



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

6 DECEMBER 2023

**CROFTING COMMISSION MEETING
ST KILDA, GREAT GLEN HOUSE
6 DECEMBER 2023 AT 0900 hrs**

AGENDA

1 APOLOGIES	<i>Oral</i>	<i>Standing Item</i>
2 DECLARATIONS OF INTEREST	<i>Oral</i>	<i>Standing Item</i>
3 DRAFT MINUTES FROM 4 OCTOBER 2023*	<i>Minutes</i>	<i>For approval</i>
4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (of 4 October 2023)	<i>Paper</i>	<i>For info</i>
5 MATTERS ARISING FROM PREVIOUS MINUTES	<i>Oral</i>	<i>Standing Item</i>
6 ANNUAL REPORT AND ACCOUNTS 2022-2023	<i>Paper</i>	<i>For signing off</i>
7 AUDIT & FINANCE COMMITTEE REPORT <i>(a) Update from Vice Chair of Committee</i> <i>(b) Draft Minutes from 1 November 2023*</i>	<i>Paper</i> <i>Minutes</i>	<i>Standing Item</i> <i>For info</i>
8 Q2 PERFORMANCE REPORT	<i>Paper</i>	<i>For discussion</i>
9 Q2 STRATEGIC RISK REGISTER	<i>Paper</i>	<i>For info</i>
10 CARBON SEQUESTRATION, PEATLAND RESTORATION AND CROFTING	<i>Paper</i>	<i>For discussion</i>
11 REVIEW OF PARAMETERS	<i>Paper</i>	<i>For discussion</i>
12 SUGGESTED CHANGES TO SCHEME OF DELEGATION	<i>Paper</i>	<i>For decision</i>
13 REGULATORY CASEWORK UPDATE	<i>Paper</i>	<i>For info</i>
14 REGULATORY APPLICATIONS WEBPAGES	<i>Paper</i>	<i>For info</i>
15 THE COMMISSION'S CYBER SECURITY APPROACH	<i>Oral</i>	<i>For discussion</i>
16 GAELIC LANGUAGE PLAN ANNUAL REVIEW	<i>Paper</i>	<i>For info</i>
17 REPORT ON COMMISSIONER APPRAISALS	<i>Paper</i>	<i>For info</i>
18 REPORT ON MEETINGS WITH SPONSOR DIVISION	<i>Paper</i>	<i>Standing Item</i>
19 DATE OF NEXT MEETING 6 February 2024 – St Kilda (1100hrs start)		
20 ANY URGENT BUSINESS		
21 EXCLUSION OF THE PRESS AND PUBLIC		

**Not included in public copy*

APOLOGIES – ORAL

DECLARATIONS OF INTEREST – ORAL

CROFTING COMMISSION MEETING

4 October 2023

Report by the Chief Executive

Review of Action Points from 4 October 2023

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
1	Email Board with number of incomplete cases closed after 28-day reminder issued (on a monthly basis)	DoOps	End October	pending	This metric is not possible for cases which were created prior to the new release of the CIS. It was hoped that this could be obtained, however as the workflow needed changed, any cases opened against the old workflow cannot record an incomplete status. This metric will become available as cases opened after the 06/10/2023 reach the incomplete closure stage.
2	Accept Gateway Principle supported by the Board, setting deadlines, for instance 12-16 weeks, and providing list of open cases unresolved at that point to elected Commissioners so that they can use local knowledge to help resolve cases.	DoOps	December Board	pending	This metric is not possible until an update to the CIS system takes place. As an interim, a split of old cases based on geographical areas was supplied at the start of November 2023 as part of the monthly casework update.
3	Draft good news story on work of RALU team and keep feeding stories through on the work of the team	Comms Officer	asap	Social media posts in Oct/Nov on Succession Planning; Grazings Workshops and Information; Regulatory Updates; and Area Representatives	Succession project and new CEO also featured in some printed media
4	Draft discussion paper on opportunities and challenges for crofting communities to benefit from government aspirations on carbon capture, peatland restoration, the woodland code, the peatland code, bio-diversity and natural capital	DF	Dec Board	On agenda	
5	Draft paper reviewing existing parameters	JK	Dec Board	On agenda	The paper focuses on decrofting as this is the area where the Board has expressed specific interest in the parameters.

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
6	Feedback outcome of discussion on staggering elections to sponsor division	CEO	Now	6 October	
8	Paper to review how the Commission can engage with planners	CEO	Feb Board	Scheduled for February	
9	Ask staff for suggestions of how they wish to engage with the Board and set up a FIKA style session between Commissioners and staff	DoCS	Now	Suggestions requested 10 Oct	FIKA sessions for some commissioners and staff planned for 8 December
10	Circulate 'On Board' materials used in Board member induction to staff, for awareness	DoCS	Now	11 Oct	Code of Corporate Governance also circulated
11	Continue preparations for 360 degree feedback exercise between SMT and Board, to take place in December	CEO/DoCS	Dec Board	On agenda	

MATTERS ARISING FROM PREVIOUS MINUTES – ORAL

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Annual Report & Accounts 2022/23

SUMMARY

The Crofting Commission Annual Report & Accounts 2022/23 are presented to the Board for approval.

BACKGROUND

The Annual Report and Accounts for 2022/23 have been finalised.

The final draft was considered by the Audit & Finance Committee on 1 November 2023 and a copy was subsequently e-mailed to the Board. The Board is asked to confirm approval of the draft at the meeting.

While the Board's approval (assuming that it is given) will be recorded in the public minutes, the draft Annual Report itself has not been included in the public papers for the meeting. This is because the Principal Clerk at the Scottish Parliament has advised that the Annual Report & Accounts should be laid in Parliament before any reference to its contents appears in the public domain. This is standard practice.

CURRENT POSITION

The Audit & Finance Committee considered the Annual Report and Accounts and recommend these documents to the Board for approval.

The Audit Report includes confirmation that Audit Scotland has accepted the Annual Report and Accounts. Audit Scotland will publish this report on their website once the Annual Report & Accounts have been laid before Parliament¹. The Commission has been advised that the report should not be placed in the public domain until this process concludes.

Financial key points include:

- A) The Commission has prepared its Annual Report & Accounts in line with the Financial Reporting Manual requirements, and no areas of non-compliance with accounting standards or good practice were identified.
- B) No issues arose that required a financial adjustment to the draft financial statements.
- C) There are no significant matters from that work to draw to the attention of the Board.

¹ Provided the Board approves the Annual Report and Accounts, the Principal Clerk at the Scottish Parliament has advised that they will be laid before Parliament prior to Christmas.

Provided the Board is content to approve the Annual Report & Accounts, the Chief Executive, Convener and Audit Scotland will electronically 'sign off' on the report. This will ensure that the Commission can meet its statutory obligation to lay the Annual Report & Accounts before the Scottish Parliament once permission to do so is granted by the Auditor General for Scotland.

Impact:	Comments
Financial	N/A
Legal/Political	Ensures that the Crofting Commission adheres to its statutory duty to lay the audited statement before the Scottish Parliament.
HR/staff resources	N/A

RECOMMENDATION

It is recommended that the Board approves the Annual Report & Accounts for 2022/23.

Date 5 November 2023

Author Bill Barron, Chief Executive & Accountable Officer, Crofting Commission

CROFTING COMMISSION MEETING

6 December 2023

Report by the Vice-Chair of Audit & Finance Committee

SUMMARY

The purpose of this paper is to provide the Board with an update of the Audit & Finance Committee meeting of 1 November 2023.

BACKGROUND

The Board has established an Audit & Finance Committee (AFC) as a Committee of the Crofting Commission Board to support Board Members in their responsibilities for issues of risk, control and governance and associated assurance through a process of constructive challenge.

CURRENT POSITION

The Vice-Chair will provide Board Members with a verbal update of the AFC meeting of 1st November. Full details are in the following draft minute of the meeting.

Key points for Board Members to note –

1. We reviewed the draft final accounts for 2022/23 and the external auditor's final report on these. We agreed to recommend the accounts to the Board.
2. We discussed a report from internal audit on a recent corporate governance review and noted encouraging conclusions. We had a useful discussion about continuing to develop a robust culture of good governance among board and senior staff including through greater use of 360 based self assessment.
3. We noted a small number of outstanding audit recommendations but all are in hand.
4. We reviewed operational and strategic risk registers and noted the challenging interplay of risks between medium term financial planning, workforce planning and workforce training/flexibility.
5. We agreed to recommend that the forthcoming change of CEO should be managed as a short term strategic risk requiring explicit mitigation.
6. We reviewed a health, safety and welfare update and welcomed the use of external expertise to support this assurance.
7. We reviewed a complaints handling update and noted the high proportion of complaints that have been upheld. This has informed an important "lessons learned" response leading to a rigorous review by senior staff of regulatory applications that have been outstanding for longer than appears reasonable.
8. We had an important initial discussion about the 2024/25 budget ahead of our GIA allocation being finalised in December. We noted very limited flexibility even if £4.47M GIA is approved. Any reduction in that figure will be challenging, and we will consider this further at our January meeting.
9. We had a private meeting with internal and external audit. No significant issues were raised.

RECOMMENDATION

The Committee recommends that the Board should –

- **Approve the annual accounts for 2022/23 as presented.**
- **Discuss how best we might strengthen collective and individual performance at board level through greater use of 360 feedback.**
- **Add a new short term risk to the strategic risk register noting the forthcoming change in CEO and the mitigation that is planned to manage this effectively.**
- **Note the need for flexibility in business planning for 2024/25 pending confirmation of GIA in the December Financial Statement.**

Date 2 November 2023

Author Andrew Thin, Vice-Chair, Audit & Finance Committee

CROFTING COMMISSION PERFORMANCE REPORT

QUARTER 2 – JULY-SEPTEMBER 2023
with selected updates reflecting the position at end October

SUMMARY

Our Outcome 1 CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY			RAG Status
Key Milestones	1a May 2023 – Strategy agreed for allowing wider use of online system while protecting against identify fraud.		ACHIEVED
	1b July 2023 – Digital options for the majority of regulatory application types rolled out and fully functioning.		ACHIEVED
	1c July 2023 – Action plan finalised, with timings, to improve efficiency in casework handling.		GREEN
	1d Dec 2023 – Implement online progress status of a case for self-serve usage.		GREEN
Performance Measures	1.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)	AMBER
	1.2	Decrease in number of live regulatory cases at a point in time	AMBER
	1.3	Increase in number of regulatory cases discharged in the year	AMBER
	1.4	Customer satisfaction rates	RED

Our Outcome 2 CROFTING CONTINUES TO THRIVE AND EVOLVE			RAG Status
Key Milestones	2a Ongoing – Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee.		GREEN
	2b Ongoing – Encourage shareholders of common grazings, where there has been no grazings committee in office for a period of time, to form a new grazings committee to maintain and manage the common grazings.		GREEN
	2c May 2023 – Submit considered advice to Scottish Government on additional legislative changes for the proposed Crofting Bill.		ACHIEVED
	2d July 2023 – Recruit a panel of Area Representatives for 2023-2028.		ACHIEVED
	2e July 2023 – Launch campaign to encourage “living succession” within crofting.		GREEN
	2f Feb 2024 – Deliver Training events for Grazings Committees/crofting communities/landlords.		GREEN
Performance Measures	2.1	Maintain or increase the number of common grazings with a grazings committee in office.	GREEN
	2.2	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	GREEN
	2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings.	GREEN

