



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***27 SEPTEMBER 2022***

**CROFTING COMMISSION MEETING  
ST KILDA, GREAT GLEN HOUSE  
27 SEPTEMBER 2022 AT 0930 hrs**

**AGENDA**

<b>1 APOLOGIES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>2 DECLARATION OF INTERESTS</b>	<i>Oral</i>	<i>Standing Item</i>
<b>3 MINUTES FROM 18 AUGUST 2022 (<i>already published</i>)</b>	<i>Minutes</i>	<i>For info</i>
<b>4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (<i>of 18 August 2022</i>)</b>	<i>Paper</i>	<i>For info</i>
<b>5 MATTERS ARISING FROM PREVIOUS MINUTES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>6 DRAFT POLICY PLAN</b>	<i>Paper</i>	<i>For approval</i>
<b>7 UPDATE ON STAFF RECRUITMENT</b>	<i>Paper</i>	<i>For info</i>
<b>8 OUTSTANDING CASEWORK UPDATE</b>	<i>Paper</i>	<i>For info</i>
<b>9 REDUCING THE COMMISSION'S CARBON EMISSIONS</b>	<i>Paper</i>	<i>For discussion</i>
<b>10 DEVELOPMENT TEAM</b>		
<i>(a) Development Team – Dealing with underused crofts</i>	<i>Paper</i>	<i>For discussion</i>
<i>(b) Assessors Network</i>	<i>Paper</i>	<i>For discussion</i>
<b>11 ONLINE APPLICATION SYSTEM</b>	<i>Paper</i>	<i>For discussion</i>
<del><b>12 FURTHER DELEGATION OF DECISION MAKING</b></del>	<del><i>Paper</i></del>	<del><i>For approval</i></del>
<i>Please note this paper will now be considered at the November Board Meeting.</i>		
<b>13 CENSUS DATA SHARING</b>	<i>Paper</i>	<i>For discussion</i>
<b>14 CORPORATE PLAN 2023-2028</b>	<i>Paper</i>	<i>For discussion</i>
<b>15 UPDATE ON MEETINGS WITH SPONSOR DIVISION</b>	<i>Paper</i>	<i>Standing Item</i>
<b>16 DATES OF NEXT MEETINGS</b>		
Strategy – Wednesday 26 October 2022 – St Kilda Board – Wednesday 30 November 2022 – St Kilda		
<b>17 ANY URGENT BUSINESS</b>		
<b>18 EXCLUSION OF THE PRESS AND PUBLIC</b>		

# APOLOGIES – ORAL

## **DECLARATIONS OF INTEREST – ORAL**

## 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.



## CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

### Review of Action Points from 18 August 2022

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE
1	For the AFC to undertake an overall review of the Strategic Risk Register and the KPI Report.	Neil	Before November AFC
2	To seek a change in legislation to exclude the AFC from the statutory provision that the Convener chairs all Commission meetings that he attends.	Neil	Done – SG have been notified
3	The 2021 CIS options paper be circulated to new Board Members.	Aaron	Done
4	Commission solicitor to take account of the views expressed by Commissioners and reword the relevant sections of the Policy Plan in line with the comments made.	David	Done
5	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.	David	Done – SG have been notified
6	Paper on data sharing census be brought as an agenda item for discussion at a future Board meeting.	Anne	Done

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

# CROFTING COMMISSION MEETING

## 27 September 2022

Report by the Chief Executive

### Revised draft of Policy Plan

#### SUMMARY

This paper invites Commissioners to consider the changes that have been inserted into the draft Policy Plan in the light of consultation responses; and to approve a version of the plan to be submitted to the Scottish Government.

#### BACKGROUND

Following the Board's decision at its August meeting, the Commission circulated its draft Policy Plan to the statutory consultees and several other consultees. Eight responses have been received, mostly welcoming the draft Plan, and in some cases making suggestions for changes to the text, either specifically or in general terms.

Responses were received from the Scottish Crofting Federation, NatureScot, Argyll & Bute Council, Bòrd na Gàidhlig, the Cairngorms National Park Authority, the Scottish Land Court, the Law Society of Scotland and an assessor.

Officials have considered these responses and have added into the draft a number of track changes, with comments to show which organisation prompted which insert.

Impact:	Comments
Financial	N/A
Legal/Political	It is a legal requirement to consult on and publish a Policy Plan by September 2022.
HR/staff resources	The Policy Plan will set the strategic context for the deployment of Commission staff over the next 5 years.

#### RECOMMENDATION

The Board is invited to consider each of the track changes and to decide which ones to incorporate into the Policy Plan; and then to approve the Plan for submission to the Scottish Government. In accordance with the 1993 Act, it will then be for the Scottish Ministers to decide whether to accept the plan or to request changes to it.

Date 22 September 2022

Author Bill Barron, CEO

## **CROFTING COMMISSION POLICY PLAN 2022**

### **Crofting Commission – our vision**

The Crofting Commission is an executive non-departmental public body that has a legal identity that is distinct from government, but carries out administrative, regulatory and development functions relating to crofting on behalf of the Scottish Government. The Crofting Commission also provides specialist advice on crofting to the Scottish Ministers and keeps ministers advised on all matters relating to crofts and crofting. The Crofting Commission operates within a framework set by the Scottish Ministers and develops its own policies within that context. The Commission is a creature of statute, which means that its powers and responsibilities are set out in legislation. It has the power to regulate only on matters that are specifically provided for in legislation.

The Commission's vision for crofting is one that balances tradition and innovation. The Commission regulates crofting in a way that balances the rights of existing crofters<sup>1</sup>, the interests of crofting communities and the aspirations of individuals who may wish to take up crofting. The Commission recognises the importance of having diversity amongst crofters and new entrants to crofting as well as the importance of encouraging a diverse range of land uses that encompass local food production, stewardship of the land to enhance biodiversity and sequester carbon, community enterprise and local economic activity. Crofters, like many other land managers and users, will be affected by climate change and the increasing loss of biodiversity, but crofting can also offer some solutions to increase carbon sequestration and enhance biodiversity within the crofting areas of the Highlands and Islands. The Commission also recognises that crofts and common grazings comprise some of the most remote parts of the Scottish highlands and islands and some of the most challenging land to cultivate. It is the Commission's view that the diversity of land types within crofting tenure also presents opportunities to use the land in different ways that combine innovation and tradition.

It is the Commission's view that crofting, as a regulated system of land tenure of smallholdings and common grazing land, contributes to the retention of rural population and helps to sustain local and rural economies, and can deliver substantial wider environmental benefits where the land is managed sustainably. Crofting provides important opportunities for both individual and communal land management. It also provides a real and enduring connection between people and the land. It is the Commission's view that a well-regulated crofting system is central to rural life, the rural economy and the rural environment across large parts of the Scottish highlands and islands. The Commission also recognises the substantial challenges that climate change, loss of biodiversity and soil erosion (and, in some areas, coastal erosion) pose to croft land and common grazings, risks that will become more rather than less severe over time. It is also the Commission's view that crofting can provide some solutions on a national scale to loss of biodiversity.

Crofting legislation transformed land tenure within the Highlands and Islands in the 1880s by giving rights to crofters, who had been vulnerable to removal from their holdings by their landlord. The Crofters Holdings (Scotland) Act 1886 provided crofters with substantial security of tenure and a right to a fair rent. Although the challenges to crofting in 2022 are very different from the land struggles of the 1880s, crofting remains a radical system of land tenure that provides crofters with important rights and responsibilities with regard to the land they croft. In 2022 crofting offers opportunities for new entrants to gain entry into the crofting system. The role of the Crofting Commission as a regulator is to oversee and balance the interests and longer-term future of the wider crofting community and the interests of individual crofters.

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<sup>1</sup> Throughout this Policy Plan, 'crofters' includes both tenant crofters and owner-occupier crofters, unless the context implies otherwise.

In essence, crofting legislation provides protection for both the crofter and also for the croft and its associated pertinents as an integral unit within the crofting system as a whole. The 2010 Act underlines the importance of regulation of all crofts, whether tenanted or owner-occupied, for the benefit of crofting.

The Commission recognises the importance of the Gaelic language within many crofting communities. The Commission also recognises the extent to which crofting and in particular the communities based around crofting helped the Gaelic language to survive as a living language, but it also recognises the challenges the Gaelic language faces as a living language in the present day. The Commission believes that fair regulation of crofting in the interests of the wider crofting community will help these communities to continue to use the Gaelic language. The Commission is required to have a Gaelic-speaking Commissioner and will endeavour to ensure that it has at least one, and preferably more, members of staff who are fluent in the Gaelic language. [The Commission will consider the commitments made in this Gaelic Language Plan and ensure that the impacts on Gaelic will be in line with the National Gaelic Language Plan.](#)

Commented [DF1]: Bòrd na Gàidhlig

In accordance with this vision, the Crofting Commission will adopt the following policy principles as it seeks to play its role within the provisions of legislation and in fulfilment of the Scottish Government's policy for crofting.

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## Policy principles

### Benefits of a regulated crofting system

The Scottish government has set out its vision for crofting policy its National Development Plan for Crofting. As well as delivering continuous improvement and efficiency to Commission processes (see below), the Commission will be responsive to crofters and the needs of crofting communities. A well-regulated system:

- Contributes to strong, resilient and supportive crofting communities where people take responsibility for their own decisions with regard to land management and how this affects others
- Encourages the conservation of the natural environment and enhancement of biodiversity as well as distinctive crofting landscapes, where crofters and crofting communities are stewards who will sustain these benefits for future generations, with regard where appropriate to the Nature Conservation (Scotland) Act 2004 [and the Scottish Biodiversity Strategy 2045](#).
- Contributes to Scottish government (and if relevant UK government) targets for reducing carbon emissions
- Contributes to sustaining traditional crofting knowledge over generations and sharing knowledge and information about managing the land in different ways
- Underpins a small-scale rural business and land tenure system that supports the sustainable use of croft land and land subject to common grazing rights and prevents large scale amalgamation of landholdings, such as happened outwith the crofting counties;
- Ensures that crofters reside on or close to their crofts and so assists population retention within the crofting counties and designated crofting areas, with the associated social and economic impact of a working, rural population on the provision of community services such as healthcare and schools
- Retains crofts within the crofting system in order that these are available to existing crofters and new entrants to crofting, and so supporting population retention and economic activity within the Highlands and Islands
- Takes action against crofters who do not use their crofts (whether for cultivation or purposeful uses, including conservation) in order to reduce the amount of neglected land, and also against crofters who do not reside on or within 32km of their croft
- Provides opportunities for local food production and a range of other land uses.

Commented [DF2]: Cairngorms National Park Authority

The Commission also has an important role in regulating land subject to common grazing rights. The benefits of effective regulation of common land include:

- Encouraging the benefits derived from shared management of common grazings
- Strengthening crofting townships and connections between crofters, and encouraging best practices on common grazings
- Encouraging management of common assets
- Supporting crofters who wish to engage in crofter forestry and woodland creation projects and making decisions where crofters wish to use a common land for purposes other than grazing such as affordable housing, [subject to relevant planning regulations](#).

Commented [DF3]: Argyll & Bute Council

In order to achieve these benefits, it is the policy of the Commission to regulate fairly, consistently and efficiently.

## Crofting and the public interest

The Crofting Commission recognises that the public has an interest in a regulated crofting system. The regulated system and crofting financial assistance is paid for by the general public, as are land-based subsidies such as LFASS that provide an important contribution to the sustainability of crofting.

In terms of the legislation applying to crofting, the Commission must consider the public interest when giving consents and approvals and when consenting to the creation of new crofts and common grazings. Legislation also provides that any “purposeful use” of a croft, which is a use that is not cultivation, must not adversely affect the public interest. When considering whether to remove land from crofting tenure by decrofting, the Commission must assess whether it is in the public interest to do so.

The Commission’s policy in this area is that [it](#) recognises the public interest in:

- sustaining a healthy rural land-based population within crofting areas
- encouraging local food production on croft land and common grazings
- creating opportunities for new entrants to crofting from diverse backgrounds
- halting the loss of biodiversity and nature-rich habitats on croft land and common grazings
- reducing emissions from croft land and common grazings and so contributing to national net zero targets
- developing new ways of using croft land sustainably
- strengthening local rural economies that are underpinned by the local crofting community
- retaining land within crofting tenure for future generations of crofters;
- [implementing the principles set out in Scotland’s Land Rights and Responsibilities Statement](#)

Commented [DF4]: Scottish Land Commission

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When assessing applications that involve an assessment of the public interest, the Commission will have regard to the above matters and to any other matter or matters it considers to be in the public interest.

As a statutory regulator, it is the role of the Commission to balance the public interest against other interests, such as those of the estate and the crofting community in the locality.

## Policy on promoting the interests of crofting and collaborating with others

The Commission recognises that it has a particular responsibility to promote the interests of crofting and believes that this can be achieved in a variety of ways. The Commission will work with partners and stakeholders, such as HIE, local authorities and others involved with the sustainable development of crofting. Through such collaboration, the Commission can:

- Raise awareness of the benefits of crofting and the crofting system
- Promote the concept that, to deliver the widest range of benefits, crofting must be both properly regulated as well as supported and developed
- Promote successful working relationships between crofters and landlords and, where appropriate, work with community landlords, public landlords and private landlords to promote the interests of crofting
- Seek to influence a planning authority’s Local Development Plans in a way that is beneficial for the [sustainable future of the](#) crofting system and seeks to protect crofting from development that is damaging to crofting interests
- Strengthen its own effectiveness.

Commented [DF5]: Argyll & Bute Council

The Commission will keep crofting matters under review and advise the Scottish Ministers on crofting matters and conditions. [This could include, where appropriate, commissioning specialist research on matters relevant and important to the future of crofting.](#)

Commented [DF6]: SCF considers that commissioning of specialist research would be welcome.

### **Policy on croft re-organisation**

The Commission has the statutory power to re-organise crofting townships. The Commission recognises that reorganisation schemes are resource intensive and are usually appropriate only where there is a large degree of agreement within the crofting township as to how it should be re-organised. In cases where there is a real need for re-organisation and a large degree of consensus within the relevant crofting community, the Commission's policy is to consider carrying out a re-organisation scheme subject to having sufficient resources to do so.

### **Policy on levels of service**

By far the largest of the Commission's teams is the casework team, responsible for processing applications by crofters and their agents, for consent for instance to assign or sub-let a croft and for statutory decrofting.

The casework officers are also responsible for responding to and recording notifications by crofters and their agents and executors for changes to the Register of Crofts such as in connection with transfers of croft tenancies under testate and intestate succession, and changes to ownership. However, the Commission takes no decisions in respect of such notifications.

The Commission is fully committed to making sure that our decisions on all applications are in accordance with the legislation and fair to all parties. In addition, we aspire to significantly improve the speed of processing for both applications and notifications, both by increasing the number of staff responding to casework, and by improving the processes by which applications are handled. For example, the delegation of routine decision making to officials and more recently the development of an online application system are both substantial enhancements to the efficiency of our work.

We are committed to continual improvement of levels of service to applicants that have an application in progress and to those seeking information. We recognise that Commission processes can appear to be complex and we will seek to provide helpful and accessible information from a range of sources, in particular on our website and in response to direct enquiries. [We are also committed to maintaining levels of service that we have committed to in our Gaelic Language Plan, which includes communicating in Gaelic with callers, facilitating communications in Gaelic with individuals and organisations where Gaelic is the preferred language and welcoming completion of application forms in Gaelic.](#)

Commented [DF7]: Bòrd na Gàidhlig

### **Policy on registration and mapping of crofts and common grazings**

The Commission's role in registration of crofts is set out in statute, and it is essentially a supportive role. The principal responsibilities for registering crofts lie with crofters, their neighbours who are informed of proposed registrations and have a right to object, and the Registers of Scotland (RoS). The Commission has limited powers to influence this process, but we do check proposed croft maps against such information as is held by ourselves, and can delay the process of a registration if there is evidence of an inaccuracy. The Commission are also required to check information in the registration application and supporting documentation against the information relating to the croft in the Register of Crofts, and to seek further information in order to resolve any discrepancies prior to forwarding the registration application to RoS. However, we are not empowered, and nor would we have the means, to make sure that all croft maps are 'correct'.

The legislation gives the Crofting Commission a major role in the registration of common grazings, and we aspire to continue the process of mapping and registering common grazings when other priorities and resources permit.



