



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***6 FEBRUARY 2024***

**CROFTING COMMISSION MEETING  
ST KILDA, GREAT GLEN HOUSE  
6 FEBRUARY 2024 AT 1100 hrs**

**AGENDA**

- |   |                                |   |
|---|--------------------------------|---|
| <b>1 APOLOGIES</b>  | <i>Oral</i>                    | <i>Standing Item</i>                    |
| <b>2 DECLARATIONS OF INTEREST</b>   | <i>Oral</i>                    | <i>Standing Item</i>                    |
| <b>3 DRAFT MINUTES FROM 6 DECEMBER 2023*</b>  | <i>Minutes</i>                 | <i>For approval</i>                     |
| <b>4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING<br/>(of 6 December 2023)</b>   | <i>Paper</i>                   | <i>For info</i>                         |
| <b>5 MATTERS ARISING FROM PREVIOUS MINUTES</b>  | <i>Oral</i>                    | <i>Standing Item</i>                    |
| <b>6 AUDIT &amp; FINANCE COMMITTEE REPORT</b><br><i>(a) Update from Vice Chair of Committee</i><br><i>(b) Draft Minutes from 24 January 2024*</i> | <i>Paper</i><br><i>Minutes</i> | <i>Standing Item</i><br><i>For info</i> |
| <b>7 Q3 PERFORMANCE REPORT</b>  | <i>Paper</i>                   | <i>For discussion</i>                   |
| <b>8 Q3 STRATEGIC RISK REGISTER</b>   | <i>Paper</i>                   | <i>For info</i>                         |
| <b>9 FIRST DRAFT BUSINESS PLAN 2024-2025</b>  | <i>Paper</i>                   | <i>For discussion</i>                   |
| <b>10 REGULATORY CASEWORK UPDATE</b>  | <i>Paper</i>                   | <i>For info</i>                         |
| <b>11 POLICY AND PARAMETERS FOR DECROFTING</b>  | <i>Paper</i>                   | <i>For approval</i>                     |
| <b>12 TIER 3 – WHEN IS A DECISION A DECISION?</b>   | <i>Paper</i>                   | <i>For decision</i>                     |
| <b>13 DATE OF NEXT MEETING</b><br><b>20 March 2024 – St Kilda</b>   |                                |   |
| <b>14 ANY URGENT BUSINESS</b>   |                                |   |
| <b><u>AFTERNOON (CLOSED) SESSION</u></b>  |                                |   |
| <b>15 EXCLUSION OF THE PRESS AND PUBLIC</b>   |                                |   |

*\*Not in public copy*

# APOLOGIES – ORAL

## **DECLARATIONS OF INTEREST – ORAL**

# CROFTING COMMISSION MEETING

## 6 February 2024

Report by the Chief Executive

### Review of Action Points from 6 December 2023

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
1	Amend previous minutes so that the first two decisions are shown as actions	DCS	asap	15/12/2023	Decisions which imply an action should be recorded as "actions" (or perhaps as "decisions and actions") so that they do not get omitted from the Action List
2	Send Shetland data to Commissioner Gray	DO	asap	08/01/2024	
3	Ensure consistency between the text of actions in the minutes of meetings and the Action List	DCS	Minutes of December meeting and ongoing	15/12/2023	
4	Create schedule of Tier 3 meetings for 2024	Head of Regulatory Support	asap	11/01/24	Convener confirmed that Commissioner Macaulay is to be included
5	Clarify (in terms of legislation) when a decision is made, the notification procedures and timescale for intimating the decision (is it required to be within the 21 days of the meeting?).	Solicitor & Head of Regulatory Support	February Board agenda		
6	Sign the Annual Report and Accounts	Convener and CEO	6 Dec	06/12/2023	
7	In future, a covering paper is required for each report to the Board	CEO	February agenda and ongoing		Similar style to the papers for the SRR – short, but highlighting key points for the Board to note
8	Further communications around incomplete applications to be issued.	DO and Comms Officer	January	09/01/2024	
9	Circulate the correct version of the Strategic Risk Register to Commissioners.	CEO PA	6 Dec	06/12/2023	Incorrect link had been included in the paper – maybe need to tighten up version control for links to Board papers in general?
10	Convene and produce a paper to the Board prior to the next scheduled meeting (i.e. in January). The paper may be based on the suggestions provided by Commissioner Andrew Thin and the practicalities of what the Commission are able to achieve.	Head of PDGC	Before end of January	23/1/2024	Afternoon meeting with MW also proposed a discussion about the future of crofting – Convener suggests combine both for a full day in w/c 22 Jan