Our Outcome	3 CROFTS ARE OCCUPIED AND USED		
			RAG Status
Key Milestones	3a June 2023 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2022 crofting census returns that they are in breach of their duty to be ordinarily resident, obtaining their plans and intentions for resolving the breach and either issuing a notice section 26C(1) of the 1993 Act or establishing that there is a good reason not to issue a notice.		AMBER
	3b July 2023 – Write to a selection of crofters and owner-occupier crofters who have not responded to the 2022 crofting census and whose address would indicate they are in breach of the residence duty. Should correspondence confirm that they are in breach then the case would be followed up in terms of 1a above		AMBER
	3c August 2023 – Launch and publicise a system of investigating reports that owner-occupiers of vacant crofts are not resident on or within 20 miles (32 kilometres) of the croft and/or not working the croft, to determine whether a notice should be issued under section 23(5) of the 1993 Act requiring the landlord to submit proposals for letting the croft.		AMBER
	3d October 2023 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2022 crofting census returns they are in breach of the duty to cultivate the croft, giving information about their options. This will include both a selection of individuals who are also in breach of the residence duty, and those who are complying with their residence duty.		GREEN
Performance Measures	3.1	Number of formerly vacant crofts let by the landlord or the Commission following the Commission initiating action under the unresolved succession (section 11) or vacant croft (section 23) provisions of the 1993 Act.	AMBER
	3.2	Number of RALU breaches resolved by a crofter or an owner-occupier crofter (i) in breach of their residency duty taking up residence on their croft; or (ii) in breach of their duty to cultivate and maintain the croft resuming cultivation and maintenance of the croft.	GREEN
	3.3	Number of RALU breaches resolved by the assignation or renunciation of a tenanted croft, or the letting or sale of an owner-occupied croft.	GREEN
	3.4	Number of RALU breaches concluded by tenancy terminations orders (section 26H), or approval of letting proposals submitted by owner-occupier crofters following a direction to do so (section 26J).	GREEN

Our Outcome 4 OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION, AND OUR GOVERNANCE PROCESSES ARE BEST PRACTICE			RAG Status
Key Milestones	4a October 2023 – Climate Emergency Charter: We will create an Environmental Team and publish an Emergency Climate Plan.		GREEN
	4b October 2023 – Introduce quality assurance and checking programme for regulatory work that feeds into the Register of Crofts.		RED
	4c January 2024 – Update Workforce Plan and Medium Term Financial Plan.		GREEN
Performance Measures	4.1	Increase in Employee engagement Index.	No info yet
	4.2	Business Travel corporate carbon emissions.	ACHIEVED
	4.3	Redeploy efficiency savings within £4.17m core budget.	GREEN

DETAILED PROGRESS REPORTS

The following sections provide a detailed report on both the milestones and performance measures for each Outcome.

Our Outcome			
<p>1 CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY</p> <p>We are committed to providing a quality and professional service to all our customers, especially those that make regulatory applications to us or who send us applications for registration of their croft, for us to review and forward to the Registers of Scotland. We are committed to fairness in all our decision-making, and we monitor turnaround times for all the different types of process.</p> <p>We also seek continuous improvement of our internal processes, to deliver consistent and fair decision making that is compliant with legislation, and that also delivers value for the public purse. By refining how we deliver our services to customers, we can provide a faster, more consistent and more informative service to our customers, thereby improving customer satisfaction and confidence while simultaneously improving value for money.</p>			
Milestone	RAG Status	Responsible Manager	Details
1a May 2023 – Strategy agreed for allowing wider use of online system while protecting against identify fraud	ACHIEVED	Aaron Ramsay	The Commission has worked with an external solicitor with a specialist knowledge of digital fraud and identity issues, as well as a good knowledge of crofting law. The outcome of this was a route to handling digital signatures and identity verification that was agreed by the Commission Board at the May 2023 public meeting.
1b July 2023 – Digital options for the majority of regulatory application types rolled out and fully functioning	ACHIEVED	Aart Wessels	The digital applications system is now live fully to the public with all developed application types, and a roadmap in place to deliver all key Regulatory applications by Q3 of 2023. Post this the remaining notification types will be brought online to bring the project to an initial completion stage.
1c July 2023 – Action plan finalised, with timings, to improve efficiency in casework handling	GREEN	Aaron Ramsay	The Board agreed a range of short-term measures in the June 2023 public Board meeting which were to compliment a range of measures already under development, also covered in the paper. Four out of the five approved measures have been implemented, with he last one, work on truncation of the objection process, proceeding at a good rate.
1d Jan 2024 – Implement online progress status of a case for self-serve usage	GREEN	Aart Wessels	CIS 1063 release went live early October. After the first rush of supporting the go-live and bugfixes, this will be taken further. Implementation is done, instructions and testing still to be planned

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
1.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)	Figures for 2022-23: Assignment – 19.9 weeks Decrofting CHSGG – 23.1 weeks Decrofting Part Croft – 26.9 weeks	Assignment – 15 weeks Decrofting CHSGG – 18 weeks Decrofting Part Croft – 23 weeks	Time taken from application to notification of decision, <i>for cases where no registration is required</i>

PROGRESS

Average case turnaround times have improved in the second quarter of 2023-24 for Decrofting Part croft, however this remains out with the target/indicator. There has been a slight increase in the average turnaround times for Assignations and Decrofting Croft House Site applications, both are now out with the target/indicator timeframe. Turnaround times reflect the cases which have been cleared over the first six months of the year, which includes many which had been delayed before the action plan to improve clearance of casework was implemented.

	Approx Number of cases per year	Median weeks (2022-23)	Median weeks (2023-24 Q1)	Median weeks (2023-24 Q1-2)	Median weeks (2023-24 Q1-3)	Median weeks (2023-24 Q1-4)
Assignment	300	19.9	14.7	16.3		
Decrofting Croft House Site	125	23.1	11.0	20.1		
Decrofting Part Croft	300	26.9	33.0	27.9		

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Stuart Hogg

Number	Aim	Baseline	Target/Indicator	Measure
1.2	Decrease in number of live regulatory cases at a point in time	1052 on 31 March 2023	Reduce to 800 or below	Number of live regulatory cases on 31 March

PROGRESS

Outstanding cases at the end of October 2023 is 875 which is reduced from the baseline of 1052 from March 2023. To achieve the goal for the end of March 2024, steady progress will need to be maintained for the remaining quarters. The outstanding cases figure fluctuates considerably and clearance will be lower during the festive period in Q3 / early Q4, so this remains a challenging target. Additional performance management measures are underway to support this target, with plans to adjust how the Commission handles old or “stuck” cases outwith its control.

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Stuart Hogg

Number	Aim	Baseline	Target/Indicator	Measure
1.3	Increase in number of regulatory cases discharged in the year	1866 in 2022/23	2200	Total number of cases discharged during the year

PROGRESS

502 cases were discharged in Q1, and 560 cases were discharged for the second quarter of 2023-24 for a total of 1062 cases for year to date. This is a positive increase but overall is still tracking behind the required discharged rate of 1100 for both quarters to date to achieve the target of 2200 in year.

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Stuart Hogg

Number	Aim	Baseline	Target/Indicator	Measure
1.4	Customer satisfaction rates	2.8 in 2022/23 (across all questions)	Average of 3.75	Average 'overall satisfaction' score on a scale of 1 (unsatisfied) to 5 (satisfied). <i>NB This indicator has been redefined but the target is broadly comparable with that in the business plan</i>

PROGRESS

Customer Feedback forms were issued to 32 randomly selected cases following a decision in Q2, but only 6 returns were received, with an average 'overall satisfaction' score of 3.33. Combined with the results from Q1 this gives amounts to 64 randomly selected cases and 12 returns, with an average overall 'overall satisfaction' score of 3. In response to this the Commission has, under agreement from the CEO, changed the process to widen the scope of when surveys are sent out to all applications from Q3 onwards, with a revision to the questions. It is hoped this increase in surveys sent will yield more returns, and in turn make this metric more measurable.

Q1	Q2	Q3	Q4
RED	RED		

Responsible Manager: Stuart Hogg

Our Outcome

2. CROFTING CONTINUES TO THRIVE AND EVOLVE

The Commission has a responsibility to promote the interests of crofting, and to advise the Scottish Government about crofting issues. Our Policy, Development and Grazings team is in place to support crofters, those interested in crofting, and grazings committees alike. Along with other agencies we will do what we can to ensure that crofting communities continue to be resilient, and benefit from healthy turnover of crofts to new entrant crofters.

Milestone	RAG Status	Responsible Manager	Details
2a Ongoing – Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee.	GREEN	Finlay Beaton	Our target is to maintain the number at 500 or above and as of 1 October 2023, there are currently 503 Grazings Committees in office which is a decrease of 7 from the end of the previous quarter. We have a system in place to issue reminders to Committees whose term of office will complete. The first reminder is one month prior to the end of term to make the Committees aware of the necessary action to appoint a new Committee. If the Committee fails to return, we issue reminders at the 4 and 12 week stages after the Committee is out of office.
2b Ongoing – Encourage shareholders of common grazings, where there has been no grazings committee in office for a period of time, to form a new grazings committee to maintain and manage the common grazings.	GREEN	Finlay Beaton	Projects to encourage committees are carried out when resources allow which may focus on specific areas or the length of time that there has been no committee. Within this second quarter, there has been one long term Committee returning which had been out of office since 2018. We offer guidance and templates to assist the formation of new Committees upon request to ensure the legislation and good practice is adhered to.
2c May 2023 – Submit considered advice to Scottish Government on additional legislative changes for the proposed Crofting Bill.	ACHIEVED	David Findlay	This has been completed. Proposals regarding assignation, carbon sequestration, correction of manifest errors and access to tenanted croft land are being considered by the Crofting Bill Team.
2d July 2023 – Recruit a panel of Area Representatives for 2023-2028.	ACHIEVED	Heather Mack	A Panel of 19 Area Representatives was appointed on 1 June 2023 for an initial 3 year term as requested by the Board.
2e July 2023 – Launch campaign to encourage “living succession” within crofting.	GREEN	Heather Mack	The succession information pack and accompanying survey have been approved, and the mail out to all crofters in the pilot areas took place in October. Local drop-in sessions in these areas have been arranged, Lochinver 6 th Nov, Balivanich 14 th Nov & Barra 15 th November. We will be accompanied by representatives from FAS, RSABI, SLMS & Citizens Advice Scotland at all these sessions to offer further help and support to crofters. The Scottish land Matching Service crofting portal was launched in early August.
2f February 2024 – Deliver Training events for Grazings Committees/ crofting communities/landlords.	GREEN	Finlay Beaton	Three Grazings Workshops have been delivered to 40 individuals in North Skye, Strath and Lochinver. Feedback from the workshops has been very positive with the Farm Advisory Service now offering further funding to deliver further workshops in other parts of the Crofting Counties.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
2.1	Maintain or increase in number of common grazings with a grazings committee in office.	500 Grazings Committees in office on 31 March 2023	Maintain at 500 or above	Administrative records
PROGRESS – Grazings committees in office remain above 500 with 503 currently in office.				
Q1	Q2	Q3	Q4	
GREEN	GREEN			
Responsible Manager: Finlay Beaton				

Number	Aim	Baseline	Target/Indicator	Measure
2.2	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	36 townships with single or multiple investigations concluded	No numerical target as demand led. Investigation and response to be carried out within 28-day time period.	Records of administrative action.
PROGRESS Requests received from either internal or external sources. Within this quarter we have received ten requests for individual share investigations and two requests from solicitors to research and provide the share position on a specific common grazings. We have also had four requests for the whole shareholding position on a common grazings which has been checked and provided in all cases.				
Q1	Q2	Q3	Q4	
GREEN	GREEN			
Responsible Manager: Finlay Beaton				