## **Policies on decrofting and retaining land within crofting tenure**

The legislation and a body of case law developed by the Scottish Land Court sets out the basis on which the Crofting Commission can consider granting a decrofting direction. The Commission is required to assess each reasonable purpose application against the following legislative factors: the good of the croft, the crofting community, the estate (where relevant) and the public interest, and must be satisfied that the extent applied for is not excessive. The legislation also sets out additional factors to which the Commission may have regard, including the sustainability of crofting and the crofting community in the locality, the landscape and environment of the locality and the social and cultural benefits associated with crofting. The Commission cannot adopt any policies with regard to decrofting that are inconsistent with the legislation and case law. There are statutory factors to which the Commission must have regard in each and every application for decrofting. The Commission is also required to carry out a careful balancing exercise and assess the individual facts of the case in relation to the various factors set out in the legislation.

The Commission's approach to decrofting is that its decisions with regard to decrofting applications are determined by the legislation having regard to the individual facts of the case, but will be informed by the Commission's policy position that there is value in retaining croft land within crofting tenure. The Commission's policy position in this regard is informed by the importance of providing opportunities for both existing crofters and future generations of crofters to continue crofting croft land. It is also likely that actively used croft land will continue to attract financial assistance in future years for the various social, economic and environmental benefits associated with crofting, and such assistance will be important for the future of crofting.

The Commission aims to protect land from being lost to crofting. A decrofting direction irrevocably removes the land subject to the application from crofting tenure. The Commission takes a long-term view when determining decrofting applications and will exercise its discretion to consider, amongst other factors, the advantages of retaining the croft (or part thereof) as part of the pool of croft land in the locality. It is also the Commission's policy that it will not normally decroft any grazings share held by an applicant as part of his or her tenancy or which the applicant has included in a disposition.

## **Policy on croft residency and use of crofts**

The Crofting Commission will work by both statutory and non-statutory means to increase croft residency and to increase the amount of croft land that is cultivated or put to a purposeful use, [but recognises that particular importance should be given in this policy plan to its statutory duty enforcement powers](#). The Commission's policies on residency and land use apply equally to tenant crofters and owner-occupier crofters. It is the Commission's view that a healthy crofting system consists of crofters who are resident within their crofting communities and are actively using and managing their crofts and common grazings. It is the Commission's view that resident crofters within the crofting community will make these communities more resilient and better able to retain rural population as well as create and generate economic activity within rural, and sometimes remote, populations.

The Commission recognises that much croft land and/or common grazing land is currently neglected because some crofters are failing to comply with their crofting duties. The Commission acknowledges that non-residency and neglect has the potential to undermine the credibility of the crofting system. The policy of the Crofting Commission from 2014 has been to encourage greater voluntary compliance with crofting duties. The development team will reinforce this concept by raising awareness of the duties requirements and the negative impacts on communities and croft land through non residency and underuse of the land. The current policy of the Commission is that this work will continue over the next five years, but Commission policy will also recognise the need for crofting duties enforcement action on non-residency and failure to use the land. Although the Commission's crofting duties enforcement team is small in comparison to the size of the task, the Commission has

Commented [DF8]: SCF

recently invested additional resources in it, and our policy is to invest further in crofting duties enforcement over the next five years. The Commission will take targeted action on crofting duties enforcement to increase croft residency and active land use. Some of this action will be as a result of reports or information received from grazings committees, assessors and members of the relevant crofting community. The Commission relies upon receiving information from these persons before it is able to investigate a case of potential non-compliance with a crofting duty or duties. Some of the duty enforcement action will be taken where the Commission is aware of potential non-compliance with crofting duties, for instance as a result of an annual notice return or a failure to return the annual notice.

We have the right to inspect croft land ourselves, or employ a partner agency to do this, as part of gathering evidence about the use to which a croft is being put.

The Commission will also work with landlords to ensure that vacant crofts are let to individuals who will comply with the statutory duties relating to residence and land use. Where the landlord of a vacant croft fails to submit a letting application or a proposal to let the croft, the Commission will take on the process of advertising and letting the vacant croft. The Commission will promote the concept of “living succession” as a measure to reduce the number of intestate situations and unresolved successions.

The Commission will seek to ensure that long-standing unresolved successions are resolved in the first instance by the executor of the deceased crofter or the landlord, but failing that the Commission may use its statutory powers to terminate the tenancy and declare the croft vacant, to enable the tenancy to be let to an individual who will comply with the statutory duties relating to residence and land use.

#### **Consent to be absent**

When considering applications by crofters for consent to be absent, the Commission recognises that there can be legitimate reasons why a crofter is unable to be ordinarily resident on a croft for a period of time. The Commission would have to be satisfied that there is a good reason to be absent, and the period of time approved for any absence would depend on the circumstances of the individual application. The Commission will need to be satisfied that the other crofting duties (besides the residency duty) will be complied with for the duration of the consent to be absent. The Commission’s policy here is that it will balance the interests of the individual crofter who is applying for consent to be absent with the interests of the wider crofting community and the desirability of retaining an active population within remote rural communities and crofting communities where most of the crofters reside on or close to their crofts (and not more than 32 kilometres away from them). It may also consider the contribution that the absent crofter makes to his or her crofting community, albeit that the crofter is unable for a good reason not to live on or close to the croft.

#### **Policy on new entrants, tenancy termination and compulsory letting**

Aligned to the Commission’s work on crofting duties is the Commission’s policy that crofting and the crofting system should create new opportunities for people who wish to become crofters or owner-occupier crofters for the first time. The Commission’s view is that crofting should be an open system. It is the policy of the Commission that crofting should be an inclusive system that includes people regardless of their background, sex, disability, sexual orientation, age or ethnicity. The Commission’s policy in this area will be similar to its policy on crofting duties, and it will encourage voluntary action whilst also not hesitating to use its statutory powers. The Commission’s development team will work to encourage non-resident and/or non-active crofters to assign or sell their crofts to someone who will be resident and will use the croft.

At the same time, the Commission's crofting duties enforcement team will take targeted action (as set out above at paragraph XX) to work with non-resident and/or non-active crofters and require them, in cases of non-compliance, to take steps to ensure that they are compliant with crofting duties. If the crofter is unable to take steps to ensure compliance with the relevant crofting duty or duties, the Commission will proceed to terminate the crofter's tenancy or require the owner-occupier crofter to let the croft, unless there is a good reason not to. Such action will result in new croft tenancies becoming available for letting to new entrants to crofting as well as to existing crofters. Such action also results in the owner-occupier crofter losing his or her owner-occupier status and his or her crofting rights.

Where an application is made for consent to sub-let, assign or let a croft, the Commission will not limit consideration to the suitability of the proposed sub-tenant, assignee or tenant. The Commission will give full consideration to the bigger picture and must apply subparagraphs (b) to (e) of section 58A(7) of the 1993 Act. This includes, but is not limited to, the interests of the crofting community and its sustainable development, and could include an assessment of what else might be done with the croft and who else could be the tenant of the croft. The Commission will also consider any such application on its individual merits. Whilst it has no power to direct any tenant or landlord to apply for consent to sub-let, assign or let a croft to any particular individual, an applicant tenant cannot assume that his or her choice of sub-tenant, assignee or tenant will be accepted in all cases, even if the proposed sub-tenant, assignee or tenant would appear to meet the residency and land use duties.

#### Policy on land use

The legislation enables crofters to carry out many different forms of cultivation, which includes livestock production as well as growing of vegetables, fruits, keeping of bees and planting of trees. The legislation also permits crofters to carry out purposeful uses that are not cultivation [and subject to any planning regulations](#) (provided in the case of tenant crofters that they have the consent of their landlord). These uses could include, for instance, the use of part of a croft for holiday-letting accommodation, renewable energy projects or a local bakery or farm shop or a facility associated with a leisure activity.. All of the croft must be used for either the purposeful use or cultivation or a mixture of the two Decisions as to how the land will be used lie with the crofter or, in the case of common grazings, the grazings committees and the crofters sharing in the common grazing subject to applying for any statutory approvals (such as section 50B of the Crofters (Scotland) Act 1993).

Commented [DF9]: Argyll & Bute Council

It is the Commission's policy to work through its development team with crofters and crofting communities to encourage a diverse range of land uses which can deliver social, economic and environmental benefits within local crofting communities and populations, but decisions as to how the land will be used lie with the crofter (or, in the case of common grazings, the grazings committees and the crofters sharing in the common grazing). Legislation also permits crofters to create new woodland and to enable regeneration of existing woodland, either by themselves or by way of a joint venture with their landlord. [The Commission also recognises the importance of grazing, livestock and grassland management as some crofts include species rich grassland or habitats of botanic interest, which are maintained through grazing by crofters.](#)

Commented [DF10]: NatureScot

#### Policy on apportionments

The legislation and case law from the Scottish Land Court set out the basis on which the Commission considers apportioning an area of common grazing for the exclusive use of a crofter or township. In assessing apportionment applications, the Commission will consider the application on its merits and exercise its discretion to balance the interests of the applicant in having the land apportioned and the interests of the shareholders in the common grazings, and will consider any comments from the grazings committee as part of its statutory consultation, as well as any comments from shareholders and the landlord/ owner of the common grazings.

The Commission recognises that there can be differing views around issues to do with the value of land, and that the value of land cannot be measured solely from an agricultural point of view. However, the Commission has no specialist skills in land valuation and will not approach apportionment applications from the basis of a land valuation. Where the land sought to be apportioned is considered to have "hope value" and there is a reasonable prospect of development, such "hope value" is a relevant consideration and the Commission will decide how much weight to give to such a consideration having regard to all the facts of the case. The Commission could decide, for example, to apportion land where there is an element of "hope value", but decide to make the apportionment order subject to review at fixed intervals or for a fixed period time. It is the Commission's view that where a development takes place on a common grazings involving the landlord and third parties, all the shareholders should in principle share in terms of their souming rights in the value of any land that is resumed or subject to a scheme for development. This will be a factor among others in deciding whether or not to apportion land.

When apportioning land, the options available to the Commission include apportioning for a set period of time and/or subject to review at fixed intervals. Where the Commission decides that it is appropriate to apportion land subject to review at fixed intervals, its policy in most cases is to have a review every ten and twenty years. It will however take account of the circumstances of each application. The Commission's underlying policy in this area is that where the crofter has ceased to use the apportionment or is not utilising it as intended, or where there are concerns about the use of the apportionment, the possibility of restoring the crofters' common grazing rights over the land should be considered.

The Commission will publish more detailed guidance to applicants of apportionments which will be available on its website, but will not form part of this Policy Plan. This guidance will set out the factors that any applicant should take into account if he or she wishes to maximise the likelihood that the application will be approved. All applications will however be assessed on their merits and having regard to the relevant facts and circumstances.

## Policy on crofting development and support

Developing crofting is a key element of Commission activity which will underpin many of the other aspects of the Commission's remit.

Downward pressure on profitability of agricultural activity means action is required to ensure crofters are aware of and enabled to benefit from financial returns of alternative opportunities utilising their available assets, land and people. The Commission will develop a network of support for crofters and grazings committees identifying sources of financial support and technical guidance. This will be made available on the Commission web site by the Commission's development officers. The officers will also link with named staff in the organisations and agencies providing support and with the panel of assessors and grazings committees, to promote opportunities for development.

A programme of education to ensure all crofters are aware of their rights, opportunities, obligations and liabilities will be instigated and delivered through the network described previously.

To assist crofters with the above, information will be provided by way of regular reminders and presentation of options through the network and website keeping crofters informed as their circumstances change.

Notably the Commission is aware of the increasing numbers of ageing crofters and will provide specific information on their options for dealing with succession regarding crofting assets.

The Commission is also aware of the pressures and difficulties some crofters have as tenants and owner occupiers in complying with their duties and will provide guidance on options to address these matters. Aspects of community-based working along with temporary or permanent transfer of duties responsibility will be highlighted.

The Commission will consult and advise Scottish Government and other organisations to ensure their support systems are adapted where necessary to suit individual crofters and grazings committees.

The Commission will consider and advise on the possibility of introducing a Croft Availability Network to assist new entrants into crofting and existing crofters to leave.

All the development work of the Commission will include consideration of environmental and climate impacts.

[The Commission considers that it is important that there is adequate financial support to the sustainability and future of crofting.](#)

Commented [DF11]: SCF

## Crofting Development and New Crofts

The Commission has no statutory power to create new crofts in the absence of an application from the owner of land. The Commission will, where appropriate, work with landowners and others who might wish to create new crofts and promote the creation of suitable new crofts. Where the creation of a new croft is in the public interest and the interests of the local crofting community and where the creation of a new croft could bring social and economic benefits, the Commission will look favourably on such applications. 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. [The Commission also recognises the Scottish Ministers' objective to diversify the pattern of land ownership in Scotland and to implement the Land Rights and Responsibilities principles. In this context, the Commission considers that crofting offers an established means of diversifying ownership and control of land \(including tenanted land\) that complements the wider land reform programme.](#)

Commented [DF12]: Scottish Land Commission

It is also the Commission's policy to collaborate with other agencies and bodies and crofters, so far as its resources permit, to encourage sustainable land uses which enhance biodiversity and increase carbon sequestration (for instance, through restoration of peat land). Crofting affects approximately three-quarters of a million hectares of land across the Scottish highlands and islands.

### Policy on grazings

The Commission recognises the significant role played by the voluntary Grazings Committees and the scale of the crofting asset held under common grazing and will seek to increase the number of committees in office. Through these committees the Commission will encourage greater utilisation of the land and opportunities it presents, particularly in the area of climate change mitigation [and nature regeneration](#).

Commented [DF13]: SCF would like the plan to state how the Commission will encourage an increase in the number of grazings committees.

Commented [DF14]: NatureScot

The Commission recognise the importance of having up to date and meaningful regulations and records and will encourage Clerks, Committees and shareholders to review their existing documents. Advice and information will be made available on the Commission website and through the Grazings and Development network.

The Commission will continue to provide training for committees and their clerks in the effective regulation and financial administration of the common grazings. [The Commission will consider appointing grazings constables to manage common grazings where suitable and appropriate to do so.](#)

Commented [DF15]: SCF

### Policy on sub-letting and short-term leases

Although the Commission will consider every sub-letting or short lease application on its merits, the Commission generally sees sub-letting or short-term leases as a shorter-term and interim measure rather than a longer-term solution to a situation where a crofter or owner-occupier crofter is unable for an indeterminate period of time to be ordinarily resident and/or cultivate the croft or put it to a purposeful use. Crofters and owner-occupier crofters should not see sub-letting or short leases as a long-term solution to non-residency or a failure to use their crofts.

### Policy on applications for consent or approval – sub-letting, assignation and letting

Where an application is made for consent to sub-let, assign or let a croft, the Commission will not consider only the suitability of the proposed sub-tenant, assignee or tenant as the case may be. The Commission will give full consideration to the bigger picture and must apply subparagraphs (b) to (e) of section 58A(7) of the 1993 Act. This includes, but is not limited to, the interests of the crofting community and its sustainable development, and could include an assessment of what else might be done with the crofts and who else could be the tenant of the croft. The Commission will also consider any such application on its individual merits. Whilst it has no power to direct any tenant or landlord to apply for consent to sub-let, assign or let a croft to any particular individual, an applicant tenant cannot assume that his or her choice of sub-tenant, assignee or tenant will be accepted, even if the proposed sub-tenant, assignee or tenant would appear to meet the residency and land use duties.

### Policy on planning

As a statutory consultee, the Crofting Commission has a right to be consulted on Planning Authorities' draft Local Development Plans, and on individual planning applications on land subject to crofting tenure. We regularly make comments on Local Development Plans, representing the interests of the crofting communities in general terms, and we will work with Planning Authorities to acquire a mutual understanding of the needs of remote communities.

Conversely, we will not often 'take sides' in relation to an individual planning application, preferring to leave the representations to the parties directly involved, and the decision to the Planning Authority. This seems more appropriate, given that we have our own statutory regulatory role, and may indeed need to take our own decision on a related decrofting application. However, as resources permit, we will sometimes guide Planning Authorities on how to weigh up any crofting-related issues that are at the heart of a contested planning application.

That guidance will be based on the issues such as:

- Location of any development site within a croft.
- Impact of the proposed development.
- Impact of any proposed access to the proposed development on the croft.
- And the operational need for the proposed development.

