



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

29 OCTOBER 2025

**CROFTING COMMISSION MEETING
ST KILDA, GREAT GLEN HOUSE
29 OCTOBER 2025 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 27 AUGUST 2025*	<i>Minutes</i>	<i>For approval</i>
4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (of 27 August 2025)	<i>Paper</i>	<i>For info</i>
5 MATTERS ARISING FROM PREVIOUS MINUTES	<i>Oral</i>	<i>Standing Item</i>
6 ANNUAL REPORT & ACCOUNTS 2024-25*	<i>Report</i>	<i>For approval</i>
7 REVIEW OF PERFORMANCE REPORT – Q2 – JULY-SEPT	<i>Paper</i>	<i>For info</i>
8 REVIEW OF STRATEGIC RISK REGISTER – Q2 – JULY-SEPT	<i>Paper</i>	<i>For info</i>
9 RESIDENCY POLICY	<i>Paper</i>	<i>For approval</i>
10 REVIEW OF AREA (SIZE) OF HOUSE SITES TO BE DECROFTED AND TRUNCATION OF OBJECTIONS PROCESS	<i>Paper</i>	<i>For approval</i>
11 APPORTIONMENT POLICY – ANOTHER PURPOSEFUL USE	<i>Paper</i>	<i>For approval</i>
12 REVISED APPORTIONMENT POLICY	<i>Paper</i>	<i>For approval</i>
13 CIS REPLACEMENT	<i>Paper</i>	<i>For discussion</i>
14 FARMING OPPORTUNITIES FOR NEW ENTRANTS (FONE)	<i>Paper</i>	<i>For discussion</i>
15 SCHEME OF DELEGATION	<i>Paper</i>	<i>For approval</i>
16 AUDIT AND FINANCE COMMITTEE MEMBERSHIP*	<i>Paper</i>	<i>For approval</i>
17 DATE OF NEXT MEETING 17 December 2025 – St Kilda		
18 ANY URGENT BUSINESS		
19 EXCLUSION OF THE PRESS AND PUBLIC		

**Not in public copy*

APOLOGIES – ORAL

DECLARATIONS OF INTEREST – ORAL

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

Review of Action Points from 27 August 2025

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
1	New risk on Policy Plan to be added to the Strategic Risk Register, with Board Chair, AFC Chair and CEO to provide wording.	CEO	Before end Q2	08/09/2025	
2	Add new risk relating to CIS replacement to Strategic Risk Register	DoCS	Before end Q2	08/09/2025	
3	Submit report to BnG on final year of 2020-2025 Gaelic Language Plan	Gaelic Language Officer	September	09/09/2025	
4	Switch December 2025 and May 2026 Board meetings from virtual to in-person and review dates in New Year	DoCS	December Board/ January 2026	28/08/2025 for meeting switches	Review action diarised
5	a) Head of Policy to redraft proposed Policy Plan Table of Contents and forward to Chair for circulation to the Board.	Head of Policy	Before Oct Board	09/09/2025	
	b) Head of Policy to schedule a series of scoping discussion meetings with the Board.	Head of Policy	To begin as soon as possible	Commenced on 4 September	
6	Revised paper on Apportionment Policy to be brought to October Board meeting.	DoOp	Oct Board		
7	a) Arrange half-day workshop for Board as an Introduction to the Planning System in the New Year, to involve a professional Planning Officer.	CEO	Feb Board (afternoon session)		On Board Planner
	b) 'Current Constituency Issues' to be put on Board Planner for a meeting in 6 months' time	DoCS	Feb Board meeting		

MATTERS ARISING FROM PREVIOUS MINUTES – ORAL

ANNUAL REPORT & ACCOUNTS 2024-25 - For approval

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

Review of Performance Report Q2 – July-Sept

SUMMARY

The quarterly Performance Report is one of the Commission's key reporting tools, with Outcomes linked to the Corporate and Business Plans.

<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/251029/Q2-July-September-Performance-Report-2025-2026.pdf>

BACKGROUND

This is the second quarter report of performance using the revised format approved by the Board for the 2025/26 Business Plan. The Performance Report is split into seven sections, representing organisational functions, as follows:

- Outcome One – Commission-wide milestones and KPI's
- Outcome Two – Regulatory and Registration function
- Outcome Three – Policy function
- Outcome Four – Grazings function
- Outcome Five – Residency & Land Use function
- Outcome Six – Information Services function
- Outcome Seven – Corporate & Customer Services function.

CURRENT POSITION

Being halfway through the year, there is an expectation that things will still change, and some work will not have begun, being scheduled for later in the year. Bearing this in mind, of the thirty-one Milestones identified in the report, twenty-four are flagged with a Green RAG status, six are marked as Amber and one is Red.

Of the thirty-one Performance Measures, twenty-four indicate a Green RAG status, six are set at Amber and one is currently marked Red.

Members of the Executive Team will be present at the meeting and happy to take questions from Board members on the details set out in the report.

Impact:	Comments
Financial	Tasks detailed in the report are costed within the 25/26 budget
Legal/Political	N/A
HR/staff resources	Staff resources from all teams are expended delivering the targets outlined in the report.

Date: 9 October 2025

Author: Jane Thomas, Director of Corporate Services

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

Quarterly review of Strategic Risk Register – Q2 – July-Sept

SUMMARY

A review of the Strategic Risk Register is a Standing Item for Board consideration. Following a review by the Board, the register will also be considered by the Audit & Finance Committee in November. The risk register can be seen here <https://www.crofting.scotland.gov.uk/userfiles/file/appendices/251029/Strategic-Risk-Register-Q2-2025-26.pdf>

BACKGROUND

The Strategic Risk Register is reviewed by the AFC Committee at each of its quarterly meetings and by the Board.

Internal Audit 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>
			There are no risks currently with an overall risk score above 75.

NEW RISKS			
<i>Ref no</i>	<i>Topic</i>	<i>Risk score</i>	<i>Comments</i>
S14	Policy Plan	30	The Board has begun a programme of modernisation and has added this item to the register in recognition of the need to progress development.
S15	CIS Replacement	75	The Commission has identified that its internal case handling system needs to be replaced, due to product support ceasing, creating a security risk. The timeframe and costs (both financial and in staff resources) have yet to be finalised and approved.

