



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***4 OCTOBER 2023***

**CROFTING COMMISSION MEETING  
ST KILDA, GREAT GLEN HOUSE  
4 OCTOBER 2023 AT 0900 hrs**

**AGENDA**

- |  |                |                         |
|--|----------------|-------------------------|
| <b>1 APOLOGIES</b>   | <i>Oral</i>    | <i>Standing Item</i>    |
| <b>2 DECLARATIONS OF INTEREST</b>  | <i>Oral</i>    | <i>Standing Item</i>    |
| <b>3 DRAFT MINUTES FROM 16 AUGUST 2023*</b>                                    | <i>Minutes</i> | <i>For approval</i>     |
| <b>4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING<br/>(of 16 August 2023)</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 REGULATORY CASEWORK UPDATE</b>  | <i>Paper</i>   | <i>For info</i>         |
| <b>7 ANALYSIS OF DELAYED CASES</b>   | <i>Paper</i>   | <i>For info</i>         |
| <b>8 QUICK FIRE REVIEW ON IMPACT OF SHORT-TERM MEASURES</b>                    | <i>Paper</i>   | <i>For discussion</i>   |
| <b>9 RESIDENCY AND LAND USE TEAM UPDATE</b>                                    | <i>Paper</i>   | <i>For discussion</i>   |
| <b>10 PROGRAMME FOR GOVERNMENT AND DEVELOPMENT TEAM<br/>PRIORITIES</b>         | <i>Paper</i>   | <i>For discussion</i>   |
| <b>11 PARAMETERS IN APPLICATIONS</b>   | <i>Paper</i>   | <i>For discussion</i>   |
| <b>12 FORWARD BUDGET ISSUES</b>  | <i>Paper</i>   | <i>For discussion</i>   |
| <b>13 RoS AND DIGITAL APPLICATIONS ROLLOUT</b>                                 | <i>Paper</i>   | <i>For information</i>  |
| <b>14 EXTENDING THE SCHEME OF DELEGATION</b>                                   | <i>Paper</i>   | <i>For ratification</i> |
| <b>15 REPORT ON MEETINGS WITH SPONSOR DIVISION</b>                             | <i>Paper</i>   | <i>Standing item</i>    |
| <b>16 SHOULD FUTURE COMMISSIONER ELECTIONS BE STAGGERED?</b>                   | <i>Oral</i>    | <i>For discussion</i>   |
| <b>17 HYPOTHETICAL EXAMPLES OF RISK APPETITE IN CASEWORK</b>                   | <i>Paper</i>   | <i>For discussion</i>   |
| <b>18 DATE OF NEXT MEETING<br/>6 December 2023 – St Kilda</b>                  |                |                         |
| <b>19 ANY URGENT BUSINESS</b>  |                |                         |
| <b><u>AFTERNOON (CLOSED) SESSION</u></b>                                       |                |                         |
| <b>20 EXCLUSION OF THE PRESS AND PUBLIC</b>                                    |                |                         |

*\*Not in the public copy*

# APOLOGIES – ORAL

## **DECLARATIONS OF INTEREST – ORAL**

# CROFTING COMMISSION MEETING

## 4 October 2023

Report by the Chief Executive

### Review of Action Points from 16 August 2023

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
1	Afternoon discussion with Board/ET in October, looking at Bullet Point 1 in AFC paper regarding Risk Appetite, using real case studies, circulated in advance.	CEO	October Board (with case studies circulated earlier)		
2	Paper for Oct Board addressing Bullet Points 2 & 3 of AFC paper	CEO	October Board		
3	Create Rules of Procedure for Tier 3 meetings	HoRS	In time for Oct Board		CEO has clarified what is available and what was previously covered by Crofters Commission under Standards of Service. He will provide an update under Matters Arising at Board meeting and Head of Regulatory Support will circulate procedure for Tiew 3 meetings to the Board
4	Reprise AP on Milestones for digital applications to show 3/6/9/12 month targets/aspirations	HoDigital	Before October Board		To be emailed to Board
5	Draft report detailing what has been done to engage with RoS to address digital rollout blockers and what is being done to solve the problem.	DoOp	October Board		
6	Dates for 2024 agreed – place on website, make staff aware.	DoCS	Now		Action associated = 9am start time.
7	Draft paper on Comms Plan needed to manage customer expectations, promote good news stories and highlight work of RALU team	Comms Officer + ET member – CEO to confirm who	October Board		CEO to cover at Board meeting
8	Draft paper providing analysis for elected Commissioners showing caseloads by area, highlighting 'hard' cases	DoOP	October Board		
9	Forward Paper 17 to December Board Planner (Commissioner Appraisals)	DoCS	Now	18/08/23	Dec Board Planner

10	Meeting to be arranged before 14 Sept for Board to discuss with BB/ET issues to be raised with Bill team on joint tenancies	CEO		07/09/23	Organise via Teams – send out invite for 1 hour meeting. Invite Board + ET
11	Draft discussion paper for future Board meeting, reviewing parameters, collating parameters and with suggestions on how to make the website easier to use for customers	HoRS	October Board		
12	Paper on suggested improvements to website user-friendliness	HoDev	Dec		

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

# CROFTING COMMISSION MEETING

4 October 2023

Report by the Director of Operations

## Regulatory casework update

### SUMMARY

This paper forms the regular update on casework within the Commission, with additional updates on the breakdown of the outstanding figure.

### BACKGROUND

This paper forms the regular casework update position supplied to the Board, along with additional details of new measures being explored to help achieve the casework targets set by the Board.

### CASEWORK UPDATE

The number of applications and notifications discharged during the last three full calendar months (June to August 2023 at time of writing) is **566** against a receipt figure of **493**. This is a higher number of discharges than in any 3 month period since the pandemic. Further details of the previous quarterly receipt vs discharge totals are provided in **Figure 1**, below.



Figure 1 – The quarterly number of applications received<sup>1</sup> and discharged<sup>2</sup> since April 2021.

<sup>1</sup> Some applications which become valid and complete at a date subsequent to the date of initial receipt have been double-counted in the 'received' data shown in Figure 1.

<sup>2</sup> An application is considered 'discharged' once a decision is taken to approve or refuse the application or when it is confirmed that a decision is no longer required because the application is withdrawn or invalid.



The outstanding balance of undecided applications at the end of August 2023 is 896. The historic trend is shown in **Figure 2**, below.

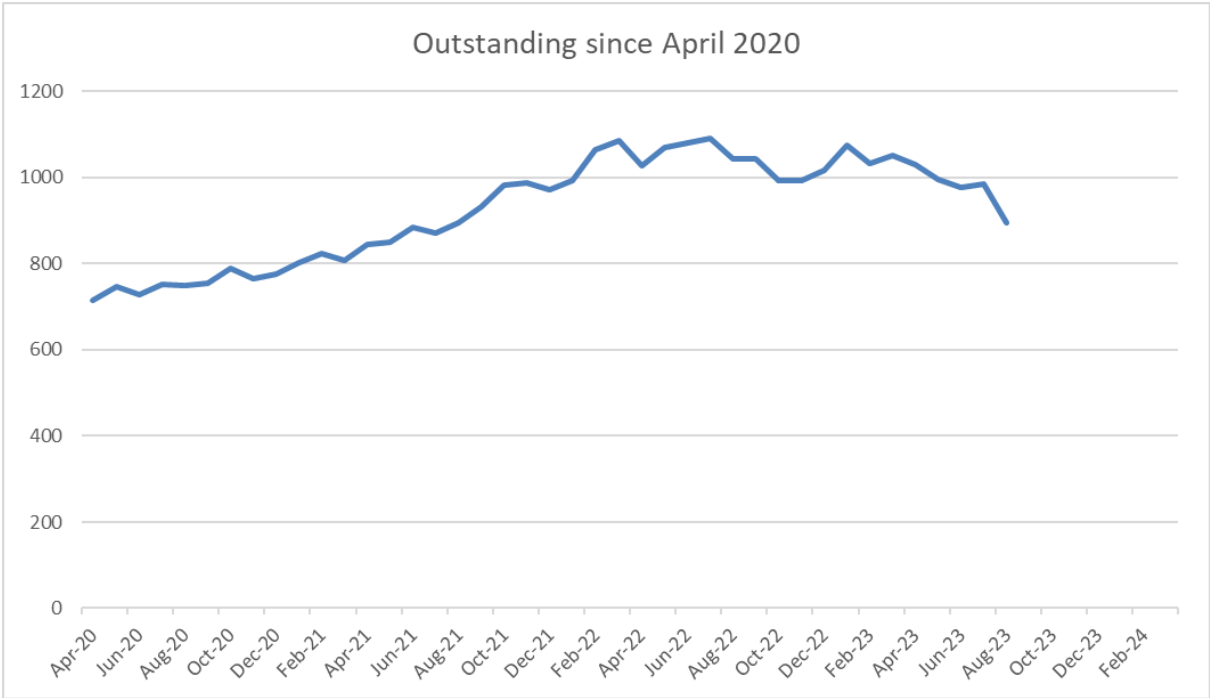


Figure 2 – The numbers of applications estimated to be awaiting decision at month end since April 2020.

**REQUIRED RATE OF DISCHARGE TO MEET TARGET**

The average monthly discharge rate for the year 2022-23 was 155.5 cases per calendar month, an annual total of 1,866. The clearance target for the current reporting year is 2,200, which will require an average of 185 discharges per month for the period of September 2023 – March 2023. This would bring the outstanding figure down to an estimated 760, compared with a target of 800. However it should be noted that the October holidays and festive period will likely make this a challenging target for the months of October, December and January. See figure 3 below for the monthly clearance since April 2020.