In most cases, the Commission's comments will be that any proposed development is sited to use the least possible amount of productive in bye land. [The Commission will consider opposing development where it does not support the interests of crofting. The Commission will be robust in protecting croft land from loss to development.](#)

Commented [DF16]: scf

#### **Policy on law reform**

It is the Commission's view that the existing legislation applying to crofting brings many benefits and statutory protections for crofters, owner-occupier crofters, crofting communities and the wider public. However, there is a generally held view that the existing legislation needs to be updated, in some respects urgently, and various anomalies need to be removed from the legislation. To this end, it is the Commission's policy to collaborate with its sponsor division within Scottish government and with stakeholders to assist with law reform and legislative proposals and to keep its sponsor division properly advised on crofting matters, including legal matters relating to crofts and crofting. The Commission would like to see future legislation assisting the further development and growth of crofting and will assist the Scottish Government in assessing whether the Commission requires enhanced legal powers to assist with this.

#### **Policy on access to croft land**

When considering applications that could result in croft land becoming separated from the nearest adopted public road from which access can reasonably be taken, the Commission will wish to ensure that the croft land or, as the case may be, common grazings can be accessed directly from the public road by agricultural vehicles or other machinery required for the cultivation and maintenance of the croft or in connection with the common grazings. The Commission will scrutinise applications where it is proposed that an existing access from the public road will no longer be available to croft land or common grazings or where a new access is proposed from a public road that may not be suitable. Applications should ensure that any consent or approval sought would not result in croft land or common grazings being cut off from a public road. Failure to do so is likely to result in an application being refused.

### **Policy on division**

It is the Commission's policy not generally to allow the fragmentation of croft holdings into smaller units where such fragmentation would result in a holding of a size that would be unlikely to attract financial assistance, grant or subsidy (where the original holding would be of a size that it could attract such support). Reference should be made to the relevant rules on eligibility for financial assistance and the minimum amount of land required for a crofter or farmer to be eligible to apply for subsidy. The Commission recognises that fragmentation of crofts can result in holdings that are of insufficient size to afford any incoming croft tenant with a range of realistic options as to how to use the land. It is the Commission's policy to prevent this from happening.

### **Policy on resumption applications and schemes for development**

The Scottish Land Court has responsibility for dealing with resumption and scheme for development applications, but the Crofting Commission is entitled to object to, or support, such an application. The policy of the Commission is that it will consider objecting to such applications where, for instance, it considers that the area applied for is unreasonable in relation to the proposed purpose or where it considers that it is unnecessary to remove the area of land applied for, or part of it, from crofting tenure.

DRAFT



# CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

## Update on Staff Recruitment

### SUMMARY

**This paper invites Commissioners to note the progress with recruitment of staff during the current financial year.**

### BACKGROUND

In December 2021, in the light of the Glen Shuraig report on the Commission's staffing needs, the Scottish Government (SG) Draft Budget included an increased Commission budget of £3.9m. However, this funding was not guaranteed. Instead, the Commission was invited to submit a business case outlining how it would use the money and the benefits that would be achieved. After discussions between the Board and management, a business case was submitted to the SG in February, and on 5 April 2022, the SG confirmed that they had accepted it. The budget of £3.9m was confirmed for 2022/23, and the SG's acceptance of the business case implied that it would rise further in 2023/24, as the business case had stipulated the funding for that year that would be required to sustain the higher staff complement.

Prior to 5 April, the Commission had adopted a cautious approach to recruitment because of the uncertainty around its 2022/23 budget. However, before the end of March we had:

- Appointed a part time Head of Development and Policy (on agency terms) and a Head of Grazings and Planning (on TRS) to replace the previous postholder who had retired at Christmas 2021;
- Made TRS<sup>1</sup> appointments to the vacant B2 operations manager post and the new improvement manager post in the Regulatory team, which were seen as essential. Both TRS postholders subsequently secured the posts on a permanent basis.
- Recruited 7<sup>2</sup> regulatory A3s on 23-month agency terms, in anticipation that at least this part of the business case would be fully funded by SG.

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<sup>1</sup> Temporary Responsibility Supplement. In other words, temporary promotion.

<sup>2</sup> One has since left the Commission, so at time of writing we have six regulatory A3s on 23-month agency terms. All six have applied for permanent positions as part of the current A3 recruitment.

## RECRUITMENT SINCE 5 APRIL 2022

Action to implement the staffing expansion and to fill vacancies commenced in earnest after 5 April.

This has been a substantial exercise involving a considerable commitment of time for many CC staff, whether they are recruiting managers or panel members, applicants, managers and colleagues supporting and coaching the applicants to perform to their best in the recruitment process, or in some cases more than one of those categories. In some cases the promotion of CC A3s into non-regulatory B1 posts was deliberately delayed by a few weeks in order to protect the work on the backlog. Nevertheless, the majority of new posts were filled within 5 months of the confirmed award of the additional funding.

The recruitment exercises not yet concluded at the time of writing are:

- Backfilling for two recently promoted CC officers: the Head of Digital and a B1 Grazings Officer.
- Recruitments that have been held back until the autumn: the 7<sup>th</sup> RALU B1 and the fixed term B1 GIS officer.
- External recruitment of permanent A3s for regulation, registration and C&CS. While the first stage of this recruitment – the appointment of 7 caseworkers on 23-month agency terms – took place before Easter, the follow-up exercise to recruit on a permanent basis has been left till last, so that it was clear how many posts needed to be backfilled. Over 80 applications have been received and are being sifted. Interviews will take place by October but the SG recruitment process may mean that we cannot appoint all the recruits until the New Year (although we will invite them to start early on agency terms if they are in a position to do so). The intention is for the 5 new permanent recruits to start at about the same date, so that they can begin their training together. This recruitment will also provide a means for any or all of our current 23-month temporary A3s to switch to permanent contracts, so long as they are successful in the selection process.

In addition, the exercise to seek reassessment of the grading of all A3 posts has not progressed as fast as we hoped, but our comprehensive submission on this will be forwarded to SG this month.

Progress with recruiting to the new posts and filling pre-existing vacancies is summarised in the table<sup>1</sup> below. The colour coding is:

Appointment taken up or at least offered	
Applications closed – preparing for interviews	
Not advertised yet	

Post	Reason for recruitment	Progress	Recruits from where?
C1 Director of Operations & Policy	Business Case expansion	Appointed 31 August	SG
C1 Director of Corporate Services	Business Case expansion	Appointed in September	CC B3 on promotion – backfill required
B3 Head of Digital	Backfill	Not advertised yet	
B2 regulatory operations manager	Post vacant from Jan 2022, initially filled on TRS basis	Substantive appointment in May	CC B1 on promotion – has been backfilled
B2 regulatory improvement / product owner	Post created Jan 2022, initially filled on TRS basis	Substantive appointment in May	CC B1 on promotion – has been backfilled
B2 Senior Caseworkers (2)	Business Case restructure	Appointed in August	Two CC B1s on promotion – no backfill needed
Second B2 Coder	Business Case expansion	Agency terms from July, substantive appointment in October	External
Third B2 Crofting Development Officer	Business Case expansion	Appointed in September	CC B1 on promotion – backfill required
B1 Grazings Officer	Backfill	CC B1s have been invited to express interest; if no takers we will advertise	
B1s for RALU (2)	One pre-existing and one new vacancy	Appointed 5 September	CC A3s on promotion – backfill required
Seventh RALU B1	Business Case expansion	Not advertised yet	
GIS B1 (part-time)	To replace former temp	Regulatory B1 selected to work 60/40 GIS/regulation for 6 months	CC B1 part-transferred – has been backfilled
GIS B1 (temp for 12 months)	Additional capacity for backlog resilience	Not advertised yet	Likely external
Regulatory B1s (5)	Business case expansion (2) and 3 pre-existing vacancies	Four appointed between June and August, one starting 3 October	Four CC A3s on promotion – backfill required. One external.
Compliance A3	Business case expansion	Offer made, date of appointment TBC	External
Regulatory A3s (5)	Backfill and pre-existing vacancies	Many applicants, sift currently under way	External
Regulatory & Registration A3s – opportunities for 6 temps to become permanent	Business case expansion	Included in above recruitment	Current temps
C&CS A3s (3)	Backfill	Interviews scheduled for September	External

<sup>1</sup> The table excludes the proposed statistician on secondment, which will be a short term post if filled.

<b>Impact:</b>	<b>Comments</b>
Financial	The recruitment is funded by the expansion of the Commission's 2022-23 budget which was confirmed by the SG in April 2022.
Legal/Political	Prompt recruitment is important to demonstrate to Government and stakeholders that the Commission has positive plans to put the increased funding to good use.
HR/staff resources	The opportunities opened to staff by the expansion appear to be improving staff morale. This will be measured in the next SG-wide people survey in October 2022.

**RECOMMENDATION**

**The Board is invited to note the progress made with recruitment and the anticipated timing for the remaining stages.**

Date            8 September 2022

Author         Bill Barron, CEO

# CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

## **Outstanding Casework Update**

### **SUMMARY**

**High numbers of outstanding cases remains a top priority for the Commission. A recent reduction in the overall number of outstanding applications due to a high number of discharges in August, is encouraging. There are grounds for cautious optimism that the total number of outstanding cases will fall further in the coming months, although some months will be better than others and the figure will fluctuate.**

**Strategies to strengthen the regulatory team continue primarily via recruitment and training, both of which are going well. [We will monitor the system closely as throughput of cases increases, to identify any changes or improvements needed to maintain progress.]**

**A challenge remains with the more lengthy and complex cases due to a focus on the bulk of the cases and the lack of experience in the team to dedicate to these cases.**

**A recent update has been made to the messaging to applicants and the public around casework delays which has reduced the anticipated delay from 12 weeks to 6 weeks for new cases. An increased focus has been placed on dealing with customer enquiries.**

**The proportion of cases that are escalated to higher Tiers for decision and trends therein are examined.**

### **Background**

High numbers of outstanding casework continue to be a challenging issue for the Commission. Previous board papers have explored the reasons behind this increase and steps taken to mitigate the effects and reverse the trend.

This paper presents the most up to date figures on outstanding casework and outlines the recent progress made to improve the position. The key approach to improve the situation is the recruitment and training of new staff to fill vacancies and create an expanded team. The allocated resources for the Regulatory team staffing increased from 20.5 to 28.5 full time equivalent staff in April 2022, which was enabled by the additional funding from the Scottish Government in response to the business case submitted by the Commission.

## Outstanding casework update

As shown in Figure 1 there was a clear increase in the number of discharged cases for the month of August. This was particularly encouraging since it was a holiday month with several staff on leave. This increase in discharges has meant that the overall outstanding figure has reduced from 1091 to 1043 – although the Glen Shuraig model had not predicted such falls should be expected until October.

The good result for the month of August is due to several months work by staff from the regulatory team and other teams. It is difficult to identify with confidence the specific cause of the increased discharges but it is likely that the much greater stability in the team, with increased numbers and training, has had a positive impact.

It will be necessary to monitor this over the next few months to see if and how this trend continues. It is likely that fluctuations will be seen, and the outstanding casework may go up and down. It will be important to assess the overall trend which will give a clearer indication of progress into the outstanding casework.

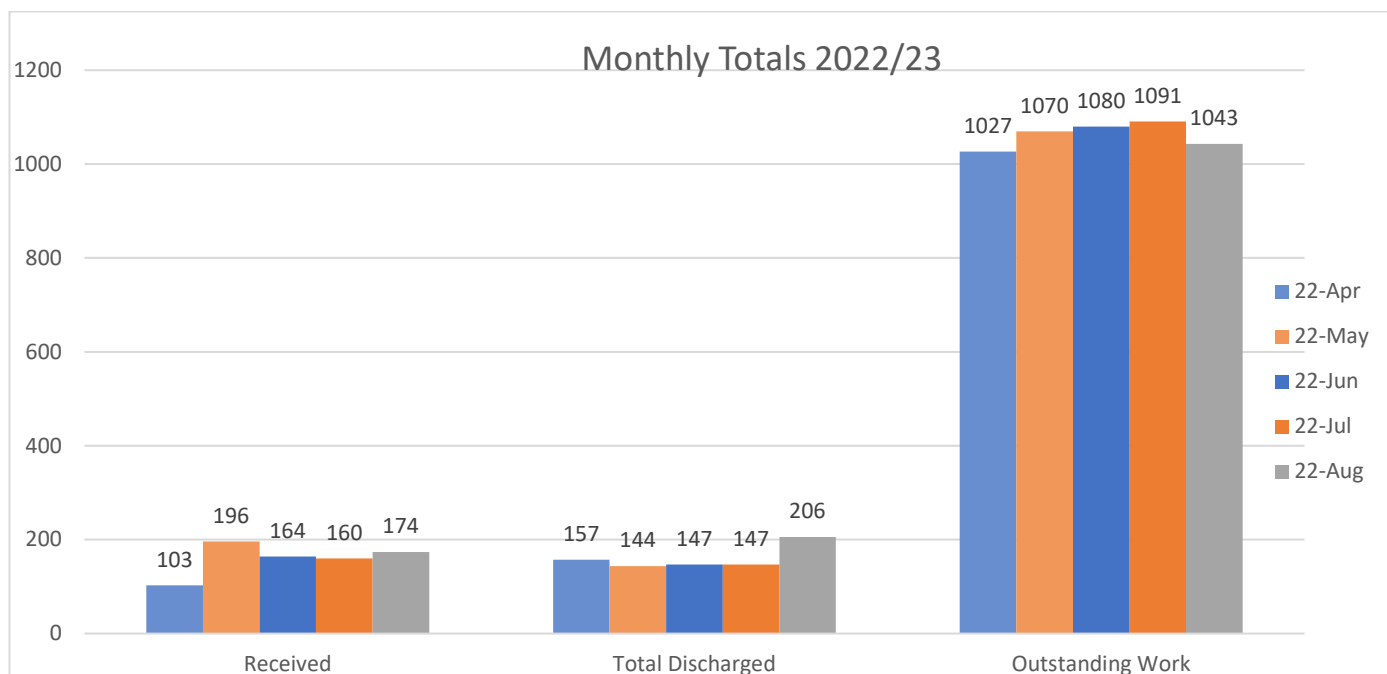


Figure 1 – Applications and notifications received, discharged and outstanding since April 2022.

## Recent developments

Recruitment continues and the Commission has 8 people moving into new roles throughout September. The regulatory team is now fully staffed for the positions at B2 (Senior Casework Officer and other posts) and B1 (Casework Officer). The team has over ten administrator posts filled and there is current recruitment underway for the final administrator posts. There has been an excellent response to the A3 casework administrator recruitment (84 applicants) which is a major step forward for the organisation as this same post would have 5-10 applicants for recruitments run in 2021. This may be due to redrafting job descriptions, proactive advertising of the posts and opening up the geographic location.

Work continues on CIS and improvements and this has included near completion of the governance documentation for CIS. Considerable steps forward have also been made on improvements to the case paper which represents considerable time savings for Casework Officers.

Due to the greater stability in the team with more staff trained we expect to see an overall improvement in the speed at which cases are progressing. The message about the casework delays has been updated to reflect this improvement and has been shared on social media, the website and general messaging. Please see below for the full message that is displayed on the Commission website, this replaces the previous message about a 12 week delay affecting applications:

*“We apologise that there are currently delays in processing applications in addition to the usual timescales for cases. For new cases, delays of 6 weeks should be anticipated in addition to our usual timescales.*

*Applications that were received before March 2022 have been subject to additional delays due to a period of understaffing. We are prioritising these cases, but some may have ongoing delays whilst new staff receive the required training. Please be assured that we will be in touch when there is a significant update about your case. We encourage applicants to get in touch with our customer services team if you have not heard from us in the last 12 weeks or more.*

*The Commission are undertaking considerable staff recruitment and training which will alleviate current delays and result in continuing service improvements through the rest of 2022 and throughout 2023. We thank applicants and their agents for their continued patience whilst we work towards improving our casework processing times.*

*More information on our typical timescales can be found on the [Forms and Guidance](#) page of our website. This outlines the different timescales involved in applications and in particular the longer timescales involved in cases that are escalated for decision by senior staff or Commissioners. In order for applications to be processed as quickly as possible, please refer to the relevant decision making parameters for the application type. Applications that meet these parameters will generally be decided considerably quicker.”*

## **Customer enquiries**

Increased capacity for processing casework has meant it has been an appropriate time to bring in a new process to place a greater emphasis on ensuring timely responses to customer enquiries. Over the last few months the greatest emphasis for the team has been on processing casework and as such the customer queries were lower priority and were being looked at by only a few members of the team on a weekly basis.