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
11	Board paper to be rewritten to reflect the requirements of the Commissioners and set clear parameters. The CEO will discuss with the Commissioners how to better reflect and adjust the parameters in line with what they have raised in these discussions and the previous decision.	CEO/Solicitor/ Head of Regulatory Support	February agenda	15/01/24 (In draft)	Paper should support the Board's aspiration to make decrofting easier in the interests of the economy
12	Implement changes to scheme of delegation	Head of Regulatory Support	asap	15/01/24	
13	Provide Commissioners with parameters for Proposal 3 (Extending the Scheme of Delegation) and proposed timescales for when staff are to take the decision if valid or incomplete.	Head of Regulatory Support	March Board meeting		
14	Circulate analytics that provide information on which specific website pages (especially relating to regulation) are being visited, and what is being accessed on the website.	Head of Digital	asap	03/01/2024	
15	Supply results of penetration testing to the AFC.	Head of Digital	January AFC	08/01/2024	
16	Case to be brought to Tier 3 meeting	DoO	asap		Dec Board agenda item 21b refers
17	New CEO to bring a short paper to a future meeting on remote and hybrid working, and any changes applied to the policy.	CEO	Perhaps March Board?		This was recognised to be partly an operational decision but with strategic implications. It is on the March Board papers Planner
18	Develop an action plan to take forward some or all actions proposed during feedback session between Board/Management	DCS / Head of PDGC	asap		Includes discussion session on future of crofting to be supported by Head of PDGC
	<b>ITEMS CARRIED OVER FROM PREVIOUS MEETING (Oct 2023)</b>				
1	Email Board with number of incomplete cases closed after 28-day reminder issued (on a monthly basis)	DoO	End October	Monthly from Nov 2023	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	Establish a steering group comprising staff and Commissioners and potentially CCAR's, to oversee work on Future of Crofting priority	Head of PDGC	After Minister's visit		

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

## AUDIT & FINANCE COMMITTEE REPORT



# CROFTING COMMISSION MEETING

**6 February 2024**

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 24 January 2024.**

## **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 24 January. Full details are in the following draft minute of the meeting.

Key points for Board Members to note –

1. We reviewed financial performance, including expenditure and cash flow control, for Q3 and identified no significant issues.
2. We reviewed a draft budget and business plan for 2024/25 and noted some issues relating to performance indicators that are referred to in recommendations below.
3. We considered the adequacy of medium term financial planning in the light of the SG Financial Statement of 17<sup>th</sup> December and the wider macro-economic climate, and agreed that this continues to require frequent review as circumstances evolve.
4. We reviewed a revised workforce plan for 2024-29 and noted a need to keep this under review as the new CEO considers issues relating to regulatory capacity and senior management resource.
5. External Audit reported on a wider scope review that gave good assurance on budget control, medium term financial planning, governance, cyber security and Best Value.
6. Internal Audit reported on a planned review of core financial systems that gave an unusually high level of positive assurance in relation to the work of our finance team.
7. We reviewed progress with outstanding audit recommendations and were pleased to see good progress with relatively little work outstanding.
8. We discussed assurance around cyber security and resilience and received strong first line assurance from IT staff, second line assurance from the CEO and third line assurance from external audit.
9. We reviewed current risk management policy and considered again the adequacy of our approach to risk appetite. We concluded that the main priority for now relates to effective implementation of our existing risk appetite statement.

10. We reviewed operational and strategic risk registers and agreed to recommend addition of risks relating to cyber security and resilience. We noted a continuing high level of risk associated with the regulatory caseload.
11. We reviewed a health and safety update and noted further roll out of risk assessments to bring all processes up to standard.
12. We agreed to recommend that the board self-assessment for 2024/25 should be conducted via collective discussion involving senior officials.
13. We reviewed a quarterly complaints report and noted a falling number of complaints received and significant counterbalancing positive feedback.

## **RECOMMENDATION**

**The Committee recommends that the Board should –**

- **Consider fully the performance measurement arrangements proposed in the draft 2024/25 business plan with specific reference to “SMART” monitoring of -**
  - **The time taken to process individual regulatory cases**
  - **Efficiency measures**
  - **Indicators of continuous improvement**
  - **Effective application of risk appetite**
- **Consider fully the adequacy of first, second and third line assurance in relation to cyber security and resilience.**

Date            24 January 2024

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

## 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.		AMBER
	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.		AMBER
	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.	AMBER
	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
<b>Key Milestones</b>	<b>3a June 2023</b> – 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.		GREEN
	<b>3b July 2023</b> – 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		GREEN
	<b>3c August 2023</b> – 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
	<b>3d October 2023</b> – 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
<b>Performance Measures</b>	<b>3.1</b>	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
	<b>3.2</b>	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
	<b>3.3</b>	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
	<b>3.4</b>	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.		ACHIEVED
Performance Measures	4.1	Increase in Employee engagement Index.	RED
	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><b>1 CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY</b></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
<b>1a May 2023</b> – Strategy agreed for allowing wider use of online system while protecting against identify fraud	<b>ACHIEVED</b>	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.
<b>1b July 2023</b> – Digital options for the majority of regulatory application types rolled out and fully functioning	<b>ACHIEVED</b>	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.
<b>1c July 2023</b> – Action plan finalised, with timings, to improve efficiency in casework handling	<b>GREEN</b>	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 the last one, work on truncation of the objection process, proceeding at a good rate.
<b>1d Jan 2024</b> – Implement online progress status of a case for self-serve usage	<b>GREEN</b>	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 third quarter of 2023-24 for Decrofting Croft House Site & Assignment, with average turnaround times for Assignment meeting the target of 15 weeks. The median turnaround times for both application types show a positive trend remaining below the 2022-23 average in all 3 quarters of 2023-24. There has also been a slight decrease in turnaround times for Decrofting Part croft, however Decrofting Part croft turnaround times are out with the target/indicator.

	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	14.9	
Decrofting Croft House Site	125	23.1	11.0	20.1	18.2	
Decrofting Part Croft	300	26.9	33.0	27.9	27.5	

Q1	Q2	Q3	Q4
AMBER	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 December 2023 is 877 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 quarter. The outstanding cases figure fluctuates considerably and clearance was lower (as expected) during the festive period in Q3 and is expected to be lower in early Q4, so this remains a challenging target. Additional performance management measures have been introduced to support this target, addressing how the Commission handles old or “stuck” cases outwith its control.

