

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD ON 28 JUNE 2023 AT 9:30AM IN GREAT GLEN HOUSE

Present:	Malcolm Mathieson	Convener
	Andrew Thin	Commissioner
	Mairi Renwick Mackenzie	Commissioner
	Duncan Gray	Commissioner
	Iain Maciver	Commissioner
	Duncan Macaulay	Commissioner (via Teams)
	Colin Kennedy	Commissioner
	Donald Macdonald	Commissioner
	Rod Mackenzie	Commissioner
	Bill Barron	Chief Executive
	Christopher Reynish	Director of Operations & Policy
	Aaron Ramsay	Director of Corporate Services
	David Findlay	Commission Solicitor (from 11:30)
	Jane Thomas	Head of Compliance and minute-taker
	Aileen Rore	Scottish Government (via Teams)
	Gift Mlambo	Scottish Government (via Teams)
	Observers	Members of staff, Assessors and public 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. The Convener welcomed members of the public as observers.

2 DECLARATION OF INTERESTS

There were no declarations of interest.

3 BOARD MINUTES FROM 10 MAY 2023

The draft Minute had previously been circulated for comment and was brought to the meeting for formal approval. It was proposed by Commissioner Thin and seconded by Commissioner Kennedy.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (*of 10 May 2023*)

All Action Points had either been cleared or were on the agenda. Commissioners agreed that, in relation to item 6, working with SLMS, it would be wise to review how things are going in a year's time. This would be placed on the Board Meeting Planner.

Action Point 1	Board to review work with SLMS in May 2024
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5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no matters arising from the Minute.

6 REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES

The paper was introduced by the CEO, who explained the context in relation to the Corporate Plan and the view of internal audit that it is good practice for the Board to look at the plan on an annual basis. The paper shows progress against targets. The Outcomes were revised and confirmed by the Board in late 2022.

Whilst agreeing the Recommendations in the paper, it was agreed that it makes sense to look at the Outcomes again in the next 6-9 months and there was some discussion on the suitability of setting a target figure for cases, rather than using improvements to turnaround times as a target. It was felt turnaround times are a better indicator.

Action Point 2	Board to review Corporate Plan Outcomes in 6-9 months' time
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7 DRAFT STRATEGIC RISK REGISTER

The item was introduced by the CEO, who explained that the Strategic Risk Register was being revamped to bring it in line with the newly signed off Corporate Plan and considering Board member comments at the last Board meeting. It has come to the Board as a draft for discussion.

Members welcomed the draft and there was discussion on the various risks noted, such as the risk of low take-up of digital applications and the risk posed by challenging budgets, risks being balanced by mitigating factors such as streamlining of regulatory procedures. There was a question mark over whether fear of challenge in the SLC should be classed as a high risk and whether threats tocrofting tenure should be added, i.e., the reputational risk of the complexity ofcrofting regulation leading tocrofting itself being seen as a flawed system.

In answer to a question on the costs of regulatory processing, the CEO pointed out that this information is captured in the Corporate Plan, the Convener stressing the need to focus on future improvements in efficiency.

The CEO agreed to take on board the points raised and revise the draft, with a view to presenting an updated version of the register at the August meeting.

Action Point 3	CEO to revise draft SRR and bring updated version to August Board Meeting
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8 ANNUAL CONSIDERATION OF STRATEGIC RISK IDENTIFICATION AND APPETITE

The Convener and the Vice Chair of the AFC lead the discussion on the item, encouraging all Board members to add their views, and reflecting that it is a common tendency for public boards to avoid risk, especially where there is a culture of criticism when mistakes are made. If staff are to be given a clear lead, the Board needs to express where it is willing to risk mistakes being made in the cause of progress and where it will not, for instance on finance.

It was emphasised that we will always abide by our legal obligations, but we can look at how we operate. There was agreement on the need to be less risk averse in certain areas of regulatory decision-making, especially at Tier 1, managing risks within legal parameters. In terms of how the Commission operates, the 'all at once' approach was questioned. With more prioritisation, the Executive Team could be empowered to make more decisions.