The issue of improving customer service for these enquiries by phone and email has been raised previously by the Board. To address this the regulatory team has brought in a rota for all staff in the team to answer queries daily. This has meant that enquiries can be dealt with more promptly and improve the customer service provided for this level of enquiry. The most straightforward enquiries are dealt with directly by the customer service team. Once the volume of outstanding enquiries has been reduced the team will be in a position to respond to most queries well within the 20 days that is quoted. The exceptions will be because some general enquiries can be very complex and involve investigation, but this will be flagged up with the enquirer.

The new rota that has been introduced has brought to light the level of complexity for many of these enquiries and means that the more complex of these are needing to be dealt with by experienced officers and can be quite time consuming. This is challenging when so many of the team are relatively new in post and casework demands remain high. Refining how these are dealt with to ensure best use of staff time and a good customer service will be ongoing.

### Complex and longstanding cases

A proportion of cases are older and more complex including those that are referred to Tiers 2, 3 and 4. The Commission hold some data of 'in progress' cases over 1 year for 2021 and 2022. This gives us an indication of the relative changes in the amount of more complex or lengthy cases as shown in Figure 2. These cases often require a more experienced Casework Officer to progress them. There are currently around 250 cases that are over 1 year old from the list of application and notification types that are reported on. This is considerably higher than in 2021 where the total was in the region of 150. The overall figure of outstanding cases has gone up between 2021 and 2022, but also proportionally a steady increase in the number of cases over 1 year is seen.

The increase in the proportion of older cases was probably inevitable at a time when the overall total of outstanding casework was rising rapidly, given the resources available to the team. We are still relatively short of experienced officers, but by asking the Senior Casework Officers to focus on these cases, it is hoped to prevent the number rising and in time to see it fall.

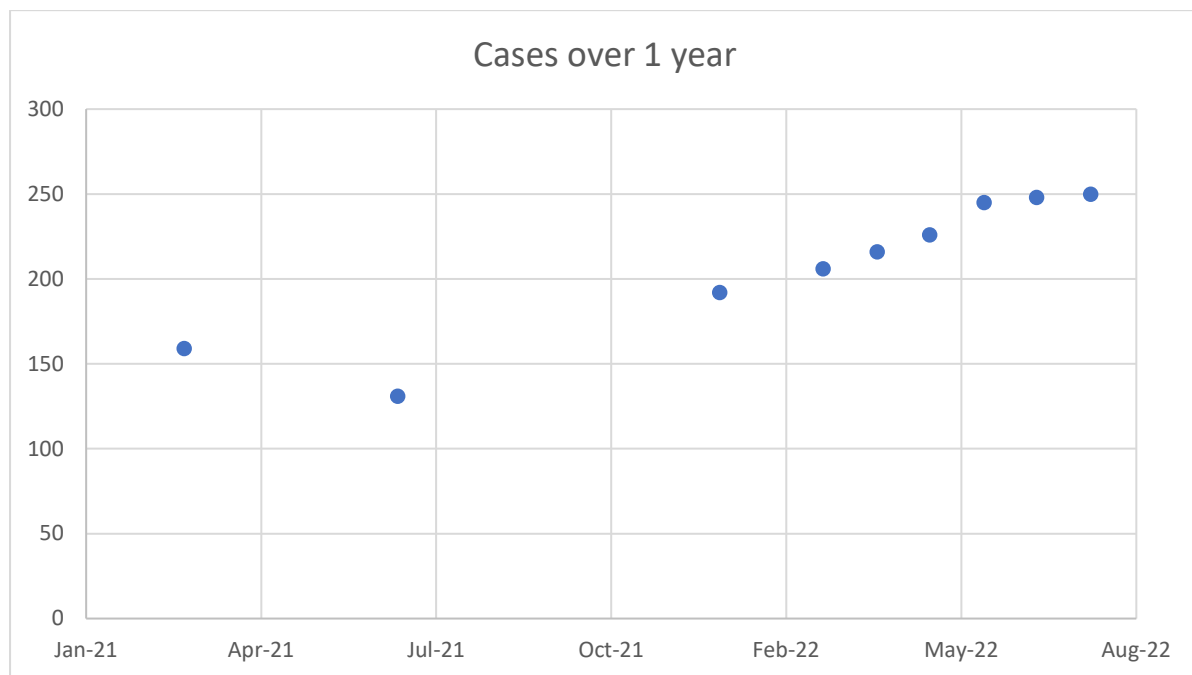


Figure 2 – The number of cases that remain in progress over 1 year since they were first validated by the Commission, January 2021.

Another factor which has until recently affected longstanding cases has been delays with obtaining RPID reports. More recently this issue has considerably improved which may help speed things up moving forward.

As we move forward and make progress into the overall numbers of outstanding cases the more complex cases are going to be a particular challenge which will take longer to make progress on as Casework Officers are gaining experience and are more focussed on clearing the bulk of the cases. Cases in this category are also more likely to generate complaints.



## Decision making at Tiers 2, 3 and 4

For cases that cannot be taken for decision at Tier 1, whereby they do not stay within the specified parameters for the function, or objections have been raised, they need to be escalated to higher tiers for decision. The scheme of Delegated Decision Making ensures that applications are given the appropriate level of scrutiny to ensure they are considered fairly and resources are used effectively.

The proportion of cases decided at Tier 1 has been between 74 % and 77 % since 2018. The overall number of cases decided has reduced over the last 4 years as shown in Figure 3; the proportion of cases decided at Tier 1 has remained fairly constant.

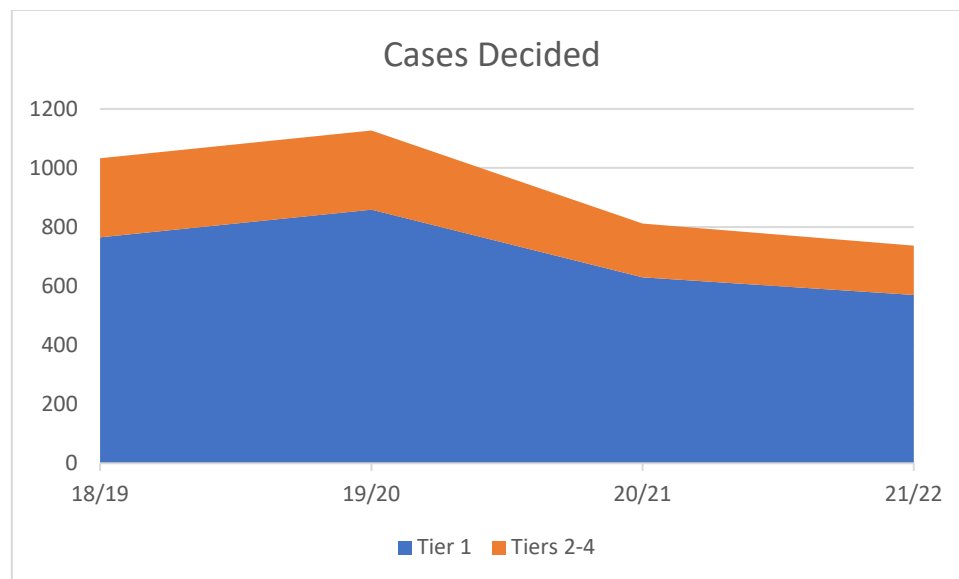


Figure 3 – The total cases decided for the reporting years since 2018-19 and the proportion of cases decided at Tier 1 (blue) and Tiers 2-4 (orange).

This means that as the throughput of the Casework Officers increases, the demand on Tiers 2 and 3 may increase in proportion.

The number of cases considered at Tier 2 and 3 meetings are presented in Figure 4 for the last 3 years. While this shows an overall increase in the total number of cases considered at this level, this is accompanied by a *decrease* in the overall number of decisions and an *increase* in the number of deferrals. Deferrals are when the case is deferred to a future meeting as more information is needed or to be considered at a higher Tier.

The overall increase in cases considered at Tier 2 could indicate a trend towards increasing complexity of some applications. It is important to note that Tier 2 acts as a decision making body and a body to which casework officers bring cases to seek guidance on how to progress to the next stage of the casework process. Reasons for the increased cases at these meetings may include the increasing number of issues come to light or come about from registration, an increasing number of applications not staying within the parameters.

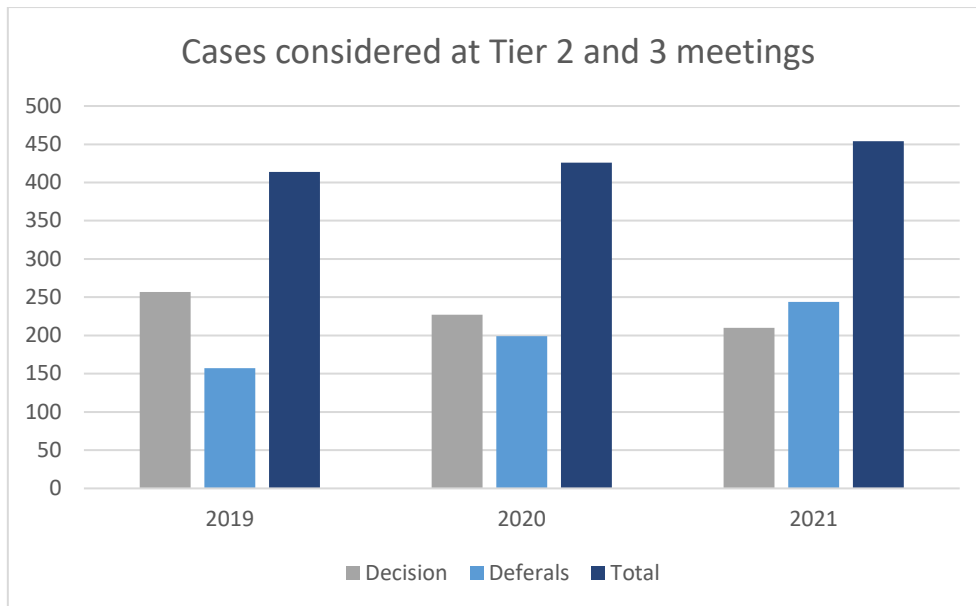


Figure 4 – Numbers of cases considered at Tier 2 and 3 meetings from 2019 to 2021, including the numbers decided on and deferred.

Policy changes may affect the parameters and this can be reflected in the number of cases escalated to Tier 2. For example an amendment to the policy on subletting in 2021 resulted in an increase in the number of cases escalated to higher tiers for decision. The number of apportionment applications reaching higher tiers has also increased between 2019 and 2021 which may be due to policy changes and a higher number of cases where objections have been received. Apportionments can be particularly challenging for the Commission. This issue has been commented on by the Land Court in *Matheson -v- Crofters Commission RN SLC/32/10 2012* that *“the Commission had a balancing act to carry out. It had to take account of the interests of the other shareholders. And it had to consider the future. Except where an apportionment is granted temporarily, the land is lost to communal use in perpetuity”*. As the Commission themselves put it in the note of decision *“When considering applications for apportionment, as well as taking the aspirations of the applicant into account, the Commission must safeguard the interests of the present and future interest of the other shareholders.”* That is an accurate statement of the task they had to perform. They had to balance those interests. There is no legal requirement to give one set of interests greater weight than the others.

Triaging is already utilised to flag up to applicants at the initial stages whether the application is likely to be escalated and give them the opportunity to adjust their application. Future avenues for the Commission may include increased signposting and education to applicants and agents to try and minimise some of these issues.

Cases that reach higher tiers take longer to be processed by the Commission and more resources are required. The overall increase in cases considered at these higher tiers alongside the reduction in cases processed, demonstrates that a greater proportion of resources have been required to be dedicated to these cases over the last 2 to 3 years.

## Conclusion

A recent drop in numbers of outstanding cases is due to an increase in discharged cases which is an encouraging sign. An overall decrease in the number of outstanding cases is forecast in coming months but fluctuations in the numbers are also expected. Recruitment and training are a key factor in this improvement and the continued progress with these is positive.

New messaging has gone out about outstanding casework and expected delays which reflects the increased capacity with case processing. Longstanding and complex cases remain a key issue and high numbers of these are a challenge when so many of the team are relatively new. The recent appointment of the new Senior Casework Officer posts will help with this issue.

Decision making and case consideration at higher tiers is necessary for more complex cases that raise particular issues. The increase in numbers of cases considered at these levels may suggest increasing complexities that have been experienced with casework between 2019 and 2021.

<b>Impact:</b>	<b>Comments</b>
Financial	Ongoing staffing costs for the Regulatory team and other teams that work on cases.
Legal/Political	Wider impacts of casework delays and reputation issues for the Commission.
HR/staff resources	Ongoing pressures on staff from high volumes of work in the regulatory team and knock-on effects to other teams. Considerable resource is being put into recruiting and training, taking staff time away from other duties.

**RECOMMENDATION**

**That the Board note the issues surrounding outstanding casework and advise on further action to ensure that progress continues to be made.**

Date            14 September 2022

Author         Heather Mack, Head of Operations

# CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

## **Reducing the Crofting Commission's Carbon Emissions**

### **SUMMARY**

**The Scottish Government is committed to Scotland achieving a 75% cut in greenhouse gas emissions by 2030 and net zero emissions by 2045. All public bodies are required to contribute towards achievement of this goal. This paper considers how the Commission should prepare to increase its contribution.**

### **BACKGROUND**

Public bodies in Scotland have had statutory duties on climate change since 2011 under the Climate Change (Scotland) Act 2009.

Since 2015-16, public bodies have been submitting mandatory annual reports on compliance with their climate change duties under the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015.

With reference to the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Amendment Order 2020, public bodies annual climate change reports must now include:

- where applicable, the body's target date for achieving zero direct emissions of greenhouse gases, or such other targets that demonstrate how the body is contributing to Scotland achieving its emissions reduction targets. [Note: direct emissions are from the body's own operations, and how they are defined and measured needs to be clarified.]
- where applicable, targets for reducing indirect emissions of greenhouse gases, for example from the body's supply chain
- how the body will align its spending plans and use of resources to contribute to reducing emissions and delivering its emissions reduction targets
- how the body will publicise, or otherwise make available, its progress towards achieving its emissions reduction targets
- where applicable, what contribution the body has made to helping deliver Scotland's Climate Change Adaptation Programme.

### **CURRENT POSITION**

As an initial step, it is proposed to publish the following 'Climate Emergency Charter' within a specific 'Climate Emergency' section of the Crofting Commission's website.

In reality the Crofting Commission's direct emissions are inconsequential, and so it is envisaged that a key focus within the development of our Emergency Climate Plan will focus upon our policy work and opportunities for the Crofting Commission to influence and work with other parties regards reducing greenhouse gas emissions. We may also wish to have a stronger focus on the emissions generated from travel by Commissioners, staff and visitors.

**Crofting Commission Climate Emergency Charter**

As a public body, we will lead by example in promoting our work on the climate crisis. The Crofting Commission recognises the climate crisis, and we are developing a climate emergency charter.

We also pursue the [Sustainable Development Goals](#). In the following recommendations, in addition to our environmental policies, we are publishing a climate emergency charter for the organisation to clarify our aspirations regarding the Crofting Commission team and how we work with external partners.

**1. Following the seventeen sustainability goals as set out in the National Performance Framework.**

<https://nationalperformance.gov.scot/sustainable-development-goals>.

We are closely following the aims of the National Performance Framework in our work.

**2. Recognising the climate crisis in policies.**

At the Crofting Commission we will take the environment into account in the policies we create. This includes minor and internal policies.

**3. Aiming to be carbon neutral.**

One of the outcomes recorded in our Corporate Plan is to reduce our impact upon the environment. We are focused on progress to become carbon-neutral and intend to consider our Action Plan during the coming year. In our annual climate change report to be submitted by the end of November 2022, we are required to provide:

- 3.1 The Commission's target date for achieving zero direct emissions of greenhouse gases, or such other targets that demonstrate how the Commission is contributing to Scotland achieving its emissions reduction targets
- 3.2 Where applicable, targets for reducing indirect emissions of greenhouse gases
- 3.3 How the Commission will align its spending plans and use of resources to contribute to reducing emissions and delivering its emissions reduction targets
- 3.4 How the Commission will publish, or otherwise make available, its progress to achieving its emissions reduction targets
- 3.5 Where applicable, what contribution the Commission has made to helping deliver Scotland's Climate Change Adaptation Programme.

