

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD ON 6 DECEMBER 2023 ST KILDA, GREAT GLEN HOUSE

Present:	Malcolm Mathieson	Convener
	Andrew Thin	Commissioner
	Mairi Renwick Mackenzie	Commissioner (via Teams)
	Duncan Gray	Commissioner
	Iain Maciver	Commissioner
	Duncan Macaulay	Commissioner (via Teams)
	Colin Kennedy	Commissioner
	Donald Macdonald	Commissioner
	Rod Mackenzie	Commissioner (via Teams)
	Bill Barron	Chief Executive
	Christopher Reynish	Director of Policy (via Teams, until item 5)
	Aaron Ramsay	Director of Operations (via Teams)
	David Findlay	Commission Solicitor
	Joseph Kerr	Head of Regulatory Support (via Teams)
	Aart Wessels	Head of Digital (via Teams, items 14 and 15 only)
	Neil MacDonald	Head of Finance (via Teams)
	Aileen Rore	Scottish Government (via Teams)
	Observers	Members of staff, Area Representatives and public via Teams

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English.

2 DECLARATION OF INTERESTS

No interests were declared.

3 BOARD MINUTES FROM 4 October 2023

The minute taker was asked to adjust some points from the previous minutes:

Page 4, that it should detail Decision and as an Action Point for the creation of a steering group. That the action should be reflected in the minutes so can be followed up on.

Page 5, Decision but should also be an Action Point to follow on from the Decision.

Page 6 – that the Minute should have the full Action Point detailed.

The Board agreed to adjust the Minute. If Action Points are created, then this should be accurately captured and followed through in the Minute.

Action Point 1	<i>Amend previous minutes so that the first two decisions are shown as actions.</i>
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The Board agreed to approve (with adjustments to) the Minute. Proposed by Commissioner Andrew Thin and seconded by Commissioner Duncan Gray.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (of 4 October 2023)

The CEO went through the Action Points documents, highlighting those which were still pending.

Item 1 and 2 which are marked “pending” it was detailed that it will require a longer lead in time to complete. The reporting capabilities and ability to extract the metrics have been impacted by introduction of new release of CIS. It was noted that for Item 2 it is possible to gather the relevant information but only in those constituencies that match traditional geographical boundaries. The Director of Operations detailed the work to better understand the information we have, including how long a case will normally take and what reports will be required to be produced to best gather the data.

Action Point 2	Director of Operations to send Shetland data to Commissioner Gray.
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It was noted that the Action Points should be consistently captured in the Minute and the Action List, and that actions 2, 4 and 8 were not the same as in the minute.

Action Point 3	Ensure consistency between the text of actions in the minutes of meetings and the Action List
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Clarification was sought on whether the changes from 0.2 hectares to 0.4 hectares parameter had taken place and from which date. The Head of Regulatory Support confirmed that this had been implemented with effect from 6 November 2023.

5 MATTERS ARISING FROM PREVIOUS MINUTES

As a matter arising from the August Board meeting, an email had been circulated to Commissioners on 4th December with details of the changes to the Law-Policy-and-Procedure document regarding Tier 3 meetings.

The rewritten document now anticipates a strict rotation of commissioners on Tier 3 panels, planned well in advance.

The Board revisited the arguments about when a T3 decision is complete, with advice from officials that it is a valid decision only at the point the grounds are written, approved, and intimated to the applicant. The current approach entails a ‘proposed’ decision being reached at the meeting, which allows time for any required reflection on the decision in the light of the draft grounds. The Board requested further analysis of whether this approach was compatible with the Act’s requirement that some decisions be intimated within 21 days of being “taken”. Commissioner Thin also asked that, if the current approach is continued, the terminology used should be consistent, e.g. between “proposed decision” or “recommended decision”.

In any event, there was consensus amongst the Commissioners that the process should be tightened up and that grounds should be issued as quickly as possible after a Tier 3 meeting.