RISKS THAT ARE INCREASING (since last update)			
<i>Ref no</i>	<i>Topic</i>	<i>Risk score</i>	<i>Comments</i>
			No risks have increased in Q2

RISKS WHICH COULD POTENTIALLY HAVE THE MOST SERIOUS CONSEQUENCES (Current impact 25 or higher)			
Ref no	Topic	Current impact score	Comments
S6	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 annual notice, absentee landlords of vacant crofts and failed successions. This is viewed as high priority work for 2025-26. The risk level recorded is Static.
S8	Budget	25	The overall current risk score fell in Quarter 3 of 2024/25 and has not increased in Q2 of 2025/26.

RISKS WHICH ARE MOST LIKELY TO TRANSPIRE (Current likelihood 4 or 5)			
Ref no	Topic	Current likelihood score	Comments
S2	Challenges to Decisions	4	Increased by Solicitor in Q4 2023/24. Static in all quarters in 2024/25. Static in Q1 and 2 of 2025/26.
S5	Credibility of crofting	4	Need to progress work of Policy, Projects & Research team alongside the more established RALUT and grazings teams to ensure we are encouraging new entrants and active crofting, plus need for comms activity to highlight the continuing benefits of crofting. Work on increasing rate of Annual Notice returns prioritised.
S11	Take-up of online applications	5	While the system is working well and popular with users, reaching the potential levels of use depends on resolving key issues with Registers of Scotland, especially about fraud prevention. Changes in secondary legislation are required.

RISKS THAT THE EXECUTIVE RECOMMENDS ARE DISCHARGED		
Ref no	Topic	Comments
S12	Board recruitment to appointed member vacancies	The Executive Team recommend this risk can now be discharged.

CURRENT POSITION

Following the Board meeting on 27 August 2025, two new risks were added to the register. With the appointment of two new members of the Board confirmed, the Executive Team recommend risk S12 can be discharged.

RECOMMENDATION
The Board is invited to note the level of risk assigned in the Strategic Risk Register, controls in place and action planned and confirm it is content. It is also recommended that risk S12 should be discharged.

Date: 8 October 2025

Author: Jane Thomas Director of Corporate Services

CROFTING COMMISSION MEETING

29 October 2025

Report by the Director of Operations

Residency Policy

SUMMARY

This paper presents an updated policy on residency which, if approved, will form an interim policy statement for the Commission. The policy has been written based on an initial scoping discussion with the Board. Key aspects of the policy include a requirement for crofters to provide evidence of residency as requested by the Commission. The policy includes details of how the Commission interprets the term 'ordinarily resident'.

A brief summary of impacts and risks for the policy are presented. Further work would be required to establish how the changes could be managed, especially in terms of the increased risks around handling of personal data.

The policy, if implemented, would provide a framework to allow the Commission to undertake evidence-based residency checks. A key point to be aware of is that the policy could not be implemented to its full extent based on current resources and existing priorities. However, the policy could be implemented in a targeted way for the Commission to make best use of its resources to have a measurable impact.

BACKGROUND

This paper presents a draft policy on residency for the Commission. The policy has been drafted in response to a Board scoping discussion about the topic held in September 2025. The policy is part of a wider review of the policy plan. Once finalised and agreed by the Board, each policy will be published to supplement the current policy plan as an interim policy statement. The draft policy is presented below to give a complete picture of the policy. It may be the case that the policy will need to be adjusted slightly as related policies develop and when it is put together with related policies to ensure it reads well.

This policy focuses on the residency duty for crofters to be ordinarily resident within 32 km of their croft. It outlines the Commission's approach to residency at a high level and introduces principles which will inform other policies such as sublet, short term let, consent to be absent and assignation. The full details of those subsequent policies will be discussed and presented at a later date, following the agreed schedule of policy papers.

DRAFT RESIDENCY POLICY

Policy context

The duty to be ordinarily resident on, or within 32 km of the croft, is the first of three key crofting duties outlined in crofting legislation. The residency of crofters, on or close to their crofts, is vital to local populations in crofting areas, benefits communities and helps address labour shortages in rural areas. The Commission is aware that most crofters do meet the residency duty, however a minority of crofters are in breach. The Commission has powers to enforce this duty. It is a key tool through which the Commission can support population retention and active crofting.

Policy aims

1. To increase the number of crofters that meet the residency duty.
2. To apply a consistent and fair approach to enforcement of the residency duty. This will include a requirement for crofters to provide evidence to demonstrate their compliance.
3. To identify and resolve residency breaches of crofters when they first become crofter of a croft.

Policy principles

- Ordinarily resident is the term used in the context of a crofter's residency duty. Consideration of whether a crofter is 'ordinarily resident' will be based on the following principles:
 - o The given address should be within 32 km of the croft. This given address should be the main residence for the crofter.
 - o The crofter should have an established presence and settled purpose at the given address.
 - o The crofter should have a degree of continuity at the given address. Any absences should be accidental or temporary.
 - o Evidence will be routinely used by the Commission to ascertain whether a crofter is ordinarily resident. The evidence will be used to establish proof of the given address being the main residence.
- The Commission will undertake residency checks for crofters and crofters are required to provide evidence demonstrating residency on request. Details of what is accepted as proof of residency is specified in Commission guidance:
(<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/251029/9-Annex-A.pdf>).
- Checks requiring crofters to provide evidence of residency will generally be carried out in conjunction with enforcement processes.
- Checks requiring crofters to provide evidence of residency may be carried out in conjunction with a Commission application or notification which has been submitted. The residency check will be done on the current crofter or on the incoming crofter as appropriate.
- Checks requiring crofters to provide evidence of residency may be carried out in conjunction with Annual Notice procedures.
- If a crofter is currently unable to meet the residency duty and their absence is temporary, then they are expected to apply for a Consent to be Absent. This includes crofters who have newly become the crofter of their croft. Crofters are expected to consider the residency duty prior to obtaining a croft where this is pragmatically possible.
- If a crofter cannot meet the residency duty on a long-term basis, then they should arrange for a permanent transfer of the croft to someone who can meet the crofting duties.
- If a crofter is applying for a sublet or short term let, then the crofter is expected to either be resident or if they are not resident, they are expected to preferably have obtained a Consent to be Absent or be in the process of applying for one.¹

¹ This statement is not an exact reflection of what was discussed at the Board scoping meeting, which was that Consent to be Absent is a requirement for all non-resident crofters, including for those seeking to obtain a sublet or short term let. Consent to be absent cannot be an absolute requirement as this would remove the Commission's discretion under section 58A(7)(a)(i) and seek to pre-determine the outcome of such a consideration in advance. That is what is called fettering of discretion and would make any decisions susceptible to a successful appeal under at least one of the grounds set out in section 52A(3). Additionally, making this an absolute requirement would contradict the [current policy plan](#), at paragraph 58.