Q1	Q2	Q3	Q4
AMBER	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, 560 in Q2 and 482 in Q3 making a total of 1,544 cases for year to date. This is a positive increase but overall is still tracking behind the required discharged rate of 1,650 for 3 quarters to date to achieve the target of 2200 in year.

Q1	Q2	Q3	Q4
AMBER	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

1 customer feedback form was returned in Q3, showing 'overall satisfaction' score of 3. In response to low response rates in previous quarters, 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 Q4 onwards, with a revision to the questions. New customer satisfaction survey will be issued, along the Census Notification Letters, to all customers who had an application decided in the 12 months prior. It is hoped this increase in surveys sent with streamlined questions, will yield more returns, and in turn make this metric more measurable.

Q1	Q2	Q3	Q4
RED	RED	RED	

Responsible Manager: Stuart Hogg



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
<b>2a Ongoing</b> – Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee.	AMBER	Finlay Beaton	Our target is to maintain the number at 500 or above and as of 1 October 2023, there are currently 483 Grazings Committees in office which is a decrease of 17 committees from the end of the previous quarter. This decrease could be due to the high number of committees which have gone out of office within this quarter (51 of which 26 have not returned committees to date). Some of these committees may have arranged the required meeting or there may be a delay in the notifications. We will monitor the situation and take any appropriate steps as required. We do 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.
<b>2b Ongoing</b> – 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.	AMBER	Finlay Beaton	We offer guidance and templates to assist the formation of new Committees upon request to ensure the legislation and good practice is adhered to. However, with current staff resources, and work pressures, it has not been possible to focus on such projects as carried out previously. It is intended to carry out a recruitment exercise to fill the current vacancy as soon as possible which will provide the required resource to focus on tasks such as these.
<b>2c May 2023</b> – 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.
<b>2d July 2023</b> – 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.

<b>2e July 2023</b> – Launch campaign to encourage “living succession” within crofting.	<b>GREEN</b>	Heather Mack	The succession information pack and accompanying survey have been issued and 258 surveys have been completed and are being processed. Local drop-in sessions on succession took place in November in Lochinver, Balivanich and Barra. These were well attended by crofters and good feedback was received from crofters and other organisations that attended including FAS, RSABI, SLMS & Citizens Advice Scotland. The Scottish land Matching Service crofting portal was launched in early August.
<b>2f February 2024</b> – Deliver Training events for Grazings Committees/ crofting communities/landlords.	<b>GREEN</b>	Finlay Beaton	Two basic Grazings Workshops have been delivered to 19 individuals in Sleat and Dornie within this quarter. This workshop was also delivered as a training exercise for 24 staff and Commissioners in December. A new advanced training workshop has been created and delivered in Achiltibuie and Fort William with 26 attendees. A further 2 advanced courses are planned in the next quarter in Portree and Gairloch.

## PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
<b>2.1</b>	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 target is 500, however numbers have dropped to 483 at the end of the quarter.				
	Q1	Q2	Q3	Q4
	<b>GREEN</b>	<b>GREEN</b>	<b>AMBER</b>	
Responsible Manager: Finlay Beaton				

Number	Aim	Baseline	Target/Indicator	Measure
<b>2.2</b>	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 8 requests for individual share investigations and 4 requests to provide clarity on all shares within a particular common grazings.				
	Q1	Q2	Q3	Q4
	<b>GREEN</b>	<b>GREEN</b>	<b>GREEN</b>	
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. Meetings with Shareholders and committee in Durnamuck to attempt to resolve difficulties and move the township forward.

Q1	Q2	Q3	Q4
GREEN	GREEN	GREEN	

Responsible Manager: Finlay Beaton

Our Outcome	<b>3 CROFTS ARE OCCUPIED AND USED</b> 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
<b>3a June 2023</b> – 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.	GREEN	Joseph Kerr	RALUT have identified the tenant and owner-occupier crofters who fall into this category.  There were a total of <b>54</b> letters issued to tenants and owner-occupier crofters under this category.
<b>3b July 2023</b> – 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.	GREEN	Joseph Kerr	RALUT have identified the tenant and owner-occupier crofters who fall into this category.  There were a total of <b>40</b> letters issued to tenants and owner-occupier crofters under this category.
<b>3c August 2023</b> – 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.  Will engage with Comms Team prior to launch.

<p><b>3d October 2023</b> – 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><b>GREEN</b></p>	<p>Joseph Kerr</p>	<p>RALUT have identified the tenant and owner-occupier crofters who fall into this category.</p> <p>There were a total of <b>37</b> letters issued to crofters under this category.</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 **21** 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 have been **2** section 11(8) notices issued terminating the tenancies and we are currently awaiting letting proposals from the landlord.

#### **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 **1** 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	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

For the year to date: **17** crofters/owner-occupier crofters have resolved their breach of duty by taking up residence on their crofts (2 of which were following confirmation of their compliance with the terms of an undertaking notice;

For the year to date: **12** crofters/owner-occupier crofters have resolved their breach of duty by cultivating and maintaining their crofts.