Action Point 4	Create schedule of Tier 3 meetings for 2024.
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Action Point 5	Agenda item for the next Board meeting to clarify (in terms of legislation) when a decision is made, the notification procedures and timescale for intimating the decision (is it required to be within the 21 days of the meeting?)
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6 ANNUAL REPORT AND ACCOUNTS 2022-2023

The Convener congratulated the staff on the work and excellent standard of the Annual Report and Accounts.

Discussion were had regarding the timing for the content of the report and if the document can still be amended. The Head of Finance explained that, while e.g. significant updates to risks could be incorporated at any point up to signing off, in respect of postholders and remuneration, the report covers the year to 31st of March 2023.

Decision	<i>The Board approved the Annual Report and Accounts for 2022-2023</i>
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Action Point 6	<i>Convener and CEO to sign the Annual Report & Accounts.</i>
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7 AUDIT & FINANCE COMMITTEE REPORT

The Vice Chair provided an update to the Board, detailing that the draft Business Plan for 2024-25 will need to be based on the budget for that year, which would only be known on 19 December. Commissioner Thin wished it noted that considerable work and contingency planning is already in place in regard to the budget, by Finance Team and the CEO. The financial outlook in the future is likely to be more challenging and the Commission is engaged in forward thinking and open to making any changes that may be required to meet this.

The Board noted the draft minutes of the AFC meeting.

8 Q2 PERFORMANCE REPORT

The CEO introduced the report and main highlights. Overall it was positive report with actions going in a good direction. It was discussed that the customer satisfaction rates are still shown as in the red. The ability to capture satisfaction rates adequately was a concern, and different approaches may be tried.

The amber status for the milestones relating to regulatory work was raised. This still shows the impact of the workload pressures, and the ongoing work to streamline processes will be important in getting this changed.

Commissioner Thin asked that all papers have a cover sheet.

Commissioner Mackenzie asked what differences the changes to closing incomplete cases after 28 days has made and how that is progressing. The Director of Operations referred to Item 1 of the Action Points. He advised the Board that we still need better metrics on this change and that it is still too early to measure the impacts and success. The number of cases terminated under the measure would not be a good measure of its impact, as the primary aim was to get the missing information so that the case could proceed.

Communications on the changes were raised and it was detailed that the website had a dedicated page on this process, and that comms had been issued. The Board asked for more communication activity on this point.

Action Point 7	<i>In future, a covering paper is required for each report to the Board,</i>
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Action Point 8	<i>Further communications around incomplete applications to be issued.</i>
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Convener congratulated the Commission Staff that targets being set by the Commission Board are in large being met.

9 Q2 STRATEGIC RISK REGISTER

CEO introduced the paper and detailed that there have been few changes to the Strategic Risk Register since the previous quarter. An amendment has been added to detail a risk for the transition period with the upcoming change in CEO.

Commissioner Thin noted that this risk was not detailed in the circulated papers.

Action Point 9	<i>Circulate the correct version of the Strategic Risk Register to Commissioners.</i>
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10 CARBON SEQUESTRATION, PEATLAND RESTORATION AND CROFTING

The Commission Solicitor introduced the paper on Carbon Sequestration, Peatland and Crofting. He highlighted the disconnect between the practical side of peatland restoration for crofters with the commercial side of carbon credits. Several Commissioners expressed their satisfaction with the paper and to have the issue discussed. Several Commissioners made the point that crofters need assurance of the risks and rewards with respect to carbon markets but that this is some way away. Also shared was the concern that crofters may not get back what they thought they were giving up rights for.

The point was made that crofters may need to ensure that they cover their own carbon emissions in order to qualify for future conditional payments. Future payment systems were likely to value both peatland and woodland, and perhaps also biodiversity.

Commissioner Thin suggested several specific actions around the issue including discussion with crofters and Commission Area Representatives about the issues, ensuring the Commission is at the heart of discussions about peatland on croft land, consideration of this issue and Commission policy and parameters with respect to apportionments, and raising awareness with grazings committees and shareholders about the opportunities.

Concerns were raised about investing too much resource into the issue with so many important priorities for the Commission already, in addition to possible duplication of work between different agencies.

