

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD BY 'TEAMS' AT 9AM, 13 MAY 2021

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Vice Convener
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal	Commissioner (open session)
	James Scott	Commissioner
	Bill Barron	Chief Executive
	Aaron Ramsay	Head of Digital & Improvement
	David Findlay	Commission solicitor
	John Toal	Head of Policy & Grazings
	Joseph Kerr	Head of Regulatory Support
	Mary Ross	Head of Operations & Workforce
	Heather Mack	Head of Crofting Development
	Neil Macdonald	Head of Finance
	Jane Thomas	Head of Compliance and minute taker
	Karen MacRae	Development Officer (open session)
	Gordon Jackson	Scottish Government
	Aileen Rore	Scottish Government

Members of staff, Assessors and the public

### **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting, including the staff, Assessors and members of the public observing, with a greeting in Gaelic, followed in English. There were no apologies.

### **2 DECLARATION OF INTERESTS**

The Convener asked if anyone had any Declarations of Interest that they wished to inform the meeting of. Commissioner Campbell intimated that he would declare an interest in the private part of the meeting, under item 16(b).

### **3 BOARD MINUTES FROM 4 MARCH & 18 MARCH 2021**

The Board Minutes of the Special Meeting on 4 March 2021 and the Board Meeting of 18 March 2021 had previously been circulated and approved, and subsequently published. They were brought to the meeting for information only.

### **4 MATTERS ARISING FROM PREVIOUS MINUTES**

There were no Matters Arising.

## 5 EMAILED PAPER FOR APPROVAL: *Budget 2021-22*

Head of Finance explained that the budget had been reviewed by the Audit & Finance committee in January, prior to confirmation of the Grant-in-Aid award, and the pay uprate. It was subsequently presented to the Board in March and adjusted to reflect the agreement reached regards allocating additional resources towards key strategic priorities, such as delivery of IS projects. The final draft was then circulated to the AFC. The Vice-Chair confirmed that the draft had captured the Board's recommendations and the draft budget was subsequently circulated to the Board by email, to ensure everyone is content.

The Commission approved the budget for 2021-22.

<b>Decision</b>   <b><i>The Commission approved the budget for 2021-22.</i></b>
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## 6 AUDIT & FINANCE COMMITTEE REPORT

### (a) Update from Malcolm Mathieson

Vice-Chair of Audit & Finance reported that the committee had gone through the end year results in depth, looking carefully at the budget for the current year and the draft Business Plan, which was approved with minor adjustments and is on the Board agenda for today.

Head of Digital & Improvement had given an important presentation to the committee, setting out the timelines and targets for the various IT-related projects that are currently in development. The Vice-Chair commended the way the information had been presented and would forward a copy of the chart to any Commissioner who wished to see it.

The committee had also approved the Internal Audit workplan for the year and, in order to discuss the Internal Audit report on CIS, an additional AFC meeting is being held on 17 May. It had been hoped that the External Audit Governance report would also be ready for discussion, but this now seems unlikely, as Deloitte's timescale has slipped slightly. The Internal Audit report would be discussed by the Board at a Special Meeting on the evening of 20 May. In answer to a question, the Vice-Chair explained that the External Audit report would be discussed at a specially convened AFC meeting, as soon as it is ready, and it will then come to the full Board for discussion.

### (b) Draft Minutes from 28 April 2021

There were no comments on the Minute.

### (c) Review of Key Performance Indicators Q4 2020-21

The KPI report was brought to the Board for information. Although there were several items marked as RED, the committee understood the reasons for this, which were mainly to do with COVID-19 restrictions impacting on the ability to meet the target; for instance, it had not been possible to attend agricultural shows for the last year.

Vice-Chair offered to meet any member of the Board outside the meeting, if any further detail on the report was requested.

## **7 RESULTS OF THE CROFT UNDERUSE AND AVAILABILITY SURVEY**

Development Officer Karen MacRae introduced the paper, explaining the background, with the aim of the survey being to gain insight into the reasons for crofts being underused. There had been a good response rate of 410, with the Western Isles having the highest response.

The survey results showed that unused crofts and lack of availability of crofts to new entrants were issues of concern to the vast majority of respondents. There were four reasons for this that were most commonly highlighted. These, along with the possible solutions, will be taken forward by the Development Team, to help shape their approach to the issue. The team will work with the RALU team on this and their work on the turnover of crofts and also work with the Farm Advisory Service to improve information for crofters. On the ground, Development Officers will try to explain how underused crofts are a loss to local communities. The aim is to be as pro-active as possible and engage at a local level.

Commissioners supported this approach and hoped a positive momentum could be built up, agreeing that making a difference on one croft could have a ripple effect in a crofting community. There was support for the aim of being as visible as possible in the community.