Number	Aim	Baseline	Target/Indicator	Measure
2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings.	15 significant engagements	No numerical target as demand led. Aim to keep significant engagements below 20 cases through early intervention, provision of guidance, training and mediation as required.	Records of administrative action. (Note that this covers different types of intervention: getting Committees into office; resolving medium size queries; and helping to address deeper issues.)
PROGRESS Three Grazings Workshop delivered to 40 individuals within the quarter, plus one meeting with a Grazings Committee and shareholders which requires a significant engagement due to a number of issues causing disharmony within the community.				
Q1	Q2	Q3	Q4	
GREEN	GREEN			
Responsible Manager: Finlay Beaton				

Our Outcome	3 CROFTS ARE OCCUPIED AND USED By ensuring crofters are complaint with their Duties and by working with crofting communities and stakeholders, we can increase the number of crofts that are occupied and well managed.		
Milestone	RAG Status	Responsible Manager	Details
3a June 2023 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2022 crofting census returns that they are in breach of their duty to be ordinarily resident, obtaining their plans and intentions for resolving the breach and either issuing a notice section 26C(1) of the 1993 Act or establishing that there is a good reason not to issue a notice.	AMBER	Joseph Kerr	RALUT have identified the tenant and owner-occupier crofters who fall into this category. (Between the categories set out at milestones 3a, 3b and 3d, the Team have identified a total of 215 cases for further investigation) Letters will go out from October 2023.
3b July 2023 – Write to a selection of crofters and owner-occupier crofters who have not responded to the 2022 crofting census and whose address would indicate they are in breach of the residence duty. Should correspondence confirm that they are in breach then the case would be followed up in terms of 1a above.	AMBER	Joseph Kerr	RALUT have identified the tenant and owner-occupier crofters who fall into this category. (Between the categories set out at milestones 3a, 3b and 3d, the Team have identified a total of 215 cases for further investigation) Letters will go out from October 2023.
3c August 2023 – Launch and publicise a system of investigating reports that owner-occupiers of vacant crofts are not resident on or within 20 miles (32 kilometres) of the croft and/or not working the croft, to determine whether a notice should be issued under section 23(5) of the 1993 Act requiring the landlord to submit proposals for letting the croft.	AMBER	Joseph Kerr	Notification forms, supporting documentation and processes have been finalised, and workflows have been designed by RALUT and are currently with IS team for building. Indications that the workflows will be built on CIS and we will be in a position to go live towards the end of the year. Will engage with Comms Team prior to launch.

<p>3d October 2023 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2022 crofting census returns they are in breach of the duty to cultivate the croft, giving information about their options. This will include both a selection of individuals who are also in breach of the residence duty, and those who are complying with their residence duty.</p>	<p>GREEN</p>	<p>Joseph Kerr</p>	<p>RALUT have identified the tenant and owner-occupier crofters who fall into this category.</p> <p>(Between the categories set out at milestones 3a, 3b and 3d, the Team have identified a total of 215 cases for further investigation)</p> <p>Currently on target for being achieved within timescale.</p> <p>Letters will go out from October 2023.</p>
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PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
3.1	Number of formerly vacant crofts let by the landlord or the Commission following the Commission initiating action under the unresolved succession (section 11) or vacant croft (section 23) provisions of the 1993 Act.	7	At least 45 permanent resolutions to breaches of duty, unresolved successions or vacant crofts delivered through Commission action (numbers will be reported separately for 3.1-3.4 but the target relates to the total of the four categories of intervention)	Records of administrative action.

PROGRESS:

Unresolved succession (section 11):

The Commission are currently dealing with **23** cases where the succession to the tenancy remains unresolved after 3 years of the death of the crofter. The Team are in correspondence with parties to assist the resolving of these successions. If these efforts are unsuccessful, the cases will progress to the issuing of notices under the section 11 intestate succession proposing to terminate the tenancy, declare the croft vacant and require the landlord to submit letting proposals. There was **one** case where an intestate succession notification was received and processed, thereby resolving the succession.

Vacant croft (section 23):

The Commission are currently liaising with private landlords in Jura and Kilfinnan with a view to letting **12** vacant crofts created under the constituting non-croft land as croft provisions set out at section 3A of the 1993 Act. The Commission are also currently liaising with a public sector landlord with a view to letting **4** vacant crofts where the tenancy was terminated under the duties enforcement provisions of the 1993 Act. There was **one** croft let to a new entrant in Lochalsh following the issue of a section 11(8) notice terminating the tenancy and requiring the landlord to submit re-letting proposals.

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
3.2	Number of RALU breaches resolved by a crofter or an owner-occupier crofter (i) in breach of their residency duty taking up residence on their croft; or (ii) in breach of their duty to cultivate and maintain the croft resuming cultivation and maintenance of the croft.	5	(see 3.1)	Records of administrative action.

PROGRESS

In the first half of the year: **13** crofters/owner-occupier crofters have resolved their breach of duty by taking up residence on their crofts.
 In the first half of the year: **14** crofters/owner-occupier crofters have resolved their breach of duty by cultivating and maintaining their crofts.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
3.3	Number of RALU breaches resolved by the assignation or renunciation of a tenanted croft, or the letting or sale of an owner-occupied croft.	28	(see 3.1)	Records of administrative action

PROGRESS

In the first half of the year:

- **10** crofters resolved their breach of duty by assigning the tenancy of their crofts;
- **3** croft tenancies were renounced and are now available for let
- **1** owner-occupier crofter let the tenancy of their croft to an existing crofter
- **3** owner-occupier crofters sold/transferred ownership of their crofts

In addition, during the same period:

- **11** crofters resolved their breach on a temporary basis by subletting their crofts;
- **2** owner-occupier crofters resolved their breach on a temporary basis by short-term letting their crofts
- **10** crofters obtained consent to be absent from their crofts.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
3.4	Number of RALU breaches concluded by tenancy terminations orders (section 26H), or approval of letting proposals submitted by owner-occupier crofters following a direction to do so (section 26J).	5	(see 3.1)	Records of administrative action

PROGRESS

In the first half of the year:

- Issued **27** notices of suspected breach of duty under section 26C(1);
- Considered in **3** cases that there was a good reason not to issue a notice of suspected breach of duty under section 26C(1);
- Made **34** decisions that a crofter was in breach of duty under section 26C(5);
- Made **5** decisions that a crofter was not in breach of duty under section 26C(5);
- Issued **32** notices providing crofters with the opportunity to comply with the duty within a timescale the Commission consider reasonable under section 26D(1)
- Made **6** decisions accepting undertakings to comply with the duty under section 26D(5).
- There were **4** termination orders issued in the first half of the year; 2 in Barra, 1 each in Gairloch and Applecross. There were a further 2 decisions to terminate tenancies, which will to termination orders being issued in October.

Q1	Q2	Q3	Q4
AMBER	GREEN		

Responsible Manager: Joseph Kerr

Our Outcome **5 OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE**

By ensuring that our staff and Board members have appropriate training and continued investment, we can develop a high-performing workforce. We will ensure that our organisation fulfils its legal requirements and contributes to the Scottish Government’s broader objectives for Scotland, including the reduction of carbon emissions.

Milestone	RAG Status	Responsible Manager	Details
4a October 2023 – Climate Emergency Charter: We will create an Environmental Team and publish an Emergency Climate Plan.	GREEN	Neil Macdonald	Secured services of Nature Positive (an RSK Company) to assist with the Commission’s assessment covering emission scopes 1, 2, and a subset of scope 3. Data has been identified and collated and as at November is being analysed. An Emergency Climate Plan to set out how the Commission will reduce its GHG emissions due to be drafted in November. Volunteers have been sought and sourced to participate within the CC Environmental Team.
4b October 2023 – Introduce quality assurance and checking programme for regulatory work that feeds into the Register of Crofts.	RED	Aaron Ramsay	The senior casework officers are considering implementation of this programme, and the practicalities of it. Initial reports of common data errors has been produced, to be combined with processing errors and hot spots. This work has been put on hold until Q1 of 2024 to align with Board priorities to reduce casework targets.
4c January 2024 – Update Workforce Plan and Medium Term Financial Plan.	GREEN	Bill Barron	These will be as complete as possible prior to the departure of the current CEO.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
4.1	Increase in Employee engagement Index	67% in October 2022	Maintain at 67% or above	SG people survey, October 2023
<u>PROGRESS</u>				
This score cannot be updated until after the 2023 staff survey is run.				
Q1	Q2	Q3	Q4	
n/a	n/a			
Responsible Manager: Jane Thomas				

Number	Aim	Baseline	Target/Indicator	Measure
4.2	Business Travel corporate carbon emissions	Business travel 2.1tCO2e in 2021/22	Below 5 tCO2e in 2022/23	Emissions from business travel by staff and Commissioners

PROGRESS

Data has been identified and collated. With the assistance of Nature Positive, the Commission’s overall environmental management information is more comprehensive than prior years as we develop an Emergency Climate Plan to set out how the Commission will reduce its GHG emissions.

Business Travel Emissions 2022/23 = 1.07tCO2e

Overall Commission Emissions 2022/23 = 15.2tCO2e (Includes office/home emissions and accommodation bookings)

The Board may wish to consider the following:

- 1) The baseline of 2021/22 was significantly lower than pre-pandemic years as the Commission had just begun to travel to engagements.
- 2) The 2022/23 emissions on business travel were also atypical and significantly lower than pre-pandemic years.
- 3) The Commission may wish to adjust this performance indicator for 2024/25 once the Commission has published its Emergency Climate Plan. It would seem sensible to review our overall emissions target for the organisation, which while including business travel, will capture commuting, office emissions etc.

Q1	Q2	Q3	Q4
AMBER	ACHIEVED	ACHIEVED	ACHIEVED

Responsible Manager: Neil Macdonald

Number	Aim	Baseline	Target/Indicator	Measure
4.3	Redeploy efficiency savings within £4.17m core budget		3%	Funding redeployed as a result of efficiencies in existing operations

PROGRESS

Various efficiency measures are being identified. In addition, staff churn and managed lead in times for recruitment will contribute to achievement of the target.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Neil Macdonald

Key to RAG definitions

R – Red A – Amber G – Green

AMBER means the objective is likely to fall short of successful delivery, in timescale or target or both; but the shortfall is expected to be modest.

GREEN is anything better than AMBER: no shortfall is anticipated;

RED indicates that we are seriously delayed or heading for a significant shortfall.

Once an objective has been completed during the financial year, we mark it **ACHIEVED**, even if it was late in the delivery.

Any tasks scheduled for later in the year, and so not started in Q1, can be marked **GREEN**, unless there is already a reason to think we may not be able to deliver them as intended.

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive Officer

Review of Strategic Risk Register for Quarter 2

SUMMARY

The Board is invited to note and comment on the Strategic Risk Register for Quarter 2 (period to end September 2023), which can be found [here](#). It has been updated by managers following its consideration by the AFC at its meeting on 1 November.

BACKGROUND

The Strategic Risk Register is reviewed by the Audit and Finance Committee at each of its quarterly meetings and then by the Board at its subsequent meetings. On 1 November, the AFC noted and accepted the SRR, but suggested that an additional strategic risk be added, to cover the forthcoming change of CEO postholder. Inclusion of this new risk is the only change that has been made since the AFC considered the register.

Azets have recommended that a cover paper should be prepared by the Executive Team to highlight key points. This paper provides that analysis in the form of four tables.