**4. Wherever possible, we encourage the most environmentally friendly travel and avoid travel where we can.**

We are closely examining our practices for the future to ensure that we can balance our obligations to the environment, while covering such a large, and at times remote area within the Crofting Counties of Scotland. Technology will help us to meet this challenge, but we must have a balanced and sensible approach to interacting and working with the Crofting Community we serve. Where reasonable we will use the most environmentally friendly modes of transport. This will also be reflected in our travel policy.

**5. Adhering to the latest best practice in relation to Scotland's environmental goals and adapting our approaches where appropriate.**

We work closely with other public bodies to pursue sustainable policies in Scotland and if working methods improve, we will change them.

**6. We will be mindful of the environment in everything we do.**

In our work to regulate the crofting system fairly, and to protect and strengthen it for future generations, we will have an awareness of the climate crisis and encourage the organisations we work with to be similarly aware.

**7. We will use sustainable procurement.**

The Crofting Commission will primarily use Scottish Government Framework Contracts for major procurement purposes. Our procurement process will follow the Government's plan.

<https://www.gov.scot/policies/public-sector-procurement/sustainable-procurement-duty/>

The Crofting Commission will use sustainable provision at the highest level. We will be aware of sustainability risks and opportunities when accepting any bids.

**8. We will create an environmental team within a year.**

We will create an in-house environmental team meeting three times a year to build on our sustainable systems.

**9. We will create an emergency climate action plan within a year.**

Together with the environment team and working closely with other organisations, we will formulate an emergency climate plan.

## **DEVELOPMENT OF AN EMERGENCY CLIMATE ACTION PLAN**

Having discussed the statutory requirements with the Sustainable Scotland Network (Scotland's public sector network on sustainability and climate change), it is recommended that the Crofting Commission initially sets a **target to achieve net zero emissions by 2040**, which can subsequently be adjusted once further research is undertaken regards what this means both operationally and financially going forwards.

Secondly, to assist with the development of a climate action plan it is proposed to issue a small-scale tender to secure the services of external professional expertise to address the following objectives:

- Assist with the development a climate action plan detailing how the Commission can measure its current emissions, put monitoring systems in place to measure future emissions, identify and set targets to how we can achieve zero emissions within an ambitious timeframe
- Set out our commitment to move to net zero emissions with a target date and route map
- Establish monitoring and reporting for emissions including office facilities and travel
- Embed climate action as a priority across the organisation and how it can be delivered through our Corporate and Business Plan
- Acknowledge the wider leadership role of the Commission in relation to influencing external parties.

### **Outputs**

- A Climate Action Plan proportionate to the Commission and our operations, which includes a route map to achieving net zero emissions.
- Monitoring and reporting for emissions
- Innovative solutions to how we can significantly reduce emissions.

<b>Impact:</b>	<b>Comments</b>
Financial	The initial cost relating to the engagement of external expertise to assist the Commission in developing a Climate Action Plan is estimated at £5,000 (net of VAT). The cost of the engagement would be offset against Commission staff time should we attempt to develop an Action Plan in isolation.
Legal/Political	<p>The Commission has a statutory responsibility to meet the targets detailed within the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Amendment Order 2020.</p> <p>Ministers have written to public bodies and are seeking 100% compliance with the new legal duties as there is intense Parliamentary and media scrutiny around Scotland's delivery of action on the global climate emergency. Ministers are keen that public bodies should set suitable ambitious targets.</p>
HR/staff resources	A number of colleagues have already expressed an interest in being involved within a Commission Environmental Team. It is not envisaged that this would involve a significant time commitment and would assist both the Commission and also provide development opportunities for colleagues outwith their day-to-day responsibilities.

## **RECOMMENDATION**

**The Board is asked to confirm approval of (or agree on an alternative approach):**

- a) Publication of the Commission's Climate Emergency Charter in its current format.**
- b) Initially committing to a net zero emissions target by 2040.**
- c) Engaging external expertise to initially assist with the development of a Climate Action Plan, which will ensure that the Commission is adhering to best practice.**

Date            9 September 2022

Author         Neil Macdonald, Head of Finance

# CROFTING COMMISSION MEETING

## 27 September 2022

Report by the Chief Executive

### Development Team: Dealing with underused crofts

#### SUMMARY

This paper aims to provide the Board with an update on the outreach activities undertaken by the Development Team to promote the active use of croft land; and seeks the Board's views regarding opportunities to grow that activity, including proposals for a stakeholder engagement and communications campaign.

#### BACKGROUND

The Board is invited to **note**:-

- the background information, provided at **Annexes A and B**, regarding **the scope and scale of the problem presented by unused and abandoned croft land**; and
- the further background information, provided at **Annex C**, regarding **the Commission's enforcement activity to increase residency and land use**.

#### DEVELOPMENT TEAM ROLE

The Board is invited to **discuss and provide its views** on:-

- the **outreach activities**, summarised at **Annex D**, that have been **undertaken so far by the Development Team to encourage active use of croft land**; and
- the **opportunities and channels** that the **Development Team should prioritise to further grow this outreach activity**.

Impact:	Comments
Financial	Engagement with crofting groups may raise T & S costs.
Legal/Political	Addresses issues detailed in the Scottish Government National Development Plan for Crofting, and aspirations of active crofters and support organisations.
HR/staff resources	Three Development officers with managerial and administrative inter-departmental liaison.

#### RECOMMENDATION

The Board is invited to **agree** that:-

- the **Development Team should build upon its outreach activities to develop and deliver a targeted stakeholder engagement and communications campaign, as set out at Annex E**.

Date: 16 September 2022

Author: Arthur MacDonald, Head of Development and Policy



## BACKGROUND: UNDER-USED CROFTING LAND

### THE CHALLENGE

1. The Commission is in receipt of regular complaints from active resident crofters and aspiring crofters about the poor state of crofts and hazards associated with the unused and abandoned croft land. An example is provided at **Annex B**.
2. In the first five months of this year, unsolicited reports submitted to the Commission have come from: Islay; Uist; Wester Ross; North Sutherland; and Lewis. This indicates a fairly widespread problem.
3. Although underutilisation of crofts is often associated with crofters who are not ordinarily resident there are an increasing number of crofts where resident crofters are no longer actively using their land. There are many reasons for inactivity, including:
  - Croft vacancy
  - Elderly or infirm crofters
  - The demands on crofters of other business interests or employment
  - Lack of funds
  - Lack of knowledge of crofting legislation
  - Lack of crofting skills/experience
  - Crofter apathy
  - Lack of other active crofters locally (critical mass)
  - Deceased crofters, and
  - Local discord.
4. Unused croft land has physical and financial impacts on the active crofters in the affected townships. Inactive crofters are less inclined to pay for maintenance of vital communal equipment and fences which increases the financial burden on the active crofters. The potential income available to inactive crofters from support schemes and economic activity is lost to the community. Broken fences, collapsing buildings and dysfunctional drains are hazards for livestock, facilitating straying and entrapment in broken wires.

### THE SCALE OF THE PROBLEM

5. The numbers of crofts affected is difficult to determine. There are crofters who do not claim any form of subsidy and yet are active crofters. This may be due in part to the complexity of the funding application process, which for many crofters is beyond their skills (with many crofters reliant on paying other crofters to complete and submit their applications). It is therefore important to seek more accurate sources or figures relating to unused crofts.
6. The [Economic Condition of Crofting Report \(ECCR\)](#) has provided some useful statistics which can be extrapolated to give a rough estimate of how many crofts may be underused. Responses to the survey indicated that *25% of crofters receive no revenue from their croft*. If it is assumed that they have no revenue due to inactivity this could indicate 4000 unused crofts.

7. There is also potential for a significant increase in the number of unused crofts in the future. It is known that some crofters who have no local family successor will generally leave crofts to a close relative who may not live near or be interested in working the land. The beneficiaries are often not aware of the legislation applicable to crofting. According to the 2019 ECCR:-
- 41% of crofters had no interested successor (potentially 6,500 crofts);
  - 69% of crofters were over 55; and
  - 45% of crofters were over 65.

**BACKGROUND: AN EXAMPLE OF RECENT CORRESPONDENCE REGARDING UNDER-USE OF CROFT LAND**

Dear Commissioners,

I am an active crofter of (location removed)

My crofting activities focus on a flock of North Country Cheviot sheep and a registered flock of laying hens.

I have at present an issue with the neglected crofts to the west of me in the township. At this time of year our sheep are running on the hill and on one of the parks through the open gate. This works well all through the winter until the sheep end up in the neglected crofts by either stepping over gates and fences that are down, low or no longer providing any kind of barrier. The problem is made far worse by the fact that the now heavy in lamb ewes cannot clear the barbed wire going uphill!

I have over the years taken some netting and posts up to these areas myself to shore up the gaps, for the last 2 years I have had a significant length of broken posts tied upright with ropes etc.

Last night while going to feed my sheep, I discovered some of my sheep on the crofts, three of which got stuck on the rusty barbed and plain wires on their way back out.

My questions to you are.

- 1 Why are these crofts, neglected for years, allowed to remain so?
- 2 Why is it that the few active crofters left, and their stock having to suffer for this despite having asked the folk concerned to reinstate their fences?
- 3 Why are the commission not acting against these people to do their duty as crofters?
- 4 Why do the commission not make the Landlord pursue these crofters instead of harassing those of us still trying to carry on with active crofting activities?

I would greatly appreciate some consideration of these few points from yourselves so that we can maintain some dialogue with hopefully some constructive outcome.

## **BACKGROUND: THE COMMISSION'S ENFORCEMENT ACTIVITY**

### **REQUIREMENTS OF THE CROFTERS (SCOTLAND) ACT 1993**

1. Sections 5AA, 5B, 5C & 19C of the Crofters (Scotland) Act 1993 [“the 1993 Act”] specify that crofters (Tenant and Owner Occupiers) must reside on or within 32 kilometres of their croft(s) and make use of the entirety of the associated land asset. This is generally referred to as the “duties” of a crofter. In addition, where they have a share in a common grazing, they have liabilities for the maintenance of fixed equipment along with the other shareholders in the same grazing.
2. The Commission has powers under section 26A of the 1993 Act to investigate and determine whether a crofter is complying with the duties described. Where a crofter is not fulfilling the duties requirements the Commission is empowered to take enforcement action which includes seeking undertakings from the crofter to rectify their situation in a specified timeframe. Crofters who fail to become compliant with their duties in the timeframe allowed may have their tenancy terminated or if they are an owner occupier crofter be required to let their croft to a tenant.
3. Under section 52(1) of the 1993 Act a crofter who is not complying with the grazings regulations in force at the time may be reported by the grazing committee or the owner of the grazings for a determination by the Crofting Commission. Ultimately, if found to be at fault the crofter may have their share, or part thereof, suspended or terminated with the share being apportioned to other persons sharing in the grazings.

### **THE ROLE OF THE RESIDENCY AND LAND USE TEAM**

4. The Commission has staff with specific responsibility for Residency and Land Use (RALU) and they are obliged to carry out investigations when asked to do so on Crofting Commission notification forms submitted by:-
  - Members of the crofting community within which the croft in question is situated;
  - Grazing committees;
  - Grazing constables; or
  - Assessors.
5. These investigations follow the process in section 26A to 26K of the 1993 Act and typically take 18 months to 2 years to conclude, although an investigation will not proceed where the report or notification is deemed to be frivolous or vexatious or there is a good reason not to proceed further with the case – for example relating to the age or health of the person reported.
6. As well as following up all reported suspected breaches, in recent years RALU has been systematically following up many of those who admitted a residency breach in their census returns; and has expanded its work to include owner-occupiers as well as tenant crofters, and non-cultivation as well as non-residence. They will shortly also engage with a selection of some of those who have not responded to the census.

7. From the four censuses from 2017 to 2020, the RALU team has written to 616 tenant crofters who had admitted a breach of duty. To date this work has led to the permanent or temporary resolution of 341 breaches, as follows:
- 85 crofters are now resident on the croft
  - 59 have obtained Commission consent to assign the croft tenancy
  - 4 have obtained Commission consent to let the croft tenancy
  - 3 have renounced their croft tenancies
  - 3 have transferred ownership of their crofts
  - 53 have obtained consent to be absent from their croft, and
  - 134 have obtained Commission consent to sublet their croft.
8. In addition to the above, the Commission issued 4<sup>1</sup> orders terminating croft tenancies, and a further 13 notices giving the crofter the opportunity to provide an undertaking to resolve their breach within a timescale which the Commission consider reasonable<sup>2</sup>. This illustrates the significant time and resource required to conclude cases under the statutory enforcement provisions, reflecting the necessary and desirable provisions at various stages of the enforcement process for crofters to make representations, to engage with the Commission, and to appeal to the Scottish Land Court.
9. In addition to the direct effect of terminating tenancies and requiring owner-occupier crofters to let their crofts, enforcement action is undoubtedly effective in raising awareness of crofting duty requirements. It also creates opportunities for landlords or the Commission to identify a new tenant who will most benefit the crofting community. Nevertheless, as a way of encouraging current crofters to resolve their breach of duty, it is somewhat inflexible and labour-intensive. Given the scale of the issue and the nature of section 26A of the 1993 Act, it seems unlikely that the enforcement action using section 26A alone will effectively address the numbers of unused crofts causing concern.

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<sup>1</sup> If action following reported breaches is included, there has been a total of 11 termination orders issued since the enforcement provisions were introduced.

<sup>2</sup> Should the undertaking not be complied with, these cases will also progress to the tenancy termination stage of the process.

## THE RECENT WORK OF THE DEVELOPMENT TEAM

### OBJECTIVES

1. The Commission's current Development Team was initiated in 2021, and now comprises a part time Head of Development and Policy, and three Development Officers.
2. The Scottish Government's *National Development Plan for Crofting (NDP)*, also from 2021, sets out a number of objectives for the Commission's development function, including:-
  - encouraging diversification of use of common grazings;
  - encouraging a culture of succession and turnover of crofts;
  - ensuring that entry to crofting is more accessible; and
  - providing better information to crofters.
3. Based on these, the Development Team has adopted at its top aim the imperative of increasing the active use of croft land, in accordance with the following quote from the NDP:

*"One of our top priorities is to establish an increase in the active use of croft land. We need to establish greater occupancy of crofts, attract new entrants, and encourage new common grazings committees into office".*

## ACTIONS TO DATE

4. In support of that aim, the Development Team has undertaken a range of outreach and stakeholder engagement activities, as set out below:-

Stakeholder identification	In order to mobilise the crofting community in addressing the issue of underused crofts the Development Team has started to create a network of the key people and organisations, as set out in <b>Annex E</b> .
Website development	The team has gathered a significant amount of information about current and emerging opportunities, much of it linked to the climate change mitigation measures. This information has been added, along with the relevant organisations' contact details, to the Crofting Commission web site. Being clearer about the positive options available to crofters and grazings committees is part of our strategy for encouraging compliance with the duties.
Assessor engagement	The team has engaged with the 20 assessors having consulted them online and commenced the arrangements for a meeting in Inverness in October 2022.
Landlord engagement	The team has held an event, along with colleagues from Regulatory Support and the Commission solicitor, for landlords to highlight their role in the management of croft land. A second event is planned for landlords in the Northeast Highland and Caithness area in November 2022.
Crofter education and training	Along with colleagues from the grazings team and the Farm Advisory Service, three face to face training events were held in Uist and Barra on grazings committee function and finance. Prior to this, these events were online sessions and a pilot version of a problem-solving surgery. All were well attended and received. Further in-person training sessions are planned for Brora, Fort William and Shetland before the end of this year. The Farm Advisory Service organises the events and pays for venues as well as participating in the delivery.
Outreach at agricultural shows	The team took a co-ordinating role along with Kirsteen Currie (Comms Officer) for the Agricultural Shows this year. A paper covering the show attendance this year and looking forward to next year will be prepared for a future meeting of the Board. The development team featured living succession while the grazings team promoted the benefits of having a committee and other staff explained apportionments and digital applications to our many visitors. Only two shows had stands, Black Isle and North Uist while a walking presence was fielded at Caithness, Sutherland, Grantown, Voe (Shetland) and Lochaber by a Commissioner and a member of staff.
Development of channels to provide aspiring new entrants with information about crofting opportunities	With an eye on the potential to attract new people into crofting and help the situations where crofters could not identify successors for themselves, the development team have entered into discussion with the Scottish Land Matching Service (SLMS), with a view to developing allied or alternate ways to facilitate turnover of crofts.