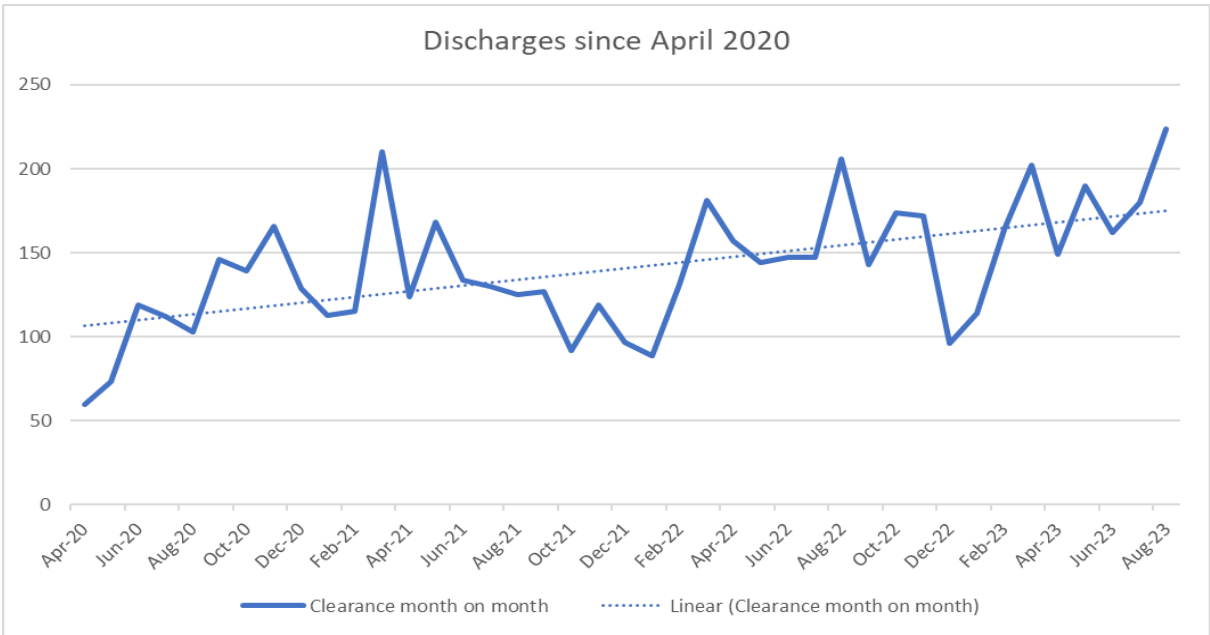


Figure 3 – The numbers of discharges in month from April 2020 onwards, with a linear average trendline.

Over the last year, the Board’s discussions regarding accelerating casework have focused on policies and procedures that could be adjusted to facilitate faster decision-making, and this has resulted in a number of changes being made. To complement this, management have been systematically examining all of the current long-term cases to identify the reasons why each case has not yet progressed to a conclusion; this work should lead to many cases being progressed and others – where the reasons for delay are outwith the Commission’s hands – terminated. It should be noted that the reported outstanding figure includes an element of both casework and notifications which cannot be progressed for a number of reasons. Investigative work into this is in early stages, however initial results suggest that as the volume of cases currently included in the reported case types as part of the outstanding figure, and that are being held for reasons out with the Commission’s control, could be as high as 140. This is being examined and discussions about possible steps to reduce this are underway.

**WHAT CASEWORK IS IN THE OUTSTANDING FIGURE BREAKDOWN?**

The total of outstanding cases that has been reported for some years comprises a full range of application types (excluding registrations) that will lead to Commission decisions, but also several notifications and a small number of MSP enquiries and RALUT case types. The latest end of month figure for August with this broken down is as follows:

<b>Breakdown</b>	<b>Received</b>	<b>Discharged</b>	<b>Outstanding</b>
Regulatory Applications	78	130	675
Regulatory Notifications	57	85	214
RALUT	6	7	6
Compliance/MSP	2	2	1
<b>TOTAL</b>	<b>143</b>	<b>224</b>	<b>896</b>

Although the KPI for the current year’s Business Plan (and in the Corporate Plan) must continue to be measured on a consistent definition, there may be a case for focusing a future target more closely on regulatory applications which require a Commission decision. MSP enquiries should not be considered part of regulatory outstanding casework, and RALUT cases do not fall under the remit of the Regulatory function, but these account for minor numbers. Notifications, however, do comprise a significant part of the overall outstanding figure and are comprised of different notification types some of which require urgent action and some which do not. It should be noted that the current reporting does not capture all notification types the Regulatory team deal with. The breakdown of the notifications reported is as follows:

<b>Notification type breakdown</b>	<b>Outstanding</b>
Testate succession – bequest	83
Intestate succession	81
Purchase by Tenant on Nominee	8
Change of LL of tenanted croft	7
Change of LL / OOC of a croft	13
Change of OOC	20
Change of ownership	2
<b>TOTAL</b>	<b>214</b>

Without notifications, RALUT cases and MSP enquiries, the end of August casework outstanding figure is **675**, though it should be noted that some notification types are linked to regulatory applications and may also result in a subsequent regulatory application when discharged.

**SUMMARY**

The Regulatory casework outstanding position, as reported with the issues noted in this paper, is improving. Achievement of clearing of 2200 cases in year and reaching a combined outstanding figure of below 800 cases, remains a very challenging objective. However numerous initiatives are underway to explore possible improvements, and as the recent intake of new Regulators gain experience and increase productivity the output trend continues to look positive, and officials are confident that progress will continue to be made (taking the holiday period into account).

<b>Impact:</b>	<b>Comments</b>
Financial	N/A
Legal/Political	Scottish Government are closely monitoring the Commission's progress towards regulatory casework targets.
HR/staff resources	To date, turnover of staff in the regulatory team has remained low.

<p><b>RECOMMENDATION</b></p> <p><b>The Board is invited to note the update on current casework position within the Commission.</b></p>
--

Date            18 September 2023

Author        Aaron Ramsay, Director of Operations

# CROFTING COMMISSION MEETING

4 October 2023

Report by the Director of Operations

## Analysis of Delayed Cases

### SUMMARY

**At the August 2023 Board meeting, Commissioners asked for a new management information metric to be presented showing outstanding and delayed cases for each Commissioner area. This paper reports progress towards production of this.**

### BACKGROUND

At the August 2023 Board meeting, the discussion around the casework update included references to expanding on the currently reported outstanding casework figure, and on the back of this Commissioners asked for a new management information metric to be presented showing outstanding and delayed cases for each Commissioner area. Officials are not yet in a position to provide this analysis; this paper presents the thinking and work to date.

The Casework Update presented in the previous paper for this Board meeting, explained that out of 896 live 'cases' at end August 2023, only 675 were for regulatory applications. The analysis in this paper is based on outstanding regulatory applications only.

This paper does not currently attempt to split the casework figures by Commissioner area due to technical changes to the CIS system which are required to do this and will be made in line with the October 2023 release, however it remains the ambition of Officials to complete this request as soon as is possible.

### CURRENT POSITION

In order to identify delayed cases, it is necessary to:

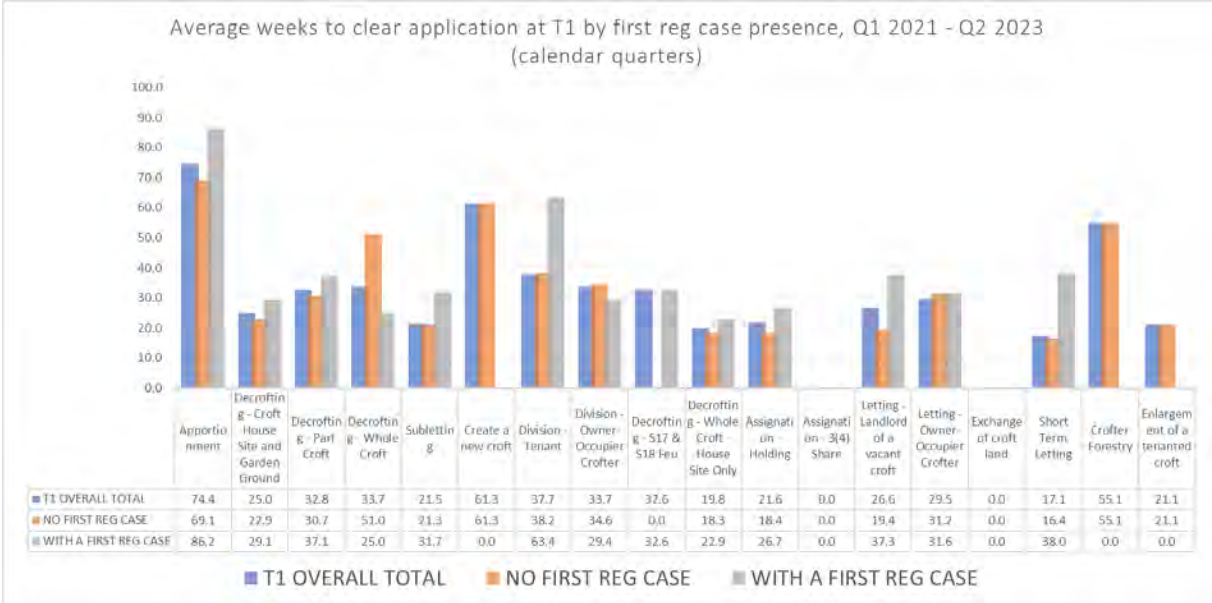
- Have norms for the normal duration of different case types, which may depend on factors such as which Tier they progress at;
- Identify cases which have taken longer than these norms;
- Have an understanding of *why* cases have been delayed, especially whether the delays are due to registration issues and whether they are within the Commission's control.