Q1	Q2	Q3	Q4
GREEN	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

**For the year to date:**

- **12** 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:**

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

Q1	Q2	Q3	Q4
GREEN	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

For the year to date:

- Issued **32** notices of suspected breach of duty under section 26C(1);
- Considered in **7** cases that there was a good reason not to issue a notice of suspected breach of duty under section 26C(1);
- Made **38** 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 **35** notices providing crofters with the opportunity to comply with the duty within a timescale the Commission consider reasonable under section 26D(1)
- Made **13** decisions accepting undertakings to comply with the duty under section 26D(5).
- Issued **7** termination orders issued in the first half of the year; 2 in Barra, 2 in Lewis and 1 each in Gairloch, Applecross, and North Uist.

Q1	Q2	Q3	Q4
AMBER	GREEN	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
<b>4a October 2023</b> – Climate Emergency Charter: We will create an Environmental Team and publish an Emergency Climate Plan.	<b>GREEN</b>	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 December is being analysed. An Emergency Climate Plan to set out how the Commission will reduce its GHG emissions due to be drafted in January/February. Volunteers have been sought and sourced to participate within the CC Environmental Team. ET is content to delegate to Head of Finance.
<b>4b October 2023</b> – Introduce quality assurance and checking programme for regulatory work that feeds into the Register of Crofts.	<b>RED</b>	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.
<b>4c January 2024</b> – Update Workforce Plan and Medium Term Financial Plan.	<b>ACHIEVED</b>	Bill Barron	Both documents have been updated in the light of the Scottish Government’s award of a £4.5m budget for 2024/25, and will now be presented to the AFC.

**PERFORMANCE MEASURES**

Number	Aim	Baseline	Target/Indicator	Measure
<b>4.1</b>	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. As at 14 December, we were still waiting for the results of the survey. These are now available to show a lower engagement score of 60%. Early in Q4 an Action Plan will be drawn up with input from the Staff Engagement Group to address any issues highlighted.				
	Q1	Q2	Q3	Q4
	n/a	n/a	<b>RED</b>	
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								
<p><u>PROGRESS</u></p> <p>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.</p> <p><b>Business Travel Emissions 2022/23 = 1.07tCO2e</b>  <b>Overall Commission Emissions 2022/23 = 15.2tCO2e (Includes office/home emissions and accommodation bookings)</b></p> <p>The Board may wish to consider the following:</p> <ol style="list-style-type: none"> <li>1) The baseline of 2021/22 was significantly lower than pre-pandemic years as the Commission had just begun to travel to engagements.</li> <li>2) The 2022/23 emissions on business travel were also atypical and significantly lower than pre-pandemic years.</li> <li>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.</li> </ol>												
<table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>ACHIEVED</td> <td>ACHIEVED</td> <td>ACHIEVED</td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	AMBER	ACHIEVED	ACHIEVED	ACHIEVED
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								
<p><u>PROGRESS</u></p> <p>Various efficiency measures are being identified. In addition, staff churn and managed lead in times for recruitment will contribute to achievement of the target.</p>												
<table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td>GREEN</td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	GREEN	GREEN	GREEN	
Q1	Q2	Q3	Q4									
GREEN	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 February 2024

Report by the Chief Executive Officer

### Review of Strategic Risk Register for Quarter 3

#### SUMMARY

The Board is invited to note the Strategic Risk Register for Quarter 3 (period to end December 2023), which can be found here:

<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/240206/8a-Strategic-Risk-Register-Q3-Oct-Dec-2023.pdf>

It has been updated by managers and was considered by the AFC at its meeting on 24 January 2024. It is an Information paper.

#### 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 for Q2, but suggested that an additional strategic risk be added, to cover the forthcoming change of CEO postholder. The new risk has been included on the register. There were no additional new risks recorded in Q3.

Azets have recommended that a cover paper should be prepared by the Executive Team to highlight any key points.

#### POINTS TO NOTE

There are no increasing risk recorded in the register for Q3. Three risks have been recorded as decreasing; one being the risk associated with the change of CEO, the others being:

- S4 Risk 'There is a decrease in the rate of turnover of crofts and in the number of new entrants. The use of croft land for traditional and innovative purposes decreases.' This risk is recorded as decreasing due to the impact of the Succession project.
- S9 Risk 'Future budget allocations do not keep pace with inflation.' This risk has been recorded as decreasing following the award of a £4.5m budget for 2024/25, indicating support for the work being undertaken by the Commission from Scottish Government, despite overall budgetary pressures.

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	

Date: 22 January 2024

Author: Director of Corporate Services

# CROFTING COMMISSION MEETING

## 6 February 2024

Report by the Chief Executive

### Draft Business Plan 2024-2025

#### SUMMARY

The draft Business Plan for 2024/2025 can be found here:

<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/240206/9a-Business-Plan-2024-25-DRAFT.pdf>

#### BACKGROUND

The Commission wishes to publish its annual Business Plan prior to 1 April 2024. The main section of each Business Plan comprises the Key Performance Indicators (KPIs) – the specific actions (milestones) that the Commission intends to deliver and the targets it will adopt for various key measures. The Board is invited to consider what milestones and measures should be set for the year ahead, based on the attached draft.

The Business Plan should be based on and consistent with the 5-year Corporate Plan which was agreed between the Crofting Commission and the Scottish Government. The attached draft reminds Board members of the key content of the draft Corporate Plan and suggests milestones and measures for the 2024/25 Business Plan based on it.