<p>Scottish Government engagement on rural repopulation</p>	<p>The Scottish Government (SG) has an initiative aimed at retaining and attracting people to stay in rural areas particularly the Islands. It is evident that crofting could play a significant part in this and contribute to alleviating the housing shortage which is associated with this issue. The team have attended an event in Edinburgh on this subject hosted by Community Land Scotland and continue to discuss options with the SG team.</p>
<p>HIE Engagement</p>	<p>The Head of Development along with the Chief Executive has attended a meeting with Highland and Islands Enterprise who were particularly interested in supporting initiatives to help with housing shortages.</p>
<p>ECCR &amp; National Test Programme</p>	<p>The team has participated in the creation of questionnaires for the ECCR and the Testing Actions for Sustainable Farming Survey and will continue to contribute while these surveys are live.</p> <p>The ECCR is a four yearly survey of crofters researching the economic activity of respondents.</p> <p>The National Test Programme is a consultation process for farmers and crofters to contribute to the design of future support systems for rural businesses. The Testing Actions for Sustainable Farming is part of Track 2 of the programme.</p>



## **OPPORTUNITIES FOR FUTURE DEVELOPMENT TEAM WORK**

1. The development function of the Commission is being used to deliver outreach and stakeholder engagement activities to enhance the enforcement activity undertaken by the RALU team. It is proposed that the Development Team will grow and focus that work by developing and delivering a new structured communications campaign. Such a campaign would require high profile, press coverage. The campaign would need to be delivered consistently across the crofting areas, and beyond, over a period of years.
2. Messaging could focus on:-
  - encouraging croft usage, highlighting not only the obligation and enforcement provisions of the Act, but also the positive value of crofters' positive choices for their crofts;
  - highlighting and signposting the rights, opportunities, and benefits available to an active resident crofter;
  - informing crofters about the solutions available to them, for example encouraging succession planning to pre-empt problems which could otherwise lead to enforcement activity; and
  - enhancing visibility of residency and land use enforcement actions and outcomes.

## **KEY STAKEHOLDERS**

3. To maximise the effectiveness of such an initiative, the Development Team would mobilise and coordinate active participation by a range of people and organisations. In addition to Commissioners and the Commission's own staff, key partners would include:-
  - Commission Assessors
  - Grazing clerks and their committees
  - Farm Advisory Service (FAS, part of Scottish Agricultural College)
  - Scottish Crofting Federation (SCF)
  - National Farmers Union (NFU)
  - Rural Payments and Inspections Directorate (RPID)
  - Community Land Scotland
  - Community landlords
  - Private Landlords
  - Scottish Land and Estates (SLE)
  - Scottish Land Matching service (SLMS)
  - Scottish Land Commission (SLC)
  - Interested active crofters, who are interested in seeing crofts used by resident crofters
  - Local print media.

4. Some of the activities these organisations might be asked to undertake are set out below.

<b>Commission Assessors</b>	<p>It has become evident from attendees at the grazings training sessions and surveys carried out by the development officers that some crofters were reluctant to engage with the commission directly. The Assessors can be useful intermediaries allowing dissemination of information on a wide basis within the crofting community. With suitable training Assessors can also assist grazings committees and clerks with guidance on administration and information about options and liaise to the development team on funding sources for development projects. To utilise the Assessors more fully we need to discuss the possibilities with them and ascertain what they are interested in and willing to undertake. The current Assessors' term of office ends in March 2023, so this work will be carried forward for the recruitment of the new Assessors for which a separate paper is provided. The Assessors will form an important link for the dissemination of ideas and information on diversification, succession, traditional crofting support and new climate change opportunities.</p>
<b>Grazing Clerks and Committees</b>	<p>The clerks and their committees, like the Assessors, can provide a link to crofters at a local level. With enhanced support from the grazings team we have seen an increasing number of committees come into office and significant interest in the FAS training sessions. Apart from linking with the commission, assessors, and crofters, we seek to encourage liaison with landlords as opportunities for the use of grazings in relation to carbon emission reduction increase.</p>
<b>FAS</b>	<p>The FAS has become a valuable partner in delivering training in conjunction with the commission both face to face and online over the last few years. FAS has Scottish Government funding for the sessions and production of associated videos covering a range of topics which include grazings management, administration, finance, woodland, and peatland schemes. All of interest to the active crofters and their committees. We intend to continue this arrangement and develop new training sessions to encourage and support active crofters which will be rolled out to a wider audience in the future.</p>
<b>SCF</b>	<p>The SCF is helpful at local level through their branch network in promoting the training sessions and encouraging crofters to attend. SCF also has a more strategic role communicating with Scottish Government on the needs of crofting. The SCF may be instrumental in developing and delivering a system to facilitate croft transfers. We intend to maintain a close liaison with them as the croft transfer scheme options are investigated.</p>
<b>NFU</b>	<p>The NFU will principally help in promoting and supporting the full range of activities of the development team.</p>
<b>RPID</b>	<p>The RPID can be very useful in two main ways. One is in data sharing which if successful could give us access to more accurate figures for assessing croft activity levels. The other is allowing us to highlight the RPID initiative on crofting duties which they are rolling out across their entire crofting estate. This will be useful as an indicator to other landlords of the potential for them to be more supportive of their crofting tenants.</p>
<b>Landlords</b>	<p>Community Land Scotland, community landlords and other private landlords are potentially helpful in supporting projects on croft land whether for individual or grazings based activities. We intend to highlight these options showing how involvement with crofting tenants can be part of the rural land use planning concept promoted through the Scottish Land Commission. The Development team would like to encourage landowners to engage with crofting activities on their estates and have a meaningful relationship with Crofters. Landlords can make representation on many regulatory applications with specific provisions made for them in legislation. We want to share this message and let them know how they can contribute to active crofting on their land, by making croft tenancies available or perhaps by making leased accommodation available to new entrants to crofting.</p>

<b>SLE</b>	The SLE as a landlord organisation could be useful in contacting their members who have crofting tenants and encouraging them to attend our area landlord events. They could also carry links on their web site to our development information which will facilitate interaction with crofters locally. We are at an early stage in working with this organisation and hope they will be a useful partner in stimulating greater use of croft land, particularly the extensive areas of common grazings.
<b>SLMS</b>	The SLMS has the potential to support a croft availability network, but it will need to make some changes to its current processes and promotional material, to include crofting at the heart of its work. We propose to continue working with this organisation and the associated Farming Opportunities for New Entrants group to assess its suitability in facilitating croft transfers.
<b>SLC</b>	The SLC has produced a lot of helpful guidance on the merits of local consultation between landowners, tenants, and wider populations. The benefits of the local dialogue can also help crofters and we are encouraging the practice at our grazings' and landlords' events.
<b>Crofters</b>	The interested active crofters are potentially our most valuable allies in strengthening crofting through development initiatives. They will be the source of future committees, assessors, clerks and possibly Commissioners. In order to support active crofting, we will continually interact with colleagues in other sections of the Commission and share the knowledge and information gained with our developing network of Assessors and partners. Our comms officer will ensure we utilise all the tech and social media systems available and work with development officers in creating a user-friendly area with relevant information on our web site

## NEXT STEPS

5. If the Board agrees with this high-level direction of travel, the Development Team will undertake further work to develop these initial proposals, including:-
  - Recruitment of suitably skilled Assessors
  - Development of key messages for stakeholders
  - Preparation of a stakeholders communications plan
  - Proposals for a suitable time and place to launch the campaign, e.g. the Royal Highland Show 2023
  - Creating an identifiable symbol to provide a recognisable visual image of the campaign, as part of a wider Communications Strategy.
6. The Development Team will revert to the Board with detailed plans for consideration and agreement before any campaign is launched.
7. In the meantime, the Team will continue building the network and delivering training sessions with assessors and grazings officials.

## KEY PERFORMANCE INDICATORS

8. The Development Team will seek to develop meaningful measures to assess the success of this initiative. For example, we can measure the number of new entrants to crofting year by year. Other measures may need to be based on sample surveys, but an increase in the number of crofters with succession plans and/or wills could be a good indicator of progress.
9. The most important element that we would like to measure – the number of crofts that are unworked – has proved elusive to date. Neither the number of legally vacant crofts nor the numbers of self-confessors in the censuses give a meaningful estimate of this.

However, given the critical importance of such an indicator, the Development Team will seek to establish a measure in collaboration with other partners. Across the network which we are developing, particularly within the Scottish Government Rural Payments and Inspections Directorate (RPID), there are statistics which, combined with the Crofting Commission's own data, could provide a reasonably reliable figure. In order to share the data, agreements and suitable privacy notices are required between the data collecting organisations.

10. There is provision in the National Development Plan for greater data sharing in connection with common grazings and mapping tools between the Crofting Commission and RPID, and this can also be explored further.

# **CROFTING COMMISSION MEETING**

**27 September 2022**

Report by the Chief Executive

## **Assessors Network**

### **SUMMARY**

The development of the Assessors network was one of the items of work specifically mentioned in the recruitment of the two Crofting Development Officer roles. There are 20 Assessors in office currently with their 5 year term due to come to an end in March 2023. This paper sets out how the development team hope the role of Assessors will continue and contribute to Crofting in their own communities assisting Crofters, Common Grazings and the Commission moving forward. The Paper also includes proposals for the process for appointing Assessors for the next term of office 2023-2028.

### **BACKGROUND**

**Annex A** is a paper produced in 2017 for the Assessors working group and gives an overview of the history and development of the role of Assessor since it was introduced in legislation in 1955. It shows that the role has been somewhat diminished in the last 10-15 years for a few different reasons one of which being uncertainty as to the remit of Assessors and how they could contribute to the work of the Commission.

In 2015 the decision was made by the Commission that Assessors should no longer be asked to provide comments into the Area office report or the regulatory decision making process. While the Assessor would have local knowledge of the Crofting Community that the Commission did not, the impartiality of the representation from the Assessor and the resulting decision was sometimes called into question. Given the robustness of the Commission's policy and detailed parameters for all application types, and in the interests of fair, open and transparent decision process, we propose that this position is maintained. The nature of the word "Assessors" gives the impression that the role will have influence in decision making which is not helpful but as this is the title given in legislation there is little we can do.

### **ASSESSORS' POTENTIAL ROLE WITH THE DEVELOPMENT TEAM**

The work of the Development Team includes a strong element of communication with crofters, and this could provide a new and reinvigorated role for an Assessors panel. The vision is that assessors should be present in communities across the crofting counties, should be well informed about the Commission's work and ideas, and so – rather like elected commissioners - could act as a conduit to explain the Commission's thinking to crofters, and to give feedback from crofters to the Commission.

Since the appointment of the Development Team in 2021 considerable effort has been made to actively engage with a variety of different stakeholders to gain an understanding of the difficulties and opportunities that are present in Crofting. The need for disseminating basic information and signposting to support and advisory organisations became a very apparent need. This led to the creation of the Crofting Development section on the Commission website which provides information on the topics that we are most asked about. Obtaining a croft, Croft Housing, Planning Considerations, Funding Opportunities etc.

While having this information available online is very positive we see the signposting and sharing of this information in crofting communities as one of the ways the Assessors network would help support the work of the Development team. A proposed detailed description of the role of the Assessor is set out in Appendix 2. Assisting with two-way communication between crofters and the Commission is one of the strong themes within this role.

## **COLLABORATION BETWEEN THE DEVELOPMENT TEAM AND THE ASSESSORS**

Shortly, the three Development Officers will each take geographical responsibility for a portion of the crofting counties as we look to raise awareness of various subjects, such as the formation of Grazings committees, succession, diversification, and completion of the annual notice. The proposal is to invite assessors to work with the Development Officers in their respective areas. As locally based individuals, they will be able to cover more ground and reach more individual crofters, townships, landlords and grazings committees than the Development Officers could.

This will require a level of commitment from both the Assessors and the Development team to maintain regular contact and to share relevant information in both directions. This is why, in the proposed new role description for Assessors (**Annex B**) we have listed both internet connectivity and IT/Email proficiency as essential for the role. We can see great benefits in having “go to” people in crofting areas who are up to date with the latest policies, initiatives, funding opportunities etc. Many crofters will find it much easier to approach someone they probably already know for crofting information rather than having to search it out themselves. In the 2021 additional crofting survey only 5 of over 500 respondents told us that they had approached their local Assessor for advice/support and that is something we would like to see increase significantly in the coming years.

It is also envisaged that where perhaps contentious situations arise within crofting communities that Assessors with their knowledge and experience of crofting would continue, where deemed appropriate, to carry out some mediation work with the appropriate team.

**Annex C** is a proposed Code of Conduct for the role.

## **Training**

It is inevitable that Assessors will all have varying knowledge of the work and processes of the Commission. Initial training will be provided covering the structure of the organisation, the work of each of the teams and the parameters and decision-making process in regulatory applications.

## ASSESSORS MEETING OCTOBER 2022

The current Assessors in office until March 2023 are as follows:

Mr Sigurd Thomson	Orkney
Mr Jonathan Hedges	Rogart
Mrs Ruth Macdonald	Isle of Lewis
Ms Joyce Wilkinson	Arisaig
Mr Philip Jubb	South Uist
Mr Leonard J Wishart	Shetland
Mrs Alison Beaton	Ross-shire
Mr Bob Meeres	Sutherland
Mrs Jane Thomson	Muir of Ord
Mr John Gillies	Raasay
Mrs Catherine MacKinnon	Bohuntin
Mr Lawrence MacEachen	South Uist
Mr Murdo MacKay	Isle of Harris
Mr Angus MacLennan	Ross-shire
Mr Ian George Macdonald	Isle of Skye
Mr Andrew Hunter	Dundonnell, Ross-shire
Mr Stuart Livingstone	Taynuilt, Argyll
Mr Donald Young	Glencoe, Argyll
Mr Stephen Varwell	Isle of Skye
Ms Cara Cameron	Sutherland

Each Assessor has been contacted by the Development Team individually in recent months to ensure that they were still interested in continuing in the role. It is proposed to hold an event for these 19 Assessors in Great Glen House, and as many Commissioners as are available, on Thursday 27<sup>th</sup> October 2022. This will be initially to re-engage with the assessors and to find out from them and their experiences how they envisage the role of Assessor developing in the future. We would like to invite a speaker to come along and then have an evening meal with them in a local hotel.

Feedback from this event and from the discussion at the Board today will be incorporated in a paper to be presented at the November 2022 Board Meeting.

### Recruitment Process March 2023

Previously there have been as many as 98 Assessor roles recruited, one Assessor for each parish. It is suggested that in March 2023 that around 30 roles are recruited, ideally spread out evenly across the crofting counties

While it is ultimately the Commission that appoint the Assessors, the method for recruiting Assessors has varied over the years.

Previously, grazings clerks had been asked to nominate individuals to represent their area and, where there was a competition, the Area Commissioner had made the final choice. Where no grazings committee existed, self-nominations were elicited via advertisements in the local press.

The method adopted in 2007 followed the steps summarised below:

- Commission advertised in local papers for individuals willing to serve as Assessors
- Applications were grouped into areas and passed to grazings committees for consideration
- Committees then held local township meetings to agree their preferred candidate
- Commission then appointed
- Where no nominations came forward from an area with a grazings committee in office, the committee was asked to hold a local meeting to nominate suitable individuals
- Where there was no committee in office, the SCF or Crofters Commission held local meetings to seek nominations.

Though this method extended participation in the selection process, a significant amount of time was required between initially advertising for Assessors and their eventual appointment, with considerable staff resources required to co-ordinate actions with several hundred grazings committees and hold local meetings where no committee was in office.

With this in mind, Commissioners may wish to consider alternative methods of appointment.

These could include:

- Self-nomination/candidates nominated by crofters following advertisement with final selection by Commissioners (application form)
- Selection by postal/online ballot following receipt of nominations

<b>Impact:</b>	<b>Comments</b>
Financial	Cost of Training, Subsistence & Travel for Assessors.
Legal/Political	N/A
HR/staff resources	The Development team will be the main point of contact for the assessors.