### 'NORMAL' TURNAROUND TIMES

The Commission highlights on its website a set of 'normal' turnaround times, explaining how these may be lengthened substantially by, for example, objections or other complexities. **These norms have not been reviewed for many years, and they predate the introduction of the Crofting Register in the 2010 Act.** Historically, these norms were 26 weeks for an apportionment or crofter forestry scheme, 6 weeks for a croft-house site decrofting, and 16 weeks for virtually anything else – but not for croft creation, for which no historic norm is applicable.

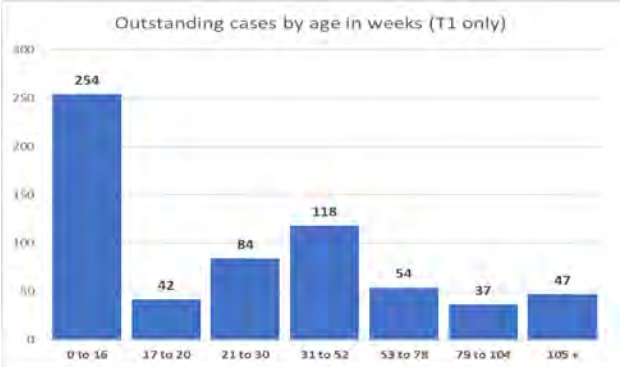
The Regulatory team with support from the Regulatory Support team are currently undergoing a review to establish what time scales, under ordinary operating conditions with no backlog, would look like – which could be equal to, longer, or shorter than the historic figures. Once this is established, performance against these can be assessed to establish how many cases in the outstanding figure would be considered as overdue. Pending this review, this paper has applied the historic norms – but only for Tier 1 cases with no registration requirement.

The following chart illustrates actual turnaround times achieved since the start of 2021, a period that included the worst of the recent backlog. Unsurprisingly, none of the case types hit the historic norms during that period, and for most case types a registration requirement added an average of three weeks onto the average duration.



**ESTIMATE OF TOTAL NUMBER OF DELAYED CASES**

By separating out the purely regulatory application aspect of the current outstanding casework volumes, we can analyse the age of all outstanding Regulatory Applications, as shown right (tier 1 only).



This breakdown is not 100% accurate as it is not possible from data alone to evaluate where a case has moved from tier 1 to another tier of decision making until that process commences, however even an approximate understanding of the makeup of casework volumes allows Regulatory management to introduce new performance management principles to employ a targeted improvement approach. One such approach is targeting of old cases, while another is looking at reducing the end-to-end processing time for cases by identifying and analysing cases which have taken longer than expected at individual components of the overall process.

The Commission Regulatory team have been exploring the creation of a methodology which allows the examination of the outstanding case load as a split between those cases which are within the expected turnaround times noted on the Commission website based on the decision making tier they are at, and the additional ask to break this down to Commissioner area.

An initial draft of the first part of this statistic is available for August 2023 (based on casework position at the start of Sept 2023), however two key factors need to be taken into account:

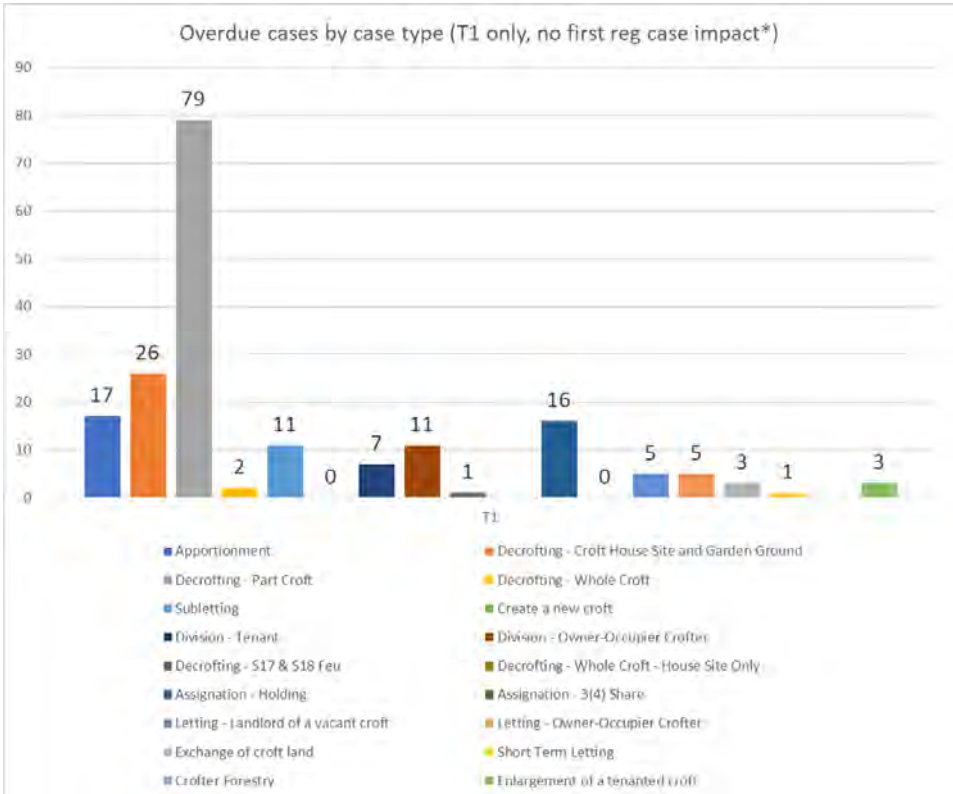
- Cases which involve the first registration process will naturally take longer due to the process which must be followed, and the potential for disputes during this
- Whether an outstanding case can be considered as overdue or not is dependant on the target set for each case type (parameters page of the Commission website)

The table below shows a simplified breakdown of cases which were showing as outstanding at the start of September, and which could be considered to have taken longer than expected. This table shows combined totals for cases at all tier stages, and an estimated split between those which can be identified as being part of the first registration process and those which are not<sup>1</sup>. The table accounts for Regulatory applications only and excludes notifications.

Estimated breakdown of outstanding case load of Regulatory applications as at 01/09/2023*	TOTAL	NO FIRST REGISTRATION ACTION	AFFECTED BY FIRST REGISTRATION ACTION
<b>Total overdue cases</b>	<b>403 ( 63%)</b>	<b>190 ( 58%)</b>	<b>217 ( 68%)</b>
<b>Total cases not considered overdue</b>	<b>237 ( 37%)</b>	<b>135 ( 42%)</b>	<b>102 ( 32%)</b>
<b>Total cases</b>	<b>644</b>	<b>325</b>	<b>319</b>

\* figures may not exactly match other casework volumes reported due to reports being run at different times

This data can be further broken down by looking at a split of the case types which are at T1 stage and which have not been subject to a first registration action impact, as shown in the following chart:



\*T1 CASES ONLY WITH NO ESTIMATED FIRST REGISTRATION IMPACT AS THERE ARE CURRENTLY NO SEPERATED METRICS FOR T2 AND T3 TIME FRAMES.

This breakdown is still an early draft, and completes only half of the ask. Once the methodology for identifying overdue cases has been concluded, it will be a simple matter to identify the numbers in Shetland or the Western Isles, where the crofting constituencies are coterminous with local authority area. However, breaking this figure down for other Commissioner areas will

<sup>1</sup> This split will not be exact and the methodology for identifying this split is still being refined.

require an update to a key part of the CIS to allow this split to be reported on. Commission officials will aim to deliver this as soon as possible, with the CIS change required planned for the October 2023 release of the 1063 CIS update.

<b>Impact:</b>	<b>Comments</b>
Financial	N/A
Legal/Political	Clear identification of delayed cases will allow more better internal management of casework and also a more informed public discussion of the Commission's operating conditions and performance.
HR/staff resources	N/A

**RECOMMENDATION**

**The Board is invited to note the progress made so far, the issues in fully completing the request, and intended timescale for full delivery of the ask.**

Date 7 September 2023

Author Aaron Ramsay, Director of Operations

# CROFTING COMMISSION MEETING

## 4 October 2023

Report by the Director of Operations

### Update on short term emergency casework measures approved at the June 2023 Board meeting

#### SUMMARY

This paper gives an update to the progress and success of the emergency measures agreed by the Board at the June 2023 meeting to accelerate casework clearance.

#### BACKGROUND

At the June 2023 Board meeting, the CEO presented a paper of possible short-term measures that were felt could have a potentially positive impact on the outstanding casework volumes, as per an earlier Board request. The focus of these measures was to allow increased clearance or efficiency of casework processes.

#### CURRENT POSITION

Of the six measures presented in the main paper the Board approved five of them for implementation. Commission officials took these forward as soon as possible. In addition there were other measures that were already underway or due to commence that would also likely positively impact the outstanding casework volumes. The table below shows these along with a progress update, starting with the five Board-approved short term measures.