Commissioners questioned whether there is a tendency to defer decisions due to concerns about cases being appealed and reflected that the focus needs to be wider than Regulatory casework, to include the work of the Development and RALU teams.

The CEO wondered whether the Commission should have a conversation about the type of Regulator it wishes to be, quoting the new approach taken by SEPA, but reflecting that often the Commission seems to operate in a quasi-judicial environment, as a tribunal, with processes very prescribed.

Drawing the discussion to a close, the Vice Chair of the AFC agreed to put together a series of statements, which will be considered by the Committee before being brought to the Board.

Action Point 4	Vice Chair of AFC to draft a series of statements on risk identification and appetite and present these to the next AFC meeting.
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9 REGULATORY CASEWORK UPDATE

The CEO introduced the paper, explaining that it delves into some statistics which are not usually presented as part of the update. He was pleased to report that feedback from staff is that they are feeling less pressured than in 2021 or 2022, and that the Table showing training targets gives a good picture of positive progress to date, with more to come. He also drew attention to the graph on page 5 of the paper, which shows the number of cases waiting for consideration by the GIS team has come down. This has a positive knock-on effect.

He explained that senior caseworkers are now applying focus to the oldest cases, to try to get as many cleared as possible. The Convener wished to convey to the staff the Board's appreciation of the hard work put in to bring about these improvements, though there is a concern on the part of the Board that, with training such a crucial element of the improving picture, the Commission has little resilience in this area.

Commissioners wanted to see staff empowered to drive faster progress. This led to a discussion of what the 'backlog' is, the Director of Corporate Services explaining that a lot of work is going into profiling, so that we can try to understand what 'normal' looks like and how this could be quantified. It was agreed the terminology is not always helpful and median turnaround times could mean more to our customers.

The Board thanked staff for their input into the paper, which they found interesting and helpful.

10 DIGITAL APPLICATIONS ROADMAP AND COMMS STRATEGY

Director of Corporate Services explained the graphs shown in the paper reflect an increased uptake of applications submitted online, with the latest figure now available for June showing 48 online applications. We are recording that crofters are completing the online procedure within an hour, so it appears the system is accessible to those using it. He explained more detailed statistics will be available. Now, the blockers to more progress are chiefly around a mismatch between the Commission's online offer and aspirations and the RoS system being paper only. As a result, some agents will not make use of the online opportunity because they do not want to split processes if paperwork must be submitted to RoS.

He explained that discussions are being held with RoS but at the moment it is not clear whether change to their processes will be quick.

Despite this negative, Commissioners were delighted to see take-up improving and to hear feedback that crofters themselves are using the online service. They would like to see Milestones added to the roadmap, with estimates for 3-month, 6-month, 9 month and 12-month targets at the August Board meeting, noting that the RoS position creates a restriction, but indicative Milestones will give a flavour of our direction of travel.

CEO reflected that the online opportunity gives crofters and agents the chance to get it right first time, which then cuts down staff time trying to deal with invalid or incomplete applications.

Action Point 5	Draft Milestones for 3, 6, 9, 12-month period and return to Board in August.
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11 2022 CROFTING CENSUS REPORT

Director of Corporate Services explained that the return rate for the census was down. There has been a wash-up discussion but the reason for the lower return rate is not clear. The reasons identified seem minor.

In 2021, there were more outbound calls to encourage take-up and this exercise had an impact, but at a cost. Apathy might be an issue, especially as crofters are required to complete a return each year but do not see an outcome. There will be a higher profile publicity campaign for the 2023 census, which will hopefully help the return rate.

Commissioners queried whether there is merit in fining non-returners, as it is a criminal offence not to complete an annual notice. However, this has been considered in the past and the view of the Procurator Fiscal sought, the feedback being that the Commission would need to provide evidence that the census had been delivered by recorded delivery to the relevant address. As the census is now online, resulting in a large cost saving, a multiple recorded delivery mail-out would cost much more than the level of any fines imposed. It was confirmed that the letter for the 2023 annual notice would make it clearer that non-completion is a criminal offence.