#### CURRENT POSITION

The draft plan does not yet include baseline data or target data. This will be populated for presentation and approval at the Board's scheduled March meeting.

#### TIMELINE

- **24 January 2024:** AFC review initial draft
- **06 February 2024:** Board review initial draft
- **07 February 2024:** Business Plan revised as necessary and then consult Scottish Government Sponsor Branch on proposed structure and measures/milestones
- **20 March 2024:** Board review final draft that is populated with baseline/target data, and updated Foreword.
- **31 March 2024:** Business Plan is published provided Board has approved.

#### RECOMMENDATION

**The Board is invited to comment on the proposed milestones and measures for inclusion in the Business Plan for 2024/25.**

Date 29 January 2024

Author: Gary Campbell, Chief Executive

# CROFTING COMMISSION MEETING

## 6 February 2024

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.

#### CASEWORK UPDATE

The outstanding casework figure, as historically reported to the Board, at the end of December 2023 was **877**, which is an increase of **2** cases since the last Board update (end of October 2023 figure), though it should be noted that at the end of November 2023 the figure was **843**. The number of applications and notifications discharged during the last three full calendar months (October to December 2023 at time of writing, based on historically reported work types) is **482** against a receipt figure of **452**, which gives a net reduction in outstanding cases of **30** over the three month period.

The current total year-to-date discharged rate is **1,543**, putting the Commission on track for a total annual clearance of **2,057**, which is down from the previous forecast of **2,146**. This reduction is based on averages and comes directly on the back of the festive holiday period and is to be expected, and will likely increase again through January and February. Looking at the 3 months clearance figures, the details are **191**, **188** and **103** discharges respectively, with **103** being December 2023. Although the December clearance was down, October and November clearance remained in a strong position both in year and when compared to previous years.

The table below shows average monthly clearance on an annual basis over the past 5 years, compared to the current year-to-date forecast prediction.

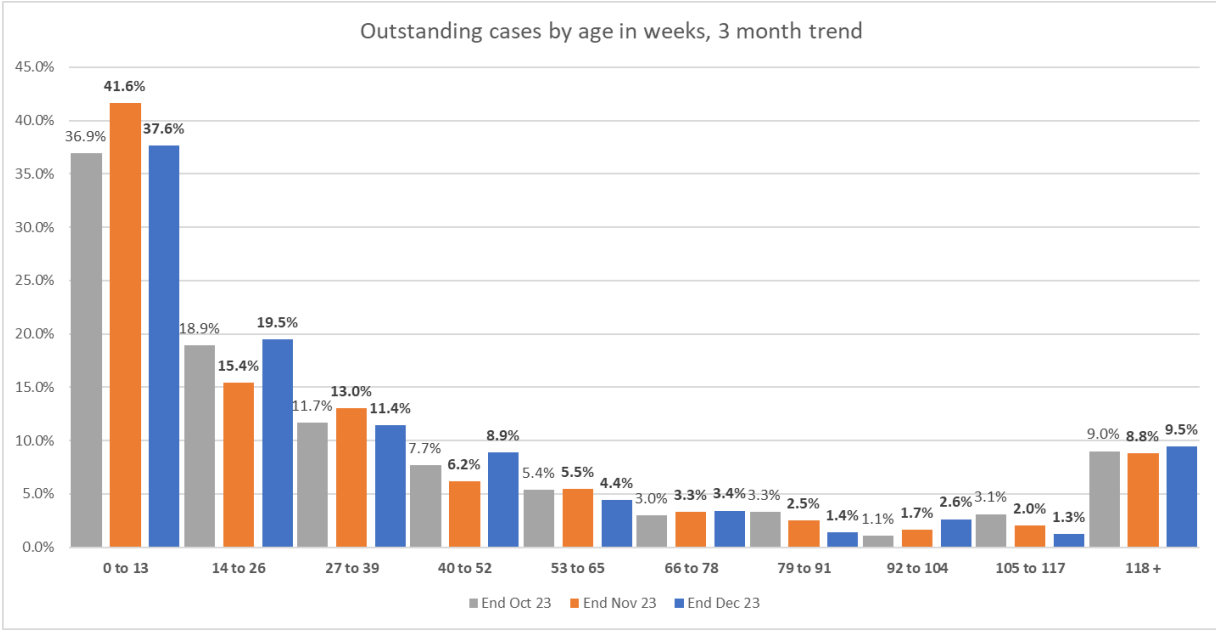
YEAR	Annual discharges	Average monthly discharges	Change to 2018 / 19 year
2023 / 24	2,057 (forecast)	171 (3 quarter average)	+47
2022 / 23	1,866	155	-144
2021 / 22	1,517	126	-493
2020 / 21 *	1,485	124	-525
2019 / 20	2,132	178	+10
2018 / 19	2,010	168	

\* COVID LOCKDOWN STARTED IN MARCH OF THIS YEAR

This table of data indicates that, at current capacity, the Commission should achieve its second best discharge rate of 6 years by the end of the current reporting year, based on the historically reported case types, and a return to pre-covid clearance rates. The Commission regulatory team is currently recruiting to fill several vacancies at B1 level, however the impact of this on case clearance within the current reporting year should be negligible.

**AGE PROFILE OF OUTSTANDING CASES**

The graph below 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 December 2023, with 3 month comparison.