Several Commissioners had received a FAS leaflet and thought that assignation should be given a higher prominence than sublet in the Succession section. It was therefore agreed that a dialogue should be opened with FAS to discuss this. This was taken as an Action Point for management.

## **8 NATIONAL DEVELOPMENT PLAN- ANALYSIS AND ACTIONS**

Head of Crofting Development introduced the paper. The NDP is a multifaceted document and the paper showed what actions the Commission is either already engaged in or where action is planned, with an approximate timescale. To illustrate this, three areas of work were highlighted:

- Grazings, where there will be work on supporting committees, engaging with long-term out of office grazings and looking at Peatland Restoration;
- Entry to crofting, where the survey results will be used and communications improved, with case studies and myth-busting;
- Duties work, with follow-ups on resident non-cultivators and those not retuning a crofting census form and a policy recently approved on vacant crofts.

Board members queried why the Commission is not involved in all aspects of the National Development Plan's objectives, as it is a Plan for crofting. The Chief Executive agreed that the Commission has an interest in the whole of the plan but will not necessarily be the agency which delivers outputs for every item. The key is to engage with partners, and this is already underway and will develop further.

Sponsor Division confirmed that Scottish Government will establish a Steering Group to oversee the plan and the Commission will feed into that group. The Board was pleased to hear that a meeting has been arranged with HIE in the Western Isles and agreed that the Commission may not always be the appropriate lead partner for all activity.

Some concern was expressed regarding the possible impact of work on the NDP diverting attention from the Commission's core Regulatory work. The CEO reassured Commissioners that this would not be lost sight of and there would need to be a balance of resources. He felt, however, that there could be considerable benefits from the development work the Commission would be engaged in.

As all the other Board members had taken part in the discussion on the paper and the NDP, the Convener asked Commissioner Annal for his view. This was expressed by the Commissioner declaring that no croft or farm under 200 acres is economically viable. The Convener pointed out that the same could be said for marginal small holding systems all over the world, but this did not make the crofting system redundant, as evidenced by the demand for crofts.

Commissioner Holt wished to put on record his disquiet that a Crofting Commissioner expressed views such as those of Commissioner Annal, which seem out of kilter with the aims of the Commission. Vice-Convener Mackenzie agreed there is positive interest in crofting, with opportunities in agri-tourism. Commissioner Campbell pointed out that crofting did not have to be a full-time agricultural occupation. It is broader than that. Crofting can support a living for people in remote, environmentally, and culturally rich communities and that is why there is demand. Commissioner Maciver indicated that he understood the point being made by Commissioner Annal as being that a croft alone cannot sustain a crofter. He said crofting requires the support of government. Commissioner Neilson agreed and pointed out that getting a start in crofting was often the first step onto an agricultural ladder, and that new entrants should be encouraged. The Convener said that he would speak with Commissioner Annal after the meeting.

## **9 BUSINESS PLAN 2021-22**

The CEO introduced the paper, which came to the Board for approval. As mentioned under item 6, the draft plan has been approved by the Audit & Finance committee, with all suggestions taken on board. Targets have been made as numerical as possible. Several targets are quite challenging but important and reflect previous conversations with the Board. It is an ambitious plan but one that management will work with the Board to deliver.

Commissioners were pleased with the format adopted for the Business Plan this year and hoped we would continue with this model, with defined quantifiable targets wherever possible. The plan was approved with no amendments.

<b>Decision</b>	<b><i>The Commission approved the Business Plan for 2021-22</i></b>
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## **10 ADDITIONAL QUESTIONS FOR CROFTING CENSUS 2021**

The Convener set the scene for the discussion, by reminding Commissioners that an additional survey was carried out with the Crofting Census in 2018. Today's paper included possible questions for a further anonymous survey, as well as three possible new questions to add to the Crofting Census form itself.

Head of Development explained that if additional questions are added to the census form, this has cost implications and, to be GDPR compliant, there must be a clear reason for the processing because we would be collecting personal data. On the survey form, additional questions for discussion are marked in red. The most efficient way of distributing the survey would be to put it online.

The Commission solicitor then went through the reasoning behind the three additional questions which could be added to the census form. On Q2, there could be a reason for receiving additional information from people who have a grazings share only; on Q3, the 1993 Crofting Act contains a section on the need to report positive measures to control weeds, whins, and bracken, as well as vermin on the croft. On Q1, the Commission solicitor was less sure how the information could be used.

On the survey, the suggestions in red include a question on housing, as this issue comes up quite often in discussions.

Commissioners discussed the wording of the suggested questions in some detail, with there being general support for the inclusion of Q2 but more doubts over Q1 and Q3. It was agreed that officers would work on revised wording for Q1 and Q3 on the form and these could be circulated to the Board by email, for approval. It was also agreed that the survey questions required more discussion, in private but that the survey should be online only and made available at the same time as the 2021 Annual Notice.

