

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD IN NOSS & RUM, GREAT GLEN HOUSE, INVERNESS AT 9.30am ON 18 AUGUST 2022

Present:	Malcolm Mathieson	Convener
	Mairi Renwick Mackenzie	Vice Convener
	Rod Mackenzie	Commissioner
	Colin Kennedy	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Duncan Gray	Commissioner
	Donald MacDonald	Commissioner
	James Scott	Commissioner
	Bill Barron	Chief Executive
	Finlay Beaton	Head of Grazings
	Aaron Ramsay	Head of Digital
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulatory Support
	Neil MacDonald	Head of Finance
	Arthur Macdonald	Head of Development
	Heather Mack	Head of Operations
	Anne Williamson	Head of Compliance & Customer Services
	Pat Kenny	Director, Deloitte LLPTO (Joined by Teams – Item 6)
	Lynne MacMillan	Development Officer (Joined by Teams – Item 13)
	Staff and public for Open session (via Teams)	

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. There were no apologies received. In the absence of Jane Thomas, today's minute taker is Joseph Kerr (Open) and Aaron Ramsay (Closed). Aaron is the Compliance Officer.

2 DECLARATION OF INTERESTS

No interests were declared in the open session.

3 BOARD MINUTES FROM 29 JUNE 2022

The Board Minute of 29 June 2022 had previously been circulated and approved and had been published. There were no comments or questions on the Minute.

4 REVIEW OF ACTION POINTS FROM 29 JUNE 2022

The Convener indicated that of the 11 Action Points from the last meeting, 7 had been completed and asked the CEO to provide an update on the remaining 4. The CEO reported that item 8 was in hand as this related to exploring shared facilities for the Royal Highland Show in 2023. He then indicated that he wished to take together items 3, 4 and 11 which all related to customer service. He further reported that item 3 relating to updating the telephone message was in hand as he aimed to get together with the Compliance Officer either today or tomorrow and arrange to record a new message in both English and Gaelic. Items 4 and 11 relate to what we say to customers about the progress of casework, and the suggestion of having a trial rota for a duty officer to receive calls from switchboard. The CEO indicated that we have given this a lot of consideration and have concerns about taking dedicated officers away from processing casework. Our Regulatory Team have suggested an alternative suggestion, which he will cover in the CEO update in the closed session of the meeting.

Commissioner Rod Mackenzie asked whether there would be an update on recruitment, and the CEO confirmed that this would be included in the CEO update.

5 MATTERS ARISING

There were no matters arising.

6 CROFTING COMMISSION ANNUAL REPORT AND ACCOUNTS FOR 2021/22

The Convener indicated that the next item was the Annual Report and Accounts which the Board had to sign off before it was laid before parliament. He invited Mr Kenny (Deloitte) to update the meeting on the auditor's findings.

Mr Kenny gave a brief summary as he indicated that there had been a good discussion at the Audit & Finance Committee on this, on 27 July 2022. Briefly, there was a clean unmodified audit opinion. Both parties were pleased about how the audit went this year. Mr Kenny indicated that the quality of the financial statement was excellent and noted that it is very unusual for a public body to be given a full set of green assessments in the finance section. The Finance Team were congratulated for the work they put into this.

Commissioner Kennedy raised the issue of having a clear divide between operational and strategic matters. The Convener indicated that it was not a matter for Mr Kenny to respond to and that training has been arranged covering this issue.

Commissioners were content to approve what they considered to be an excellent report especially given where we were the previous year. The Convener expressed his thanks to the staff from Deloitte.

7 AUDIT & FINANCE COMMITTEE REPORT

(a) Update from Vice Chair of Committee

Commissioner Campbell indicated that this was his last meeting, and he would give a brief summary and make a number of observations. He urged caution that although it is pleasing that the Commission have been found to have implemented the 41 Deloitte report recommendations, that this is not a one off. It has to be an ongoing wider cultural and behavioral change as an organisation. As an example, he pointed to the fact that

the deficits in regulatory casework processing over a period of time has not been picked up in successive KPI reports. He said that the organisation should identify its weaknesses and strengths, and these should be picked up and measured through a robust set of KPIs.