What will success look like

- An overall increase in crofters meeting the residency duty on a permanent basis.
- A perceived shift by the crofting community towards a more proactive, stricter approach to enforcement of the residency duty by the Commission.
- The integration of residency checks by use of evidence to become routine in key Commission processes.
- An increase in the number of crofters to newly obtained crofts that are meeting the residency duty.

IMPACTS

GDPR

The policy presented above outlines a substantial change in approach for the Commission and will have significant impacts, especially in terms of the evidence-based residency checks. An initial assessment has indicated that a considerable issue to overcome will be if the change means that the Commission will start processing special category data. This covers highly sensitive and personal data and it receives enhanced protection under UK GDPR. There therefore needs to be considerable further investigation around this in terms of risks, processes, cybersecurity, records management and in addition, existing IS contracts may need to be reviewed.

Resources

The other major consideration will be the impact on resources. Where residency checks are being introduced this will have considerable impacts on staffing requirements, particularly in the Residency and Land Use team (RALUT). In instances where the crofter does not pass a residency check or is not compliant, this will trigger a case to be opened with RALUT (note that it will not stop the regulatory case from progressing). The increased requirement for Consent to be Absent, for example from a crofter who has newly acquired a croft, will lead to an increase in these applications, which are subject to statutory timescales¹ and are processed by RALUT. The increase in cases for the team will need to be accommodated by an increase in resource or a change in priorities.

The policy has been written to provide a framework and the Commission can have discretion as to how and when it applies the policy. It is not possible to fully implement the policy based on current resources and existing priorities. However, the policy could be used in a targeted way to have an impact, whilst making best use of resources. The exact extent of the resourcing requirements is also difficult to establish until there is more clarity about related policies (such as sublet, short term let and consent to be absent). Further discussion about this will follow in discussions of these specific policies.

A possibility that the Board may wish to consider is to undertake a piece of work to trial implementation in relation to a residency check associated with one particular case type. This would be a way to investigate and find solutions to issues, develop processes, procedures and training. A possible option would be a change of owner-occupier crofter notification. No assessment is currently done of whether a new owner-occupier crofter meets the residency duty at the time that the notification is processed but would only be followed up subsequently for crofters that complete their Annual Notice. Approximately 230 change of owner-occupier crofters notifications are received by the Commission in a year. If 20% of these are escalated to RALUT due to a failed residency check. it would create around four extra cases for the team a month.

¹ Consent to be absent is subject to a 28-day timescale for the Commission to come to a decision (Section 21B (5) of the Crofters (Scotland) Act, as amended by the Crofting Reform Act 2010. There is a provision to remove this timescale in the Crofting Bill (Section 2).

Other impacts

The change to introduce more checks on residency using evidence will have a range of impacts on the Commission. These are likely to include changes to the CIS system, changes to workflows, changes to application forms and letters, training implications and a communications campaign.

The risks of the draft policy have been considered and include risks around resourcing, legal challenge, meeting GDPR requirements and resource capacity to implement changes. Further information can be found here:

<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/251029/9-Annex-B.pdf>

Impact:	Comments
Financial	Potential financial requirements associated with increased resource to implement the policy, increase demand on system requirements to handle special category data and a possible increase in risk from legal challenge.
Legal/Political	Possible increased risk from legal challenge.
HR/staff resources	Increased staff resource requirements associated with residency checks, a greater number of cases passed to RALU and increased Consent to be Absent.
Consumer Duty Guidance	Clarity of residency policy will benefit consumers and a greater emphasis on evidence will increase fairness.

RECOMMENDATION

The Board is invited to approve the Commission interim policy statement on crofter residency.

Date 24 September 2025

Author Heather Mack, Head of Policy

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

Review of area (size) of house sites to be decrofted and truncation of objections process

SUMMARY

In the period up to the end of 2023, the Board of the Commission agreed an increase in the area that would be acceptable in terms of house site decrofting parameters. The Board also noted that a previously agreed truncation of the objections process had been implemented. An interim review took place in October 2024 but there was limited data so it was agreed that it would be reviewed again in October 2025. To date, there have been no concerns raised by staff, crofters or crofters' agents re these changes, which appears to have been broadly welcomed and accepted without issue.

BACKGROUND

It was agreed in October 2024 that the Board decision to change the area for decrofting to a house site parameter to 0.4ha should be reviewed in October 2025. The Board also noted that a previously agreed truncation of the objections process had been implemented. In the period since these changes were introduced, there have been no concerns raised by staff, crofters or crofters' agents re these updated parameters, which appears to have been broadly welcomed and accepted without issue.

Data review – house site statistics

Officials have reviewed the figures on the 0.4ha decroftings with fresh data collected in September 2025. The results are:

- Cases with a decision date up to 18 months **before** the change (60 cases): median of 392 days taken to decide, average of 453 days.
- Cases with a record date **after** the change (so decided after the change in entirety, 64 cases): median of 187 days taken to decide, average of 201 days.
- **Before** the change, the average size applied for was 0.23 ha, with 9 people asking for greater than 0.3 ha.
- **After** the change, the average size asked for was 0.27 ha, with 18 people asking for more than 0.3 ha.

There have also been no specific legal challenges resulting from the process change.