EMERGENCY MEASURE	PROGRESS UPDATE
Immediate adjustment of parameters: allow more cases to pass at T1 without the need to escalate to T2	Live as of 06/09/2023.  These parameter changes will have a positive impact on the number of assignments, sublets and lettings which can be approved at Tier 1.  Other changes allow Tier 2 to approve decroftings up to 0.3ha where there is a justification for doing so.
Fewer SGRPID reports: only request SGRPID reports where deemed essential and acceptable information cannot be received by other means	Live.  The parameter changes will have contributed to this change, as will guidance which has been given to staff. A metric of success for this measure is primarily only obtainable at the point of decision, so it is too early to measure any decrease in reports requested compared to decided cases.
Closing incomplete cases: close incomplete cases after 28 days where the missing information has not been provided	Live as of 01/09/2023.  As incomplete cases will be closed and then 28 days given to supply the information, meaningful MI for this change will not start to be available until mid to late October.



<b>EMERGENCY MEASURE</b>	<b>PROGRESS UPDATE</b>
Truncation of objection process:	Not live. Workflows within existing Commission processes are being developed to stop the objection process at the point when the objector has had an opportunity to respond to the applicant's response to the objection.
Even swifter approval of assignments: accelerated approval for outstanding assignments meeting set criteria	<p>Live, but as a one-off exercise as the measure only applied to open cases at the point of implementation.</p> <p>At the time of writing, a total of 13 cases have been identified which met the criteria, and an outcome reached as a result of it.</p> <p>NB. It should be noted that this measure allows for cases to pass at T1 that would be rejected at T2 on grounds of insufficient assurance about residency duty and/or neglect.</p>
Trial stopping case paper for the majority of cases.	<p>It was routine for Commission staff to produce a case paper for the majority of cases escalated above T1, however a 12 week trial in June-August stopped the routine production for the majority of T2 escalations. Following a successful trial period this change is being continued.</p> <p>It is estimated that a minimum of 94 hours of case paper admin has been saved over the 12 weeks (equates to 400 hrs + per year). This is the equivalent of one full time staff day each week, though this is a conservative estimate that is likely higher in reality.</p>
Removal of multiple duplicated GDPR workflow steps from 13 core application processes.	The requirement to record personal and special category data has been replaced by a specific checklist question, rather than moving through duplicated workflow steps. This has reduced the number of GDPR steps by over 80%. The use of a standalone workflow meets GDPR legislation and is now proportionate in terms of frequency of use, bringing a small increase in efficiency.

**RECOMMENDATION**

**The Board is invited to note the update provided on the emergency measures implementation.**

Date 15 September 2023

Author Aaron Ramsay, Director of Operations

# **CROFTING COMMISSION BOARD MEETING**

**4 October 2023**

Report by the Chief Executive

## **Residency and Land Use Team update**

### **SUMMARY**

**The purpose of this paper is to provide the Board with an update on the range of activities undertaken by the RALU Team in encouraging the occupancy of crofts and the use of croft land throughout the crofting counties**

### **BACKGROUND**

The Residency and Land Use Team (RALUT) are tasked with the work of ensuring that both tenanted and owner-occupied crofts are occupied and worked. This work commenced some years ago with the Team initially dealing solely with non-resident tenants. Between July and November 2020, a short-term working group of Commissioners, assessors, and officials developed recommendations and priorities for the expansion of the RALUT work, which were accepted by the Board on 3 December 2020. In line with this plan, and as resources within RALUT have been increased, the work carried out by the Team has been extended to land use duties and also to include owner-occupier crofters and non-census returners.

### **CROFTING CENSUS**

The main work of RALUT is writing to a selection of crofters and owner-occupier crofters who have indicated on their Crofting Census Return (Annual Notice) to be in breach of one or more of their statutory duties – those duties being (i) to be ordinarily resident on, or within 32 kilometres of, the croft (ii) to cultivate and maintain the croft, or put it to another purposeful use, and (iii) not to misuse and neglect the croft.

In writing to those crofters and owner-occupier crofters we provide them with options available for resolving the breach at their own hands within a reasonable timescale (2-3 months) and explain that should they fail to do so, that the Commission will take duties enforcement action in relation to the breach.

### **NON-CENSUS RETURNERS**

In 2022, RALUT also wrote to a selection of crofters and owner-occupier crofters who had not returned their Crofting Census, where it was obvious that they were not complying with their residency duty. Again, we provided them with the options for resolving the breach at their own hands and explained that should they fail to do so, the Commission would take enforcement action in relation to the breach.

## **REPORTED BREACH OF DUTIES**

In addition to the work carried out in connection with the Crofting Census, RALUT also investigate reports of suspected breaches of duties from certain categories of persons as defined at Section 26A(3) of the Crofters (Scotland) Act 1993 [“the 1993 Act”], namely (i) a Grazings Committee/Constable, (ii) an Assessor (as appointed by the Commission) or (iii) a member of the crofting community within which the croft being reported is situated.

## **LONG TERM UNRESOLVED SUCCESSIONS**

RALUT take on intestate succession cases where the crofter has been deceased for more than 3 years and it is obvious that any ongoing correspondence relating to the possible resolution of the succession has been exhausted, or it becomes apparent that the succession is not going to be resolved. These cases come to RALUT with a view to terminating the tenancy of the croft and declaring it vacant in terms of section 11(4) to 11(8) of the 1993 Act.

## **FURTHER EXTENSION OF THE WORK OF THE TEAM IN 2023/2024**

Since the introduction of the Crofting Reform (Scotland) Act 2010, both tenant and owner-occupier crofters have statutory duties as mentioned above.

Whilst owner-occupiers of vacant crofts do not have statutory duties to comply with, the Commission adopted a policy in 2021 that all vacant crofts should be occupied and cultivated, or put to another purposeful use. While the duties enforcement provisions set out at section 26A to section 26K of the 1993 Act do not apply to owner-occupiers of vacant crofts, the Commission do have the statutory authority under section 23(5) of the 1993 Act to give notice requiring both landlords and owner-occupiers of vacant crofts to submit proposals for letting the croft whether as a separate croft or as an enlargement of another croft.

Following adoption of the above policy, the Commission allocated additional resources to RALUT, which has allowed us to develop processes to enable us to deal with cases where we receive reports that owner-occupiers of vacant crofts are not resident on and/or not working their crofts.

## **SUMMARY**

Information on the above work and additional tasks carried out by RALUT from 1 April 2022 to 1 September 2023 can be accessed at the following [link](#). In total, in the 17 month period from April 2022 to August 2023, the team’s work directly resulted in **61** permanent resolutions of breaches (through assignation or transfer of ownership, letting to a new tenant, taking up residence, renouncing the tenancy or termination by the Commission); and a further **43** temporary resolutions (through sublets, short-term lets and consents to be absent). There are a further 161 cases which are currently being processed by the RALU Team which are progressing through the different stages of the duties enforcement provisions. In addition, the team will shortly begin the process of initiating engagement with around 200 cases, or thereby, relating to the 2022 Census returns and non-returners.

<b>Impact:</b>	<b>Comments</b>
Financial	N/A
Legal/Political	Enforcement of duties by RALUT is given a very high priority by stakeholders and by the Scottish Government. Discussions are under way in the Bill Group to develop legislative proposals that would accelerate parts of the process.
HR/staff resources	The RALUT team comprises a manager and 6 RALUT officers (5½ whole-time equivalent)

**RECOMMENDATION**

**The Board is invited to note the contents of this paper**

Date            8 September 2023

Author            Joseph Kerr, Head of Regulatory Support

# CROFTING COMMISSION MEETING

4 October 2023

Report by the Chief Executive

## Programme for Government and Development Team Priorities

### SUMMARY

A summary of the relevant aspects of the Programme for Government to the Crofting Commission is presented. The work of the Development Team is relevant to several of these and four broad areas of work have been identified for the team including: (1) promoting active crofting; (2) visibility of crofting and the Crofting Commission; (3) building evidence and understanding about crofting; and (4) future of crofting work. The recommendation is, that work continues in all these areas, and with a particular focus on promoting active crofting. With regard to the future of crofting work, there is a recommendation that a steering group is formed to oversee this.

### Programme for Government

[The Programme for Government](#) was published on the 5 September and highlighted several aspects specifically relevant to the work of the Crofting Commission, as follows:

- Develop and consult on proposals to reform crofting law
- Create new opportunities for new entrants
- Encourage active management and use of crofts and common grazings
- Support rural population retention through action on non-residency
- Restore 10,700 ha of peatland and progress action with crofters to support more peatland restoration on crofting land, including SG estates. (compares to 7,500 restored last year)

Aspects in the Programme for Government that are more generally of interest for the Commission include:

- A general focus across the Programme for Government on climate and biodiversity
- The government is underway on work to transform support to farming and food production. New conditions to protect and restore peatland will be applied to basic payments. The government will continue with the agricultural reform program (sustainable food production, emissions, farming with nature) and for the new Agriculture bill the government will continue to work with stakeholders, and specific elements are to include a whole farm plan, new approaches to advice/support and enhance conditional support measures.
- Encourage responsible private investment in natural capital
- Agritourism
- Agro-forestry grants
- A focus on islands and rural coastal areas. Specific mentions regarding islands include: improvements to transport, housing, connectivity, repopulation, economic development.

## Development Team Work

In light of the recent Programme for Government, our commitments in the National Development Plan for Crofting and the ongoing work within the team (including recent interviews with Commissioners), four main work areas for the Development Team are presented.

The current and proposed work for crofting development in the Commission have been summarised into four main areas:

1. Promote active crofting
2. Visibility of crofting and the Crofting Commission
3. Building evidence and understanding about crofting
4. Future of crofting work

The benefits to working in each of these areas are detailed in Figure 1, in addition to some of the ongoing work and projects already underway. Some of the areas of work align closely with the work of other teams in the Commission.