The Regulatory team continues its strategy of handling the caseload by:

1. Preventing cases from moving beyond the 40 to 52 week category unless totally unavoidable
2. Ensuring cases are processed in age order from oldest to newest, as best possible depending on individual case circumstances and staff availability

**IMPROVEMENTS AND QUALITY**

The Regulatory management team are restructuring the functioning of the team to move away from the historic model of a dedicated B1 officer being allocated to a specific area, to a hybrid model where all areas will have a nominated “main” B1 and A4, however a percentage of the casework allocated to them will be from other areas. Elements of this were already in practice unofficially, however by formalising it greater flexibility and resilience is afforded to the regulatory team in order to deal with regional intake fluctuations, ensure even upskilling across all case types, spread geographic knowledge, and facilitate better one to one management within the caseworker structure.

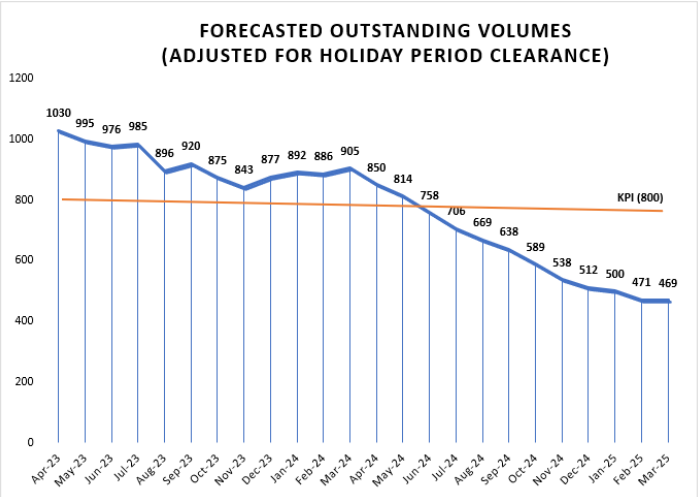
The internal training role has been reviewed, and a new B2 level role is being trialled which will aim to design and implement a similar training regime for B1 level case workers as currently exists for A4 staff, and also to create a full suite of procedural guidance documentation which will be embedded within the Crofting Information System (CIS). This will support the planned introduction of regular quality checking within the Regulatory function by September 2024, and together these will aid in consistent and confident decision making at all stages of the Regulatory process.

Throughout January 2024 the Regulatory, Regulatory Support and Registration teams are meeting face to face to carry out an end-to-end review of the customer journey for two key application types. This work will allow a fresh evaluation of the anticipated processing time for a case under normal circumstances, including where Registration does and does not affect the case. The exploration will also look at customer contact points that will allow us to evaluate where better processes could be used to avoid customer contact to chase up progress, and efficiency of the processes that make up each application. It is hoped this work will yield an action plan of planned improvements to both the customer experience and the average processing times.

The improvement officer continues to explore additional methods for process improvements, with new processes being introduced to stop the practice of holding cases in abeyance where this is not a legal requirement, and extending the incomplete cases process to older cases after the initial validation stages.

**FORECASTING MODEL**

The Regulatory management team have produced a forecasting model to anticipate the approximate intakes and clearance for the future. Although this offers only a best guess at future positions, intakes are based on 5 years of historic actuals and currently have an accuracy of 95%. Clearance is projected forward from a historic rolling 6 months of actuals. This shows that the Commission can expect to reach the target of 800 total outstanding cases by May / Jun 2024 at current intakes and capacity. This forecast improves slightly if the December clearance is excluded from the average clearance calculations, to show 800 as achievable in early May 2024. This adjusted forecast model is shown in the graph to the right. It should be noted that future forecasts beyond Sept 2024 are considered to decrease in reliability until minimum processing times are fully established as this is not currently factored in, and an outstanding figure of less than 700 may not be achievable in real-world terms.





**SUMMARY**

The Regulatory casework outstanding position has moved slightly upwards at the end of December due to the holiday period and development activities help for all staff in December, however this was forecast and is not considered a concern at this point in time due to the strong clearance figures prior to this. The current forecasting model does show that achieving the KPI of 800 or less outstanding by the end of March 2024 is likely not achievable, however the Regulatory team remains committed to trying to realize this. It should be noted that this target is based around the historically reported figure, and the actual number of Regulatory applications will be considerably less than this, with 662 outstanding at the end of December 2023.

<b>Impact:</b>	<b>Comments</b>
Financial	n/a
Legal/Political	Scottish Government as 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, including the forecasted position at the end of March 2024.**

Date            10 January 2024

Author         Aaron Ramsay, Director of Operations

# CROFTING COMMISSION BOARD MEETING

6 February 2024

Report by the Chief Executive

## Scheme of Delegation: Review of Delegation parameters relating to the Decrofting Part Croft regulatory function

### SUMMARY

The purpose of this paper is for the Board to approve 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”) to enable more decisions to be taken at Tier 1 of the Commission’s Scheme of Delegation.

### 1. BACKGROUND

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.

This paper sets out recommendations to Commissioners to revise certain delegation parameters relating to the consideration of Decrofting Part Croft applications to enable more decisions to be taken at tier 1 of the Commission’s Scheme of Delegation.