The above seems to suggest that the change has been successful, however some other factors need to be considered:

- The overall backlog was higher prior to the change
- The Commission became more forceful on the 28-day rule after this particular parameter changed just before the 0.4 ha parameter was introduced.

Truncation of objections process

This has been implemented with no adverse effects. It has been welcomed by staff and agents as it has both clarified and simplified the application process, as well as bringing us more in line with other bodies such as the Land Court and Local Authorities (for planning applications). It has also contributed to the reduction in turnaround times for some cases.

CONCLUSION

The data does suggest that the ability to determine the area up to 0.4 ha at Tier One has contributed to the decreased turnaround times, but it is probably the case that improved efficiencies also contributed to this change with the 28-day rule and the truncation of the objections process also contributing to the improved figures. However, given there appears to have been no material issues with the introduction of the 0.4ha parameter, the view of officials is that it should remain in place.

Similarly, the truncation of the objections process has been broadly welcomed with not only no adverse effects, but also a contribution to the reduction in turnaround times.

Impact:	Comments
Financial	None
Legal/Political	These changes assist the Commission improve the efficiency of decision making hence help meet its objectives as a regulator
HR/staff resources	None at present
Consumer Duty Guidance	The impact on consumers has been considered, and Commission officials consider the proposed recommendations to be appropriate in the circumstances

RECOMMENDATION

The Board is invited to approve that the 0.4 ha and truncation of objections parameters remain unchanged.

Date 29 September 2025

Author Gary Campbell, CEO

CROFTING COMMISSION MEETING

29 October 2025

Report by the Director of Operations

Apportionment Policy – Another purposeful use

SUMMARY

This paper considers how apportionment policy and procedures could be adapted to allow for consideration of apportionments for another purposeful use. This is not straightforward, because the appropriate permission is required to change the use of croft land to another purposeful use. This permission cannot be obtained over land which is not yet apportioned. This means that the Commission would be at risk of a successful appeal by processing and issuing apportionments for another purposeful use.

Accepting these applications will mean a level of risk. Steps can be taken to mitigate the risk although it does not eliminate it. Mitigations are to require dialogue between relevant parties prior to application and to exclude the apportionment's standard condition restricting the apportionment to a specific use. A review should also be included for these apportionments to ensure the Commission's policy aim for productive use is met.

BACKGROUND

At the Board meeting in June 2025, the Board approved the proposal for detailed consideration of expanding apportionment applications to include the option for another purposeful use. Discussions on apportionments also took place at the Board meeting in August 2025 and the Board indicated that they would like the policy direction to move towards a more permissive approach for apportionments.

The 'another purposeful use' provision¹ for croft land allows a greater diversity of use on croft land. Its introduction in 2007 reflects changing land use, encourages innovation and allows crofters to take advantage of diverse opportunities for their croft business. Whilst increased diversity of use is now seen on inbye croft land, the majority of grazing land and apportionments remain in the traditional use of stock grazing. Alongside this, there are concerns that common grazing use has been declining and areas of common grazing land have fallen out of use (National Development Plan for Crofting²). Diversifying use of common grazings land, including via apportionments, could help encourage an increase in use per se, because it opens more avenues for crofters to use grazing land.

¹ Crofters (Scotland) Act 1993 as amended by the Crofting Reform (Scotland) Act 2010 5C(2) Those duties are that the crofter – (a) must – (i) cultivate the croft; or (ii) put it to another purposeful use,

² [National Development Plan for Crofting](#), Scottish Government, 2021

Apportionments offer a route for an individual shareholder to develop their croft business or build a house. However, for a shareholder who is looking to do something different on part of a common grazings, such as create pods for tourist accommodation, there is currently no *apparent* way for them to do it via an apportionment (although this may be done by changing the use after the apportionment has been granted and with the appropriate permissions). Diversified use could be done in collaboration with other shareholders or the landlord using a 'use of common grazing for other purposes' (50B), 'schemes for development' (19A), or resumption (20). However, these options may not be a route that can be followed in all cases, for example if other shareholders or the landlord is unwilling to pursue the idea. The challenge of making these collaborative options work may therefore limit innovative and changing land use on common grazings.

Allowing shareholders to apply for apportionments for another purposeful use may help crofters to diversify their business and encourage economic development in crofting areas. This would help meet the policy aims that the Board have indicated around productive use and economic benefits to communities.

CONSIDERATIONS FOR POLICY

As indicated in the application form, apportionment applications are currently restricted by the Commission to stock grazing, a current or new house, an agricultural building, and woodland. Another purposeful use is excluded from this list, not because the legislation excludes it, but because obtaining permission for another purposeful use cannot be sought until after the land is apportioned. This is the key issue. Putting croft land to another purposeful use requires the permission of the landlord and failing that, permission can be sought from the Commission¹. If the Commission were to accept an apportionment application for another purposeful use, it would put the Commission at risk. This is because it may be seen to prejudge a potential purposeful use application, having already considered the apportionment application for that purpose. Even if the permission of the landlord is obtained in principle, it still represents a risk to the Commission because the landlord cannot give their permission on land that has not yet been apportioned by the crofter.

Apportionment orders are issued with a standard condition restricting use to what was stated in the apportionment application. This is appropriate because the apportionment is assessed on the intended use and so it helps ensure that the apportionment use is consistent with the assessment it has undergone to allow it to be granted. Despite the use of this condition as standard, the Commission solicitor has advised that crofters with apportionments can put them to a use other than that stated on the apportionment order, provided that it is a form of cultivation (widely defined in the 1993 Act). This is based on the case law from *Guthrie -v- Bowman*². The provision in the 2007 Act³ allows for review of apportionments, though it is unclear how the Commission would deal with such reviews. There has not been any Land Court case since 2007 where the Court has given a view on using apportioned land for other purposeful uses.

¹ 5C(4) A crofter may only put the croft to a use mentioned in subsection 2(a)(ii) if—(a) the landlord has consented to the use (unconditionally or subject to conditions acceptable to the crofter); or (b) the Commission have consented to the use.

² *Guthrie -v- Bowman* (1996, 1997) which referred to a change of use of an apportionment to a landfill site. The court held that the crofter had unrestricted use of the apportioned land subject only to the statutory conditions of tenure.

