is covered by peat, and much of that peat is located in the north of Scotland and in the Western Isles. Some of this peatland is located on upland farms and common grazings, grouse moors and afforested peatland. The Scottish peatlands also store most of Scotland's carbon. Restoration of these peatlands has been identified by the Scottish administration as being essential in reducing Scotland's greenhouse gas emissions. The historical reduction of peatlands across Britain has been far greater than has been acknowledged, which has resulted in the release of carbon dioxide into the atmosphere at earlier dates than previously thought, with peat-cutting removing large quantities of peat for fuel (Rotherham, *Peatlands: Ecology, Conservation and Heritage* (2020), 27 and 121). Upland wet and dry heather moorlands, grass moors and heath commons were often described as "wastes" and "commons" by landowners, but they "provided fuel, food and building materials for local people and sustainable grazing for domestic stock over many centuries", with the rights to cut peat-turf for fuel being much more widespread than is generally recognised (Rotherham, 122). Following enclosure and parliamentary enclosures in particular, and enclosures that took place separately across lowland Scotland in particular, the largest surviving areas of common land are now in the north and west of Scotland, and are of course now regulated by crofting and common grazings legislation.

Fuel uses of peatlands include peat, turf, gorse and birch coppice, and rushes for lights. Grazings uses of peatlands include rights of pasturage for sheep, cattle, ponies and horses. Building materials from peatlands include, of course, peat, but also turf, ling, stone, sphagnum moss, rushes, clay and birch poles. All of these uses are deeply embedded in the history of crofting, both before and after the Crofters Holdings (Scotland) Act 1886 and the Crofters Common Grazings Regulation Act 1891. It is also fair to say that the use of peatlands and upland moors by crofters has not been limited to agricultural uses: many crofters, for example, have a right to cut peat for domestic purposes.

It is important to recognise at the outset the cultural connection between crofters and their uses of largely unimproved peatlands over many years and that that use of peatlands by crofters (and commoners elsewhere in Britain) has been a key factor in their survival. It is also important to recognise that the large-scale improvement of peatlands and upland and lowland moors (and fens in England), rather than the smaller-scale use of peatlands by crofters and commoners over several centuries, has been the largest factor in the historic decline of peatlands all across Britain.

NatureScot estimates that up to 80% of Scottish peatlands are degraded. It is also estimated that, at a UK level, degraded peatlands emit an estimated 23 Mt CO<sub>2</sub>e per year, equivalent to half the emissions from agriculture and almost 5% of total UK emissions. Bare and exposed peatland which has dried out, or is drying out, releases carbon dioxide and some methane into the atmosphere. Degraded peatland are also much more susceptible to fire, which can have devastating losses on carbon stores. In 2019/2020 the Scottish government invested some £14 million in peatland restoration activities, which is co-ordinated by NatureScot through Peatland ACTION. There is a government commitment to invest £250 million in peatland restoration over the next 10 years. This has been increased to a commitment of £22m for peatland restoration in the financial year 2021-2022 as announced in the February 2021 draft Scottish budget.

Finance for peatland restoration programmes is available from Peatland ACTION, and advice on applications is available through the Agri-Environment Climate Scheme (AECS), which has a dedicated peatland restoration funding element. Separately, as set out below, peatland restoration can be financed privately and commercially through the Carbon Code or by a combination of Peatland ACTION and the Carbon Code.

## **LEGAL CONTEXT**

### **Rights of crofters in common grazings**

There is little doubt that opportunities exist, in theory at least, for peatland restoration projects on common grazings and crofts. There is, however, considerably more doubt as to whether crofters and shareholders are able to apply directly and on their own behalf for funding for peatland restoration projects. In a recent special stated case before the Inner House of the Court of Session, *Crofters having rights in Sandwickhill North Street, Melbost and Branahuie -v- Crofting Commission* (August 2020), the Inner House commented that crofters sharing in a common grazings “have, under the Crofting Acts, very little by the way of legal right to use the common grazing for non-agricultural purposes. This is so albeit that they may propose such purposes and, if they do not involve detriment, may have them approved”. The Court went on to note that “[r]eturning to the ministerial statements, it was not anticipated that section 50B purposes would be likely to involve ‘physical development’; yet that is what is contemplated in the appellants’ applications.”

#### *Purposeful uses and managed conservation activities – sections 5B(4) and 5C(8) of the 1993 Act*

The Commission has considered the extent to which crofting duties apply to common grazings. Crofters are entitled to use their crofts (and, it is thought, their grazing rights) for planned and managed uses that are not cultivation, whether as a planned conservation activity or as some purposeful and managed use. Any purposeful uses must not adversely affect the interests of the landlord. It is understood that planned and managed conservation activities which involve refraining from grazing should be treated as a purposeful use and so within the scheme of the 1993 Act. It is thought that peatland restoration, or at least some of the activities associated with restoration, could be considered as a planned and managed conservation activity.