Commissioner Mairi Renwick Mackenzie wished to acknowledge Commissioner Campbell's contribution over the last 8 years and considered that he was always willing to make constructive challenges, and to encourage the movement of the Commission into the digital age. She said he should be proud of what he has accomplished in his time with the Commission and assured him that we will continue to strive to progress and improve.

(b) Draft minutes from 27 July 2022

The meeting was asked to note that part of the Minutes have been redacted as the Deloitte report has yet to be approved by Parliament.

It was noted that the Deloitte Report will be published by Audit Scotland, probably in Mid October 2022.

(c) Annual report on Committee activity

Commissioner Scott questioned whether there was sufficient correlation between the Strategic Risk Register (SRR) and the KPI report.

Commissioner Campbell agreed and proposed that the new AFC should undertake an overall review of the SRR and the KPIs to improve the correlation between these important documents.

Action Point: For the AFC to undertake an overall review of the Strategic Risk Register and the KPI Report.

A suggestion was made and supported by the meeting to require a change in legislation, that the AFC should be excluded from the statutory provision that the Convener chairs all Commission meetings that he attends.

Action Point: To seek a change in legislation to exclude the AFC from the statutory provision that the Convener chairs all Commission meetings that he attends.

8 REVIEW OF KEY PERFORMANCE INDICATORS Q1 2022/23

The Chief Executive took the meeting through each section of the first quarter KPI report in turn.

Residence and Land Use Team

The first section related to the work of the Residence and Land Use Team. He referred to the two Amber statuses which related to the timing of letters going out to engage with returners and non-census returners from the 2021 census. In retrospect this indicated that we had been overambitious in terms of our recruitment timing. However, following success at a recent recruitment board, we have two staff taking up post in the team from 5 September 2022, and a further recruitment board for an additional post in the Autumn. We are therefore confident that these will be green in a future return.

Grazings Team

The second section related to the work of the Grazing Team. There was one red status which relates to the “increase in the number of grazings committee who have adopted the new template regulations.” The CEO considered that this was partly due to a secondment outwith the team, but more fundamentally it may be that the only occasion that committees will look to take up new/changed regulations is when there was a dispute.

Commissioner Gray agreed with that assessment. He considered that committees are happy with what they have in terms of regulations, and that is likely to only change in a crisis. In response, Commissioner Maciver considered that we are not far away from a crisis when there are grazings committees in place, but the land is not being grazed.

The point was made that the use of common grazing land is changing at great speed and the skills required to enter into agreements require legal and other professional support.

Commissioner Scott suggested that perhaps there should be a consideration of change of title to better reflect their function moving forward e.g. Common Land Management Committee. He suggested that this might lead to increased and improved participation and engagement.

The Grazing Manager also commented on Key Milestone 2d – “update and deliver a package of online training for grazings committees”. He indicated that this has moved from the focus from online to face to face training. He indicated that the Grazing Team have held 6 such sessions which were well attended, and the level of participation was encouraging.

There then followed a discussion on secondment, and Commissioner Kennedy enquired whether suitable individuals can be seconded into the Crofting Commission. The CEO confirmed that two individuals had been seconded from the Commission in the last year, but that we were unsuccessful in attracting a suitable secondee into the organisation. Commissioner Maciver suggested that perhaps the Commission is better at equipping our staff to be seconded, while that is less so, of other organisations.

Regulatory Casework Team

The CEO indicated that certain aspects were going well e.g. recruitment, training, and digital applications. He indicated that he is hopeful that these ongoing improvements will lead to improved scores in terms of regulatory casework turnaround times and cases discharged in the next 6 to 9 months.

Commissioner Scott expressed the view that it was disappointing that Milestone 3a “Next build of the Crofting Information System released, and upskilling delivered” was sitting at “red” given the work of the CIS Steering Group.

The Head of Digital made the point that the current CIS is operational and reliable, and that there had already been a significant cultural shift, with a product owner appointed and a second coder recruited. In addition, we are now in system testing and hope to deliver the new build by the end of December 2022. He indicated thereafter that he anticipated that future releases would be on a smaller timescale.