There was a query on whether a digital only option put people off, but that does not correspond with the figures for 2021, which was the first year of the online form and the return rate was higher than ever. It was agreed that having a wide return window of 3 months is probably a factor, as people forget to complete the census if they do not do it straightaway.

A supplementary survey had been included this year. Commissioners wished to see the results. It was suggested that the 2023 form should include a graph, showing what the outcomes from the annual notice are.

Action Point 6	The Supplementary Survey results to be forwarded to the Board and the Census planning team to include a graph showing annual notice outcomes for the 2023 form.
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12 TIER 3 CASEWORK PROCESS

(Head of Regulatory Support joined the meeting)

The Convener provided the context for the paper, with the CEO explaining that it illustrates that only 4% of cases end up at Tier 3 and that the Commission solicitor and Head of Regulatory Support are always present to advise at the meetings and help provide quality control and consistency of decision-making.

There were 3 proposals set out in the paper and Head of Regulatory Support reflected that the tier system in the Commission has evolved and is not set in stone. The Convener reflected that the delegation scheme is working, as few cases have to be escalated to Tier 3, but the time factor for those considered at that level is significant.

If change was desired, it should focus on improving the governance of the process, to ensure fairness and consistency. The present procedure needs to be supplemented by clear Terms of Reference and Standing Orders and a reporting mechanism that records how decisions are reached. There was a call for the casework group to be increased from 3 Commissioners to 5 and for the members to be standing members, rather than rotated. Casework group members should be selected by the Board and given written recommendations by officers.

The CEO confirmed that the Grounds currently serve as the record of the decision-making process and that updates on cases are circulated to the Board.

There was not a consensus on whether Board members should be involved in the decision-making process at all or whether it should be delegated to staff, but several Commissioners said they find involvement in Tier 3 discussions invaluable in helping them to understand more complex regulatory issues and to use their knowledge to help staff.

In answer to a question on data, it was agreed to provide a breakdown of the numbers of cases waiting to go to the Tier 2 and 3 meetings.

Summing up, the Convener confirmed the Board supports the idea of drafting robust ToR and Standing Orders for the Tier 3 casework group and moving to a standing committee of 5 members but asked the CEO to come forward with a paper on the future of Tier 3 based on the discussion, with no change to the present system until this has been approved by the Board.

Action Point 7	Provide Commissioners with numbers of cases waiting to be heard at Tier 2 and 3.
Action Point 8	CEO to revise paper in light of discussion and bring it back to August Board

13 SHORT-TERM MEASURES TO ENHANCE CASEWORK THROUGHPUT

The Convener thanked the CEO for the paper and welcomed the chance for all Board members to contribute to the discussion on it. The CEO thanked the officers who had contributed, as the paper had been a collaborative effort, and informed the Board that some of the ideas developed by staff had already been put in place and were delivering improved efficiencies.

The CEO drew attention to paragraph 5 of the paper, which set out 4 elements that have been in development since 2021-22. These underpin our ability to make any efficiency improvements. He explained that in paragraph 7, Commissioners can see what is already in hand to reduce outstanding casework. And in paragraphs 11 and 12 are suggestions for action that can be taken now, and which represent low risk adjustments. From paragraph 17, there are a series of medium risk suggestions and 26 and 27 are seen as high-risk options.

Though Commissioners welcomed the paper, they would have preferred to see some targets included, to measure impact. The Board went through each suggestion, asking clarifying questions. The CEO said it was hard to quantify the impact if the changes were adopted but they would make a contribution.

Proposals 1 and 2 set out in Annex A of the paper were approved, as was Proposal 3 after a discussion on decrofting extents. It was explained that changing parameters will have a knock-on effect on the need for RPID reports (reducing the need) and Proposal 4 was approved. The recommendations in paragraphs 11 and 12-13 were thereby approved.