### 2. DELEGATION PARAMETERS

#### 2.1 Parameter relating to the extent applied for

**Current Parameter:**

**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.

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

**Recommended Change:** At its meeting in December 2023, the Board expressed their view that it was important that crofting should not be a barrier to creating rural housing and that decroftings play a part in having sustainable viable communities. In order to reflect the Board’s view, the following change is recommended to the extent parameter

(which will bring the extent in line with a previous decision made by the Board in respect on the decrofting of statutory dwelling houses). The revised extent of 0.40 hectares applies to both existing houses and to proposed housing developments with planning permission:

**Is the application to decroft an area extending to 0.40 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.

***N.B. If the application is to provide additional amenity ground for a previously decrofted house site, the case can be considered at the first tier providing the combined area of dwelling house and amenity ground does not exceed 0.40 hectares in total.***

**2.2 Parameter relating to previous decrofting directions issued**

**Current Parameter:**

**Have two or more non-discretionary (i.e. not related to the statutory dwelling house) 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.

**Recommended Change:** That this parameter be removed. The practical application of this parameter has resulted in cases being escalated where they are for a reasonable purpose and are not excessive in relation to that purpose e.g. sites for housing which otherwise meet the extent parameters, and which can relate to large crofts whose sustainability is not adversely impacted by approving the decrofting and therefore should be capable of being approved at Tier One.

**2.3 Parameter relating to applications by tenants and owner-occupier crofters in breach of one or more of their statutory duties**

**Current Parameter:**

**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 differing scenarios.

**Recommended Change:** Having consulted with RALUT colleagues, is there evidence to suggest that the application will contribute to resolving the breach of duty?

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

**2.4 There are no recommended changes to the current parameters relating to:**

- Decrofting in the absence of a reasonable purpose,
- Decrofting of agricultural buildings,
- Access concerns, and
- Objections from members of the crofting community and the landlord (where the application is by a tenant in advance of purchase).

<b>Impact:</b>	<b>Comments</b>
Financial	n/a
Legal/Political	There could potentially be positive reputational benefits for the Commission in cases being concluded more quickly and at a more appropriate level. In contrast there could be negative reputational risks associated with allowing larger decroftings for house sites.
HR/staff resources	There could potentially be benefits in diverting staff resources from dealing with enquiries regarding application progress, complaints etc. allowing them to focus resources on progressing casework.

**RECOMMENDATION**

**For the Board to approve the recommended change of delegation parameters as set out in this paper.**

Date 25 January 2023

Author Joseph Kerr, Head of Regulatory Support

# CROFTING COMMISSION MEETING

6 February 2024

Report by the Chief Executive

## Tier 3 – When is a decision a decision?

### SUMMARY

The paper argues that decisions that a body such as the Crofting Commission can make are properly made when sufficient grounds/ reasons are agreed. It is recommended that Commission processes, including at Tier 3 of delegated decision-making, are amended to enable decisions to be taken in most circumstances at the scheduled meeting.

### WHEN IS A DECISION A DECISION?

The argument is that a decision that a public body such as the Commission could be comfortable with, taking account of its public law responsibilities and legislative duties, is made when it has sufficient reasons to justify that decision. Although the Commission could take a decision that is either without reasons or has inadequate reasons, such a decision would be susceptible to challenge. As noted below, it would also be contrary to primary legislation that requires any decision by the Commission to have reasons stated. It is therefore assumed that there is little merit in discussing whether the Commission can make decisions without reasons in an abstract sense as this would be contrary to both legislative requirements and the principles of good administration. The advice offered here differs from advice previously given to the Commission, not by the Commission solicitor, that a decision is a decision only when it is “issued” by the Commission in written form. This could be weeks or months after the actual decision is made.

It is argued that it is artificial to separate making a decision and formulating the rational basis of such a decision, whether the decision is made by members of the Commission or under delegated authority in terms of prescribed parameters. Decisions are made on the basis of the relevant law and policy as well as on the individual facts and circumstances of the case. To separate a decision artificially from these makes little sense as the Commission is governed by law, policy and discretionary powers to consider individual facts and circumstances. In theory the Commission has the power to make flawed “peremptory” decisions that do not meet its legal duties, but it is assumed for the purposes of this paper that the Commission would never wish to do so.

As a public body which is subject to public and administrative law and which also has decision-making powers under its own founding legislation, the Crofting Commission has a strong interest in providing reasons for its decisions if it wishes to be able to defend its decisions. It would have to defend its decision if a statutory appeal is made to the Scottish Land Court against an appealable decision. It would also have to defend its decision should a judicial review petition be made to the Court of Session in respect of any of its decisions.

## **Administrative law requirements – the need to give reasons**

Although Scots administrative law has developed as a distinct branch of UK administrative law, most of the principles are based on UK constitutional law. Administrative law provides that a failure to provide reasons, or give adequate reasons, may be unlawful in two ways:

- Such failure is procedurally unfair; and
- A failure to give adequate reasons means the decision is irrational.

Although there is no common law general duty on an administrative or judicial body to give reasons for its decisions, the common law in this regard has been largely superseded by the principle that, under the rule of law, public bodies must act within the relevant legislation and must be able to demonstrate that they have done so. It also allows a public body to demonstrate good administration and consistency in decision-making. This requires reasons for a decision to be set out. Another principle that has superseded the common law in this regard is effective access to justice. A person's ability to appeal a decision could be partially frustrated if sufficient reasons are not given for a decision such as to allow for a legally adequate challenge.

## **Tribunal and Inquiries Act 1992 and ECHR**

There is also a duty to supply reasons for any decision under section 10(1) of the Tribunal and Inquiries Act 1992. The Crofting Commission is listed as one of the Scottish Tribunals to which section 10 applies. It makes little sense to have a discussion about the Commission making decisions in an abstract sense without any reasons being supplied.