The CEO acknowledged that he had prioritised dealing with the backlog over the development of the CIS.

Commissioner Kennedy expressed doubt that CIS was the optimal solution for the Commission.

The Convener commented that with hindsight, system development is complex, but the Board had asked AZETS to do a review and Commissioner Scott had led a Steering Group. He noted that recent changes were improving both the governance of CIS changes and the staffing available for it.

Commissioner Scott added that the Steering Group had considered the issues carefully and believed that the Commission were in the least worst place by continuing with the current system. Other options would have been more painful. He also emphasised that CIS does work, and he considered that there are more important concerns for the Commission than this milestone sitting at red.

Commissioner Scott suggested and it was agreed that the 2021 CIS Options paper should be circulated to the new Board members.

Action point: The 2021 CIS options paper be circulated to new Board Members.

The CEO thanked the Board for detailed consideration of the KPI report.

9 STRATEGIC RISK REGISTER (SRR)

The CEO gave a brief overview of the SRR. He indicated while the KPI report looked at the detail, the SRR was a higher level overview. He indicated further that any comments from Commissioners on the structure and content of the SRR would be welcome.

10 OUTSTANDING CASEWORK UPDATE

This will be a Standing Item on Board Agendas until the situation with the backlog is less challenging. Head of Operations introduced the update.

She indicated that the level of discharged cases had been consistent in recent months and that this was higher than the discharge rate at the end of 2021, although she recognised that further progress had still to be made. She commented that applications were more numerous than notifications.

She commented that the main (but not the only) delay in processing cases was at the start of the process, as staff had to be trained up in the full range of regulatory functions. She did however point out from the table included in the report, that this initial delay had reduced significantly across a number of functions e.g. assignation, part croft decrofting and house site decrofting.

Commissioners Kennedy and Scott suggested that as well as staff training, could we look at reviewing processes, accepting that this may be a question of the Commission's risk appetite, as there had been no recent legislative changes.

Commissioner Rod Mackenzie asked if the forecasting model could be developed to demonstrate the resources required to clear the backlog and the anticipated timescales.

Commissioner Campbell questioned why it took so long for staff to be trained at administrative level. He was also concerned that we still had the same message about a 12-week delay and questioned why we have not started to refer to shorter lead in times. The Head of Operations responded that there were other factors in delays e.g. croft registrations, mapping issues etc.

The Convener offered the services of the Commissioners to input in any way to resolve these issues.

Commissioner Rod Mackenzie requested that the recommendation in the paper be changed from “That the Board note the issues surrounding the outstanding casework...” to “That the Board take cognisance of the issues surrounding the outstanding casework, in order to make clear that this is not a tick box exercise, but it raises issues that Commissioners may seek action upon”.

11 UPDATE ON DELOITTE REPORT

It was agreed that this would be considered in the closed session as the report has not yet been presented to Parliament.

12. REPORT ON MEETINGS WITH SPONSOR DIVISION

The Convener reminded Commissioners that any Commissioner can sit in and listen to Sponsor Meetings, and he would encourage them to do so. He confirmed that the content of the meetings had changed and rather than going point by point through operational matters, the meetings focus on policy and strategic matters.

The CEO then drew the Board’s attention to the fact that the second paragraph should be deleted from the paper, as this was incorrectly carried over from a previous paper on the subject.

The CEO then commented that the Bill group meetings had been progressing well; the SG is taking forward the more straightforward changes where consensus has been established.

There have also been separate meetings with the Commission and the SG about the Commission inputting its own ideas in terms of legislative changes. At these meetings, SG clarified that while there is nothing ruled out in terms of what the Commission can raise, we have to be mindful that SG are committed to delivering a crofting bill within this current Parliament and therefore it could cause difficulties if we make too many requests, or if we make requests for changes where a consensus has not been established.

Commissioner Scott commented that we should be up front with SG on the casework modelling set out in the Head of Operations paper, so there are no surprises. The CEO indicated that this has been done.