³ Crofters (Scotland) Act 1993 as amended by the Crofting Reform Act 2007, Section 52 (10)(b) and Section 52 (12)

PROPOSED POLICY CHANGE

To open up applications to another purposeful use, the Commission would need to take on the risk that the landlord, the grazings committee or other shareholders in the common grazing would successfully appeal against an apportionment issued for another purposeful use. This risk could be slightly reduced by excluding the condition restricting use on the order. Instead, the apportionment could be issued with a generic condition that the apportionment should be used. The application would still need to be considered with regard to the intended use and the shareholders and landlord would still be able to comment on the application in respect of its intended use. However, the specific use would not then be included in the conditions of the apportionment order as per the usual process.

The risk could also be minimised by including a requirement for the crofter to have made the landlord aware of their plans for the apportionment and for them to have indicated their support or at least not raised any major objections. Any view of the landlord on the proposed apportionment would be considered as part of the application process in the usual way.

Including a review of the apportionment after an appropriate time period could also be used. This would help ensure that the apportionment is in use and would ascertain how the crofter has progressed with their plans for the apportionment. The Commission also has the option at a review to introduce a new condition and it may be appropriate for the introduction of a condition restricting the apportionment to a specific use at this point.

A downside of this approach would be that it would likely be a more complex and lengthy application for the Commission to process. It may also be controversial if the application has the potential for a shareholder to make a profit from the apportionment. In considering the apportionment it will be necessary to ascertain if the intended use could be done in a collaborative way and if this has been considered by the applicant.¹

If this approach is taken, it would be beneficial to continue the condition restricting use to what was stated in the application for the majority of apportionments., as there are benefits to this including clarity and reassurance for other shareholders. When this standard condition for use was excluded from apportionment orders for a period of time, the Commission experienced difficulties with this. It would also be beneficial to review this apportionment policy change a year or two after it has been implemented, to assess whether it has had the intended effect, what impacts it has had and whether any improvements or adjustments can be made.

If this policy change is not chosen by the Board, the Commission would continue with its current approach to apportionments. This involves another purposeful use applications being discouraged and refused. This is the lowest risk approach to this issue.

LEGAL RISK

Despite the proposal to change the policy and the mitigations suggested, the Commission solicitor has emphasised that he considers the risks around this policy change to be substantial.

This risk lies in the requirement for the Commission to consider purpose as part of its decision making, but that this consideration also means the Commission could be seen to prejudge purposeful use consent, even if the purpose is not listed in the conditions. If the Commission does not consider the underlying purpose for an apportionment, it opens up a route of appeal for anyone unhappy with such a decision under the 1993 Act (sec 52A(3)): that the Commission in making its decision “failed to take into account certain relevant or material considerations”.

¹ A policy change around another purposeful use for apportionments will need to have regard to the [current policy plan](#), which references development on grazing land at paragraph 41, page 9.

The Commission solicitor notes: the Commission does not have any power under the 1993 Act to grant an apportionment for a particular purpose that is not cultivation within the meaning of sec 5C(8) of the 1993 Act. The powers given to the Commission are to apportion an area of common grazings for the “exclusive use” of the applicant. In deciding whether to apportion for exclusive use, the purpose to which the applicant will put the apportionment is clearly a relevant factor in deciding whether the application has merit; this is different from apportioning for that particular purpose. If the application states a purposeful use requiring landlord consent, the Commission on this view has no power to apportion for this use; its powers are simply to apportion the area if it so wishes, and it is for the crofter to obtain whatever consent(s) he or she needs for any particular purpose. The important point about an apportionment, and the main factor the Commission has to consider, is whether it is appropriate in all the circumstances of the case to give the applicant “exclusive use” and remove the rights of all the other shareholders in respect of the land applied for. As the use to which an apportionment can be put may well change over time, the main consideration for the Commission is to balance the rights of the shareholders (and the views of the grazings committee) against the application from the crofter rather than to be fixated on a particular use that may well change over time.

The Board need to be fully aware of the risk of the Commission prejudging a future another purposeful use application if the Commission were to consider and potentially approve an apportionment application for another purposeful use. This could result in a successful appeal against the Commission by the landlord, grazings committee or grazing shareholders.

Impact:	Comments
Financial	n/a
Legal/Political	Changing policy to allow apportionment applications for another purposeful use would mean an increased risk to the Commission. It could increase the likelihood of a successful appeal to the Land Court.
HR/staff resources	Changing apportionment policy to facilitate another purposeful use may mean an increase in complex and controversial applications, which would require greater amount of staff time, in particular more experienced staff.
Consumer Duty Guidance	Clarity around apportionment law, policy and processes benefits consumers.

RECOMMENDATION

The Board is invited to approve the proposal to change apportionment policy, subject to acceptance of the associated risk.

This change would be incorporated into the apportionment interim policy statement, stating that apportionment applications for another purposeful use will be considered by the Commission. The apportionment would not be issued with a condition restricting it to a specific use and would be subject to review after an appropriate time period.

Date 29 September 2025

Author Heather Mack, Head of Policy

CROFTING COMMISSION MEETING

29 October 2025

Report by the Director of Operations

Apportionment Policy

SUMMARY

This paper presents an updated draft apportionment policy. This is based on direction from the Board, current policy and practice at the Commission, and input from staff. If approved this will be published as interim policy guidance and it will also form the basis for the apportionment section of the next policy plan in 2027.

BACKGROUND

This paper presents a draft of an interim policy statement on apportionments. This has been written based on Board discussions on apportionments at Board meetings in June and August 2025. The text presents an updated apportionment policy based on feedback from the Board and with input from Commission staff. The current policy on apportionments is found in the [current policy plan](#) on page 8, paragraphs 40 to 43.

If approved, this draft will be published as an interim policy statement and will also form the basis for the next policy plan. The text may need to be adapted slightly as other related policies evolve and when it is published alongside other policies.