## **11 REVIEW OF APPORTIONMENT POLICY (this item was taken after item 12)**

Head of Policy & Grazings explained that the need to review policy on Apportionments came out of the RALU STWG recommendations. At present the Commission has a purely reactive role in relation to apportionments and if it conditioned apportionments with a review at intervals, it would have a more proactive one. The 2007 Act introduced the possibility of conditioning apportionments for a period of time or to be reviewed at fixed intervals, or both. Between 2009-2014, it was relatively common for the Commission to grant for a period of time but it has seldom conditioned apportionments by a review at fixed intervals. As suggested in the paper, these reviews could be a relatively light touch with minimum demand upon resources but would allow the Commission the capacity to monitor the use of areas of land it has agreed to apportion.

This would not be retrospective. There may be resource implications, but it is hard to judge at present because the reviews would be some time in the future. They could be based on self-assessment online forms, with minimal inspection required, in cases of suspected non-compliance.

The question of responsibility for paying compensation for permanent improvements was raised, with the Commission solicitor saying that he will give this some thought. It was confirmed that in Succession cases, the Apportionment would carry on. There was concern that the policy could lead to a 2-tier system of dealing with Apportionments, but Head of Regulatory Support said this already exists to an extent.

It was pointed out that the policy does not imply that a review is mandatory and that a flexible approach could be taken. The Convener asked if the Board was willing to approve the paper on that basis. Six Commissioners approved the recommendations in the paper, two did not approve and one Commissioner had no comment. The recommendations were therefore approved.

<b>Decision</b>	<b><i>The Commission approved the policy proposals contained in the paper, with review periods to be decided on a case-by-case basis.</i></b>
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## **12 REPORTS FROM HEADS OF TEAMS**

### **(a) IS Team**

Head of Digital & Improvement confirmed that cyber security had been reviewed and no significant issues found, with all the recommended improvements put in place within 24 hours of receiving the report. The website refresh was complete and the new website live. The accessibility review will take place in June. The external contractor will also review the accessibility of the Annual Report, as the organisation's major publication. Applications Received will be searchable on the website. The digital applications work is proceeding and there will be a Digital First test in late May.

The team has a new member of staff joining on 17 May and work has been switched within the team to allow one member to focus on the digital applications. On CIS, the team is plotting out specific steps towards the final version for the new release, due to go live in August. The project to migrate to the Cloud is in its final stages.

It was explained that rather than bringing a Project Manager in to help the team, the resource required was a Delivery Manager, and this was being sourced as a secondment opportunity, at B3 level for 6 months. There was a discussion on the time taken to bring someone in to complete the delivery work on the various projects, and why this needed to be someone from SG, with frustration at the delays.

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

Head of Regulatory Support gave the update, reflecting that the Tier 2 system is considering 10 cases or more at each meeting, which is at the top end of what is possible. He reported on an interesting case of 7 woodland crofts in Argyll that will be coming to a meeting next week. Work on the modules required for the online applications is progressing well and is on track.

On RALU, the interviews will take place next week for a B1 officer to be based in the Western Isles. Ten breach of duty cases have been progressed since the last update. There are 98 ongoing cases being progressed, with several cases escalated to the team from Tier 3 meetings.

A meeting has been arranged at the end of May with a grazings committee on Skye, who have reported 29 suspected breach of duty cases to the Commission. Some unresolved Succession cases are also being dealt with by the team. This is a 'must' in the Act and there are cases in Shetland and Wester Ross plus a further 28 cases being looked at. These will include the issuing of termination notices.

It was agreed that this active work should be recorded on the website so that crofters can see that action is being taken on breach cases and that they can result in assignations to new tenants. It was also hoped these stories could be featured in the agricultural press and that solicitors would be made aware of them, as they highlight the powers of the Commission.

### **(c) Operations & Workforce**

Head of Operations & Workforce had issued end of April statistics, which show an increase in cases coming through in March. The 2020 crofting census returns are creating work. Resilience in the team therefore needs to be built up. A member of the Customer Service team joined Regulation at the start of April and another two A3 staff will join in early June. A B1 officer from the Grazings team is also helping for 6 weeks, which is appreciated.

The team has carried out an exercise, reviewing file locations, which has resulted in useful streamlining, with documents now all in one place. On Registrations, there appears to be no backlog, which is good. The Convener expressed his thanks to the teams for their hard work. In answer to a question, Head of Operations & Workforce explained that experienced officers work across the board, on all application types but newer members of staff are taught one function at a time. One of the perennial challenges for the Regulatory team is the length of time it takes to train a new member of staff in what are complex processes.