13 ANNUAL REVIEW GAELIC LANGUAGE PLAN

This paper was presented by Lynne MacMillan from the Commission’s Development Team who have taken responsibility for the Gaelic Language Plan during Jane Thomas’ period of secondment.

They have been tasked with updating the Commission Board and Bòrd na Gàidhlig by the end of August on progress with the Commission’s Gaelic Plan. It is an obligation on public bodies to produce a Gaelic Plan, and the Commission are now on the third edition of the plan which will run until 2025. Throughout the year reports are made on a quarterly basis to the Senior Management Team and on an annual basis to the Board.

The Commission received £1,100 from the GLAIF programme which has funded a training programme whereby 12 members of staff have accessed weekly gaelic training classes of two different levels of ability, as well as providing access to free online materials. All new Commissioners and new members of staff are made aware of this training opportunity. There are also twice-yearly Gaelic training awareness sessions available to all.

Gaelic has most recently been used on our social media posts. In addition, we have had voiceovers made for Commission videos.

Commissioners were happy to approve the Gaelic Language Plan update. Commissioners also wished it to be put on record that it was encouraging to see the number of staff participating in Gaelic language training.

14 DRAFT POLICY PLAN

The draft Policy Plan paper was prepared by the Commission solicitor and other officials who collated contributions from other members of staff and from Commissioners. He indicated that this is an important document as it sets out the strategic policy and the Commission's priorities for the next 5 years. It is a high-level plan required by statute, which sets out what the Commission considers crofting to be, and some of the major policies it will apply when carrying out its functions and making its decisions, including casework decisions.

Commission solicitor welcomed feedback from Commissions on (a) who should be consulted on the plan, in addition to the statutory consultees and (b) the content of the plan.

Consultation

Commissioner Scott indicated that as he was leaving the Commission, he did not consider that it was appropriate for him to comment on the content of the plan. However, in terms of consultation he was strongly of the view that the wider list of organisations included in the paper be included in the consultation.

Convener asked if Commissioners considered that there was any other body, other than those listed in the paper, who should be consulted on the Policy Plan.

Commissioner Maciver suggested including Assessors and individual colleges (as well as UHI) be included as consultees and this was agreed by the Board.

Reference was also made to certain woodland bodies being consulted. The Convener suggested that Commissioners send any suggestions for bodies to be included in the consultation process to be forwarded to the Commission solicitor, but noted the plan would be sent out the following week in order to comply with statutory timescales.

CONTENT

New Crofts

Commission Solicitor drew the meetings attention to the "*For Board discussion*" section of the draft Policy Plan on "New Crofts" which states "*Although a matter for the Scottish Ministers, the Commission would, in principle, support the extension of the designated areas in order that crofts could be created more widely across Scotland.*"

He asked for Commissioners' views on whether this should be included in the Policy Plan.

While this is outwith the control of the Commission, it was suggested that the Commission could consider issuing a statement supporting new croft creation beyond the traditional crofting areas.

Commissioner Kennedy expressed concern about including more areas to regulate when we are struggling to regulate the current crofting areas. These concerns were shared by both Commissioners Maciver and Rod Mackenzie.

The Convener pointed out that one of our statutory responsibilities is the development of crofting. He asked whether there was consensus that extending crofting wider across Scotland was something that the Commission would want to flag as a possibility, but not actively encourage at the current time.

Commissioner Scott commented that as this is a 5-year Policy Plan, if we are not prepared to support, in principle, an extension of the creation of new crofts into other areas, we could be seen to be marginalising crofting and further bringing about its demise, rather than seeing this as an opportunity for crofting to flourish more widely.

Commissioner Mairi Renwick Mackenzie also pointed out how long it can take to create new crofts in these designated areas and gave an example that the first croft was not created in Moray until 2022.

Commissioners agreed that any extension of crofting would have to come with additional funding.

Commissioner Kennedy indicated that he was not against new crofts, but that his experience was that the main driver for creating new crofts is in order to access housing grants.