APPORTIONMENT INTERIM POLICY STATEMENT – DRAFT

Policy context

Common grazings allow the traditional land use of stock grazing via shared management practices. Demand on grazing land has expanded beyond this traditional use and now includes other uses such as renewable energy, peatland restoration, woodland, biodiversity enhancing activities, economic development, housing and new croft creation. However, despite these demands there are concerns about an overall decline in common grazing use.

Apportionments offer a way for shareholders to obtain land for their own exclusive use. This provides considerable opportunities for individuals, such as developing their business, creating housing and contributing to environmental benefits. This in turn can bring wider economic, social and environmental benefits to communities. These active uses support Scottish Government aims, including population retention in rural areas, creation of new housing and addressing both climate and biodiversity crises.

The collaborative nature of common grazings, with multiple shareholders and at least one owner, brings both benefits and challenges. Effective management and communication are key to ensuring successful and active use of this land. Apportionments can be a source of disagreement and the Commission recognises the importance of early and open communication between parties to encourage co-operation.

Policy aims

1. Apportionments will contribute to sustaining and increasing productive land use.
2. Collaboration between interested parties regarding apportionment applications at the pre application stage. This will contribute to open communication and effective communal working in crofting communities.

Policy principles

- Apportionments should be for one of the following reasons:
 - o Cultivation: stock management
 - o Cultivation: other types of cultivation
 - o Cultivation: agricultural building (existing or proposed)
 - o Site of an existing croft dwellinghouse
 - o Site of a proposed croft dwellinghouse
 - o Planting trees or use as woodlands for the exclusive use of the shareholder
 - o Creation of *new croft(s)*¹ (subject to additional subsequent applications, which may include division, letting and assignation)
 - o Other uses will also be considered and should be detailed in the application
- The Commission will typically support the creation of apportionments that contribute to one or more of the following:
 - o Increase active use of grazings land
 - o Assist individual shareholders with their stock management
 - o Assist individual shareholders with their crofting business
 - o Create a *new croft holding*¹ (this will be subject to additional subsequent applications, which may include division, letting and assignation)
 - o Apportionment of a share which is deemed to be a croft under section 3(5) of the 1993 Crofters (Scotland) Act
 - o Provide economic or social benefits to the local community
 - o Contribute to population retention
 - o Support environmental aims such as carbon capture or enhancing biodiversity
- To ensure active use of crofts and common grazings, current and recent use of the common grazings will be taken into consideration. If the apportionment increases overall use this is favourable. Active use of common grazing and apportioned land will be considered in terms of the immediate future, as well as the sustainability and likelihood for continued active use in the longer term.
- The Commission will consider the rights of current shareholders, future shareholders, landowners and the crofting community.
- The Commission will typically grant an apportionment where it is evident that it will sustain or increase use of the land, where it is supported by the grazings committee and where there are no competent objections to it. Where there are competent objections to an apportionment the Commission will balance the opportunity for the applicant, against the rights of both current and future shareholders, in addition to consideration of the views of the owner and landlord, and any wider benefits.
- Where there is potential for other uses of the land which may have a considerably higher value than the agricultural value, so called 'hope value', which may be indicated in a local development plan, then this will be taken into consideration.
- Objective evidence will be sought as needed to make a fair decision on the application. This will normally include obtaining an RPID area office report as standard.

¹ This refers to a new croft in a general sense, rather than a new croft as per section 3A of the Crofters (Scotland) Act 1993, as amended by the Crofting Reform (Scotland) Act 2010.

- The Commission will normally issue apportionments with certain conditions as standard. These include:
 - o The provision of appropriate fencing and gates for the apportionment, which should be erected within a fixed time period and maintained for the duration of the apportionment. The exceptions to this are when a fencing condition for some or all of the apportionment is not appropriate or required.
 - o That the apportionment will be used only for the intended use as stated in the application.
- Other conditions may be issued as appropriate.
- Apportionments may be issued with a review period as specified in the conditions. The addition of a review period will depend on the individual case and is likely to be added when an apportionment application receives objections. This will help ensure the apportionment use remains as intended and to provide fairness for objectors. This will usually be after an interval of 5 or 10 years.
- Requests for review of apportionments will be encouraged by those who can raise a request for review (grazing committee, owner and the apportionment holder) and have a concern about the use of the apportionment.
- Apportionments can be issued as termed if considered appropriate based on the intended use and circumstances of the case.
- Opportunities to modify an apportionment application after submission to the Commission will be limited to minor essential adjustments.
- Apportionments should be of a reasonable size that is fair to all shareholders. The area should be appropriate to the applicants souming or share entitlement (further guidance can be sought from the RPID local area office).
- Apportionments should not include all of the best agricultural land or all improved areas on the common grazings, enabling fairness to all shareholders.
- Apportionments typically should not include shared (now or previously) facilities, fanks, bull parks or agricultural buildings.
- Apportionments should not include land under shared management agreements (such as AECS).
- Apportionments should not cut off the rest of the common grazing from the nearest or most convenient public road or access point.
- Apportionments should not cut off access for contiguous crofts or properties.
- Where the proposed apportionment is contiguous with a croft (other than the applicant's croft), the Commission will consider this as part of the application process. The applicant should preferably discuss their plans for an apportionment application with the crofter of any croft contiguous to the proposed area, in advance of submitting their application.
- Applicants should discuss their intention to apply for an apportionment with any interested parties in advance of making their application and take account of any concerns. This should include the grazings committee and landlord and may also include shareholders and neighbouring land holders.
- Where there are multiple shareholders interested in obtaining an apportionment, the Commission encourages discussion and consensus between shareholders regarding a fair and suitable allocation of land between parties.

What will success look like

- An increase in active land use on both apportionments and common grazings.
- Active management of grazing land and effective communal working in crofting communities. This will include open communication between all relevant parties in advance of any apportionment application.

IMPACTS AND RISKS

The policy is broadly similar to the current process followed by the Commission, so it does not represent any significant changes to processes, or have significant impacts on resources. Some updates will be required to application forms and accompanying guidance. Some updates will also be required for internal guidance and procedures. These will take time to be implemented before the policy can be fully enacted. The greater clarity in the policy should aid decision makers and help mitigate risks around apportionment decisions. Case by case application of the policy by experienced staff will help ensure that it is applied in an appropriate and consistent way.