Article 6 of the ECHR has also been interpreted as requiring any decision-making body to provide reasoning with any decision.<sup>1</sup>

## **When is a Crofting Commission decision made at Tier 3 or at Board level?**

The argument presented here is that a decision is made by the Commission when sufficient or adequate reasons are supplied for a decision. At what stage is this within Crofting Commission procedures? The standard expected in terms of reasoning by Article 6 of the ECHR is helpful. Reasons do not have to be given on every point raised in the decision-making process, but the interested parties must be sufficient to allow the parties to understand the essence of the decision so that any appeal rights can be exercised.<sup>2</sup>

On this argument, a Commission decision is made when sufficient reasons have been agreed by the decision-makers such as would enable the interested parties to understand the basis on which the decision has been made and has sufficient detail to allow these parties to appeal, if they so wish. If the decision is made at Tier 3, the decision is made when sufficient grounds are articulated to justify the decision. When exactly is this? An example is given:

*an application is made that requires the Commission to exercise statutory discretion, but it is unclear how it will exercise its discretion. There are objections from two parties and an RPID report. Although the case papers extend to several hundred pages and hundreds of separate points are made, the Commission has identified eight material issues in the case (in relation in part to the statutory section 58A(7) factors), and also considers that the objectors raise two material issues, but the rest of the grounds of objection are irrelevant. The Commission makes its decision when it agrees what it makes of the eight material issues having considered the law and evidence, and also states what it makes of the material points raised in the objection. This is sufficient for an interested party, be it the applicant or an objector, to make an appeal.*

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<sup>1</sup> *Hadjianastassiou v Greece* (1993) 16 EHRR 219.

<sup>2</sup> *Helle -v- Finland* (1998) 26 EHRR 159.

*If all the material issues identified, including in the objections, are made at the Tier 3 meeting, the decision is made at that meeting. If some of the material issues are not properly discussed at the meeting, the decision is not made until the response to these material issues is agreed unless the Commission wishes to risk issuing a flawed decision preemptorily. The response to material issues is often not agreed until after a Tier 3 meeting and only once draft grounds of decision are agreed. Should Commissioners wish to have a legally defensible decision made at a Tier 3 meeting, it is likely that these meetings would have to last for many hours or a substantial amount of advance work would have to be done. Both of these would be changes from existing practices.*

The point is not that Tier 3 has to give its response to every single point raised in a case. In some controversial cases, hundreds of points – many irrelevant or repetitive – could be made. The work of officials and Tier 3 decision-makers is to identify perhaps ten or fewer material issues out of possibly a hundred points made. Tier 3 has to give its view on the material issues so that the basis of its decision is clear and so that any interested party can understand how the Commission has made its decision and has a sufficient basis on which to consider an appeal.

It is also not suggested that Tier 3 members need to agree the specific wording of any grounds at a Tier 3 meeting. It is stated however that Tier 3 members need to give officials sufficient direction as to the content of the grounds of decision. It is appropriate thereafter for officials to work the necessary detail into the grounds and express them in an appropriate manner.

#### **When is a decision made under delegated authority?**

If the decision is such that it is made under delegated authority in terms of an agreed parameter, the parameter or associated guidance should provide sufficient *pro-forma* reasons as the basis of the decision. Decisions made under delegated authority and in terms of prescriptive parameters should be such that limited discretion is to be applied, because the authority has effectively said:

*applications that fall into category 'x' also fall to be decided under parameter 'y' for a decision 'z'*

An example would be:

*A applies to assign a croft to B, and both A and B are ordinarily resident and have or intend to work the croft, and there is nothing about A or B that would require the case to be escalated, nor are there any objections; the relevant parameter states that under delegated authority, the application will be approved. The pro-forma reasons are that B will be resident and has plans to work the croft and this is good for the crofting community, and no objections were received.*

It needs hardly be said that such applications are low risk (in the sense they unlikely to be appealed and have no objections), fall within a defined category and are largely administrative in nature. Although legislation provides the Commission with discretion, it is appropriate for a body that deals with a large number of routine, uncontroversial applications to streamline the processing of such applications and to focus its discretionary powers on applications that are controversial, difficult and/or do not fall within an easily-defined category.

The argument here is that, if it is a delegated decision such as this, the making of the decision and the grounds for it happen at the same time. Where a delegated Tier has some discretion to make a decision, the decision is taken when the reasons for the decision have been set out.

<b>Impact:</b>	<b>Comments</b>
Financial	Relatively small – but more staff time could be involved in preparing alternative sets of possible grounds and in preparation for Tier 3 meetings.
Legal/Political	More certainty as to when a decision is made and what a good decision requires will be good for the Commission’s reputation, and also allow it to issue decisions within 21 days of being made.
HR/staff resources	See above.

**RECOMMENDATION**

**In light of the above, it is recommended that Tier 3 officials provide an official recommendation, or set of recommendations, including a list of material issues and draft grounds in advance of the Tier 3 meeting in order that a decision can be made at the meeting. This will mean that the Tier 3 process becomes “front-loaded” in advance of the meeting.**

Date            17 January 2024

Author           David Findlay, Commission Solicitor



**DATE OF NEXT MEETING**

**20 March 2024 - St Kilda**

**ANY URGENT BUSINESS**

**EXCLUSION OF PRESS & PUBLIC**