**RECOMMENDATION**

**The Commission is invited discuss the role of Assessors in the work of the Commission and in particular to advise:**

- **whether they agree with the proposed role for assessors set out above and in Annex A**
- **whether they agree a panel of about 30 assessors is the right number**
- **their ideas for the method of recruiting assessors.**

Date            15 September 2022

Author:        Development Team



**BACKGROUND: SHORT HISTORY OF ASSESSORS PANEL**  
**Assessors Working Group 15 Aug 2017**

1. The Crofters (Scotland) Act 1955 provided the Crofters Commission with the powers to appoint a panel of assessors to assist with its work.
2. For the purpose of assisting them in the local execution of their functions under this Act, the Commission shall have power to appoint a panel of suitable persons resident in the crofting counties to act as assessors, when required by the Commission so to act, and may make to such assessors any loss of earnings that they would otherwise have made or any additional expenses (including travelling and subsistence expenses) to which they would not otherwise have been subject, being loss or expenses necessarily suffered or incurred by them for the purpose of enabling them to perform duties as such assessors, such payments as the Secretary of state, may with the approval of the Treasury, determine. Section 2(2).
3. In its first Annual Report, covering the period to 31 December 1956, the Commission reported that it had appointed a panel of assessors, who were selected for their good standing in their communities, for their integrity and knowledge of crofting conditions. The Annual Report for 1957 records that a panel of 71 assessors had been appointed for a 2 year period. It also indicates that the Commission relied on its assessors for information about local conditions and for advice in difficult cases. It hoped that correspondence would flow in both directions rather than the norm of waiting for action from above and then explode into complaint. The report indicated that the Commission would welcome timely suggestions and information.
4. The first Assessors Conference was held in 1958, with the Commission expressing the view in its Annual Report that amongst our Assessors we have men possessing the calibre and the will to support us in some of the more difficult tasks which we now feel sufficiently strong to tackle." The Commission wished to stimulate activity at a township level and while there may have been expectation of help from the government or external agencies it felt that assessors should be on the watch for any opportunity to develop initiative in townships. That theme was maintained in its report of the second Conference in 1959: Our hope is that in addition to advising us the assessors will be able to stimulate initiative at township level. However, the view was also expressed that this might be more difficult for those directly involved in crofting and it might be easier for those independent of crofting to stimulate reform.
5. In 1961 the Commission sought to strengthen the basis of its Panel of Assessors and make it a more effective link between the Commission and crofting communities by extending selection beyond the recommendation of Commissioners and Commission Officers. Nominations were invited from township committees, district council, Crofters Unions and SNFU branches. A panel of 70 assessors was chosen from the 299 names recommended. A pattern of Annual conferences became established which focused on livestock and land improvements, marketing, ancillary industries, full and part-time crofting, forestry and a range of other issues relevant to crofting. There was also different guest speakers and sometimes a visit to a place of particular crofting interest within the Inverness area took place.

6. In 1967 the Panel of Assessors was appointed primarily on an elective basis, with grazings committees choosing assessors. It was intended that this would give crofting a more effective voice in discussion with the Commission, along with liaison representatives from the Crofters Unions and the Crofting Committee of the SNFU. Eight Area Conferences were also held prior to the main Assessors Conference. This was a feature of the deliberations which the Commission held with assessors on the proposal for crofter owner-occupation that developed at this time and throughout the early 1970 s. There was general support for the Secretary of State's proposal for crofting reform recorded at the 1973 Assessors Conference. It was also a regular feature for the Assessors to put forward resolutions to the Secretary of State. It is not recorded as to what impact these had.
7. In 1983 when appointing a 3 year panel, the Commission indicated a desire to appoint younger members of the crofting community. It repeated this in 1989 stating that it was looking for active crofters under the age of 65. The pattern of annual conferences continued until the early 1990s when the Commission examined in more depth its communication with the crofting community and undertook a review of its network of contacts, including assessors. At the 1991 Assessors Conference, demands were made for more local representation and accountability. The Commission considered more effective ways of using the network, which included smaller, local, more personal seminars for Assessors, which will be held in spring 1993 throughout the crofting areas. It was intended that the seminars would give the assessors a clearer understanding of Commission work, and improve communications between their communities and the Commission.
8. Until the end of the 90 s the Commission concentrated on a more regional approach to assessors seminars. There tended to be three separate regional seminars in the course of the year. In addition the Commission held open meetings in the crofting Areas to communicate more directly with the crofting community. The relevant Annual Reports record that 37 open meetings were held in 1995 and 24 in 1996. A survey of Crofters awareness and satisfaction with Commission services in 1996 compared the responses on the effectiveness of the assessors' network as a means of communication to and from the Commission with results from a survey taken in 1993. This indicated that 56% considered it effective in 1996 compared to 34% in 1993.
9. An Assessors Seminar was held for all assessors in Inverness in February 2001. In its 2002-03 Annual Report the Commission stated that Area Assessors continue to provide a valuable information service to the Commission and their community. This includes assessing and advising the Commission on policy development, local issues, assisting in the assessment of demand for crofts, monitoring levels of activity on absenteeism and providing an important Commission voice on the ground." It may be that this was what the Commission hoped would be provided rather than what was being provided.
10. By 2004, with the prospect of legislation to reform and modernise crofting, the continuing role of assessors was being questioned. It was noted that since a streamlined regulatory process was introduced in 2003, assessors were not routinely consulted on regulatory applications, asked to attend public meetings or consulted on crofting policy. No specific training for assessors had taken place within the last four years.
11. Consultation meetings attended by 33 of the 68 assessors in office indicated that assessors felt that there was apathy, the role had been diminished, that their views were often ignored and there was no feedback on decisions. It was suggested that there was a lack of information emanating from the Commission, and the role should be redefined with new elections and a younger generation of crofters encouraged to come forward. They considered the strengths of the assessor panel to be that they had expertise to offer the Commission at a more local level, and that they could provide local knowledge and an impartial view.

12. The Commission agreed to set-up a group to consider the role of assessors at its April Meeting in 2004. This group recommended establishing a Crofting Advisory Panel of 20 members which would effectively replace the Assessor Network. To a degree this corresponded with the proposals for legislative reform which would appear in the Draft Crofting Reform Bill in 2005. This would enable Advisory Panels to be set up at a local level for areas wishing to develop their own policies. The Commission's own panel would be made up of 2 representatives from 7 crofting areas and additional members with particular expertise. The panel's purpose would be to advise the Commission on policy development and help to improve understanding of policy at a local level.
13. Commissioners agreed to a pilot in 2006, with a panel consisting of 30 members which would gradually replace the recognised assessors system. It was viewed that this could better serve the future needs of the Commission and crofting, and it would also allow for more effective and manageable training and support to be provided. Ultimately, it was indicated that it would be confusing to set up a new panel towards the end of the term of this Commission.
14. The idea of a Commission Advisory Panel continued to receive mention but a new Assessors Panel was appointed in 2007. The assessor position was advertised which enabled interested individuals to apply for the posts. The role, as advertised, was to notify the Commission of matters relevant to crofting; reply to Commission queries on matters of policy and specific regulatory cases; assist the Commission with information on absenteeism and the use of croft land; attend Commission Hearings, the Annual Assessors Conference and any Area Assessors Conferences. They were also to receive and disseminate information from the Commission.
15. A panel was appointed for 5 years to cover from 2007 until 2012 and an Annual Assessors Conference was held in Inverness each year. The Commission Convener in the foreword to the 2007/08 Annual Report wrote of the assessors network: The latter has been revitalised, after a period of decline, and each assessor, although technically appointed by the Commission, as legislation requires, has been chosen by his or her own community of crofters, using a process devised by the Commission in partnership with the Scottish Crofting Foundation."
16. The following year the Convener reported: A word on the revitalised Assessors Network. Given the Commission's new focussed role in regulation, we have spent quite a lot of time and effort on an on-going programme of Assessors and Commissioners training. This has certainly borne fruit, and the reports we get from Assessors on cases they are involved in is invaluable.
17. In addition to the annual conferences records indicate that over the following years the Commission was engaged in a considerable number of area based training sessions and meetings with assessors. It may be purely coincidental, but resources and effort were employed in revitalising the Assessors Network at the same time as a major inquiry was taking place into crofting. The final report only mentioned assessors in relation to the Commission's then role and functions, with no apparent future role for them within its recommendations.
18. A new panel of Assessors was appointed for five year period by the Crofting Commission in 2012. Following discussions with the Scottish Crofting Federation and the National Farmers Union of Scotland, a more comprehensive job description was provided along with a code of conduct. An application form was provided for completion, which enabled essential requirements to be weighted and considered, if necessary. Following the initial recruitment stage 73 of the 98 potential posts were filled.

## **ASSESSOR NETWORK – VOLUNTEER ROLE DESCRIPTION**

Assessors provide a highly valued link between the Crofting Commission and local crofting communities.

An Assessor should be available to attend occasional local meetings and have relevant experience of land-based activity within a crofting community. This may, for example, be as a crofter, a crofting landlord or a member of a grazings committee.

In your role you will:

- Retain an interest in the state of crofting within the Assessor area, advising the Commission on any matters as appropriate.
- Respond to requests for information from the Commission and engage in particular matters relating to the functions of the Commission e.g. assist the Commission in its role as a Key Agency in planning by providing advice on croft land for Local Development Plans.
- Encourage and assist in the establishment of grazings committees.
- Liaise with common grazings committees, where necessary, in the exercise of their duties.
- Assist the Commission in the regulation of crofting by promoting the completion and return of the Crofting Census forms within the Assessor area.
- Provide any relevant assistance and advice to individuals who are new to crofting and provide an initial source of contact.
- Signpost Crofters to relevant Commission website guidance, information and factsheets where appropriate.
- Disseminate information on matters of interest to crofting in the local area from the Commission.
- Co-operate with staff from local Area SGRPID offices, when engaged on Crofting Commission business
- Bring to the notice of the Crofting Commission any relevant local matter concerning crofting, which you consider the Commission should be aware of, e.g. the effect of conservation legislation, the demand for crofts in your area, land use concerns.
- Assist the Commission in implementing any current initiatives aimed at the effective regulation of crofting, e.g. the Occupancy Initiative aimed at increasing the occupation of crofts
- Attend Assessors' conferences, meetings, in order to contribute to the topics and matters being considered.
- Willingness to participate in training sessions
- Adhere to the Assessor's Code of Conduct and other standards as required of Commission appointees.

## **Skills/Knowledge**

### **Essential**

- Experience of active crofting
- Engagement in a crofting township/community
- Understanding/awareness of crofting system and/or local crofting culture
- Experience/awareness of land-based activities and associated issues
- Understanding of crofting regulation and/or crofting grants
- Internet connectivity
- IT and email proficiency

### **Desirable**

- Active crofter
- Current or previous involvement in Common Grazings Committees
- Mediation skills
- Excellent communication skills
- Drivers Licence

## **ASSESSOR'S CODE OF CONDUCT**

### **INTRODUCTION**

As an Assessor, you are appointed on merit and you are expected to carry out your role with dedication and a commitment to the Crofting Commission and its core values of integrity, honesty, objectivity and impartiality.

In this Code:

- integrity is putting the obligations of public service above your own personal interests
- honesty is being truthful and open
- objectivity is basing your advice on rigorous analysis of the evidence
- impartiality is acting solely according to the merits of the case

These core values support good governance and ensure the achievement of the highest standards in all that the Crofting Commission does. This in turn helps the Commission retain the respect of Ministers, Parliament, the public and crofting communities.

### **PROCEDURES FOR CARRYING OUT DUTIES**

You will complete all duties as laid out in the Volunteer Role Description with care and diligence in accordance with the Code of Conduct. Assessors are expected to carry out their duties in accordance with the following standards of behaviour:

#### **Integrity**

When undertaking duties as an Assessor for the Crofting Commission you must:

- Fulfil your duties and obligations responsibly
- Act in a way that deserves and retains the confidence of all those with whom you engage
- Ensure public resources are used properly and efficiently
- Deal with the Crofting Commission, public agencies and the general public sensitively
- You must not misuse your official position, for example by using information acquired in the course of your official duties to further your private interests or those of others
- You must not accept gifts, hospitality or other benefits from anyone which might reasonably be seen to compromise your judgement

#### **Honesty**

- You must set out the facts and relevant issues truthfully and correct errors as soon as possible.
- You must not deceive or mislead Commissioners and the staff of the Crofting Commission or others or be influenced by improper pressures or the prospect of personal gain.

## **Objectivity**

- You must provide information and guidance on the basis of evidence and accurately present the options and facts.
- Respect the integrity of the policies agreed by the Crofting Commission and decisions taken by the Commission.
- You must not ignore relevant considerations when providing guidance or frustrate the implementation of policies once decisions are taken.

## **Impartiality**

- You must carry out your responsibilities in a way that is fair, just and equitable and reflects the Crofting Commission's commitment to equality and diversity.
- You must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.

## **Declaration of Interests**

- You must declare if you have an interest in a matter, which may be perceived to affect your ability to act impartially.
- You may not act as a representative for a stakeholder in a formal Commission process.
- You must regard yourself as having a personal interest in any matter, if that matter relates to any of the following:
  - (a) Employment or business you are involved in
  - (b) Posts you hold (whether remunerated or not)
  - (c) Property, including land, you own or tenant
  - (d) Associations or bodies you are a member of

## **Confidentiality**

- During and after your term of appointment to the Panel of Assessors, you will be subject to the obligation of confidentiality in relation to any information of a confidential nature which has come to your knowledge as a result of your appointment.
- You must ensure that any information collated on behalf of the Commission is at all times managed sensitively and that no sensitive information is wrongly passed to a third party.
- Any paperwork or electronic mail and data must be stored securely.

## **Breaches and Complaints**

When carrying out your duties you will be in regular contact with crofters, other government officials and members of the public. Failure to adhere to this Code of Conduct may result in your removal from the Panel of Assessors. Any complaints received by the Commission regarding your conduct will be treated seriously and investigated. In these circumstances, a review of the case will be carried out by the Chief Executive and reported to Commissioners for their final decision.

# CROFTING COMMISSION MEETING

## 27 September 2022

Report by the Chief Executive

### Digital Applications update

#### SUMMARY

This paper gives a summary of the current digital applications picture, specifically focusing on how to achieve full benefit realisation for the system.

#### BACKGROUND

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

This paper forms an update of the current state of play with the digital application project, and specifically focuses on the benefit realisation of the project and suggested actions to help reach the goal of circa £50k per year in savings from a fully digital service.

#### CURRENT POSITION

At the time of writing the digital system has the following application types live:

- Assigment (trusted organisations only)
- Subletting
- Short Term Let
- Decrofting Part Croft by Tenant
- Decrofting part croft by Owner-Occupier Crofter
- Decrofting Part Croft by Landlord
- Decrofting Whole Croft by Tenant
- Decrofting Whole Croft Owner-Occupier Crofter
- Decrofting Whole Croft by Landlord

Through the month of September Division by Tenant, Division by Owner-Occupier crofter, Decrofting House Site & Garden (Tenant, Landlord and Owner-Occupier Crofter) and Assigment of a Grazing Share are all planned for digital implementation.

Currently there have been 29 total applications made digitally, with the majority of decrofting types being made by individuals and not solicitors or agents. A breakdown of these is shown at **Annex A**. Although the numbers still remain low compared to what we had predicated, all of the decrofting applications currently submitted digitally have triggered a rapid completion alert, which means they were done start to submission in less than 60 minutes.



The Digital Apps team also attended the Black Isle show and managed to speak to a limited range of five professional bodies to gain feedback on usage of the digital system. Feedback from these representatives was that they were all aware of the digital system, with some using it and some not. However all those spoken to fed back that the system did not sit with their own workflows, with many applications being only partially completed by the solicitor or agent, and a paper form being sent to the client to fill in the rest. This resulted in double handling for them, and resulted in no desire to use the system. When asked if the ability to submit a PDF version of an application digitally would help this, the feedback was unanimously that it would.

This was then followed up with an email survey to all registered solicitors and agents, which presented three potential feature changes for their consideration, asking the question if these would increase their usage of the digital system:

1. Allow submission of a PDF form digitally
2. Allow collaboration in real-time from a third party
3. Introduce real-time status updates for digitally submitted applications

The feedback was again unanimous that option 1 would result in them using the digital pathway more often, however all agreed that option 2 would also benefit this. All responses liked option 3, however the feedback seemed less to indicate that this would prompt usage of the digital system and more that this was simply a desired feature.

As a result, in addition to the finalisation of the decrofting application types, through the start of September the digital system has had a significant update to allow collaboration on an application by a third party, where the initiating party is a trusted organisation. For example, a solicitor or agent can start the application, however they can then generate a link which can be sent to their client in order to allow them to contribute in real-time for appropriate questions. This collaboration does not require the second party to create or log into an account, however it is restricted and can only fill in information for selected questions. All collaboration links must also be erased before any of verification steps can be completed to ensure no subsequent amendments are made.