The Commission Development Team was launched in 2021 and has been undertaking work in these areas (for more information see previous [Board paper 10\(a\), September 2022](#)). Work has focused on active crofting, as well as visibility of crofting and the Commission. There has been less of a focus as yet on building an evidence base about crofting or on the future of crofting. All these areas of work are important for the Commission, so it would be valuable for the Development Team resources to work on all these areas. A particular focus on promoting active crofting would be beneficial and this is highlighted in the Programme for Government.

The team's recent discussions with individual commissioners reflected on the many challenges that the crofting system faces and a range of views on the future direction of crofting policy and legislation and how crofting can be developed alongside other SG policies on areas such as population, land use, environment and food production. As the Scottish Government's principal adviser on crofting, the Commission is well placed to lead public debate about the future evolution of crofting. This would be a considerable undertaking for the Commission in general and the development team in particular, but could be central in enabling the Commission and commissioners to influence the future of crofting. This would benefit from a detailed plan and a steering group involving staff and a number of Commissioners.

The development team will work very closely with the Commission's residency and land use team and grazings team, particularly on such areas as active crofting, new entrants, action on non-residency and more active use of common grazings and the potential for a wide range of activities on common grazings that includes livestock as well as carbon sequestration and biodiversity enhancement projects.

Figure 1 – The broad themes of work for the Development Team. The benefits of each area of work are listed in addition to specific work or projects.  
 \*work which directly relates to actions in the Programme for Government.

## 1. Promote active crofting

*Benefits:*

- Encouraging active use of crofts\*
- Enabling new entrant opportunities\*
- Helping to encourage residency\*
- Encouraging innovation and collaboration amongst crofters

*Development team work:*

- Succession project to encourage crofters to consider living succession and creating a will
- Encouraging landlords to let vacant crofts
- Better info to crofters/stakeholders on the website in addition to other forms of communication
- Communications campaign about the duties of a crofter

## 2. Visibility of crofting and the Crofting Commission

*Benefits:*

- Ensuring the public understands the value of crofting
- Ensuring the Commission is well placed to do its work effectively
- The Commission is the advocate for crofting
- Helping crofters to navigate crofting regulation

*Development team work:*

- Events
- Case studies to highlight crofting activity
- Representing the Commission on groups, including peatland restoration, carbon capture and agricultural reform/subsidies\*
- Working with the Commission Area Representatives

## 3. Building evidence and understanding about crofting

*Benefits:*

- Increasing the evidence base for crofting and Commission's work
- Inform policy and ensure the Commission is using resources effectively
- Help the Commission be seen as the expert on crofting
- Help ascertain the value of crofting to carbon capture and natural capital (such as biodiversity)

*Development team work:*

- Literature review and analysis on the value of crofting
- Analysis of Commission data on new entrants
- Analysis of the level of crofting activity across the crofting counties and broad trends therein
- Signposting and identification of opportunities for carbon capture to support SG objectives\*

## 4. Future of crofting work

*Benefits:*

- Ensuring the Commission has an active role in determining the direction of crofting over the longer term
- Ensure the Commission is using resources strategically towards overarching goals

*Development team work:*

- Development of a long term vision for crofting under direction of a steering group. This will include liaison with stakeholders and work to establish how the Commission can achieve its aims.
- Road map for the Commission to achieve its vision for crofting
- Involvement in discussions about crofting law reform\*

<b>Impact:</b>	<b>Comments</b>
Financial	Some costs may be incurred for projects and work undertaken, such as for publishing information, events and advertising.
Legal/Political	The priorities for the Commission development work will determine how crofting development evolves and have an important impact on the reputation of the Commission.
HR/staff resources	Staff resource is in place for three Development officers.

### **RECOMMENDATIONS**

The Board is invited to give a view on the relative priority for each of the four areas of work for crofting development within the Commission. The recommendation is that *1. Promoting Active Crofting* is given top priority and that the other three areas are all give equal second priority.

With respect to *4. Future of Crofting* work, the recommendation is that a steering group including staff and Commissioners is formed to oversee this work.

Date            20 September 2023

Author         Heather Mack, Head of Policy, Grazings and Development



# CROFTING COMMISSION BOARD MEETING

4 October 2023

Report by the Chief Executive

## **Scheme of Delegation: Delegation parameters for the Commission's regulatory functions**

### **SUMMARY**

**The purpose of this paper is to set out for Commissioners the current delegation parameters for regulatory functions with a focus on (1) Assignation, (2) Decrofting Part Croft, and (3) Parameters relating to extents which apply across a range of regulatory functions.**

### **1. BACKGROUND**

Casework and other decisions, made by Commission officials, are made in accordance with policies and processes approved in advance by the Board. The principal documents which encapsulate these protocols are the **Policy Plan** and the delegation **Parameters** which determine the level within the organisation at which decisions can be taken.

The Policy Plan was renewed under the current Board in 2022 and was again reviewed and confirmed by the Board at its August 2023 meeting. Many of the parameters, however, pre-date the 2022 elections and have been carried forward from previous years. The Board has therefore asked to review the key contents of these parameters which determine what is done by the Commission.

The current delegation parameters are principally based on (i) the legislative factors the Commission are required to have regard to, and (ii) the Policy Plan (December 2022), as they relate to the type of regulatory application which is under consideration.

The delegation parameters have all been agreed by previous Boards of the Crofting Commission as set out in the Commission's Scheme of Delegation.

Parameters for each application type are available online but there is a lot of duplication between them, for example where the same parameter applies to different application types. Therefore, to give an overview of how the parameters work, this paper presents in full the parameters for two key application types (assignation and part-croft decrofting); and appends two further key parameters which are specific in their own contexts.

## 2 DELEGATION PARAMETERS

### 2.1 ASSIGNATION

#### Legislation

The delegation parameters for assignation can be accessed at the following link <https://croftingscotlandgovuk.sharepoint.com/Shared%20Documents/Regulation/Regulatory%20Support%20Team/Reg%20Supp%20Folders/Devolved%20Decision%20Making/Assignation/Section%208%20-%20Assignation%20-%20230831.docx>

Assignation is one of the regulatory functions which come under the provisions of section 58A(7) of the Crofters (Scotland) Act 1993 (“the 1993 Act”) relating to applications which require the approval of consent of the Commission, other examples which come under the aforementioned provisions are exchange of crofts or parts of crofts, division of tenanted and owner-occupier crofter, letting of vacant and owner-occupied crofts, subletting, and short term letting of an owner-occupied croft. The statutory provision require that the Commission must have regard to:

- (a) *In the case of an application relating to a croft -*
  - (i) *Whether any person is or will be ordinarily resident on, or within 32 kilometres of the croft*
  - (ii) *Whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4)*
- (b) *the interests of the estate which comprises the land to which the application relates*
- (c) *the interests of the crofting community in the locality of that land*
- (d) *the sustainable development of that crofting community*
- (e) *the interests of the public at large*
- (f) *any objections received under subsection (4) or (5A)*
- (g) *any plan of the Commission approved and published under section 2C*
- (h) *any other matter which the Commission consider relevant.*

#### Policy Plan

The relevant Policy Plan reference to Assignation is set out at paragraph 59 [https://croftingscotlandgovuk.sharepoint.com/Shared%20Documents/Regulation/Regulatory%20Support%20Team/Policy%20Plan%202022/Policy%20Plan%20\(Dec%202022\)%20-%20Crofting%20Commission%20\(003\).pdf](https://croftingscotlandgovuk.sharepoint.com/Shared%20Documents/Regulation/Regulatory%20Support%20Team/Policy%20Plan%202022/Policy%20Plan%20(Dec%202022)%20-%20Crofting%20Commission%20(003).pdf)

### 2.2 DECROFTING PART CROFT

#### Legislation

The delegation parameters for decrofting part croft can be accessed at the following link): [https://croftingscotlandgovuk.sharepoint.com/Shared%20Documents/Regulation/Regulatory%20Support%20Team/Reg%20Supp%20Folders/Devolved%20Decision%20Making/Decrofting/Section%2024%203%20and%2024A%20Decrofting%20part%20croft%20by%20a%20landlord%20tenant%20or%20owner-occupier%20crofter%20240622%20\(2\).docx](https://croftingscotlandgovuk.sharepoint.com/Shared%20Documents/Regulation/Regulatory%20Support%20Team/Reg%20Supp%20Folders/Devolved%20Decision%20Making/Decrofting/Section%2024%203%20and%2024A%20Decrofting%20part%20croft%20by%20a%20landlord%20tenant%20or%20owner-occupier%20crofter%20240622%20(2).docx)

Decroftings are not applications for the Commission’s approval or consent, therefore the section 58A(7) statutory provisions do not apply. Instead there are stand-alone statutory provisions relating to the considering of decrofting applications which are set out at section 25(1)(a) and section 25(2) of the 1993 Act which state:

*“The Commission shall give a direction that a croft shall cease to be a croft if they are satisfied that the applicant has applied for the direction in order that the croft may be used in connection with some reasonable purpose (within the meaning of section 20 of this Act) having relation to the good of the croft or of the estate or to the public interest or to the interests of the crofting community in the locality of the croft and that the extent of the land to which the application relates is not excessive in relation to that purpose.”*

*“..the Commission, in determining whether or not to give such a direction, shall have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for a tenancy of a croft from persons who might reasonably be expected to obtain the tenancy if the croft were let offered for letting on the open market on the date when they are considering the application.”*

## **Policy Plan**

The relevant Policy Plan references which apply to decrofting part croft are Decrofting (Paragraphs 25 to 27), and Access (Paragraph 65).