The Convener proposed a Board discussion in advance of the next scheduled meeting. This allows for time to be considered prior to the February Board meeting and the meeting with the Minister the same day.

Action Point 10	<i>Convene and produce a paper to the Board prior to the next scheduled meeting (i.e. in January). The paper may be based on the suggestions provided by Commissioner Andrew Thin and the practicalities of what the Commission are able to achieve.</i>
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11 REVIEW OF PARAMETERS FOR DECROFTING PART CROFT APPLICATIONS (SECTION 25(1)(A)) OF THE CROFTERS (SCOTLAND) ACT 1993 (“THE 1993 ACT”) AND DECROFTING CROFT HOUSE AND GARDEN GROUND APPLICATIONS (SECTION 25(1)(B))

The CEO introduced the paper with the Head of Regulatory Support and Commission Solicitor providing input to the discussion.

The Commissioners were asked to consider recommendations to revise certain delegation Parameters relating to Decrofting Part Croft applications (section 25(1)(a)) of the Crofters (Scotland) Act 1993 (“the 1993 Act”) and Decrofting Croft House and Garden Ground applications (section 25(1)(b)).

The CEO reflected on the historical context of the Act and intention of parliament and subsequent procedures in place regarding the policy on decrofting. The Commission has been charged with balancing the purpose of the decrofting with the desirability of the land being retained in crofting tenure. He emphasised the content relating to decroftings and housing detailed in the Government’s 2009 response to the Report of the Committee of Inquiry on Crofting (Shucksmith Report). Emphasis was made to the intention of Government in curtailment of speculation on croft land with changes brought in under the Crofting Reform (Scotland) Bill 2009. The CEO believed that the Government intention, despite political changes, remains essentially unchanged in this area.

Commissioner Thin noted that the Board had made it clear they wanted to allow the easier use of Croft land to stimulate economic development, and asked that a rewritten paper be brought back with proposals in line with the Board’s expressed view.

Commissioners said that the position had changed since 2009 because (i) there has been an increase in number of new crofts being created with more land coming into crofting tenure, currently exceeding the amount of land being decrofted or resumed; (ii) it was important that crofting should not be a barrier to creating rural housing; and (iii) decroftings play a part of having sustainable viable communities.

The Commission Solicitor highlighted the Act’s requirement that decisions on decrofting should be in the public interest and that the amount of land should not be excessive for the purpose. It would be an inefficient use of land, for example, if large plots of land were released for one house, which could have accommodated three or four.

The Head of Regulatory Support explained that parameters do not determine the decision, but their purpose is to determine which applications merit a higher level of scrutiny through escalation to the higher Tiers of decision making.

A consensus was sought to Commissioner Thin’s proposal, with the majority agreeing.

<i>Decision</i>	<i>Recommendations in the paper to the changes of the parameters were rejected.</i>
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<i>Action Point 11</i>	<i>Board paper to be rewritten to reflect the requirements of the Commissioners and set clear parameters. The CEO will discuss with the Commissioners how to better reflect and adjust the parameters in line with what they have raised in these discussions and the previous decision.</i>
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12 SUGGESTED CHANGES TO SCHEME OF DELEGATION

The Head of Regulatory Support introduced the paper and detailed the 3 case types to be considered for changes to the Scheme of Delegation.

The paper contained 3 proposals all three were approved although proposal 3 required some additional assurances and clarification to the Board. Specifically, Commissioner Thin asked for specification of how decisions on completeness and validity were made, and whether some of these might need to be escalated to Tier 2 or Tier 3. There might also be a case for a tighter control around how long a time should pass before an application can no longer be considered invalid. The Head of Regulatory Support suggested the Commission produces a set of parameters to address these issues.

The rest of the Board discussed this and agreed that a further proposal was required.