The absence of any adverse effect on the landlord is of critical importance. Where a landlord is in agreement with a particular use, it could generally be assumed that the landlord accepts that there is no adverse impact on his or her interests, or he or she is willing to accept any adverse impact.

The advantage of the sections 5B and 5C is that it does not involve a complicated application process. If an application has to be made to the Commission, it involves a consultation with the landlord and the members of the crofting community. The Commission cannot give its consent to any use that is adverse to the interests of the landlord.

### *Section 50B of the 1993 Act – use of common grazings for other purposes*

The crofters sharing in a common grazings are entitled to use it for non-agricultural purposes in the following situations:

- crofter forestry and forestry joint ventures;
- other uses under section 50B which do not cause the landlord any detriment.

It is also possible that the crofters could apply to carry out a peatland restoration project (including management of stock) under section 50B where the landlord agrees that it does not cause him or her any detriment. It is likely that such projects could proceed only where the crofters and the landlord are in agreement, but the landlord is happy for the crofters to take the initiative. The disadvantage of the section 50B process is that it requires meetings to be arranged and votes to be taken, as well as public notification, prior to an application to the Commission.

### *Resumption of common grazings and schemes for development – sections 19A and 20 of the 1993 Act*

The landlord of the common grazings could also apply to the Land Court to use a common grazings for a reasonable purpose (resumption – section 20 of the 1993 Act) or for a scheme for development purpose (section 19A of the 1993 Act). These applications are made by the landlord only or by someone authorised to apply on his or her behalf. In the case of resumption, the crofters' rights in the common grazings are removed either permanently or temporarily. In the case of a scheme for development, the crofters' rights are restricted for the lifetime of the development.

There might, however, be little incentive for landowners to become involved in long-term certified restoration projects that involve long-term leases or option agreements, as it could affect the medium to longer term value of the estate.

## **TWO POSSIBLE SOURCES OF FINANCE: GRANTS AND CREDITS**

### **Grants – Peatland ACTION**

Does peatland restoration involve “physical development”? The funding of Peatland ACTION supports what it calls “on-the-ground restoration activities” such as:

- installation of peat dams in man-made ditches to increase water levels
- re-establishment of sphagnum, which are the peat-building mosses
- peat hag re-vegetating and re-profiling through growth of plants including mosses, short heather, cross-leaved heath and cotton grass.

Whilst the installation of peat dams and fundamental changes to hydrology (including the creation of flooded areas) could involve physical development, the restoration of peatland-building plants such as sphagnum and other mosses and vegetation and the re-vegetation of bare, eroded peatland is less apt to be described as physical development and could be described as a conservation activity.

### **Grazing on peatland**

According to guidance issued to land managers by Peatland ACTION in 2014, grazing at the correct densities and with the correct type of stock will trample and browse tall heather, shrubs and rushes, allowing sphagnum mosses to colonise underneath. Grazing can contribute to the maintenance of open peatland, restoration and maintenance of open habitats previously

colonised by scrub and enhance diverse wetland in terms of structure and species composition. Ideally, peatland will be grazed in conjunction with semi-improved or improved grassland so that stock have a choice of forage and graze the peatland lightly. This is a factor that the Crofting Commission could consider when deciding apportionment applications in order to ensure that any areas of peatland (low quality) grazing is complemented, if available, by better quality, semi-improved areas of grazing and that these are not removed through apportionment.

Trampling and grazing by wild deer is also a factor for land managers to consider. Reductions in deer populations, for instance, could permit increased grazing by sheep and cattle on peatland. It is therefore unlikely that peatland restoration would require stock to be removed from the common grazings, but it might require much more precise control over grazing densities and types of stock, when the land is grazed. Where grazing has to be very precisely managed, for example, crofters may develop more interest in deer management plans.

### **How could peatland restoration take place in terms of crofting legislation?**

Some existing agricultural-environmental schemes control grazing densities and offer “compensatory” payments to crofters who agree to reduce their stocking activities on a common grazings, including the exclusion of stock at certain times of the year. It is considered that the ecological health of peatlands and careful management of grazing are inextricably linked and could in and of itself be considered to be the basis of financial support. The Crofting Commission could look at the optimum grazing levels to maintain healthy peatlands and compare it with common grazing soumings. This would provide a valuable baseline.

Where some sort of physical transformation of the land is required, such as the creation of dams, it is possible that a section 19A Scheme for Development would be an appropriate means of carrying out such activity whilst retaining the land within crofting tenure. Any Scheme for Development application is made by the owner or landlord, not by the crofters, though crofters are entitled to fair recompense based upon the “market” value of the land. This is a sum that has to be paid by the landlord to the crofters, either as a lump sum or by instalments, which could be a strong disincentive to any landlord or owner who wishes to engage in a peatland restoration project. However, windfarm developments on common grazings have been able to proceed, despite the requirement of a large capital investment, on the basis that the crofters collectively share in half of the value of the development, with payments often made by way of instalments during the lifetime of the development. As outlined below, carbon credit agreements could provide an avenue for providing a commercial value for any project and so a possible basis for making a market valuation of the land.