Commissioner Scott was of the view that the crofting model fits in well with issues faced in other rural and remote areas in Scotland.

The CEO indicated that this would not be his top priority, but he considered that it would do no harm to put out a signal to say that crofting is relevant to the environment, to housing, to sustaining rural population retention and to communities both in the crofting areas and potentially, more generally across rural Scotland.

At the suggestion of Commissioner Scott, it was agreed by the Board to retain the reference to supporting new crofts but place it in the section related to Development.

Gaelic

It was agreed that a reference to supporting the Gaelic language should be included in the draft Policy Plan

Apportionment

Commissioner Kennedy expressed concern about the references in the apportionment section of the plan to "hope value" as a relevant consideration when considering whether to apportion land. He considered that the Commission should have a more balanced approach which recognises that land can be apportioned even when the land has "hope value" in relation to a potential future development.

The Convener was of the view that the wording in the plan contained that balance as recognising “hope value” as a factor in deciding on whether or not to apportion land, it also recognised that “...*the Commission will decide how much weight to give to such a consideration having regard to all the facts in the case.*”

Commissioner Kennedy considered that this should be expanded and made more specific in the plan wording to make clear that land which has “hope value” can still be apportioned.

Commissioner Campbell commented that while historically the common land would be assessed based on its grazings value, we know now that there are land uses with far higher economic value. There therefore needs to be a mechanism to measure the value of other uses.

The Commission Solicitor made the point that there was a difference between the “hope value” issue and the separate issue as to the quality of the land to be apportioned in comparison to the common grazings as a whole. All apportionments are subject to an SGRPID report, and the Reporting Officers are qualified to comment on land quality matters, though their comments mainly relate to the agricultural value of land.

In terms of the reference to “hope value”, this is based on two important Scottish Land Court cases that established that the Commission were required to take the wider shareholding interests on a common grazing into account as well as consulting with the grazings committee, along with other factors when considering apportionment applications. Options available to the Commission when considering applications to apportion land which has “hope value” is to apportion for a term, or to build in reviews at fixed intervals.

Commissioner Kennedy expressed concerns about the situation where apportionments which are termed or subject to a review are subsequently purchased by the crofter.

In terms of the policy on reviewing apportionments, the policy plan states “...*its policy in most cases is to have a review every 7 years*”. The Head of Regulatory Support referenced a recent Tier 3 meeting where the decision was made to review the apportionment at intervals of 10 and 20 years from the date of the apportionment Order. The view was taken by the Tier 3 Commissioners that as the crofter had 2 years to fence the apportionment, then 7 years from the date of the order was not adequate time to gain a return from any investment made, and reviews at 10 yearly intervals would be more appropriate.

The Commission solicitor advised that the plan should keep all options open to the Commission in relation to the consideration of apportionment applications.

Action Point: It was agreed that the Commission solicitor take account of the views expressed by Commissioners and reword the relevant sections of the Policy Plan in line with the comments made.

Action Point: To seek an extension to the upcoming crofting legislation to the effect that the new Board have a new Policy Plan in place within one year (rather than 6 months) from the date it takes office. This would give greater time to draft and agree a policy plan, to have a longer consultation period and to incorporate changes following the consultation.

15 ANNUAL NOTICE (CENSUS 2022)

The Convener asked whether Commissioners are content to agree with the questions set out in the paper which has been the subject of previous discussions, or whether there was any alternative or additional they wished to be added.

Commissioner Rod Mackenzie noted that there was a 78% return of the 2021 annual census forms, but only a 28% return in the crofting elections. Could we therefore ask:

- Were you eligible in the 2022 crofting elections?
- If yes, did you vote in the 2022 crofting elections? and
- If not, why?

In response to a question from the Head of Digital, Commissioner Rod Mackenzie confirmed that he was suggesting these questions go in the additional survey.

Commissioners supported this proposal.

Commissioner Maciver questioned why we are asking a crofter whether he has a grazing share, when that information should be available from our own records. Commissioner Scott pointed out that this was a gateway question that led to further questions on the use being made of the grazing share.