This change was implemented on feedback from professional bodies that the requirement to allow a client to complete certain questions was restricting them to paper forms, and previous Board direction that the Commission should continue to seek ways to promote the use of the digital system over PDF forms.

## **SUGGESTED POSSIBLE ACTIONS TO INCREASE UPTAKE FURTHER**

The online application system is still new. We therefore suggest that at this stage, efforts to increase its use should focus on highlighting its benefits and its usefulness to the crofter or solicitor/agent, rather than more radical methods which would deny options which are currently available. At the same time we would take note of patterns of usage and further feedback from users and non-users.

From the Commission's point of view, the three most significant benefits to be gained are:

Top priority: encouraging applicants to use the wizard to select their application form, thus ensuring that the correct form is used.

Second priority: encouraging electronic transmission of the application to the Commission, saving postage and scanning.

Third priority: encouraging use of the full digital system, which will reduce the need for checking. Forms submitted this way will always be complete, but there will still need to be checks for their accuracy and internal consistency.

The suggestions in the table below are presented to the Board for consideration of possible ways to increase uptake of the digital system and reach greater benefit realisation more rapidly. Some of these replicate suggestions presented to the Board at meeting on 18 August 2022, while others are newly presented for the first time below. The options in the table are presented with potential benefits and risks for each, though this list should not be considered exhaustive. The options are loosely in order of recommendation from most to least desirable based on the potential for increasing use of the digital system, weighted against the possible negative effects, and the likely scale of the effect.

ACTION	BENEFIT	RISK
<p><b>Allow the submission of PDF based applications created offline</b></p>	<ul style="list-style-type: none"> <li>Process solicitors and agents suggested would be useful</li> <li>Potential increase in uptake of the system, resulting in better realisation of top line benefits more rapidly</li> <li>Remains accessible to all users regardless of digital skill set</li> </ul>	<ul style="list-style-type: none"> <li>Will facilitate use of the existing PDF based forms to continue for a longer period of time</li> <li>Submitted PDF forms may still be incorrect forms, and full digital validation cannot be applied</li> </ul>
<p><b>The Commission should actively promote and encourage crofters to self-serve via the digital system</b></p>	<ul style="list-style-type: none"> <li>Promotion of the digital system as a solution that does not need a solicitor may remove the issues identified by solicitors/agents dissuading them from using it and increasing uptake</li> </ul>	<ul style="list-style-type: none"> <li>Assignations and Lettings still restricted to only trusted organisations being able to submit them</li> <li>Potential alienation of solicitors and agents, may result in lowered engagement and negative feedback</li> <li>Crofters may still wish to rely on solicitors or agents for the security they feel this brings</li> </ul>
<p><b>Introduce real time status for applications, restricted to the digital portal</b></p>	<ul style="list-style-type: none"> <li>Solicitors and agents have indicated this is something they would be keen to see</li> <li>Potential to promote increase in uptake of the system, resulting in better realisation of top line benefits more rapidly</li> </ul>	<ul style="list-style-type: none"> <li>Has a resource implication to plan and implement</li> <li>Commission may come under scrutiny as to why the function was made available only to digital applications</li> </ul>
<p><b>Remove PDF based forms for application types live digitally</b></p>	<ul style="list-style-type: none"> <li>Customers forced to use system, increasing uptake</li> <li>Better realisation of top line benefits of the digital system more rapidly</li> </ul>	<ul style="list-style-type: none"> <li>Potential customer complaints</li> <li>Commission could be seen to be discriminating against those without the means to submit applications digitally, or be forcing the use of solicitors or agents</li> <li>Professional agents may reject the process and/or complain</li> <li>Some crofters may feel they are being forced to use a solicitor or agent at their expense if they cannot use the digital technology</li> </ul>
<p><b>The Commission could allocate digitally submitted applications to a separate team, in essence prioritising them</b></p>	<ul style="list-style-type: none"> <li>Communication of this process would almost certainly increase uptake of the system</li> </ul>	<ul style="list-style-type: none"> <li>Risk of severe political backlash from existing PDF based applications, in particular those submitted by professional bodies</li> <li>Risk of re-submission of existing applications</li> <li>Risk of complaint around discrimination being levied at the Commission</li> <li>The advantage would soon diminish if uptake of the digital process was significant</li> <li>Potential for a negative morale impact amongst Commission staff</li> </ul>

From the suggestions above, the Board are asked to consider options 4 and 5 carefully with regards to the potential for negative reputational damage. In particular for option 4, removal of PDF forms for application types live digitally, the Board should consider that although the Commission recently had a successful transition to a digital only census, approximately 7% of these were taken over the phone by Commission staff, the largest reason for this being that the crofter was not able to complete the digital return themselves. There would be no such possible option for a Regulatory application, which presents potential accessibility concerns.

**FUTURE PLANNED ACTIONS**

The CC will continue to push the message through promotional routes that our application forms are being updated and using the incorrect form could result in an application being rejected and encouraging all applications to go through the current online wizard to ensure the most up to date form is used.

The Digital Applications team are also working with the Comms Officer to look at technology which will allow the production of professional, cost effective videos that can be used to supply full tutorials for end users.

<b>Impact:</b>	<b>Comments</b>
Financial	Some options will require commitment of resources from the Commission, including teams other than the Information Services. External contractor time will also be needed to implement certain changes.
Legal/Political	N/A
Reputational	Some options present a risk of reputational damage for the Commission if they are not well received, or if the Commission are viewed as forcing crofters to seek legal representation.

**RECOMMENDATIONS**

**The Board is invited to consider the options presented above and decide which, if any, they wish to be pursued by the Commission.**

Date 10 September 2022

Author Aaron Ramsay

**BREAKDOWN OF DIGITAL APPLICATIONS RECEIVED**

<b>APPLICATION TYPE</b>	<b>NUMBER RECEIVED</b>	<b>NUMBER DONE WITHOUT AND AGENT OR SOLICITOR</b>
Assignment	15	N/A
Subletting	7	4
Decrofting	7	4

# CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

## Census Data Sharing

### **SUMMARY**

**This paper outlines the proposal for allowing external parties to the Crofting Commission access to data received from our annual Census.**

### **BACKGROUND**

The Crofting Commission (CC) currently runs an Annual Notice (census) to ask all Tenants and Owner-Occupier Crofters to confirm their personal details and answer questions relating to their crofting duties. At present this information is used solely for internal purposes to ensure that the Register of Crofts (RoC) is kept up to date and to provide information for the Residency And Land Use Team (RALUT) to investigate any breach of duties reported.

### **CURRENT POSITION**

The census has been run annually since 2014 and was successfully transitioned to a fully online system in 2021, resulting in our highest response rate for 4 years (76.7%). The census asks crofters for clarification of RoC data and questions about whether the crofter is ordinarily resident, and that the croft is not misused/neglected and cultivated.

### **THE REQUEST**

A request has been received from Scottish Government – Rural Payments & Inspections Division (RPID), as Landlord Agents for the Scottish Ministers estates within the crofting counties, to have access to data received from their tenant crofters regarding whether they are meeting their duties that is provided as part of the census.

RPID have made this request because they have recently embarked on their own initiative to address non-compliance with duties by their own tenants. They have begun by writing letters to those whose postal addresses indicate they might be in breach of the residency duty, asking them to resolve the position. Follow-up letters will escalate this, with the ultimate sanction of applying to the Land Court to terminate the tenancy on grounds of breach of duty. RPID are collaborating closely with the RALUT team in the methods they are using. The RPID initiative has potential to open another method for ensuring crofts are lived on and worked, supplementing the activity by the Commission's own RALU team.

The RPID initiative will continue whether or not they have access to individualised census responses, but it would be an asset to them if they could access information on whether each crofter has reported compliance with their duties, has admitted that they are in breach, or have not replied to the census.

Individualised data can only be shared with other bodies under strict conditions. If RPID's request is agreed, a new Data Sharing Agreement (DSA) would need to be drafted and agreed prior to the release of any information<sup>1</sup>, as well as other requirements including a Data Protection Impact Assessment (DPIA). Legally the Commission would need to be clear on what data they need, how they intend to use it and confirmation that it would not be shared with any third parties. Our Privacy Notice for the Census would need updated to inform crofters that their responses may be shared, as well as the census letter updated so that all those providing information in response to the census will know in advance how it is to be used.

**WIDER CONSIDERATIONS**

The Commission has also had interest from other additional parties for more freedom of data sharing around information the Commission holds. These include HIE and the John Muir Trust.

It is suggested that the Commission should in principle be open to data sharing arrangements where these can benefit crofting, but that each proposal should be considered thoroughly on its merits before being authorised.

In each case, consideration will need to be given to the scope of their request and the potential impact it may have, including:

- How we notify the crofters in advance that their information is to be shared with an external party?
- Could this have an impact on our return rate? Could it potentially put some crofters off responding?
- Impact on CC resources to prepare requirements for reports, collate and distribute data
- Cost involved for website developer to create new reports
- What benefits will it achieve for the CC, or for the development of crofting in a wider scope?
- All external parties would need to enter into a DSA with the CC; there would be a resource cost involved to establish this.

In the current case, the approach by RPID has a clear purpose which is completely aligned to the Commission's own objectives. We therefore recommend that the Board should accept this proposal and put in place arrangements for data sharing with RPID from the 2022 census. However, this would not be seen as a precedent for any other landlord or stakeholder, as all future requests will be considered on their individual merits.

<p><b>RECOMMENDATIONS</b></p> <ol style="list-style-type: none"><li><b>1. The Board to decide if they wish to enter into a DSA with RPID giving access to census data for their crofting estates</b></li><li><b>2. The Board should consider their general stance on allowing more free access to certain data from third parties where they can demonstrate a need to access that may benefit the regulation or development of crofting</b></li></ol>
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Date            31 August 2022

Author           Anne Williamson, Head of Compliance and Customer Services

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<sup>1</sup> A Data Sharing Agreement (DSA) between CC and RPID currently exists for the purpose of sharing of personal data for the lawful purpose of feeding into our decision-making process for regulatory casework. This agreement is however with RPID in their role as local area offices and not as landlords.

# CROFTING COMMISSION MEETING

**27 September 2022**

Report by the Chief Executive

## **Corporate Plan 2023-2028**

### **SUMMARY**

**This paper invites Commissioners to discuss their ambitions for the next 5 years, to inform the drafting of a new Corporate Plan for 2023-2028.**

### **BACKGROUND**

Each Non-Departmental Public Body has a Corporate Plan as a cornerstone of its governance and its relationship with the Scottish Ministers. The Corporate Plan is normally a 5-year Plan setting out the aims and objectives of the organisation (and how progress towards them will be measured) as agreed with the Scottish Ministers. The objectives in the Corporate Plan form the basis for the more specific annual Business Plans, against which the organisation's performance is reported to the Board, the public and audit.

Although written as five-year plans, it is possible to amend a Corporate Plan in the middle of its term. The Commission did this in 2019, when we adjusted the 2017-2022 Plan to include more of a focus on direct communication with crofters, and other changes to reflect the priorities and style of the 2017-2022 Board. More recently we have been advised that it is good practice for the Board to review the content of its Corporate Plan *annually*, to check that it still contains an accurate list of the Commission's priorities as agreed between the Board and the Scottish Government (SG), and to update it whenever necessary.

The current Corporate Plan 2019-2022, a slightly modified version of the earlier 2017-2022 Plan, is found [here](#). It has done its job over the past 5 years although with hindsight, there may be weaknesses in that too many of the "objectives" are just descriptions of what the Commission does, rather than achievements we were aiming for; and also in that some of the "success factors" have proved difficult to measure.

### **THE LEVEL OF AMBITION**

In the last 3 years, the SG has invested substantially in a stronger Commission. Compared to where we were 5 years ago, we have a much stronger casework team, a new development team, a RALU team almost double in size, more capacity for improvement, and a more substantial leadership structure. It is therefore reasonable to expect the next Corporate Plan to be an ambitious statement of what the Board intends to deliver with that investment and trust by the SG. This paper therefore invites the Board to identify a realistic and achievable set of ambitious aims which can form the basis of the draft Corporate Plan that we put forward to the SG for their approval.

If the ambitions are pitched at the right level, the Board should then be able to go to Government and say confidently that all of these are within our grasp if the SG continues to invest adequately in the Commission.

The Commission's role in delivering the SG's own priorities for crofting will of course need to be reflected in the Commission's Corporate Plan. The Plan will therefore include references to the National Development Plan for Crofting (2021) and the broader National Framework. At the very least, the Commission's draft plan should include our contribution to the SG's stated priorities on enhancing opportunities for entrants to crofting, land use for protecting biodiversity and climate, improving compliance with crofting duties, and supporting legislative change.

## **SUGGESTED THEMES FOR THE CORPORATE PLAN 2022-2028**

The Board are invited to consider whether each of the following should feature in the new Corporate Plan, and if so, what level of ambition should be the aim:

- Strong performance in turnaround of regulatory casework, with turnaround times sustained at a better level
- Visible progress on turnover of crofts and resolving more breaches, through a combination of the Development Team campaign and RALU enforcement.
- Enabling a strong crofting contribution to mitigating the climate and biodiversity crises
- Effective communications about crofting to the public sector and the wider public, demystifying how it works and highlighting how it contributes to the social and economic fabric of the Highlands & Islands
- Continued purposeful development of our IT systems both internally and customer-facing
- Sustaining the current numbers of grazings committees
- Anything about registration, of common grazings or of crofts?
- Advice to Government about legislative reform, the future of subsidy and other issues
- The Commission to be recognised by crofters as an open and accessible organisation with a constructive vision for crofting, and as a problem solving regulator which supports crofters in finding ways forward
- A strong office culture and good governance; Deloitte reforms fully bedded in; a Commission that is seen as open, in touch with its clients, and fair
- High staff satisfaction; strong staff development and retention
- More of our staff living and working in remote locations across the crofting counties
- An active and focused assessors network

## **NEXT STEPS**

In the light of the Board's comments, the next stage will be to create a draft Corporate Plan for consideration by the Board, perhaps at the additional Strategy Meeting that has been provisionally booked for 26 October. Once the Board has agreed a draft, it will then be submitted to the SG for the Minister's consideration.



<b>Impact:</b>	<b>Comments</b>
Financial	The aims agreed by the Board and Scottish Government, and set out in the new Corporate Plan, will inform the Commission's negotiations with SG over each year's Grant-in-Aid, and also the deployment of resources within the Commission.
Legal/Political	When finalised, the Corporate Plan can be seen as the key document that underpins the partnership between the Crofting Commission and the Scottish Government.
HR/staff resources	The Corporate Plan will set the strategic context for the deployment of Commission staff over the next 5 years.

**RECOMMENDATION**

**The Board is invited to discuss their aspirations for the next 5 years, to inform the first draft of the new Corporate Plan.**

Date            16 September 2022

Author         Bill Barron, CEO

# CROFTING COMMISSION MEETING

## 27 September 2022

Report by the Chief Executive

### Report on meetings with Sponsor Division

#### SUMMARY

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

#### BACKGROUND

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

#### RECENT MEETINGS INVOLVING CROFTING COMMISSION CEO AND SPONSOR DIVISION

<i>Topic and Date</i>	<i>Commissioners attending</i>	<i>Lead SG officer(s)</i>	<i>Agenda items</i>	<i>Key outcomes</i>
Discussion about the progress of the Crofting Bill work, 24 August 2022	None	Michael Nugent, Aileen Rore	Deadlines for Commission actions; Grazing Committee duty to report; Annual notices; Duties enforcement process; Joint tenancies; Standard securities; Deemed crofts	Exchange of understanding between Sponsor and the Commission's CEO, Solicitor and Head of Regulatory Support, to clarify details of some proposals emerging from the Bill Group work and to exchange views about the more contentious proposals.  The main outcome is that Sponsor are better informed about the Commission's likely position on different aspects of the legislative proposals.

#### IMPACT

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

#### RECOMMENDATION

The Board is invited to note this report.

Date 16 September 2022

Author Bill Barron, CEO

## **DATES OF NEXT MEETINGS**

**Strategy Meeting - Wednesday 26 October, Noss & Rum**  
**Board Meeting - Wednesday 30 November 2022, St Kilda**

**ANY URGENT BUSINESS**

## **EXCLUSION OF PRESS & PUBLIC**