### **2.3 PARAMETERS RELATING TO EXTENTS WHICH APPLY ACROSS A NUMBER OF DELEGATED FUNCTIONS**

There are two parameters which relate to extents. The first relates to decrofting, the second relates to the Commission having a measure of control over the fragmentation of crofts.

#### **2.3.1 “Is the application to decroft an area extending to 0.2 ha or less?”**

*If **no**, the case should be escalated to the second tier of decision making.*

*If **yes**, the case can be considered at the first tier of decision making.*

**N.B.** *If the application is to provide additional amenity ground for a previously decrofted house site, the case can only be considered at the first tier **providing** the combined area of dwelling house and amenity ground does not exceed 0.20 ha in total.*

*Any application where the combined area of dwelling house and amenity ground is in excess of 0.20 ha should be escalated to the **second tier** of the delegated decision-making structure.”*

The above parameter applies to both Decrofting Part Croft and Decrofting House Site applications.

The basis of the parameter in terms of legislation is:

**Decrofting Part Croft:** section 25(1)(a) of the 1993 Act requires that the Commission are to be satisfied that “...*the extent of the land to which the supplication relates is not excessive in relation to that purpose.*”

**Decrofting Site of the Dwelling House and Garden Ground:** section 25(1)(b) of the 1993 Act requires that the Commission are to be satisfied that “...*the extent of garden ground included in that part is appropriate for the reasonable enjoyment of the dwelling house as a residence.*”

A previous Commission Board determined that they were content that applications for areas of up to 0.20 hectares (0.50 acres) could be decided at tier 1, but that anything in excess of 0.20 hectares should be escalated for further scrutiny by either senior officials at tier 2 or a Casework Group of Commissioners at tier 3.

**2.3.2 Are there concerns over the size and quality of either of the crofts resulting from the division?**

*“If no, the application can be dealt with at the first tier of delegated decision making.*

*If yes, the application should be escalated to the second tier. As a guideline, in order to be sustainable, the Commission would generally look for both of the crofts resulting from the division to be a minimum of:*

- *3 hectares in extent (with or without an associated grazing right); or*
- *One hectare (with an associated grazing right).”*

The relevant Policy Plan reference is at paragraph 66 which states that: *“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.”*

The parameter, as well as applying to applications to divide a tenanted or owner-occupied croft, also apply to the let of a part of a vacant croft, the let of part of an owner-occupied croft and an application to constitute non-croft land as a croft.

The purpose of the parameter is to enable the Commission to operate a measure of control over preventing crofts being fragmented into unsustainable units.

The figure adopted by the Commission in the parameter is based on the minimum extent required for a croft to qualify for subsidy payments.

<b>Impact:</b>	<b>Comments</b>
Financial	N/A
Legal/Political	The Board is entitled to alter the parameters to adjust the level of delegation in so far as consistent with legislation. In recent years, confidence in the system has allowed successive Boards to gradually increase the level of delegation in the interests of efficiency and consistency of decision-making.
HR/staff resources	A clear set of parameters, approved by the Board, allows staff to take regulatory decisions efficiently and in line with the Board’s requirements.

**RECOMMENDATION:**

**For the Board to consider the content of this paper and determine whether there are any aspects of the delegation parameters they would wish to review.**

Date: 1 September 2023

Author: Joseph Kerr, Head of Regulatory Support

# CROFTING COMMISSION BOARD MEETING

**4 October 2023**

Report by the Chief Executive

## **Forward Budget Issues**

### **SUMMARY**

**This paper updates the Board on the requirements and prospects for the Commission's 2023/24 budget, efficiency initiatives and planned communications activity.**

### **BACKGROUND**

The Commission's Business Case of Spring 2022 requested a budget of £3.9m in 2022/23 and £4.17m in 2023/24 in order to be able to implement the staffing recommendations of the Glen Shuraig report in November 2021. The budgets requested for both years were in due course provided in full by the Scottish Government. However, the budget for 2023/24 did not prove to be fully sufficient for the staffing levels recommended by Glen Shuraig, primarily because pay inflation has been a little higher than anticipated at the time of the Business Case. To fit within budget in the current year, we have therefore had to:

- Drop one of the A4 posts recommended by Glen Shuraig so that the increase of regulatory and registration caseworkers has been 7 posts rather than 8;
- Hold certain vacant posts unfilled for an extended period, especially the second B1 post in grazings;
- Release a B1 RALU post in order to fund a GIS manager (although neither post has yet been filled).

At its meeting in August 2023, the Board noted that there was likely to be intense pressure on budgets across the public sector, asked that the Commission should make clear to Scottish Government the budget requirement for continuing to achieve the objectives in the Business Case and asked for renewed comms activity to emphasise the positive impact the Commission is achieving.

### **BUDGET REQUIREMENT FOR 2024/25**

The expected pay uplift for the Scottish Government civil servants, which includes the Crofting Commission's staff, is expected to be around 4% between 2023/24 and 2024/25.

However, on top of this, the Commission will face some additional cost pressures, including:

- A higher than normal proportion of staff progressing up the pay steps in a salary band, because of our high levels of recruitment in the last 2 years;
- The need to stop holding several posts vacant if we are to achieve our objectives in full;
- Unavoidable above-inflation costs in some of our non-staff budget lines, particularly licenses for IT applications.

As a result, Finance has estimated that the full budget requirement for the existing complement of posts, with a comfortable level of vacant posts (“staff churn”) of 1.5%, would be **£4.591m**, an increase of 10.1% on the current year.

At the Sponsor meeting on 30 August, the Chief Executive requested a budget of £4.47m for 2024/25, an increase of £300k or 7.2%. Sponsor noted this request and recognised that over 80% of our budget is for staffing; but as expected they could give no commitment at this stage.

**EFFICIENCY AND PRODUCTIVITY**

All Scottish Public Bodies are currently being asked to consider how to reduce their budget needs in a time of constrained public finances. Some other bodies are considering shared services or reform of working conditions, but the Commission’s integration with SG for HR purposes and Finance SLA with Nature Scot means there is no scope for us here. Non-staff budgets have been scrutinised in recent years and reduced wherever possible. A further reduction in the floorplate in GGH may be viable (depending on the approach to office working taken under the new CEO). Different approaches to IT may also be considered, but there are no plans for any system that would cost less than the current one.

Nor is it likely that the Commission could reduce its functions. Many of the Commission’s activities are specified precisely by statute, and where there is discretion within the statute (such as aspects of the development, grazings and RALU functions) the Commission’s current activities have been supported strongly and publicly by the SG, not least in the 2021 National Development Plan.

Instead, the Commission’s approach to improving efficiency and productivity is focused on the way in which regulatory casework is processed, with some improvements already in hand and others subject to the anticipated legislative reform.

**PLANNED COMMUNICATIONS ACTIVITY**

Over the course of October and November, we propose to collate for SG a package of news stories highlighting the achievements of the Commission, including:

- Reduction of outstanding casework and improvement of turnaround times
- Significant numbers of breaches being resolved through RALUT action
- Launch of the succession project and number of new entrant crofters

All of these will also be promulgated publicly, made available to the print media as well as on social media. Further media stories will follow through the winter and into 2024.

<b>Impact:</b>	<b>Comments</b>
Financial	Unless a budget of at least £4.47m can be secured for 2024/25, there will need to be restraint on filling posts in the next financial year.
Legal/Political	There are many pressures on the SG’s finances.
HR/staff resources	The budget secured for 2024/25 will determine how far we can implement our workforce plan.

**RECOMMENDATION**

**The Board is invited to discuss the budget requirements for 2024/25.**

Date            25 September 2023

Author         Bill Barron, CEO

# CROFTING COMMISSION MEETING

4 October 2023

Report by the Chief Executive

## Digital Applications and Registers of Scotland forms

### SUMMARY

This paper provides a summary of the ongoing work with Register of Scotland to allow the digital submission of their forms as part of the Commission's own digital applications system.

### BACKGROUND

The Crofting Commission (CC) has introduced a digital application process for the majority of its Regulatory Application types which is being extended to include all types. Many of these types of applications also involve the receipt and processing of a Registers of Scotland (RoS) form, which is traditionally sent to the Commission alongside any fee payment due at the point of submitting a crofting Regulatory Application. However current secondary legislation does not allow the alteration of RoS forms without parliamentary approval, and the current forms do not allow submission without a wet signature.

This overlap between the two organisations was known at the conception of the digital applications project, however what the Commission could not estimate at that point was how customers would interact with this two-part process, and subsequently what level of impact it would have. The Commission now has some statistical information to review around the digital application system, in addition to feedback from a small pool of professional users.

### CURRENT POSITION

In recent weeks, the Commission has seen an increase in the number of applications made via digital channels, with a trend that suggests that the more simple applications, defined here as those with a single involved party or no RoS requirement, being the most commonly made digitally. However this still remains behind anticipated uptake rates.

Direct feedback from some professional agents has indicated that they appreciate and support the digital submission process, but will not use the system where a RoS form or payment is needed in addition to the Commission's application form. The reason cited for this is that they do not wish to separate the application out over two different methods of submission.