Impact:	Comments
Financial	n/a
Legal/Political	Expansion and clarification of the apportionment section of the policy plan is beneficial to the Commission and provides clarity to applicants, agents and the Land Court.
HR/staff resources	n/a
Consumer Duty Guidance	Expansion and clarity of the apportionment section of the policy plan benefits consumers.

RECOMMENDATION

The Board is invited to approve the apportionment policy text for a 2025 interim policy statement.

Date 6 October 2025

Author Heather Mack, Head of Policy

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

CIS Replacement

SUMMARY

Our Head of Digital has advised that the current caseload management system (the Crofting Information System or CIS) is about to become obsolete. The IS team undertook a review of potential replacement systems in early 2024 and have recommended that Salesforce, a well-known CRM system with the ability to be modified for crofting use, be purchased by the Commission at a cost of £400-500k. A final business case is now being written with the intention that the additional funds will be provided in the 2026-27 GIA award from SG.

BACKGROUND

Our Head of Digital has advised that the current caseload management system (the Crofting Information System or CIS) is about to become obsolete due to the underlying software having its system support withdrawn by the supplier. CIS is ten years old and was developed in-house as a bespoke replacement for a prior system and while it is still functional, over the past decade other off the shelf products have also been developed that could form the basis of a new caseload management system.

Potential solutions

The IS team undertook a review of potential replacement systems in early 2024 and have recommended that Salesforce, a well-known CRM system with the ability to be modified for crofting use, be purchased by the Commission. This was approved by the Executive Team and subsequently, a draft business case was prepared and shared with SG – this estimates that the cost of replacement will be £400-500K. A final business case is now being written with the intention that the additional funds will be provided in the 2026-27 GIA award from SG.

Next Steps

The Board should be aware that this process is ongoing and that while there is no immediate security threat in using CIS at present, it will become necessary to replace it in the near future. The Board should also note that SG are aware and that a business case for the funds will be presented as part of our draft budget requirements by the end of CY 2025.

Impact:	Comments
Financial	£400 – 500k
Legal/Political	None at present, although by doing nothing we risk a security failure in the future
HR/staff resources	None at present
Consumer Duty Guidance	The impact on consumers has been considered, and Commission officials consider the proposed course of action to be appropriate in the circumstances

RECOMMENDATION

The Board is invited to note the ongoing work re the replacement for CIS.

Date 1 October 2025

Author Gary Campbell, CEO

CROFTING COMMISSION MEETING

29 October 2025

Report by Andrew Thin, Chair

Farming opportunities for new entrants (FONE)

SUMMARY

The purpose of this paper is to help frame a Board discussion on the Commission's contribution to the work of the Scottish Government's (SG) FONE Group.

BACKGROUND

The FONE Group was created by the SG in 2014 to “find and develop opportunities on publicly owned land for New Entrants”. Since its creation, the focus of the group has expanded to include other areas of New Entrant policy and support provided by the SG.

FONE is made up of representatives from across the agricultural sector who meet to discuss opportunities and challenges facing New Entrants, and how the sector can work together and with the SG to support New Entrants. Rod Mackenzie represents us on this group.

The SG's 2024/25 Programme for Government includes a commitment to “review government's landholdings to explore opportunities to create openings for New Entrants ... and encourage public bodies with considerable land holdings to also look at what opportunities they can offer”.

To date many achievements of FONE have related to agricultural holdings tenure, although the potential to create new crofts on publicly owned land is probably also significant. For this to materialise may require clearer strategic leadership from the Commission.

KEY POINTS FOR DISCUSSION

1. The purpose of this discussion is to help support the contribution that the Commission makes to FONE through Rod Mackenzie as our representative on the group.
 - *Are we clear what we are trying to achieve through our membership of FONE?*
2. FONE members will want to understand the policy context within which new crofts might be created on publicly owned land.
 - *Do we have a clear policy on new croft creation which answers this question?*
3. There are areas of publicly owned land throughout the crofting counties that are not currently in crofting tenure.
 - *Do we have a clear view, jointly with relevant local authorities, as to which general areas of that land might sensibly be considered for crofting tenure?*

4. Large numbers of crofts already exist on publicly owned land.
 - *Do we have a clear policy framework (e.g. assignation policy) which supports the wider aims of FONE where crofts already exist (on publicly owned land or otherwise)?*
5. The work of FONE has shifted recently to include a focus on the availability of financial capital to new entrants (linking to discussion during the Crofting Reform Bill consultation about securitisation of crofts).
 - *Do we have realistic ideas that could be developed by FONE which might help address the securitisation constraint now that this will not be included in new legislation?*
6. The work of FONE has high priority within SG and is included in the 2024/25 Programme for Government.
 - *Are we clear what success will look like, and can we quantify that in some way?*

Impact:	Comments
Financial	N/A
Legal/Political	This will further reinforce strategic and policy leadership
HR/staff resources	N/A

RECOMMENDATION

It is recommended that –

- **The Board discusses each of the questions outlined above.**
- **The Board agrees priorities that it would like to suggest (through Rod Mackenzie) might be taken forward through FONE.**
- **The Board agrees to review the work of FONE again in October 2026.**

Date 29 October 2025

Author Andrew Thin, Chair

CROFTING COMMISSION MEETING

29 October 2025

Report by the Chief Executive

Scheme of Delegation

SUMMARY

The purpose of this paper is to obtain the Board's approval to introduce changes to:

- (i) the Commission's Scheme of Delegation
- (ii) the Delegation Parameters relating to the consideration of apportionment applications (section 52(4) of the Crofters (Scotland) Act 1993, ("The 1993 Act"))

1. BACKGROUND

At the meeting held in October 2024, the Board agreed to allow the following decisions or administrative steps to be made at Tier One:

1.1 Regulatory Applications

- (a) To decide applications are invalid where it has been identified at the initial assessment stage of the process that the applicant does not have the right to apply.
- (b) To take an administrative step requiring the applicant to provide the Commission with such further information relating to the application as they consider appropriate.
- (c) To refuse applications where the information required at (b) has not been provided within a reasonable timescale.
- (d) To refuse applications where a croft registration application has not been submitted within the statutory timescale.
- (e) To approve applications which comply with the parameters agreed by the Board in relation to the relevant regulatory function subject to the usual statutory factors.