POINTS TO NOTE

HIGHEST OVERALL RISKS (score 100+)			
<i>Ref no</i>	<i>Topic</i>	<i>Risk score</i>	<i>Comments</i>
S1	Casework	100	Although the number of cases outstanding has continued to reduce, pressure remains high until more of the older cases, in particular, have been discharged.
S9	Budget	100	Score is static because the budget set for 2023/24 was as the Commission had requested, however future years have not been set. This remains a key concern for the medium term.

RISKS THAT ARE INCREASING OR NEW (since last update)			
<i>Ref no</i>	<i>Topic</i>	<i>Risk score</i>	<i>Comments</i>
S11	Change of CEO	40	New risk added to the register at suggestion of AFC. A change of CEO carries some unavoidable risk but preparations in hand to make the transfer as smooth as possible.

**RISKS WHICH COULD POTENTIALLY HAVE THE MOST SERIOUS CONSEQUENCES
(Current impact 25 or 50)**

Ref no	Topic	Current impact score	Comments
S1	Casework	25	As above
S7	RALUT	25	It is important to maintain a strong Residency and Land Use team to continue addressing and resolving breaches of crofting duties, contacting those who do not respond to the census, absentee landlords of vacant crofts and failed successions.
S9	Budget	25	As above

RISKS WHICH ARE MOST LIKELY TO TRANSPIRE (Current likelihood 4 or 5)

Ref no	Topic	Current likelihood score	Comments
S1	Casework	4	As above
S2	Take-up of online applications	5	While the system is working well and popular with users, reaching the preferred levels of use may depend on resolving key issues with Registers of Scotland, especially about fraud prevention.
S4	New entrants and active crofting	4	Need to progress work of development team alongside the more established RALUT and grazings teams to ensure we are encouraging new entrants and active crofting.
S6	Credibility of crofting	4	As for S4 above, plus need for comms activity to highlight the continuing benefits of crofting.
S9	Budget	4	As above

Impact:	Comments
Financial	The Strategic Risk Register is a high-level tool which influences the prioritisation of objectives and deployment of resources across the Commission.
Legal/Political	
HR/staff resources	

RECOMMENDATION

The Board is invited to comment on the content of the Strategic Risk Register, in particular the mitigation actions proposed.

Date: 23 November 2023

Author: Bill Barron, CEO

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Carbon sequestration, peatland and crofting

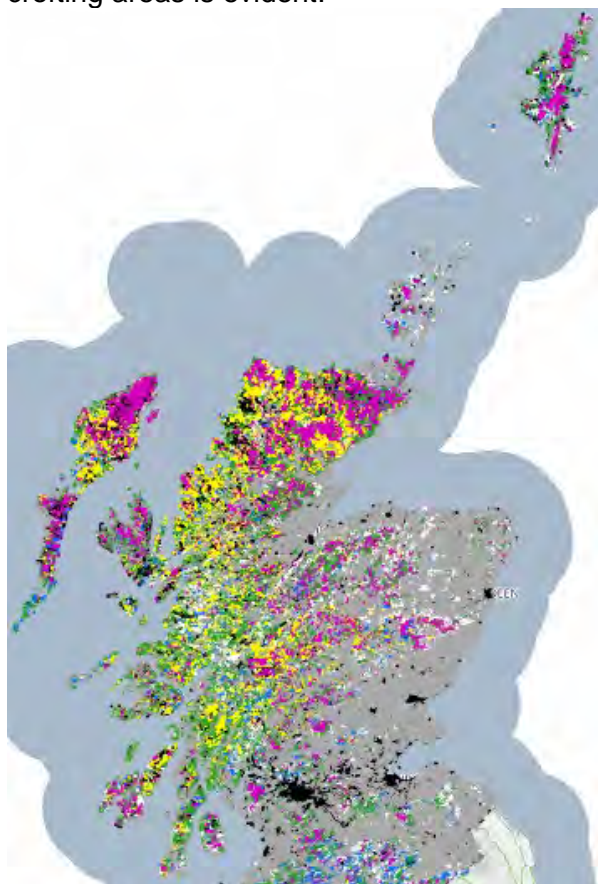
SUMMARY

This paper explains some of the current barriers to crofter involvement in peatland restoration schemes and invites the Board to consider what action the Commission might take to help address them.

BACKGROUND

In its Programme for Government published on 5 September 2023, the Scottish government commits to restoring 10,700 hectares of degraded peatland and progress action with crofters to support more peatland restoration on land under crofting tenure, including the Scottish Ministers' crofting estates.

In the map reproduced below, pink represents deep peat with high conservation value with some potential for restoration (generally, the highest quality deep peat) and yellow represents areas identified as having potential for peatland restoration. The considerable overlap with crofting areas is evident.



Nevertheless, there appear to be several barriers to crofters taking an active and profitable part in peatland restoration schemes. This paper describes the current position and briefly assesses the options.

‘PEATLAND ACTION’ (Government funded) AND ‘PEATLAND CODE’ (commercial)

The current lack of a clear connection, for crofters, between the public aspect of peatland restoration, as funded by Peatland Action, and the private aspect in the form of carbon commercialisation, is one of the barriers to crofters’ engagement in peatland restoration:

- To date, most peatland restoration projects within Scotland have been supported by Peatland Action, with a target of restoring 250,000 hectares of degraded peatland by 2030. In 2022-23, only 7,500 hectares of peatland were restored.
- The Peatland Code is a voluntary certification standard for UK peatland projects. It offers independent verification and validation of the standards set out in the Code, which is essential for credibility within the wider carbon market and assures purchasers that the carbon sequestered is real, quantifiable and permanent. Critically, if any peatland restoration scheme is to be validated under the voluntary Peatland Code for future carbon crediting, it must be validated *before* any peatland restoration is started.

Government commitments to peatland restoration and Scottish Ministers’ estates, using Peatland Action funding

The Scottish Ministers estates have advised the Crofting Commission in November 2023:

“[We] manage 46 crofting estates/ land holdings extending to over 95,000 ha mainly across the Highlands and Islands and have landlord responsibility for approximately 1,500 tenanted crofts. As the majority of Scottish Ministers’ crofting and agricultural land holding interests are under either crofting or agriculture tenure, there is little influence we as landlords have on how our tenants should manage it.

Across the wider estate we have been working to identify and determine areas and condition of peatland to identify areas of degraded peatland for restoration. We have concluded desk-based assessments on over 90% of our holdings with peatland. Work is ongoing with the remaining 10%. This has helped identify sites that would benefit from restoration activities. We are currently engaging with various crofting tenants and grazings committees with the aim of developing a practical collaborative approach between landowner, crofting tenant and Peatland Action for restoration and long-term management of peatland on croft land. The work includes exploring the reason for past and present degraded peatland and identifying different restoration options.”

PEATLAND CODE ISSUES: Relevance of future subsidy system

The Scottish Government’s Vision for Agriculture sets out the importance of climate mitigation and nature restoration within agriculture. This will likely be important when the exact nature of subsidies is set out in secondary legislation once the Agriculture and Rural Communities (Scotland) Bill has been passed. The Scottish Ministers have also committed to a net-zero emissions target by 2045 under the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019.

However, a significant concern for crofters and common graziers (and others) is that the conditions to be imposed within future support systems are currently unknown, and receipt of grant could be conditional to varying extents on rural businesses becoming carbon neutral. Peatland restoration and the associated sequestration of carbon, which can be measured and

sold under the Peatland Code (and possibly measured in other ways if other standards are developed in future, either voluntarily or by government), has an obvious potential connection in assisting a rural livestock business, for example, if it wishes to reduce its emissions. A crofting example could be a sheep stock club wishing to make its activities “carbon neutral” by offsetting livestock-related emissions through peatland restoration and associated carbon sequestration. Another example could be common graziers with cattle (which are relatively large carbon emitters) who wish to offset the emissions with a peatland restoration scheme on the common grazings.

Any potential for carbon sequestration has to be measurable for it to be credited against emissions. At the present time, the only way to validate, monitor, measure and commercialise carbon sequestration on peatland is through the Peatland Code.

PEATLAND CODE ISSUES: Crofting tenure and the Peatland Code

Obligations under the Peatland Code last for at least 30 years (the minimum project duration), but the term of office of a grazings committee is 3 years only. Shareholders come and go on a frequent basis through succession and assignation. Unlike agricultural tenancies, croft tenancies are subject to the statutory conditions of tenure and a landlord is unable under current legislation to require an incoming crofter and grazings shareholder to abide by the terms of any carbon contract unless this has been agreed individually with each crofter (very difficult to achieve in practice where in some larger common grazings there could be up to a hundred shareholders) through a section 5(3) agreement approved by the Land Court and binding on successor crofters.

In an email to Commissioners, the Commission solicitor also noted the following reasons why it is difficult for crofters and crofting estates to engage in peatland restoration at this time:

1. the awareness amongst crofters that carbon units generated through a peatland restoration scheme accredited and validated under the Peatland Code are being sold commercially; currently most carbon credits generated in the UK are sold through the Code, but the Code requires expensive validation and monitoring;
2. a belief that peatland restoration, and any commercial value arising from it, is a “one off, once in a generation” benefit; validation under the Peatland Code must take place before any peatland restoration works start and cannot be validated subsequently, with a legitimate concern that any peatland restoration works under Peatland Action that are not validated would result in the loss of any ability to sell carbon credits under the Code;
3. an understanding that any scheme validated under the Peatland Code contain obligations that last for a minimum of 30 years and often for longer (Peatland Code, 1.2 *Project Duration*);
4. a belief that carbon trading is complicated, expensive and only for larger landowners who can afford specialist consultants and the ongoing validation costs; there is currently legal discussion around how sequestered carbon fits within established legal principles of property and ownership, but on a more practical level a landowner is unable to carry out at least some peatland restoration activities (such as changes to hydrology, reprofiling of peat hags) without interfering with the rights of crofters in the common grazings.

Ways forward for crofters

There are several ways that peatland restoration on land subject to crofting tenure could be progressed.

- 1 Crofters could wait until there is greater clarity regarding **future support systems**. There could be seen to be a disincentive to carry out any peatland action at the present time without any mechanism by which any carbon sequestrated could be used to offset crofters' rural businesses, or carbon credits generated from sequestration under the Peatland Code could be sold. Crofters could seek to create carbon credits through peatland restoration (probably through collaboration with the landlord – see below) and retain these for possible future offsetting. In the meantime, crofters could engage with government to ensure that their interests with regard to carbon sequestration and natural capital are adequately recognised in any new support systems.
- 2 Crofters could collaborate with their landlord and agree that the landlord will make a section 19A **Scheme for Development** application or a **resumption** application so that the necessary works associated with peatland restoration can be carried out by a contractor. Crofters are unable to validate a scheme under the Peatland Carbon Code as they are not owners of common grazings or tenants of it under a recognised tenancy. The Court of Session found in *Ross v Graesser* 1962 SC 66 that the right of a crofter in common grazings is not a right of tenancy, but merely a pertinent of their tenancy of croft land. Furthermore, the costs of validation under the Peatland Code, plus the costs of ongoing monitoring and the liabilities in the event of for instance fire, are a substantial financial burden (Peatland Code, 2.4 *Commitment of Landowners and Project Developers*);

NatureScot has permitted crofters to take part in Peatland Action projects, but this does not benefit crofters financially. Peatland Action pays contractors directly for the work carried out. However, any restoration carried out with Peatland Action support could be used for validation purposes under the Peatland Code provided the validation happens before any restoration commences. The crofters and landlord could agree at the outset the terms on which peatland restoration, funded through Peatland Action, would be validated and monitored under the Peatland Code and how and when any carbon credits generated would be sold. Crofters would likely hold out for 50% of the number of carbon credits, but there are certain risks that a landlord could underwrite, such as insurance, and the ongoing responsibilities under the Peatland Code to make good any damage done to the restoration, such as for instance by wildfires or damage by red deer. There is some evidence that wildfires will become more prevalent over parts of the Scottish highlands due to climate change, but that is beyond the scope of this paper.