The Head of Digital also advised that we asked the question to check that the information held in our records is correct. One of the subsidiary benefits of the census information is to improve our data accuracy.

The Head of Digital indicated that SGRPID have requested that the Commission enter into a data sharing agreement to share information in relation to breaches of duty in the crofting census by tenants on the SG estates.

Action Point: It was agreed that a paper on data sharing census should be brought as an agenda item for discussion at a future Board meeting.

16 DIGITAL APPLICATIONS UPDATE

The Head of Digital indicated that he was not going to spend too much discussing the paper but that he is happy to take any questions on it.

He highlighted that part croft and whole croft decrofting by tenant digital applications were now live.

He turned to the question of why the online system is not being used much, but noted that his observations were based on very small samples. He spoke to 5 or 6 professional agents at the Black Isle show. Their feedback was that the digital applications were very good, but solicitors and agents are not using them as they do not reflect how they work. They indicated that they as agents don't complete the whole of the form, the part of the form which sets out why a crofter is decrofting or assigning etc is completed by the crofter and not the agent. They will also not consider duplicating that information by re-typing the form with the crofter's input.

This raises the question of whether we should allow a hybrid system where a PDF is scanned or completed digitally, that is then submitted digitally to the Commission. A number of agents (still small statistically) indicated that they would make use of the hybrid system.

Commissioner Gray questioned why we were putting the crofter down the solicitor/professional agent route. Commissioner Kennedy commented that the Land Court does not expect crofters to use solicitors.

Commissioner Scott suggested not encouraging the use of the hybrid system. Where there is cash involved, such as IACS applications, it was clear that people are able to do their applications digitally. We should be encouraging the use of the Digital System. Commissioner Campbell and the Convener both agreed.

At this point the Head of Digital referred to the next paper on “Application online progress status” offering customers a real time progress online for submitted applications and the benefits that could accrue even if submitted as a hybrid system.

Commissioner Scott indicated, however, from the table of benefits set out at page 3 of the paper that there are significant benefits to both the Commission and the customer from the Digital system that are not obtained from the Hybrid system.

Commissioner Rod Mackenzie focused on the smallness of the sample and considered that there are many rural consultants and advisers who would complete the whole of the form online. Other examples given were the Inland Revenue and SEPA who require online digital applications.

Commissioner Gray observed that having been an assessor for many years, supporting the completion of the digital form would be an ideal role of the assessors.

The view of the Board was that we should continue to encourage parties to go down the digital route, thereby accruing all the potential benefits listed in the paper to both the Commission and its customers. The Convener asked for a further paper to the next meeting, considering the pros and cons of stricter approaches.

17 APPLICATION AND ONLINE PROGRESS STATUS

The Head of Digital referred to the paper and asked if the Board wanted to progress this as a priority.

The Board indicated that they required further information relating to the costs and benefits compared to the resources required to implement this work, prior to making a decision on whether or not to progress this work as a priority

18 DRAFT RESPONSE TO LAND REFORM CONSULTATION

The paper was recognised as a good response to the consultation. The Board approved the draft response for submission as a final response.

19 DRAFT RESPONSE RE BIO DIVERSITY STRATEGY CONSULTATION

The paper was recognised as a good response to the consultation. The Board approved the draft response for submission as a final response.

20 PROPOSED BOARD MEETING DATES FOR 2023

The Board approved the proposed meeting dates for 2023, except that the proposed external visit in early October should be moved to the last week of September 2023.

21 DATES OF NEXT MEETINGS

The Board noted the next meeting dates are:

Monday 26 September 2022, Strategy Meeting, Great Glen House
Tuesday 27 September 2022, Board Meeting, Great Glen House

22 ANY URGENT BUSINESS

There was no urgent business. However, prior to closing the public part of the meeting, the Convener thanked and paid tribute to Commissioners Campbell and Scott for their contribution to the work of the Board and the wider Crofting Commission over several years.

The public part of the meeting was then closed.

23 EXCLUSION OF THE PRESS AND PUBLIC

The meeting was closed at 1445hrs with thanks for everyone's contributions.