### ONGOING WORK WITH REGISTERS OF SCOTLAND

The Commission have been in discussions for some time with RoS around this issue. Although RoS are provisionally happy to adapt to a process which suits the Commission's digital process, two issues are currently blocking this shift and are under discussion:

1. The RoS forms are prescribed and require a change to secondary legislation to alter to allow digital submission (signature removal), which if agreed upon will take an estimated 18 months to have changed
2. Separately to this, RoS have some other processes which allow digital submissions but have a higher standard of digital signature applied.

Around issue one, RoS are happy to make and agree changes to the relevant forms and follow the route to have these formally implemented. There is no route by which we can have this done more rapidly.

The second issue, standards of digital signature, would involve a wider change to be adopted by RoS. For the Commission’s digital application process, the Board of Commissioners agreed to adopt a simple electronic signature (SES), as legal advice indicated this offered a comparable level of assurance to the non-probative wet signature currently employed to the paper forms, and also offered the most accessible solution to crofters.

In contrast, RoS use a mix of submission via email or online account verification for their digital enabled processes. The key differences are that for RoS the majority of submissions are made via a professional body such as a solicitor who can verify the details as correct. Where the submission is from a non-verified source, RoS has noted that these applicants:

*“involve certification of identity by an Authorised Certifier and the assessment of two separate forms of approved identification, such as a passport, driving licence, utility bill etc. These robust procedures were implemented as a fraud prevention measure independently of any consideration of whether a signature appears on an application form or not.”*

**NEXT STEPS**

The Commission has shared the relevant pages of the external security advice obtained around digital signatures and identity verification, and RoS are currently reviewing this internally via their legal and fraud teams to see if a route whereby the wet signature being removed and a more simple form of identity verification, such as being included as part of the Commission’s SES, would be possible.

The next meeting is due to take place towards the end of September where it is hoped RoS will be able to present a final view.

<b>Impact:</b>	<b>Comments</b>
Financial	N/A
Legal/Political	RoS are an independent body and are entitled to take their own view on the level of anti-fraud protection needed for the Crofting Register
HR/staff resources	Further uptake of online applications will increase the efficiency of the Commission’s regulatory processing.

**RECOMMENDATION**

**The Board is invited to note the RoS issues noted above, and the current actions underway to try and resolve them.**

Date            7 September 2023

Author            Aaron Ramsay, Director of Operations



# CROFTING COMMISSION MEETING

4 October 2023

Report by the Chief Executive

## Further Delegation of Decision-making

### SUMMARY

As part of the ongoing process of devolving regulatory decision making from Commissioners to staff, this paper comes to the Board:-

**To obtain agreement to extend the Commission's Scheme of Delegation to include aspects of the following functions which are administered by the Commission's Grazings Team:**

- a. *"Making such inquiry, if any, as they may deem necessary, that any or all of the members of a grazings committee are not properly carrying out the duties imposed on them (or that the grazings clerk is not properly carrying out the duties imposed on him) under this act..."* (Section 47(8) of the 1993 Act).
- b. Determining applications by a grazings committee or the owner of a common grazings that a person has contravened or failed to comply with any common grazings regulations. (Section 52(1) to 52(1E) of the 1993 Act).

**To seek the Board's agreement to include new parameters of delegation in relation to the following functions which are already included in the Scheme of delegation and which are administered by the Commission's Residence and Land Use Team:**

- a) *Resolving long standing intestate successions (Sections 11(4) to 11(8) of the 1993 Act).*
- b) *Considering whether to approve or reject proposals from landlords to re-let vacant crofts (Section 23(5) to 23(5ZB) of the 1993 Act).*

### 1. BACKGROUND

Under the Commission's Scheme of Delegation there are a number of decisions that are not delegated either to officials at Tiers 1 and 2, or to a Casework Group of Commissioners at Tier 3. These decisions have to be taken by the full board of Commissioners. There were recently a couple of cases which come into that category, which the Grazings Team escalated to the full board of the Commission for consideration. At the meeting considering these cases, Commissioners expressed the view that aspects of these cases should be considered for inclusion in the Scheme of Delegation. The paper comes to the Board to agree changes to the Scheme of Delegation in light of Commissioners comments.

## 2. EXTENDING THE SCHEME OF DELEGATION

### 2.1 INQUIRIES INTO WHETHER MEMBERS OF THE GRAZINGS COMMITTEE OR THE GRAZINGS CLERK ARE PROPERLY CARRYING OUT THEIR DUTIES (Section 47(8))

#### Proposal One:

- 1) To delegate to Tier 2
  - A decision on whether it is deemed necessary to make an enquiry;
  - Where an inquiry is made, a decision on whether or not the committee members or the grazings committee are properly carrying out their duties;
  - A decision on whether it is appropriate to draw up an action plan with the grazings committee to identify and resolve any issues to enable the duties to be properly carried out.
- 2) Not to delegate:
  - A decision to remove from office any members or clerks;
  - A decision to appoint or provide for other persons in their place.

**Reasoning:** The Grazings Team should be responsible for working with Grazings Committees to resolve any issues and to help them properly carry out their duties and the aforementioned decisions should be delegated to assist them in that role. However any decision to remove persons from office or appoint persons in their place should continue to be reserved to the full board of the Commission due to the strategic, political and reputational issues involved on such decisions.

### 2.2 Determining applications by a grazings committee or the owner of a common grazings that a person has contravened or failed to comply with any common grazings regulations (Sections 52(1) to 52(1E))

#### Proposal Two:

- 1) To delegate to Tier 2
  - A decision on whether or not a shareholder has contravened or failed to comply with any common grazings regulation;
  - A decision on whether to require the shareholder to conform with the grazing regulation in question;
  - A decision on specifying a timescale for requiring the shareholder to make good any damage which has directly resulted from their contravention or failure;
- 2) To delegate to Tier 3
  - A decision to determine that all or part of a shareholder's share in the common grazings be suspended;
  - A decision to determine that all or part of a shareholder's share in the common grazings be terminated.

**Reasoning:** The Grazings Team should be responsible for managing the process whereby an allegation is made that a shareholder is in breach of grazings regulations. However any decision to suspend or terminate a share in the common grazings should be escalated to a Tier 3 casework group of Commissioners due to the potentially adverse financial impact on a shareholder should their grazing right be suspended or terminated and the potential long term impact on the croft of a loss of its associated grazings share.

### 3. NEW PARAMETERS IN RELATION TO EXISTING DELEGATED FUNCTIONS

#### 3.1 Resolving long standing intestate successions (Sections 11(4) to 11(8) of the 1993 Act).

##### Proposal Three:

To add the following to the parameters for delegation for this regulatory function

**Parameter: Were representations received following the issue of the notice proposing to terminate the tenancy and declare the croft vacant?**

- If No, the case can continue at Tier One who can proceed with giving the notice to terminate the croft tenancy and declare the croft vacant.
- If Yes, the case should be escalated to Tier Two to consider whether it is appropriate to give notice to terminate the croft tenancy and declare the croft vacant.

#### 3.2 Considering whether to approve or reject a proposals from a landlord to re-let a vacant croft (Section 23(5) to 23(5ZB) of the 1993 Act).

##### Proposal Four

**Parameters: Has the landlord submitted a proposal to re-let the whole of the croft?**

- If Yes, the case can continue at Tier One, to consider whether to accept or reject the proposal to re-let the croft.
- If No, the case should be escalated to Tier Two to consider whether or not to accept or reject the proposal to re-let part of the croft.

**Reasoning:** These changes will improve casework management and decision making in respect of the respective regulatory functions

<b>Impact:</b>	<b>Comments</b>
Financial	There would potentially be modest opportunity costs in the freeing up of Commissioner's time from regulatory decision making to focus more on strategic issues.
Legal/Political	There could potentially be reputational benefits for the Commission in cases being dealt with more quickly
HR/staff resources	While Commissioners time on regulatory decision making would reduce slightly there may be a need to increase staff input to the regulatory decision-making role.

#### **RECOMMENDATION**

**That the proposed changes to the Scheme of Delegation be approved by the Board.**

Date: 4 September 2023

Authors: Joseph Kerr (Head of Regulatory Support)  
Finlay Beaton (Grazings Manager)

# CROFTING COMMISSION MEETING

## 4 October 2023

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 2021 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>
CC-Sponsor meeting, 30 August	Convener	Derek Wilson, Michael Nugent, Aileen Rore	CC performance; Budget for 2024/25	SG noted the Commission's request for a 2024/2025 budget of £4.47m; The recruitment aspects of the 2021 Business Case now considered complete, but SG will continue to monitor fulfilment of its performance aims.
Meeting with Gillian Martin MSP	Convener	Derek Wilson, Michael Nugent, Aileen Rore	Introduction to work of the Commission and issues facing us.	The first meeting with the new Minister. Reference was made to the 2021 Business Case and the need for a budget uplift.
Bill Group meeting, 8 August	Mairi Renwick Mackenzie	Michael Nugent, Aileen Rore	Joint tenancies	Extensive discussion of the advantages and disadvantages of introducing joint tenancies. For further consideration.

#### 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 26 September 2023

Author Bill Barron, CEO

**SHOULD FUTURE COMMISSIONER ELECTIONS BE  
STAGGERED? – ORAL**

# CROFTING COMMISSION MEETING

4 October 2023

Report by the Chief Executive

## Examples of case-work (not based on real examples)

### SUMMARY

The purpose of this paper is to open discussion about some fictitious cases with a view to clarifying the Board's appetite for risk.