- 3 Grazings committees could consider making an application under **section 50B** of the Crofters (Scotland) Act 1993 to use the common grazings for another purpose, namely peatland restoration. The Commission solicitor is of the view that, following the case of *Crofters of Aignish Common Grazings etc. v Crofting Commission*, any crofters making a section 50B application would have to demonstrate clearly that this case and the comments made in it by the Lord President, Lord Carloway, are not applicable. The Commission solicitor is aware that others are of the view that peatland restoration activities – such as changes to hydrology, damming, reprofiling with vegetation – could be an “other purpose” under section 50B. Any application received by the Commission under section 50B would have to be assessed on its merits and in line with the law and case law applicable at the time.

- 4 Wait until **crofting legislation** is amended on the basis that it will make a provision for joint ventures between crofters and landlords for carbon sequestration and biodiversity enhancement projects. The Crofting Commission has proposed this to the Crofting Bill Team.

- 5 Explore the relevance of the **crofting community right to buy** under Part 3 of the Land Reform (Scotland) Act. Although the new landowner and the crofting interests remain legally distinct following any purchase under Part of the 2003 Act, the interests of the new landowner and the interests of the crofters will likely be closely aligned. Indeed, crofters will likely be the directors of any company limited by guarantee that is the new crofting community landowner. In such a context the crofter-owned estate could spread any financial benefits – and risks – of peatland restoration amongst the crofting interests and also, should they wish, spread any financial benefits more widely to any non-crofting element of the local community.

6. The Commission could open up dialogue with “in office” grazings committees about peatland restoration. One option would be to issue a survey to clerks, giving some information on what degraded peat looks like, and to ask questions about the level of degraded peatland on their grazings. It could also ask about interest in peatland restoration, as well as the barriers to this from the point of view of grazing committee. This would provide a list of contacts with which the Commission could continue to provide relevant information as it comes up. The Commission could also pursue discussions and opportunities to engage with Scottish government regarding future agricultural and land-use subsidies.

UK Woodland Carbon Code (WCC)

It should be noted that, aside from peatland restoration, crofters could benefit from any new woodland creation on crofts and common grazings under the voluntary UK Woodland Carbon Code (WCC). It also provides for the creation of independently verified carbon units. The WCC sits alongside the Peatland Code on the UK Land Carbon Registry. The relationship between crofter forestry, the WCC and woodland creation deserves a separate paper.

Impact:	Comments
Financial	N/A. Significant for crofters, but not for the Commission.
Legal/Political	The credibility of crofting in the eyes of Government and the wider environmental movement, will be enhanced if the problems described in this paper can be overcome.
HR/staff resources	Currently, the Commission is devoting relatively little resource to these issues, though the Solicitor and the Policy, Development and Grazings team have given it some attention, among many other tasks.

RECOMMENDATION

It is recommended that the Commission’s Board notes the contents of this paper and considers whether the Commission should take any action, or offer any guidance, to facilitate peatland restoration – whether to crofters and grazings committees, to crofting landlords, or indeed to the Scottish Government in regard to policy development.

Date: 26 November 2023

Author David Findlay, Solicitor

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Review of parameters for decrofting applications

SUMMARY

The purpose of this paper is 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))

1. INTRODUCTION

Deciding on decrofting is a very important aspect of the Commission’s work. Nearly half of all regulatory applications considered by the Commission are decrofting applications, mostly either part croft or croft house & garden ground. Each case is significant, both for the applicant, who will often have development aspirations which depend on the decrofting being granted, and for crofting in the locality – any decrofting results in a loss of croft land for future generations.

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.

2. LAW AND POLICY ON DECROFTING

While the Commission has a responsibility to exercise its discretion, it does not have a free hand to apply its own values to decrofting, because how the Commission should approach decrofting (and other) applications has been addressed by Parliament in legislation, by the Land Court in case law, and by the Scottish Government. These set out:

- Specific considerations which the Commission must take into account when deciding a decrofting application are the interests of the crofting community, the good of the croft and the wider public interest. For a reasonable purpose decrofting application, these include assessing whether there is a reasonable purpose, how likely it is to be implemented, and whether the amount of land to be decrofted is excessive for the purpose. For a croft-house and garden ground, they include a requirement that what is being decrofted is just that – a croft house with a reasonable garden ground around it.
- The Commission’s general responsibility to promote the interests of crofting. While other bodies – planning departments, Nature Scot, SEPA etc have specific responsibilities for the built environment, the natural environment and environmental protection – the Commission’s specific responsibility is to promote the interests of crofting. One aspect of this, in S1(2A)(b) of the 1993 Act, is as follows:

S1(2A)(b) In exercising their functions under subsection (2), the Commission must have regard to ... the impact of changes to the overall area of land held in crofting tenure on the sustainability of crofting.

One of the purposes of the Crofting Reform (Scotland) Bill 2009, according to the Policy Memorandum on the amended Bill, was to address the issue of speculation on croft land and “it is proposed that the powers of the Commission to reject decrofting applications will be strengthened” and to increase the powers of the Land Court to refuse resumption applications. The powers of the Commission to refuse decrofting applications were increased (in what is now section 25(1A), (1B) and (1C) of the 1993 Act) instead of pursuing a rural occupancy burden on decrofted house sites. The Memorandum went on to note that the Commission’s amended decrofting powers will enable it “to reject decrofting applications where planning permission has already been granted”.¹ The importance of giving the Commission power to refuse decrofting applications even where planning permission has been granted is an important theme of the Policy Memorandum, and is now given legislative effect in section 25(1A)(b) of the 1993 Act.

Policy

The Commission’s Policy Plan recognises the legal and Governmental context in which we work and assures crofters and the public that we will work in accordance with it. Paragraphs 26 and 27 state:

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

The Commission aims to protect land from being lost to crofting. A decrofting direction irrevocably removes the land subject to the application from crofting tenure. The Commission takes a long-term view when determining decrofting applications and will exercise its discretion to consider, amongst other factors, the advantages of retaining the croft (or part thereof) as part of the pool of croft land in the locality.

3. THE ROLE OF PARAMETERS

In practice, whichever Tier the decision is taken at, the Commission needs to aim for consistency in how it applies the constraints of legislation and its own policy views, to successive decrofting decisions. Parameters seek to achieve this consistency while delegating the more routine applications to B1 case officers.

Parameters are not policy, but should follow on from policy to aid its practical implementation. They are best seen as a set of operational practices designed to achieve a balance between consistent application of policy and efficiency of decision-making.

¹ Crofting Reform (Scotland) Bill 2009 (as amended), *Policy Memorandum*, pages 6 and 15. The Memorandum stated that “increasing the grounds for the Commission to reject decrofting applications will help to suppress the speculative demand for croft land for developments which might be considered to damage crofting and the benefits crofting provides.”

Parameters are used to determine whether a B1 casework officer is entitled to approve the application without further consideration of any of the specifics of the case, or whether it requires to be considered more carefully, by managers or by the Board. When casework officers encounter an application which ticks all the parameters, they will know it is in line with similar cases considered in the past, and may approve it directly. (But they don't have to. They are always able to escalate to Tier 2 if there is anything about the case that appears to them contentious.)

Other things being equal, the more cases that can be decided at Tier 1, the more efficient the turnaround of cases should be. Therefore, it is in the Commission's interest to have broad parameters which allow a high proportion of cases to be decided at Tier 1. But at the same time, it is essential – and an Accountable Officer responsibility to ensure - that the parameters only authorise approvals that are consistent with the legislation. The alternative would be to empower and expect junior staff to take decisions that were not in line with legislation.

The extent parameters for decrofting applications

Given the legal requirement for the Commission to check that land to be decrofted is not excessive for its purpose, it is necessary to consider what might be considered normal and therefore not excessive. Of course, this will depend very much on the purpose of the application. Currently, the Commission operates with a suite of decrofting parameters, namely:

- Any application for any purpose, will not be automatically escalated if it is below 0.2ha
- For a housing development with planning permission, Tier 2 may choose not to escalate an application up to 0.3ha (as part of the 'emergency' measures designed to accelerate decrofting decisions
- For a croft house and garden ground, areas up to 0.4ha need not be escalated (but this only applies for an existing croft house and existing garden ground, few of which will be of this size).

Much of the debate about parameters for decrofting has focussed on the size of plots for housebuilding, so officials have investigated what is currently the **normal** size for a housebuilding plot in a rural area in the crofting counties. The evidence suggests that this normal size would be **no more than around 0.2ha**. This evidence is:

- The Commission's own recent decrofting decisions. Many of these are for areas well below 0.2ha. Recent larger areas include a Tier 3 approval of 0.95ha for 5 homes (i.e. 0.19ha per home).
- The informal opinion of two architects who each advised that a normal rural plot was about 0.12 ha.
- House build plots, mostly with planning permission, currently available on the open market. These range from nearly one third (0.3) of a hectare at Broadford on Skye, to one fortieth (0.025) of a hectare for a site in Applecross, with the majority at or close to 0.2ha, as set out in the following table. The table is not a scientific analysis of the current market and is for illustrative purposes:

at Harrapool, Broadford, a site of 0.3 ha is available (planning permission also includes separately a workshop as well as a dwellinghouse)
at Tote, Skye, a 0.21 ha site is available for sale, described as "generous" in size'
in Orkney, a 0.2 ha site is for sale in South Ronaldsay
at South Erradale, a site of 0.2 ha is available
at Laide, Gairloch, a site of 0.2 ha is available
at Waternish, a plot of 0.2 ha as a house plot is available
at Tighphuirt, Glencoe, a plot of 0.2 ha is for sale
at Camuscross, Sleat, a plot of 0.2 ha is available
at Stromeferry, plots of 0.198 ha and 0.15ha are available with separate planning permissions

at Glendale, Skye, a site of 0.18 ha is available
 at Drimnin, on the Movern peninsula, a site of 0.1704 ha is available
 at Upper Breakish, a site of 0.166 ha is available
 at Inverinate, near Morvich, a site of 0.16 ha is available
 at Camuscross, Skye, a site of 0.16 ha is available
 at Blaich, Fort William, a 0.089 ha site is available for sale
 at Allangrange, a site of 0.076 ha is available
 at Balblair, a plot of 0.06 ha is available
 in Strathspey, a plot of 0.0445 ha site is for sale
 at Applecross, a site of 0.025 ha is available

4. CONCLUSION

Based on these principles and evidence, the annexes to this paper set out recommendations to Commissioners to revise certain delegation parameters relating to the consideration of Decrofting Part Croft applications and Decrofting Croft House and Garden Ground applications, which respectively represented 32% and 12% of all cases escalated from Tier one during the period 1 November 2022 to 31 October 2023.

Impact:	Comments
Financial	N/A
Legal/Political	The Commission needs to ensure that its parameters support decision-making which is in accordance with the Act and caselaw.
HR/staff resources	A well-set parameter, broad enough to cover a range of normal applications, improves the efficiency of casework handling.