Moving on to the suggestions representing medium level risk, Director of Corporate Services explained that agents often provide incomplete applications, which then sit in the system. The proposal would see these cases closed if relevant information is not provided within a certain timescale. Most agencies would simply reject incorrect or incomplete submissions, but we try to be more helpful, which pushes the number of cases open but not complete up. It was agreed a 28-day notice period is reasonable but there must be a comms campaign to explain the change in procedure. The proposal in the paper at paragraph 17 was approved.

The Commission solicitor explained the issues that come up because of the objection and any resulting consultation process in casework and the impact this has on delaying decision-making. The proposal set out in paragraph 24 will speed up the process and was approved.

The CEO then went over the two high risk items detailed in the paper, paragraph 26 on assignments and 27 on map checking. On assignments, this is a highly political area, with a debate opened with SCF and others that should perhaps be left to develop before change takes place. However, Commissioners felt approving this measure could speed up getting new people into crofting, and the fact that it would be for a limited period reduces the risk of a backlash. It was pointed out that the Commission has no control over owner-occupied croft transactions and that we actually refuse very few assignment applications.

The Convener clarified that the change suggested would only apply to applications already in the pipeline, to get them cleared quickly, which raised a question on fairness.

Commissioners queried the terminology being used and wondered whether some of the short-term measures might be taken up permanently, as efficiency measures. The CEO agreed that it would make sense to have a quick-fire review in 6 months, with the Convener agreeing that the Board could consider a report in a few months which showed the value (or not) of embedding the changes long-term.

On assignments, it was agreed that only cases where there are no objections could be approved as proposed. The CEO wished to go back and discuss the implications of approving the cohort of cases currently in the system, where there is no objection, to ensure no unforeseen consequences. The Board agreed, asking for a description of how the process of approval will be handled for a trial period. The CEO will provide this for August, as well as quantifying the numbers involved in the changes in August, followed by a quick-fire review in October.

On paragraph 27, the CEO explained that while the Commission is doing more than it strictly has to do in checking maps before they go to RoS, there are obvious longer-term benefits to crofting which would be jeopardised if this was stopped abruptly, as well as the relationship with RoS being negatively impacted.

The Vice Chair of the AFC reflected that at several points during discussions at the meeting, the Policy Plan had been referred to. It was therefore proposed that the Board should spend some time on a separate discussion on the Policy Plan in the afternoon of the Board meeting in August. The Convener agreed but emphasised the need for members to have read through the plan ahead of the meeting.

Decision	<i>The Board approved proposals 1-4 in the Annex and the recommendations in paragraphs 11 and 12-13.. The Board further authorised the closing of incomplete cases, as set out in paragraph 17 of the paper and the truncation of the objection process, as set out in paragraph 24.</i>
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Action Point 9	A Comms campaign is required to publicise the changes approved by the Board.
Action Point 10	The CEO will discuss the proposed change to the assignment process as set out in paragraph 26 with officials and report back to the Board in August on how this will be handled, as well as providing data to go alongside the narrative on the changes proposed in the paper.
Action Point 11	The CEO will provide a quick-fire review of the impact of the changes approved for the Board meeting in October
Action Point 12	The Board will spend part of the afternoon session of the meeting in August to discuss the Policy Plan

14 REPORT ON MEETINGS WITH SPONSOR DIVISION

Commissioners noted the paper. There were no questions.

15 DATE OF NEXT MEETING

The next meeting will be held in St Kilda on 16 August 2023.

16 ANY URGENT BUSINESS

There was one item of business to raise regarding the recruitment of a new CEO. The Convener provided an update, explaining that the job specification has been agreed, confirming the job will be internally and externally advertised and the advert has been signed off and should be live shortly. It was anticipated that the preferred candidate would be selected by the end of August.

It was pointed out that there may be good candidates in other NDPBs who might welcome a secondment. The Convener agreed to speak to sponsor division to see if this could be included as an option.

Action Point 13	Convener to check with sponsor division to see if the possibility of a secondment opportunity can be included in advert for CEO post.
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17 EXCLUSION OF THE PRESS AND PUBLIC

The Convener wished to thank everyone for their efforts and contributions throughout the day and closed the meeting at 3:02pm.