### ***Credits***

#### **What is the “market” value of peatland?**

There has been a developing market in carbon trading. The basic idea is that a private (or a public) body purchases carbon credits in order to offset its own carbon emissions in an effort to reduce its carbon footprint and/or to become “carbon neutral”. How does this work? The company can invest either directly or through an intermediary in a (certified) project that results in measurable reductions in carbon emissions. One such project could be the development of a new native woodland project. Another project could be peatland restoration that changes a peatland from a carbon emitter to a carbon sink through carbon sequestration.

The Woodland Carbon Code and the Peatland Code are two codes which have received some national/ international recognition as ways of certifying projects that result in reduction in carbon emissions. The Woodland Carbon Code is managed by Scottish Forestry, an agency of government. The Peatland Code is managed by the International Union for Conservation of Nature (IUCN).

## **What is the Peatland Code?**

The Peatland Code is a voluntary standard for UK peatland projects wishing to market the climate benefit of peatland restoration. According to the IUCN National Committee – United Kingdom, the Code “is currently designed to attract private purchases motivated by corporate social responsibility. The funding received from the sale of carbon benefit will depend on the extent of damage prior to restoration, the size of the project and the length of the management agreement”. There has been an increased interest from landowners and companies in purchasing carbon units. Independent validation and verification to this standard provides assurance and clarity for buyers regarding the quantity and quality of emissions reductions purchased. For instance, an example of a peatland restoration project where 10% of the area was actively eroding, and where 90% was drained before restoration, might generate almost 300 tCO<sub>2</sub>e emissions reduction units per hectare over 100 years. As at October 2020, the Scottish Government states that there are 23 projects across the UK registered with the Peatland Code. Smaller projects can take place where there is collective work as a group for the validation and verification process under the Peatland Code, which makes the third-party certification process much more cost effective.

It is fair to say, however, that carbon trading on peatland is very much an emerging and uncertain market. In Scottish terms, and considering the amount of deep peat that is located in parts of the north of Scotland and the Western Isles, there are certainly opportunities to use peatlands on the international carbon credit trading market. Any carbon credit trading would require works and activities on the ground, as well as a certification and verification in terms of the Peatland Code.

According to the Code (Para 1.3), eligible land can include land under tenancy tenure, where there is written consent from the landowner and an agreement that the obligation for delivery of the project shall be transferred to the landowner should the tenancy end before the conclusion of the project. However, crofters in a common grazings do not have a tenancy in respect of the common grazing, but rather a right that is a pertinent of their tenancies of croft land. Where the croft land is purchased, the right is recognised legally as a stand-alone grazing right.

## **Carbon credit trading and common grazings**

Are carbon credits a commodity that a landowner of croft land or common grazings could “sell”? Any trading scheme would, as set out above, require a project and works on the ground in order to transform the peatland from a carbon emitter to a carbon sink in a way that is measurable.

This paper is not intended to be an analysis of the voluntary Carbon Code and how that could be applied to a common grazings, which deserves a separate paper in its own right. It is fair to say that a landowner of a common grazing could probably carry out the works required for an accredited restoration scheme only if he or she resumes the land or applies to make the land subject to a scheme for development. The underlying principle of resumption or schemes for development is that the crofters sharing in the common grazing are entitled to one-half of the difference between the market value of the land on the date of resumption less the crofting value (which is usually very small). Section 21(2) further provides that the market value is the amount which the land, if sold in the open market by a willing seller, might be expected to realise. Any commercial valuation of the land would take account of any commercial development which requires the landlord to resume. In practice, such as where there is a wind farm on a common grazings, a landlord and the crofters generally agree that the income from the proposed scheme will be shared 50/50 between the landlord and the crofters and so the Land Court does not have to determine the open market value of the land. With a renewable energy development, there will usually be a suite of legal documents in place, including an Option Agreement between the landlord and developer, a draft Lease that is annexed to the Option Agreement and Minutes of Agreement between the crofters and the landlord.



With any peatland restoration under the Carbon Code, there will be a carbon contract between the landlord (as the sole owner of the emissions reduction benefits) and a third party, which includes provision for future sale of carbon by the landowner which, in terms of the Code, are linked to the predicted sequestration rates. It is envisaged that crofters would seek half the commercial value of such contract, unless it is substantially less than half the market value of the land to be developed, and that agreements would be reached between landowners and crofters without having to resort to the Land Court for a market valuation of the land. The Land Court has indicated in previous cases that before carrying out any market valuation of the land, it would expect the parties to lead evidence from surveyors setting out a professional valuation of the land.