1.2 Registration applications:

- (a) To make an administrative step to require the applicant to provide the Commission with such further Information relating to the application as they consider appropriate.
- (b) To take a decision appealable to the Scottish Land Court to refuse to forward applications to the Registers of Scotland (RoS) where the information required at (a) has not been provided within a reasonable timescale.
- (c) To refuse to forward applications to the RoS where the fee payable in respect of the application has not been tendered within a reasonable timescale.
- (d) To take the administrative steps of forwarding applications to RoS where the checks have been carried out against the Information relating to the croft in the Commission's Register of Crofts.

2. FURTHER DEVELOPMENTS

The changes proposed to the Scheme of Delegation and which we are looking to obtain Board approval are:

2.1 Registration applications

To bring the processing of registration applications in line with the current delegated powers in relation to regulatory applications by adding the following category of decision that can be taken at Tier One:

To decide applications are invalid where it has been identified at the initial assessment stage of the process either that (i) the applicant does not have the right to apply or (ii) the application is otherwise not capable of being made competent. The following is a list of examples of where a decision could be made at Tier One that a registration application is invalid.

- Individual who submitted the registration application is not listed as a stakeholder on the Commission's Register of Crofts
- The Registration application (Form A) has been received from an Individual who is not the person listed as Schedule 2: Table 1 of the Crofting Reform (Scotland) Act 2010 ("The 2010 Act") as the person responsible for submitting the application to register the croft or their agent
- The Change application (Form B) has been received from an Individual who is not the person listed as Schedule 2: Table 2 of the 2010 Act as the person responsible for submitting the application to register the change event or their agent
- Application has been received to register a holding which is not included in the Commission's Register of Crofts
- Incorrect RoS Form has been received e.g. (Form A has been received instead of Form B)
- Form B has been received prior to a decision on the regulatory change event case being made
- Form B has been received following the issue of an advance of purchase decrofting direction prior to the purchase having taken place
- Where there is no croft to register following the refusal of an application to constitute non-croft land as a New Croft in terms of Section 3A of the 1993 Act.

2.2 Review of the Delegation Parameters relating to the consideration of apportionment applications (section 52(4) of the Crofters (Scotland) Act 1993, ("The 1993 Act"))

To include the following as delegation parameters in considering apportionment applications:

A Is there a grazings committee in office for the Commission to consult with in terms of 52(4) of the 1993 Act?

If yes, it can continue in the first tier of decision making.

If no, it should be escalated to the second tier of the delegated decision making structure.

Reasoning 1: Balancing the interests of the applicant with the interests of other shareholders with rights in the common grazings

In a previous appeal on an apportionment decision, the Land Court has commented on the role of the Commission in considering apportionment applications as follows:

In *Matheson -v- Crofters Commission* (2012) the Land Court commented that "*The Commission had a balancing act to carry out. It had to take account of the interests of*

the other shareholders and it had to consider the future except where an apportionment is granted temporarily, the land is lost to communal use in perpetuity. As the Commission themselves put it in the note of decision, when considering applications for apportionment, as well as taking the aspirations of the applicant into account, the Commission must safeguard the interests of the present and future interest of the other shareholders. That is an accurate statement of the task they had to perform. They had to balance those interests. There is no legal requirement to give one set of interest's greater weight than the others."

Clearly the Commission can only consult with a committee if there is one in place. However, the Commission is still required to balance the interests of the applicant and the interests of other shareholders with rights in the common grazings even when there is no Committee in place. The recommendation therefore is to escalate all cases where there is no Committee in place to Tier 2 to ensure that all relevant interests are taken into account in the consideration of the application.

B Is the proposed apportioned area contiguous to part of a croft tenanted by a different crofter to the applicant?

If no, it can continue in the first tier of decision making.

If yes, it should be escalated to the second tier of the delegated decision making structure.

Reasoning 2: Demonstrating that the Commission have taken account of the impact of granting an apportionment on another crofter's right to purchase.

In terms of section 12(3) of the 1993 Act, any apportioned land is excluded from the rights of crofters to acquire their subjects unless the apportioned land is "... *adjacent or contiguous to any other part of the croft.*" It is important therefore that the Commission can demonstrate that they have identified and taken into consideration whether or not the apportionment applied for includes land over which another crofter could potentially have purchase rights in the event they themselves were to obtain an apportionment of the land which is contiguous to part of their croft.

Reasoning 3: Grounds of Decision

Where an apportionment is approved at Tier 1, the standard grounds of decision are as follows:

"The application for the Commission's consent to apportion part of the above common grazings for the applicant's own exclusive use has been approved subject to conditions set out in the apportionment Order."

We propose that in all cases where either (i) there is no grazings committee in place for the Commission to consult with in terms of section 52(4) or (ii) the area applied for includes land which is contiguous to part of another tenant's croft, the case should be escalated to Tier 2. This will ensure that a comprehensive set of grounds is prepared supporting the Commission's decision with evidence demonstrating that all relevant interests have been taken into account in the consideration of the application. This is essential in ensuring that the Commission is in a position to prepare a robust defence of its decision should it subsequently be appealed to the Scottish Land Court.

Impact:	Comments
Financial	There could potentially be a modest financial gain if the Commission are in a stronger position to defend decisions that are subsequently appealed.
Legal/Political	This will ensure proper governance is being followed with consistency in relation to the delegated authority for both registration and regulatory applications.
HR/staff resources	None
Consumer Duty Guidance	This meets the requirements of the Consumer Duty legislation

RECOMMENDATION

Commissioners are invited to consider these proposals and approve the proposed changes to (i) the Scheme of Delegation and (ii) the delegation parameters for apportionments.

Date 8 October 2025

Author Joseph Kerr, Head of Regulatory Support

DATE OF NEXT MEETING

17 December 2025 - St Kilda

ANY URGENT BUSINESS

EXCLUSION OF PRESS & PUBLIC