Commissioners appreciated the case stats now provided. There has been a rise in Apportionment applications, which gives some concern, as these cases take a long time to process. It was agreed that it would be interesting to see data on this, to view the reasons being given for the applications. It was noted that housing may be one reason and that the issue of housing had come up several times during the meeting. It was therefore suggested that this is returned to on a Strategy Day in the near future.

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

Head of Policy & Grazings reported that the specific measures introduced last year to help grazings committees due to go out of office had been a success, with 510 now in office. It will be a challenge for some committees to arrange shareholder meetings when restrictions are eased. A high number of enquiries continue to come into the team. Many are quite straightforward but dealing with them well will hopefully prevent more complex issues arising. Advice at an early stage can prevent later problems.

In 2016/17 a new Template was made available for committees to use when drawing up Regulations. This is designed to assist committees, but it is not being used very often. There was, for instance, a recent Tier 3 case where a committee had sought to use its Regulations as a way of controlling the public when on the common grazing. But this is not what Regulations are for. They are a Code for the users of the grazings, not the public. Perhaps one way to promote the use of the Template would be to pre-populate it, to speed up the process of approval.

On Policy, the Commission has recently responded to a local development plan consultation for the Inner Moray Firth area, which includes over 700 crofts, on some of the better agricultural land. There is a value in this land, for local food production and food networks, for instance, that crofters can engage with. This area also contains a hinterland area with stricter controls on housing in the countryside. Commissioners were pleased that a submission had been made to the consultation. There was also a recognition of the work done by the grazings team and the limitations on their resources.

#### **(e) Crofting Development**

Head of Crofting Development gave a brief update, as there had already been papers from the team earlier in the meeting. She reported that the second B2 Development Officer would be joining the team shortly and that, when the B1 Communications Officer is recruited, they will join the Development Team, as much of the work of the team has an external focus. Apart from the survey work reported on, the team has held meetings with stakeholders and is learning about peatland restoration, has produced a leaflet, and is getting in touch with Assessors.

A Review into Communications has been completed by an external consultant, which has resulted in lots of things to think about. This will be summarised in a paper for the June Board meeting. In answer to a question, Head of Development confirmed the recruitment process for the Comms Officer is underway, but it may take several months, based on recent experience, for the post to be filled. The CEO confirmed we will be going straight to an external advertisement for the post.

### **13 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS**

The Convener noted that the local market for livestock is good at the moment, which helps people to invest in the land for the future. This is, after all, the focus of the Commission; investing in crofting for the future.

Commissioner Neilson had noted the same good prices when out and about, having spent time on QMS work and a week on Islay. He was still helping on the STWG on forms and, as a result, some policy questions may need to be brought to the Board.

Commissioner Maciver agreed the crofting economy was looking fairly good but urged that others needed to invest in crofting communities too, not just the crofters. He reported problems with sea eagles and geese from his area. Approaches from crofters continue but he is usually able to direct these to officers.

Commissioner Mathieson's work since the last meeting has focused on the Audit & Finance committee and he was thanked for his contribution to the committee's work.

Commissioner Scott said work was getting a lot busier, with restrictions easing and people going back to think about investments such as training, which is for the longer-term. He felt there is positivity in crofting at the moment. He was engaged in meetings connected to upland estates and noted that each interest group tends to focus on their own interest, so what can be lacking is a joined-up approach.

Vice-Convener Mackenzie had been busy with lambing. Sea eagles had also been seen in her area, which is quite a worry. She is sitting as part of a panel on agri/tourism on 20 May, promoting diversification on crofts.

Commissioner Campbell had attended the AFC meeting in April and continued to receive queries from crofters, which he directs to the website if possible. He mentioned that the sea eagle debate was interesting because, while they are predators, they also represent one of the main reasons tourists visit the Highlands and Islands – the wildlife.

Commissioner Holt reported that he was halfway through lambing, so it was a busy time of year.

Commissioner Annal was asked if he had anything to report and the Convener asked if he was in touch with crofters on Orkney. Commissioner Annal remarked that if you put several 100ac crofts in Orkney together, you might have a decent unit and that crofters he spoke to who had decrofted were glad to have done so. He said only places like North Ronaldsay wanted to retain small crofts. When asked about Caithness, he said most crofters want to decroft but that it might be different to Orkney, which has half the cows in the Highlands and Islands.

### **14 DATE OF NEXT MEETING**

The next meeting will be held by Teams on 24 June 2021. The Board would be keen to hold a face-to-face meeting in August, if possible and confirmed that arrangements should be made for an external Board meeting in Lairg in October.

### **15 ANY URGENT BUSINESS**

No urgent business was reported.

The Convener thanked everyone for attending and closed the public session at 13:44.



When the Closed session convened, Commissioner Annal did not return.

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

The Convener thanked everyone for their contributions and closed the meeting at 14:42.