The landlord's reserved rights in a croft and common grazings with regard to peat are to extract rather than to restore. Statutory condition 11 (Schedule 2 to the 1993 Act) gives the landlord the right to cut and take peat, except peat that may be required for the use of the croft or common grazings. The extraction of peat is of course inimical to the practice of peat restoration. The landlord is permitted to make drains and water-courses, but whether this would extend to building dams, flooding areas of land and fundamentally altering the hydrology of an area of land is more questionable. In all likelihood, any commercial agreement lasting 30 years and involving some physical works (such as flooding of certain areas of land) would require the landlord to resume the land or apply for a Scheme for Development in order to create commercial certainty. It is also possible for the Land Court on authorising resumption or a Scheme for Development to order that payments to the crofters are to be made by instalments for the lifetime of the development. The instalment option can make developments on common grazings a commercial possibility.

## **CONCLUSIONS**

A lot of work is still to be carried out in identifying which areas of deep peat are located on crofts and common grazings, and which of these areas are degraded. Ironically, the most degraded areas of peatland, some of which are thought to be on common grazings, offer the highest potential in terms of future carbon sequestration, whilst relatively better managed nature reserves such as non-forested parts of the Flow Country (only relatively small parts of which are under crofting tenure) offer less scope.

There would appear to be two main routes for funding peatland restoration projects. The two current routes are Peatland ACTION and a combination of Peatland ACTION and finance through the Carbon Code (though in theory peatland restoration could be wholly financed through the Carbon Code). The Peatland ACTION route generally involves payments directly to contractors who carry out the work, with little in the way of benefit to landowners (or, for that matter, crofters). Another route that could become more common would involve private companies making a deal with the landowner or buying the land.

The manager of Peatland Action has confirmed that, in the case of a Peatland Action, there is no accreditation under the Carbon Code as the carbon credit is not materialised. Accreditation in terms of the Carbon Code must be done before the work commences and cannot be done retrospectively. This means that if a landowner wishes to sell the carbon credits and have a Peatland ACTION grant, he or she can do so by combining it with money from the Peatland Code which will verify the whole project. The right kind of grazing – both in terms of density and in terms of the type of grazing – can be an integral part of a peatland restoration project. It would be useful to get a better understanding of what constitutes good management of peatland on common grazings land.

| <b>Impact:</b>     | <b>Comments</b>  |
|--------------------|--|
| Financial          | Will involve use of the B2 resource in the Western Isles and also some involvement of the C2 solicitor and B3 head of development.   |
| Legal/Political    | There are large legal constraints on the freedoms of crofters to engage in peatland restoration. Any proposals for work in this area have to be in light of the legal constraints. |
| HR/staff resources | See above on use of staff resources.   |

## **RECOMMENDATION**

**The Commission could work with grazings committees, community landowners and Scottish Ministers estates and with NatureScot and Peatland ACTION to see how peatland restoration projects could benefit crofters, specifically for loss of grazing and peat-cutting rights, and consider whether there are opportunities for landlords and crofters to collaborate to restore peatland whether through Peatland ACTION or through more commercial models involving landlord participation in the Carbon Code. This would initially involve work by the two B2 Western Isles officers, with support and direction from David Findlay and Heather Mack. It will also involve work to identify suitable possible sites within a common grazings or involving several common grazings for restoration schemes.**

**This work will proceed on the basis that crofters do not appear to have a right to use common grazings for peatland restoration projects without reference to the interests of their landlord, at least where the restoration involves material physical changes to a part of the common grazings. It would also recognise that there are significant challenges with regard to how the current funding under Peatland ACTION can work for crofters' common grazings.**

**Separately, the Commission will work with Sponsor towards a long term solution to ensure peatland is well managed across crofting land. This will involve highlighting the cultural importance of peatlands and uplands to crofting and the role that generations of crofters have had in stewardship of these habitats, particularly in the context of future discussions regarding funding of rural land-based activities. The Commission will also underline the importance of supporting financially the sustainable use and management of peatlands and the crucial role crofting plays and will play in the future management of peatlands.**

Date            26 February 2021

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*The author has discussed some of the issues in this paper with David Campbell, Crofting Commissioner, but the views expressed are his own.*

## **'ROUND THE TABLE' – ORAL UPDATE**

**REPORTS FROM HEADS OF TEAMS - ORAL**

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

**UPDATE FROM THE APPLICATION FORMS REDESIGN  
SHORT TERM WORKING GROUP - ORAL**

**DATE OF NEXT MEETING – 14 MAY 2021 (TEAMS)**

**ANY URGENT BUSINESS – ORAL**

## **EXCLUSION OF PRESS & PUBLIC**