RECOMMENDATION:

For the Board to consider and agree whether to authorise the change of delegation parameters set out in the annexes to this paper.

Date: 28 November 2023

Authors Bill Barron, CEO and Joseph Kerr, Head of Regulatory Support

EXISTING DELEGATION PARAMETERS AND RECOMMENDED ALTERNATIVES

1.1 Is the application to decroft an area extending to 0.20 hectares or less?

- If **yes**, the case can be considered at the first Tier of decision making.
- If **no**, the case should be escalated to the second Tier of decision making.

In addition, as part of the emergency measures it was agreed that Tier 2 could approve an application to decroft the site of an existing house or a proposed housing development for an area extending up to 0.30 hectares.

LEGISLATION

In terms of section 25(1)(a) of the 1993 Act, the Commission are required to be satisfied that “...the extent of the land to which the application relates is not excessive in relation to the stated purpose”

LEGAL ADVICE

The Commission solicitor previously gave the following advice in relation to what excessive means “*In the Land Court case of Page -v- Greene 1993 SLCR 94, an applicant sought resumption of an area extending to 1.2141 ha (a smaller area than applied for in the current application) for a residential house and amenity ground. The Land Court refused the application and stated that any area resumed must not be out of proportion to the area of the subjects which are required to enjoy that amenity. The Court stated that area applied for was “greatly excessive” compared to the area of the area of the dwelling-house and garden. The Court found it difficult to envisage any circumstances where resumption for the amenity of a dwelling-house would exceed 0.2 ha. The Court cited the case of Watson v MacLennan 1970 SLCR 75 as authority for the finding that the non-viability of the remainder of the croft as a crofting unit was not a reason for granting resumption of any area larger than required for the dwelling-house and associated amenity. In Watson v MacLennan the Land Court noted that the vast majority of crofts are poor and non-viable, and this is not a good reason for authorising resumption. There is no reason why the general principles applying to the extent of land which may be resumed for dwelling-houses and amenity are different from those applying to decrofting applications.*

“The cases referred to above were decided before the 1993 Act was amended in 2010 to strengthen the Commission’s powers to refuse decrofting applications”

RECOMMENDATION: Based on the statutory requirements, the Commission’s Policy Plan and legal advice received, the recommendation is to retain the up to 0.20 hectares figure at Tier One, but to make the emergency measure change to authorise Tier Two to decide an application for a dwelling house site of up to 0.30 hectares a **permanent change**.

1.2 Have two or more reasonable purpose directions been issued in respect of this croft in the last 5 years?

If **no**, the case can be considered in the first Tier of decision making.

If **yes**, the case should be escalated to the second Tier of decision making.

RECOMMENDATION: Experience has shown that this parameter rarely if ever results in a refusal of a part-croft decrofting application, because applications should be considered on their current merits rather than their historical context. It is **recommended** that this parameter should be discontinued.

1.3 Are we considering any other decrofting applications for this croft?

If **no**, the case can be considered at the first Tier of decision making.

If **yes**, the case should be escalated to the second Tier of decision making.

RECOMMENDATION: This parameter is occasionally relevant so that separate applications made at the same time on the same croft, are flagged up and can be considered in combination. The **recommendation** is no change to this parameter.

1.4 In the case of an application by a tenant or owner-occupier crofter, are we investigating a suspected breach of duties?

If **no**, the case can be considered at the first Tier of decision making

If **yes**, the case should be escalated to the second Tier of decision making

This parameter relates to decrofting applications submitted by tenants or owner-occupier crofter who are under investigation by the Commission's RALU Team for suspected breach of duties. Some of these decroftings may form part of the tenant or owner-occupier crofters plan for resolving their breach of duty e.g. a tenant or owner-occupier crofter applying to decroft the site of a house to enable them to progress their plans to take up residence on the croft, or a tenant applying to decroft the dwelling house or house site on the croft, prior to them applying to the Commission for consent to assign the tenancy of the remainder of the croft to an individual who will be in a position to comply with the statutory duties. Other decroftings may simply be to remove land from crofting tenure for reasons unrelated to resolving the breach of duty, essentially asset stripping the croft prior to the Commission taking duties enforcement action. The problem with the current parameter is that it does not distinguish between these scenarios.

RECOMMENDATION: To change the parameter to read "***This parameter only applies where the croft is the subject of live Breach of Duties case. Having consulted with RALUT colleagues, is there evidence to suggest that the application will contribute to resolving the breach of duty: If yes, Tier One. If No, escalate to Tier Two.***"

Delegation parameters for Decrofting Croft House and Garden Ground applications

1. LEGISLATION

For the Commission to issue decrofting direction in terms of section 25(1)(b) of the 1993 Act, an application must be made “...*in respect of part of a croft, which consists only of the site of the dwelling-house on or pertaining to the croft and in respect of which a crofter is entitled a the time of the application, or has been entitled, to a conveyance by virtue of section 12(2) of this Act, and they (the Crofting Commission) are satisfied that the extent of garden ground included in that part is appropriate for the reasonable enjoyment of the dwelling house.*”

Increasing the extent to approving decrofting house site and garden ground applications extending up to 0.40 hectares at Tier One does not remove the legal requirement set out above that the Commission require to be satisfied that (i) the area must consist only of the site if the dwelling house on or pertaining to the croft and (ii) the extent of garden ground must be appropriate for the reasonable enjoyment of the dwelling house. Applications that do not meet this criteria require to be processed under the part croft decrofting reasonable provisions set out at section 25(1)(a) as they relate to decrofting “*croft land*” as defined at section 12(3) of the 1993 Act, rather than the site of the dwelling house on or pertaining to the croft.

2 Recommended changes to Parameters

2.1 Current Parameter: Check the appropriate application form has been used

The most important thing is to establish that it is an application which can be dealt with as a statutory house site i.e. the applied for structure must be wind and watertight and the applicant must not previously have decrofted a house site under the Section 25(1)(b) provisions in relation to this croft.

If it does meet the criteria, it can continue in the first Tier of decision making.

If the application does not meet these two criteria the case should be dealt with under the non-devolved section 25(1)(a) part croft (reasonable purpose) provisions.

RECOMMENDATION: Increasing the extent for applications to be approved at Tier One to up to 0.40 hectares places greater emphasis on the Commission ensuring that the application meets the criteria to be considered under the house site and garden ground provisions rather than the reasonable purpose part croft provisions. Officials therefore recommend the following change to above parameter as follows:

Recommended parameter: “Is the application for a part of a croft which consists only of the site of the dwelling house on or pertaining to the croft?”

The criteria to be met are that dwelling house must be wind and watertight, the applicant must not previously have decrofted a house site under the Section 25(1)(b) provisions in relation to this croft, and the application must not include croft land which does not form part of the site of the dwelling house and garden ground:

If it does meet the criteria, it can continue in the first Tier of decision making.

If the application does not meet the criteria, it should be escalated to Tier 2 to determine whether to (i) return the application and advise the applicant to re-apply under the reasonable purpose part croft provisions or (ii) agree to modify the application to consist only of the site of the dwelling house and garden ground.

2.2 Existing Parameter: Is the site applied for reasonable in relation to the size of the dwelling and the size of the croft?

“An application for a combined area (house site and garden ground) of up to 0.40 hectares can be considered at the first Tier of decision making. Factors in considering whether an application of up to 0.40 hectares can be approved include:

- *The typical size of house sites in the geographical area*
- *The size of the dwellinghouse*
- *The size of the site claimed in relation to the croft*
- *Natural/topographical features of the area applied for e.g. rocky outcrop.”*

Officials considers there is a greater need for consistency in applying this parameter now that the approval extent at Tier One has been raised to up to 0.40 hectares. They consider further that there should be greater scrutiny on the impact of applying the higher figure agreed by the Board on the sustainability of smaller crofts.

RECOMMENDATION: To ensure consistency across the organisation, that the third bullet point should be changed to

- *The size of the site claimed in relation to the croft (an application should be escalated where the area applied for comprises more than 20% of the total extent of the croft which is the subject of the application)*

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Reviewing aspects of the Commission's Scheme of Delegation

SUMMARY

As part of the ongoing process of devolving regulatory decision making this paper comes to the Board to consider three recommendations to review the Commission's Scheme of Delegation in order to:

- a. revise the reference in the Scheme of Delegation relating to how regulatory applications submitted by Commissioners are decided
- b. extend the Scheme of Delegation to include delegating to staff decisions on whether there is a good reason (i) not to direct an owner-occupier crofter to submit a proposal for letting the owner-occupied croft (Section 26J of the 1993 Act) and (ii) not to terminate a croft tenancy (Section 26H of the 1993 Act)
- c. extend the Scheme of Delegation to include delegating to staff determining whether applications are Invalid or Incomplete.

1. BACKGROUND

This paper comes to the Board in order to consider recommendations in relation to changes to the Scheme of Delegation.

2. PROPOSED CHANGES TO THE SCHEME OF DELEGATION

2.1 Regulatory Applications submitted by Commissioners

Current Reference in the Scheme of Delegation to applications by Commissioners

"Any application submitted by a Commissioner or a member of staff which complies with all the parameters for delegation, as agreed by the Board, can be approved at Tier One (Casework Officer).

Any regulatory application submitted by a Commissioner or a member of staff which fails to comply with one or more of the parameters for delegation, as agreed by the Board, shall be escalated to the Full Board for consideration in closed session."

2.1.1 Proposal One: To amend the reference to applications by Commissioners

“Any application submitted by a member of staff which complies with all the parameters for delegation, as agreed by the Board, can be approved at Tier One (Casework Officer).

Any regulatory application submitted by a member of staff which fails to comply with one or more of the parameters for delegation, as agreed by the Board, shall be escalated to the Full Board for consideration in closed session.”

Any application submitted by a Commissioner shall be escalated to the Full Board for consideration in closed session.”

REASONING: Because the parameters of the Scheme of Delegation are determined by board members it is entirely possible that a board member could take part in (or even lead) a decision to change a parameter, and having done so could appear to take advantage of this change by lodging an application within that parameter. Whether deliberate or not, the risk of a perceived conflict of interest will be obvious and is real. Therefore the proposed change recommends that **all** applications submitted by Commissioners are considered by the full Board which reflects the position previously set out in the Commission’s Instrument of Delegation, which was in force until around 2017/18.

2.2 Extending the Scheme of Delegation

Proposal Two: To delegate to officials and potentially to Tier 3, decisions on whether there is a good reason:

- (i) not to direct an owner-occupier crofter to submit a proposal for letting the owner-occupier’s croft (Section 26J of the 1993 Act) and
- (ii) not to terminate a crofter’s tenancy (Section 26H of the 1993 Act);

Reasoning: The Commission had previously delegated to officials the authority to determine, at an early stage of the duties enforcement process (in terms of section 26C of the 1993 Act), whether there is a good reason not to give a tenant crofter or owner-occupier crofter a written notice that the Commission consider that a duty is not being complied with.

The recommendation here is to extend the authority to officials to consider whether there is a good reason, at a later stage of the duties enforcement process, not to direct an owner-occupier crofter to submit letting proposals for the croft, or not to make an order terminating the crofter’s tenancy. Due to the progressive stages of the duties enforcement process an application has to go through, new information can come to light and circumstances can change significantly by the time the case reaches the latter stage of the process, and there may be a good reason which has emerged that the RALU Team were not previously made aware of as to why the case should not progress to the letting proposals or tenancy termination stage.