Decision	<i>Proposals 1 and 2 were accepted by the Board. For proposal 3 the Board requires further details specifically around parameters for the decision and indicative timescales for taking the decision as invalid or incomplete.</i>
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Action Point 12	<i>Implement changes to scheme of delegation</i>
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Action Point 13	<i>Provide Commissioners with parameters for Proposal 3 (Extending the Scheme of Delegation) and proposed timescales for when staff are to take the decision if valid or incomplete.</i>
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13 REGULATORY CASEWORK UPDATE

Commissioners welcomed the continued decline in outstanding cases and increase in cases discharged. It was noted by the Convener that the style and presentation of the information is greatly improved and appreciated.

Concerns were noted that the information shows an increase in the number of older cases and that further understanding and information about this may be required. The Director of Operations reassured Commissioners that since this information was presented, they have seen an actual decrease in the older cases. However, the figure will fluctuate as cases from the middle of the range move into the oldest range. The nature of these older cases means that they can be more contentious and or difficult to process which requires greater staff resource and time. He detailed that the staff are continuing to work on prioritising the older cases and streamline the process to be able to target and identify any long-standing cases. Focus is on stemming cases becoming older than 52 weeks where possible, and clearing the oldest cases first.

The CEO advised that the clearance rate of older cases is increasing, and if this persists, the number of older cases will fall once the numbers of cases reaching the older thresholds declines.

Credit and praise passed on by Commissioners around the work of the Team was seconded by the Director of Operations.

14 REGULATORY APPLICATIONS WEBPAGES

The paper was provided to the Commissioners for information. Comments were received regards the difficulty in finding the correct form on the website and that in some cases landlords are not informed correctly about the notification of an application by the applicant.

Commissioners would like to see what the popular pages and content are from the website and gain more analytical information on this. The Head of Digital advised that his team do review this information regularly, however detailed metrics will be available from January due to some recent changes implemented.

Action Point 14	<i>Head of Digital to circulate analytics that provide information on which specific website pages (especially relating to regulation) are being visited, and what is being accessed on the website.</i>
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15 THE COMMISSION'S CYBER SECURITY APPROACH

The Head of Digital gave an oral update on cyber security. He reassured the Board of the commitment that is taken to it and detailed both in house and external expertise in place to mitigate risks. Information was provided about the proactive approach the team take to identify vulnerabilities with a programme of active testing. A reminder was given that the Commission presents at least an annual review of cyber security to the Board, with the next due in February 2024.

Comment made by the Convener that it may be appropriate for the AFC to have sight of any testing data. Vice Chair of the AFC agreed that should be discussed further by the AFC, and that he would like to see the outcome of the penetration testing.

Action Point 15	<i>Head of Digital to supply results of penetration testing to the AFC.</i>
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16 GAELIC LANGUAGE PLAN ANNUAL REVIEW

The Paper was introduced by the CEO and no comments or questions raised.

Decision	<i>The Gaelic Language Plan Monitoring Report was approved.</i>
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17 REPORT ON COMMISSIONER APPRAISALS

The Convener introduced the paper and invited Commissioners to note and provide and comments. He provided some context that the appraisals were a recommendation both from previous Deloitte Recommendation 2.3 and 'On Board' guidance. The Convener detailed that he has completed seven out of eight appraisals for 2022/23. In respect of the missing one, he noted that it is not possible to compel a commissioner to take part in the process.

A summary report has been submitted to sponsor division.

The Convener noted that he will continue to keep the Board informed of progress and updates.

18 REPORT ON MEETINGS WITH SPONSOR DIVISION

The CEO reported on the meetings held with Sponsor and the positive feedback that had been received, both in general on the progress of the Commission and specifically on the work that has taken place on succession planning.

19 DATE OF NEXT MEETING

The next meeting will be held in Great Glen House on the 6 February 2024. The Convener emphasised that the time of the Board is 11am to allow for the meeting with the Minister earlier that morning.

20 ANY URGENT BUSINESS

The Convener on behalf of the Board wished to give a public thanks to Bill Barron CEO, for the work he has undertaken with a huge degree of integrity and commitment. He praised Bill's contribution to the organisation and crofting, wishing him well in his retirement.

21 EXCLUSION OF THE PRESS AND PUBLIC

Convener closed the meeting at 1600hrs.