### 1. INTRODUCTION

The purpose of this paper is to give a few examples of some more complicated cases that are dealt with by casework officers, which are not dissimilar to some of the cases that appear at a Tier 3 panel of 3 Commissioners, in order to clarify risk appetite. Such cases comprise a small number (approximately 1-2%) of cases the Commission receives – and so the main focus of activity to accelerate processing of casework should be on relatively routine and straightforward cases. Nevertheless, it is thought that more efficient processing of more difficult cases has the potential to deliver some benefits:

- Caseworkers would be able to get problematic cases off their books more quickly, allowing them to focus on other cases;
- Applicants would obtain a decision more quickly within agreed timescales, such as 3-4 months. Even if it results in more refusals, applicants would be able to plan more effectively, appeal any decision they do not like and/or make alternative plans;
- A shorter processing time would result in fewer complaints or negative reputational publicity.

The Board is invited to clarify its assessment of risk in such cases, in particular:

- if it is happy for caseworkers, with input from the regulatory support team, to make delegated decisions (to approve/ refuse) where there is uncertainty regarding a material issue, such as the extent/ boundaries of a common grazings or croft or where an applicant has provided only a small amount of detail of any proposed development or other activity; it is fair to observe that the Commission can be loathe to take decisions, including decisions to refuse, where there is uncertainty regarding a material issue and can sometimes be seen to be overly accommodating in allowing time for applicants and others to supply additional information;
- if it is happy for caseworkers, in cases such as the above where there is a material uncertainty, to default to *refusing* the application on the grounds that the Commission has insufficient evidence with regard to a material consideration;
- if it is happy for caseworkers to shorten existing processes, such as removing the serving of case papers on all interested parties for comment, and proceed to a decision, and how this is to be balanced against fairness to other interested parties including members of the crofting community who might have an interest in the application;
- if it is willing to accept a greater degree of litigation risk in the Land Court on the grounds that it might not have considered relevant and material matters sufficiently in coming to

- a decision or has not given parties with an interest in the case adequate opportunity to comment on the case, which could be seen as a breach of natural justice;
- if it is happy to accept that such an approach will result in more refusals and, with that, possibly more statutory appeals.

If the Board is willing to accept a greater degree of risk in these or other aspects of decision-making, process changes will be implemented and training carried out to bring these changes into effect.

One of the principal requirements of a public body is to act, and make decisions, fairly and without bias. The Crofting Commission has a reasonable reputation for acting fairly and impartially in the context of disputes and disagreements regarding applications, though that reputation is tarnished by the length of time of decision-making. However, faster decision-making and a fair and thorough approach to applications should not be incompatible aims and there will be adequate time to consider the merits of any competent objections made.

The Board should also be aware that there are other reasons why complicated cases take longer to decide than they should which have nothing to do with fairness, such as staffing, training and internal processes. Any effective reduction of processing timeframes to 3-4 months requires action on these matters as well, which is why these matters are also getting close attention from Board, regulatory managers and staff.

## **2. EXAMPLES**

### **Example 1**

Crofter A makes an apportionment application. One of the shareholders sends a copy of a resumption order from the 1970s (with a poor-quality map attached), which would appear to show that some of the apportionment is on land that has been resumed by the Scottish Land Court. However, the resumed site has not been fenced and is, according to the grazings committee, used by shareholders for grazing stock. The crofter wishes to apportion the land for a small woodland regeneration scheme and has the support of the grazings committee, but two of the shareholders object stating that some of the land is not common grazings and, in any event, is used by them for grazing stock.

Should the Commission simply reject the application as incompetent, stating that there is sufficient lack of clarity as to whether all of the area to be apportioned is on common grazings and stating that the applicant should obtain a determination from the Land Court as to the status of the land should he wish to pursue his application? Or should it proceed to determine the application on the basis that it is currently used as part of a common grazings and has the support of the grazings committee?

*Crofting Commission Policy Plan (2022) provides (whilst considering each case on its individual merits) at paragraph 39 that the Commission will balance the interests of the applicant and the interests of the shareholders (who would lose their rights over the land), and sets out that options available to the Commission include a time-limited apportionment or an apportionment that is subject to review at fixed intervals so that where an apportionment is no longer used, it can be returned to common grazings and available for the shareholders to use.*

### **Example 2**

An owner-occupier crofter applies to decroft two-thirds of a croft for the purposes of building four luxury houses, the purpose of which is to enhance the applicant's holiday rental income, and she would also consider selling one of the house plots to the highest bidder. Planning permission in principle has been obtained from the planning authority. The area extends in total to 2 ha and would result in the loss of  $\frac{2}{3}$  of the croft, which is 3 ha. The land consists of Macaulay LCA class 2 and 3.1, which is land that is suitable for arable crops.

There are numerous objections to the application, including from local residents and a local housing association. The objectors state that there is very high demand for affordable housing in the locality and they object very strongly to what some describe as a “waste” and “inefficient” use of land in this way, as the land applied for could accommodate up to 30 affordable homes rather than four luxury homes with plots and large garden areas of 0.5 ha (1.24 acres). They also state that such a development makes housing in the locality less affordable (prices are currently very high) and uses up land that could be used as the site of a dwelling-house or dwelling-houses for future generations of crofters, who would live and work the land.

Other objectors state that it is the role of the Crofting Commission to protect the interests of crofting rather than the financial interests of an individual owner-occupier crofter and the quality of land on the croft is some of the best in the whole area, and would be capable of supporting crops and vegetable growing which would help the local food economy and increase the amount of local, nutritional food in an area where most food is packaged and brought in by hauliers. Two of these objectors state that they would be interested in taking up a tenancy of the land and have the experience and necessary capital to make a success of it.

An objector from the crofting township states that demand for croft tenancies from young people in this area is very high, but they are unable to get into crofting due to the excessive costs of buying a croft, and they often have nowhere suitable to live due to the price of housing, and end up living in caravans or unsuitable temporary accommodation. Some of these young folk work for the local sheep stock club and do whatever jobs they can get from the estate. The objector states that it is the role of the Commission to support local young people to become new crofters who will raise families, retain schools and local services and sustain a strong local crofting community and retain the rural population. If it were to decroft the land sought, the Commission would in the objector’s view be complicit in the decline not just of crofting communities, but living and working rural populations and the sustainability of the local rural economy – and she argues that the primary statutory role of the Commission under the Crofters (Scotland) Act 1993 is to promote the interests of crofting and support population retention.

How should the Commission deal with such an application? It is already 10 months since the application was lodged and the applicant has been writing to the Commission asking for a decision to be made as soon as possible, otherwise she will make a complaint. Should it instruct an RPID report so that it can obtain more information as to the quality of the land and its potential uses? Should it ask RPID to assess whether there might be demand for a tenancy of the croft? Should it simply refuse the application without further delay? Or should it approve the application and decroft the land?

*Crofting Commission Policy Plan (2022) provides (whilst considering each case on its individual merits) at paragraphs 26 and 27:*

- *Recognition of the importance of providing opportunities for both existing and future generations of crofters to continue crofting croft land;*
- *A high-level aim of protecting croft land from being removed from crofting tenure, with the Commission taking a long-term view when determining decrofting application.*

### **Example 3**

The landlord of a crofting estate applies to let a vacant croft on the estate. Three people object within 28 days of the public notification of the application and raise various matters and provide information and evidence supporting their objections. The Commission sends the objections to the applicant (separately) and invites the applicant to respond to the objectors’ comments. The Commission then sends the comments the landlord has made about the objectors to the objectors so that the objectors can respond to what the landlord has said about them individually, and again separately. The objectors make several comments about the landlord in their response, but the Commission under its new procedures **does not** send a copy of the objectors’ responses back to the landlord.



Current guidance from the Land Court from the most recent case on the matter (*Tayburn -v- Crofting Commission*, 2019) states that all interested parties in an application, which includes objectors, are to be given “an equal opportunity to comment upon the matters and evidence which [is] to be considered ... It is apparent the Commission did not manage to do so” (paragraph [83] of the decision note). The matters and evidence would include the RPID report, the matters raised in the competent objections and any other relevant information. Should the Commission:

- (a) Compile a case paper setting out all the relevant matters and evidence on which the decision will be taken and serve this on all the interested parties, with all having an equal opportunity for comment (and so comply with the guidance of the Land Court as set out in *Tayburn -v- Crofting Commission*)

**OR**

- (b) Proceed straight to a decision on the case, dispense with compiling a case paper and not provide the interested parties (the applicant, proposed sub-tenant (if applicable), proposed tenant (if applicable), objector, landlord (if applicable)) with any opportunity to comment on the relevant matters and evidence that is going to the decision-makers?

*Crofting Commission Policy Plan (2022) provides (whilst considering each case on its individual merits) at paragraph 58 that as well as considering whether the proposed tenant will comply with crofting duties, the Commission will look at the “bigger picture” and assess the wider interests of the crofting community and its sustainable development.*

<b>Impact:</b>	<b>Comments</b>
Financial	There is a risk of more appeals to the Scottish Land Court and exposure to legal/judicial expenses.
Legal/Political	Any processing of applications has to be consistent with the principles of natural justice and fairness.
HR/staff resources	Some training will be required to implement changes to existing processes, and more early intervention will likely be required from the Regulatory support.

**RECOMMENDATION**

**It is recommended that the Board should discuss these examples and clarify its risk appetite in order that officials can implement appropriate measures.**

Date: 14 September 2023

Author: David Findlay, Commission Solicitor

**DATE OF NEXT MEETING**

**6 December 2023 - St Kilda**

**ANY URGENT BUSINESS**

## **EXCLUSION OF PRESS & PUBLIC**