Potential good reasons for not proceeding include:

- The owner-occupier crofter or tenant may not currently be in a position to comply with the statutory duty for health reasons e.g. undergoing medical treatment which prevents them from taking up residence.
- The Commission are currently considering an application by a crofter, under section 8 of the 1993 Act for consent to assign the tenancy of the croft to an individual who will be in a position to comply with the statutory duties if the application was approved.
- The Commission are currently considering an application by an owner-occupier crofter under section 29A of the 1993 Act for consent to let the tenancy of the croft on a crofting let to an individual who will be in a position to comply with the statutory duties if the application was approved.

2.2.2 Extending the Scheme of Delegation

Proposal Three: To delegate to officials the authority to determine whether regulatory applications are invalid or incomplete. In general, an application is considered to be “invalid” where it cannot be put right by the actions of the applicant e.g.

- the application is in respect of a unit which is not entered on the Commission’s Register of Crofts,
- the applicant is not shown on our Register of Crofts as the tenant, landlord or owner-occupier crofter of the croft,
- the applicant is trying to apply for something that their status does not allow then to apply for e.g. a landlord applying to divide, an owner-occupier crofter applying to assign, the landlord of a tenanted croft applying for a decrofting direction.

In contrast, an application is generally considered to be “incomplete” where the applicant can take steps to remedy the deficiencies in an application e.g. by signing and dating the application form, by answering all relevant questions in the application form, by supplying the Commission with the appropriate supporting information and/or documentation relating to planning, mapping, management agreements etc.

Background: The historic Instrument of Delegation made no references to determining whether applications were invalid or incomplete. The current Scheme of Delegation similarly makes no reference to invalid or incomplete applications. The Scheme of Delegation refers to approving applications, refusing applications, modifying certain types of applications, and imposing conditions on certain types of applications. Nevertheless, staff do determine that applications are invalid or incomplete on a daily basis.

Reasoning: For completeness and to remove any uncertainty that staff are acting under the delegated authority of the Board, the Scheme of Delegation should be extended to authorise staff to determine whether a regulatory application is invalid or incomplete.

Impact:	Comments
Financial	N/A
Legal/Political	There could potentially be reputational benefits for the Commission in cases being concluded more quickly (Proposal 2) or at a more appropriate level (Proposal 1).
HR/staff resources	There may be modest additional staffing costs in preparing more cases for the Full Board under Proposal 1. Proposal 2 should be a net time saver. Proposal 3 should have no impact as it confirms longstanding existing practice.

RECOMMENDATION

It is recommended that the Board should discuss and agree the recommendations set out in the paper on changes to the Scheme of Delegation

Date: 23 November 2023

Author Joseph Kerr, Head of Regulatory Support

CROFTING COMMISSION MEETING

6 December 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 performance metrics and 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 (August to October 2023 at time of writing, based on historically reported work types) is **571** against a receipt figure of **490**. The current total year to date discharged rate is 1,252, which puts the Commission on track for a total annual clearance of 2,146, however this does not take into account potential periods of reduced output across the holiday period. Further details of quarterly receipt vs discharge totals are provided in **Figure 1**, right.

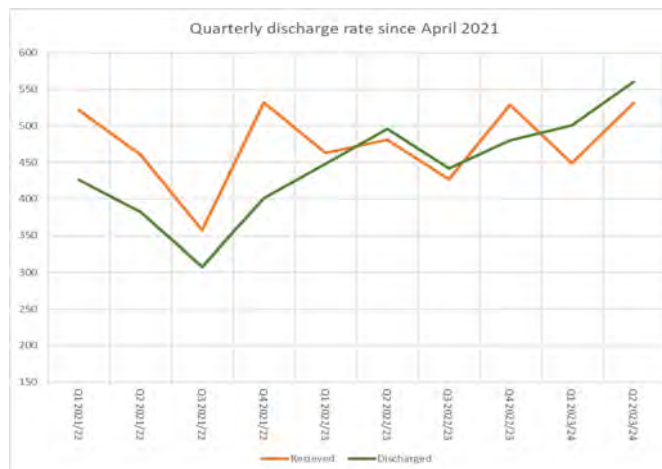


Figure 1 - The quarterly number of applications received and discharged since April 2021, based on historically reported case work types.

The outstanding balance of undecided applications at the end of October 2023 is 875 (as historically reported). The historic trend is shown in **Figure 2**, right.

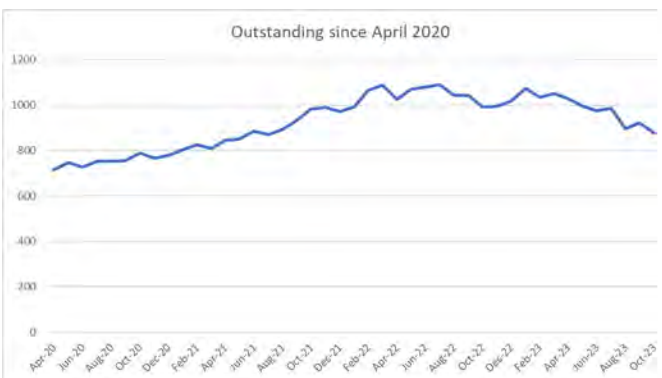


Figure 2 - The numbers of applications estimated to be awaiting decision at month end since April 2020.

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 this reporting year is 2,200, which will require an average of 190 discharges per month for the period of November 2023 – March 2024 to achieve.

Outstanding Figure Breakdown

The current reported singular outstanding figure is comprised of a mix of regulatory applications, notifications, MSP enquiries and RALUT case types. The latest end of month figure for the end of October 2023 breaks down as follows:

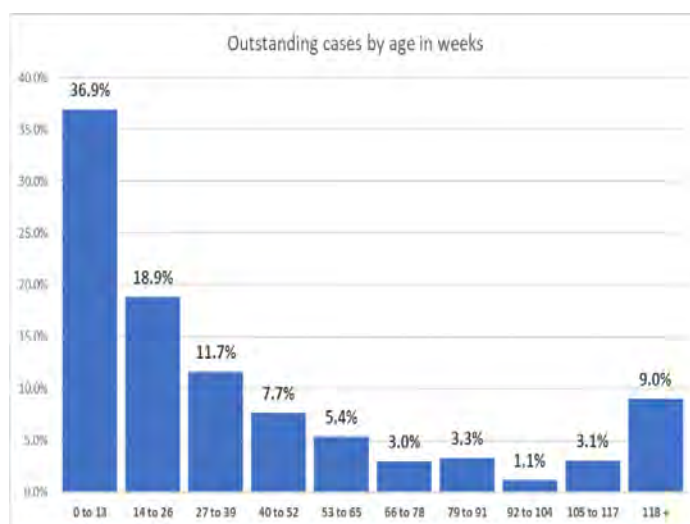
Breakdown	Received	Discharged	Outstanding
Regulatory Applications	96	117	667
Regulatory Notifications	58	72	199
RALUT	5	2	8
Compliance/MSP	0	0	1
TOTAL	159	191	875

However this figure has not recorded all work completed by the Regulatory / Registration teams, which includes a small number of missing Regulatory application types, some other notifications (especially notifications of deaths) and all Registration work. A full breakdown of all processing work primarily completed within the Regulatory and Registration functions is as follows (excludes responding to crofter enquiries):

Breakdown	Received	Discharged	Outstanding
Regulatory Applications	107	125	683
Regulatory Notifications	92	126	347
Registration Cases	142	166	528
TOTAL	341	417	1,558

Age Profile Of Outstanding Cases

The graph right shows a split of the outstanding casework (as historically reported) based on the age of the cases from the point of receipt in the Commission to the end of October 2023. The majority of the cases fall into the first two categories, and a small drop in the number of cases between 27 and 105 weeks has been achieved in the last two months. Moving forward the Regulatory team are introducing a more structured approach to casework clearance, supported by new reports, as follows:



1. All cases should be prevented from moving beyond the 40 to 52 week category unless totally unavoidable (see section on aged cases for details)
2. Cases that are already longstanding should be tackled in age order from oldest to newest

This approach will aim to break the cycles of either clearing the oldest cases first - which results in a flow of newer cases becoming old - or a focus on new casework - which results in the oldest cases continuing to age. This is a balance that will be managed by the Head of Operations and, moving forward, a restructured role within Regulatory which introduces a focused performance management objective to a B2 officer.

A more detailed breakdown of the age profile based on case numbers is available at the link in Annex A.

Incomplete Cases

As part of the short-term measures, the Commission introduced a process to target incomplete cases which went live at the beginning of Sept 2023. It was hoped that some MI would be available for cases closed under this process, however the “incomplete” outcome was not available in the CIS until after the Oct 2023 release date. As such, although the process has been rolled out, no statistical data is yet available.

Reasons for Aged Cases

The Commission aims to deal with the majority of its casework against a timescale of 12-16 weeks for straight forward Tier 1 cases with no registration impact, however there is currently a % of casework which is far older than this. A simple analysis for the reasons for cases becoming old is as follows:

- 1. First registration cases, where applicable, must be fully completed before accompanying Regulatory cases can be completed
 - a. In some cases Registration cases do not need to be submitted at the same time, and up to 6 months is allowed for this submission
- 2. The time taken for recent recruitments to Regulatory to be fully trained historically resulted in skillset gaps, which in turn resulted in volumes of cases being held in holding accounts
- 3. Some cases go through lengthy processes to get them to the stage of being considered valid and complete, where delays are caused by non-responsive third parties
- 4. Some cases have lengthy objection windows, especially where more than two parties are involved
- 5. Some cases are very complex and require a high degree of background research and legal advice, which can add significant time to the end to end picture
- 6. The CIS does not organize cases based on age, but based on next due action. New reports have been developed to tackle this moving forward.
- 7. Cases being held in abeyance, where the reason for this is not required within the Act

SUMMARY

The Regulatory casework outstanding position, as reported with the issues noted in this paper, continues to improve. The Regulatory management team continue to work towards process improvements, with additional work planned for January 2024 to map out the end-to-end customer journey to identify pinch points. In addition to this a proactive approach to casework management across the team aims to ensure that as well as reducing the overall outstanding casework volume, cases are processed in a more targeted approach to stop and reduce the number of cases becoming aged (initially greater than 52 weeks old) wherever possible.

Impact:	Comments
Financial	n/a
Legal/Political	Scottish Government is 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. Ongoing recruitment may affect the rate of clearance moving forward.

RECOMMENDATION

The Board is invited to note the update on current casework position within the Commission.

Date 20 November 2023

Author Aaron Ramsay, Director of Operations

Annex 1: Detailed breakdown of volume and age of all outstanding cases handled within Regulatory and Registration, end of October 2023

<https://crofting.scotland.gov.uk/userfiles/file/appendices/231206/Annex-1.pdf>

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Regulatory Applications Webpages

SUMMARY

Work is underway to draft new pages for the regulatory applications section of the website. The webpage for Assignment is presented as an example to compare the current page and the proposed new page.

BACKGROUND

The Crofting Commission website plays a crucial role in providing information, serving a substantial user base with approximately 11,000 visitors each month. Surveys conducted among crofters have consistently shown that the website is an important source of information related to crofting. However, feedback has revealed challenges in accessing and comprehending this information, with respect to regulatory applications and notifications. Over time, gradual additions and minor changes to the webpages have resulted in confusion, with information scattered across various pages and attached documents.

Earlier this year, a working group was formed with staff from across the organisation. The purpose of this group is to create new, user-friendly pages for the regulatory applications section of the website. Work is currently underway on the general information pages in this section as well as on pages specific to various regulatory applications and notifications. These general information pages include:

- Find out more information about our application types
- Steps involved in an application
- Maps
- Find an application form
- Online applications
- Appeals
- Objections
- Applications and notifications received

In addition to these general information pages, substantial work is involved in drafting each specific application and notification type. An example of this is the "Assignment" page, which is included at **Annexes A and B**. The new page incorporates information from different documents attached to the page and has been written in clear and precise language, ensuring it is understandable to the average reader. These changes will also be incorporated into the online applications portal. These pages will follow a similar structure to each other and the main sections within them will be as follows (for applications):

- How do I know it's the right application for me?
- How do I apply?
- Decision parameters
- Brief timeline for processing
- What happens after a decision is taken
- Further information

The improvements to these pages will benefit both applicants and the Commission. They will enable applicants and agents to better understand the requirements for their applications or notifications and the steps involved. This, in turn, will enhance the quality of forms received and reduce the number of enquiries. Due to current priorities in processing regulatory applications, progress has been relatively slow, and the first pages are expected to go live in early 2024.

Impact:	Comments
Financial	N/A
Legal/Political	N/A
HR/staff resources	Staff resource is required to prepare the new webpages, particularly staff with regulatory expertise.

RECOMMENDATION

The Board is invited to note the work underway on the regulatory applications section of the website.

Date 7 November 2023

Author Heather Mack

Annex A – Current Assignment webpage

Application for Commission Consent to Assign a Croft Tenancy

Tagradh airson Cead a' Choimisein gu Gabhaltas Croite a Shònrachadh

Assignment is the term used to describe the transfer of a croft tenancy from a tenant crofter, referred to as the 'assignor' or 'outgoing tenant', to a person of their choice referred to as the 'assignee' or 'proposed new tenant'.

If the Crofting Commission approve your application everything that is held in tenancy will be transferred to the new tenant.

Delegated Decision Making Parameters

Assignment - Section 8 of the Crofters (Scotland) Act 1993

A straightforward approval can be made if:

- The proposed tenant will be ordinarily resident within 32 kilometres of the croft, or will be within 18 months of obtaining the croft tenancy
- The proposed tenant has provided evidence that they will cultivate the croft
- The proposed tenant has the skills to carry out their proposals for the croft
- There have been no objections from the landlord
- There have been no objections from the crofting community
- There have been no expressions of demand for the tenancy of the croft

If any of these conditions are not met, the application will be escalated.

Regulatory Forms and Guidance - Assignment

- [Factsheet-Assignment-200129.pdf](#) 397 kB
- [law-policy-and-procedure-assignment-2022.pdf](#) 765 kB
- [Sample-Assignment-Newspaper-Advert.pdf](#) 39 kB
- [Sample-Notification-for-landlord.pdf](#) 39 kB

Please ensure you submit your [Registers of Scotland \(RoS\)](#) Registration Application form along with your application, if required.

Please note that when you are completing the Registration Application for RoS you are required to advise them of persons who own/occupy any adjacent croft or land, as our ROC is not mapped based the Commission cannot assist you with this information.

Annex B – Proposed new Assignment webpage

Image below shows the first half of a draft of the new Assignment page. Please note that the different sections will be collapsible so users can focus on the relevant information to them. This is to give an idea of the content; further changes to the wording and stylistic changes are still to be applied.

Assignment

Contents (jump to section):

- What is Assignment?
- How do I know it is the right application for me?
- How do I apply?
- Decision Parameters
- Brief timeline for processing
- What happens after a decision is taken
- Further information

What is Assignment?

Assignment is the term used to describe the transfer of a croft tenancy by the crofter to someone else. The assignment application is made by the outgoing tenant and the decision is taken by the Commission whether to approve the application.

At a glance what you need to apply:

- Application form
- Advertising – you need to advertise your application in the local press
- Notifications – you will need to notify the landlord (and if applicable any owners of the common grazings) in writing
- Registers of Scotland Crofting Register application (more info below on the steps to do this depending on whether the croft is or isn't already registered)

How do I know it is the right application for me?

If you are a tenant crofter and want to transfer your croft tenancy to another individual permanently you should apply for an assignment. Only the tenant of the croft or grazings shares can apply for an assignment. If you assign your croft then everything that is held in tenancy will be transferred to the new tenant, including any grazings shares and/or any buildings on the croft that are not decrofted. See the below table for more information on assignment.

Who should apply for an assignment
Tenant Crofters Crofters who want to transfer their tenancy on a permanent basis A tenancy can only be assigned to one person

If you are unsure whether you are eligible to apply for an assignment please refer to the form finder [here](#).

You can apply to assign your croft and/or grazings shares to any individual that you choose. Succession planning for your croft is an important consideration and one option is to transfer your croft to your successor within your lifetime. This is known as [living succession](#).

How do I apply?

Advertising: You are required to advertise in the local press that you are making the application. An example advertisement can be found [here](#).

Notifying relevant parties about the application: You are required to notify your landlord in writing of your application, as well as the owner(s) of the common grazing if your application includes grazing shares. An example notification to your landlord can be found [here](#).

Application form: Please read the accompanying guidance notes before completing the application form. This can be submitted as an online application [here](#) or it can be submitted via post using the application form and guidance notes. It is important to consider the decision parameters for the application (below) when you are preparing your application, as these will help determine how quickly your application can be processed.

Registers of Scotland application: Registers of Scotland hold a [Crofting Register](#) containing map-based information about crofts and Common Grazings. Assignment is a 'trigger' application which means that if your croft is not already registered, submitting an assignment application triggers the requirement to register your croft in the Crofting Register. This is done by submitting a [Form A first registration application](#) which needs to include a map showing the exact croft boundaries. The Form A must be submitted within 6 months of the Assignment application but we strongly encourage you to submit both applications at the same time. If your croft is already registered, then you will be required to submit a [Form B subsequent event application](#) within 3 months of a decision to approve the application. For both the Form A and Form B applications these should be submitted to the Commission along with the fee (currently £90) and the Commission will check this and forward it to Registers of Scotland.

**THE COMMISSION'S CYBER SECURITY APPROACH -
Oral (*for discussion*)**

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Annual Review Gaelic Language Plan

SUMMARY

The Crofting Commission must review its Gaelic Language Plan annually, in advance of a report being submitted to Bòrd na Gàidhlig.

BACKGROUND

Under the Gaelic Language Act (Scotland) 2005, public authorities in Scotland have a duty to complete a Gaelic Language Plan (the plan), which must be submitted for approval by Bòrd na Gàidhlig. The plan is publicised and reviewed annually, along with an annual progress report which is submitted to the Bòrd. A complete update of the plan takes place every five years.

The first Gaelic Language Plan, submitted by the Crofters Commission, was approved in 2009. The second iteration was approved for the Crofting Commission in 2015, and the third edition was approved by the Bòrd in October 2020, which is for the period 2020 to 2025.

Reports which monitor progress against the Gaelic Language Plan commitments, are written by the Gaelic Officer, and submitted on a quarterly basis to the Executive Team by the Director of Corporate Services and submitted annually to the Commission Board.

CURRENT POSITION

The Commission invested considerable time in developing a Gaelic Language Plan with a range of practical commitments aimed at supporting the objectives of the National Plan for Scotland, by enhancing the status of Gaelic, promoting staff learning, and encouraging the use of the language in the workplace.

The organisation's commitment reflects the importance Gaelic has in the culture of some crofting communities, with Gaelic-speaking households making up a significant base in many of the most widely crofted areas.

All staff are expected to have an awareness of the Gaelic Language Plan, which is part of the Induction process for new staff and is part of ongoing staff development. The Plan is included in the Commissioners' Induction Pack. The Commission Gaelic Language classes have been running throughout 2023 and are part-funded by Bòrd na Gàidhlig under the GLAIF programme, following a successful application. The GLAIF programme funds 80% of the cost of delivering the language training.

A copy of the Monitoring Report, which shows all the commitments and the progress made to achieve them, can be found [here](#). This will be updated in December 2023, at the end of Q3. A report based on the Monitoring Report will be forwarded to Bòrd na Gàidhlig in due course. It should be noted that the Bòrd views the Commission’s Plan as a model of good practice and use it as an example when advising other authorities.

Impact:	Comments
Financial	Gaelic translation (General) £24; Classes £1,938. The costs are for the period January to November 2023. The costs are equivalent to 0.05% of the overall budget allocation for 2023/24.
Legal/Political	The Commission has obligations under the National Gaelic Plan for Scotland and the Gaelic Language Act.
HR/staff resources	Resource focus is on the Development Officer as the Gaelic Language Officer.

RECOMMENDATION

Commissioners are asked to consider the Gaelic Language Plan Monitoring Report and, if they are satisfied with progress against commitments, recommend the report to Bòrd na Gàidhlig.

Date 10 November 2023

Author Bill Barron, Chief Executive Officer

CROFTING COMMISSION MEETING

6 December 2023

Report by the Chief Executive

Convener Report on Appraisals

SUMMARY

The Convener of the Crofting Commission, in line with Deloitte Recommendation 2.3 and 'On Board' guidance has completed Annual Performance Appraisals with each member of the Board and will present a short report on the process.

BACKGROUND

As part of the Deloitte external audit report into leadership and governance at the Commission, published in June 2021, it was highlighted that there appeared to be a lack of evidence that systematic annual performance appraisals with Commissioners was being carried out by the Convener at the time.

This was referred to in Recommendation 2.3 of the report. Appraisals have been completed by the Convener for 2021/22 (reported in February 2022) and for 2022/23.

CURRENT POSITION

In October and November 2021, Commissioners engaged with members of the Senior Management Team and SG Sponsor Division on joint training days, facilitated by a specialist in public Board training and development. As a result, a template detailing the performance appraisal process was agreed. Please see [here](#) for details.

The Convener has completed seven out of eight appraisals for 2022/23, attempting face-to-face meetings with Commissioners wherever possible. A summary report has been submitted to sponsor division.

The Convener welcomes comments on the process from Commissioners.

Impact:	Comments
Financial	No financial implications.
Legal/Political	Conducting annual appraisals is a requirement for members of a Scottish public body.
HR/staff resources	The Standards Officer is responsible for ensuring the Board adheres to the provisions set out in Board members Terms & Conditions.

RECOMMENDATION

Commissioners are asked to note the report, recommending any suggested improvements in the process for 2022/23.

Date 24 November 2023

Author Jane Thomas, Head of Compliance & Business Support

CROFTING COMMISSION MEETING

6 December 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>
Bill Group meeting, 5 October	Convener sent apologies	Michael Nugent, Aileen Rore	Standard securities	Further progress in developing a viable proposal
Bill Group meeting, 9 November	Convener	Michael Nugent, Aileen Rore	Several of the Commission's own proposals for change, including definition of owner-occupier crofter and withdrawal from routine regulation of all assignations	General support for the Commission's proposals, with much useful comment on the detail
CC-Sponsor meeting, 13 November	Convener, Mairi Renwick Mackenzie	Derek Wilson, Michael Nugent, Aileen Rore	Performance and progress, Scottish Land Matching Service, the Commission's budget needs	Commission's progress with e.g. casework and succession project welcomed.
Stocktake on Crofting Bill, 22 November	Convener	Michael Nugent, Aileen Rore	A review, at SG's request, of the major unresolved Bill issues requiring further thought and analysis, such as standard securities and definition of crofting community	Advice given to the SG. Further work for Commission to do on Registration-related issues

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 27 November 2023

Author Bill Barron, CEO

DATE OF NEXT MEETING

6 February 2024 - St Kilda (11am start)

ANY URGENT BUSINESS

EXCLUSION OF PRESS & PUBLIC