

REPORT ON COMMON GRAZINGS REGISTRATION PRESENTED AT THE CROFTING COMMISSION BOARD MEETING 18 MARCH 2021

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SUMMARY

Registration of common grazings in the map based Crofting Register provides security for this vast area of crofting land. It offers benefits to shareholders, owners and surrounding land users. Registration of grazings in the Crofting Register can only be done by the Commission. A project to undertake registrations completed approximately a third of registrations and revealed a range of issues in the process. A key issue was the difficulties around defining boundaries that may not have been captured before. There were also other issues which meant that the consultation process prior to registration was lengthy, such as out of date shareholder details coming to light. The question of how much consultation to do initially needs to be balanced with the possibility of rectifications, which became commonplace.

The challenges can be overcome to allow registration of grazings to restart, which will result in long term benefits to crofting grazings land. A slow approach to this work would be appropriate since there are limits to how quickly preparation of grazings for registration can progress. Consideration should be given to how this work should be prioritised alongside other Commission objectives and timescales for restarting it.

INTRODUCTION

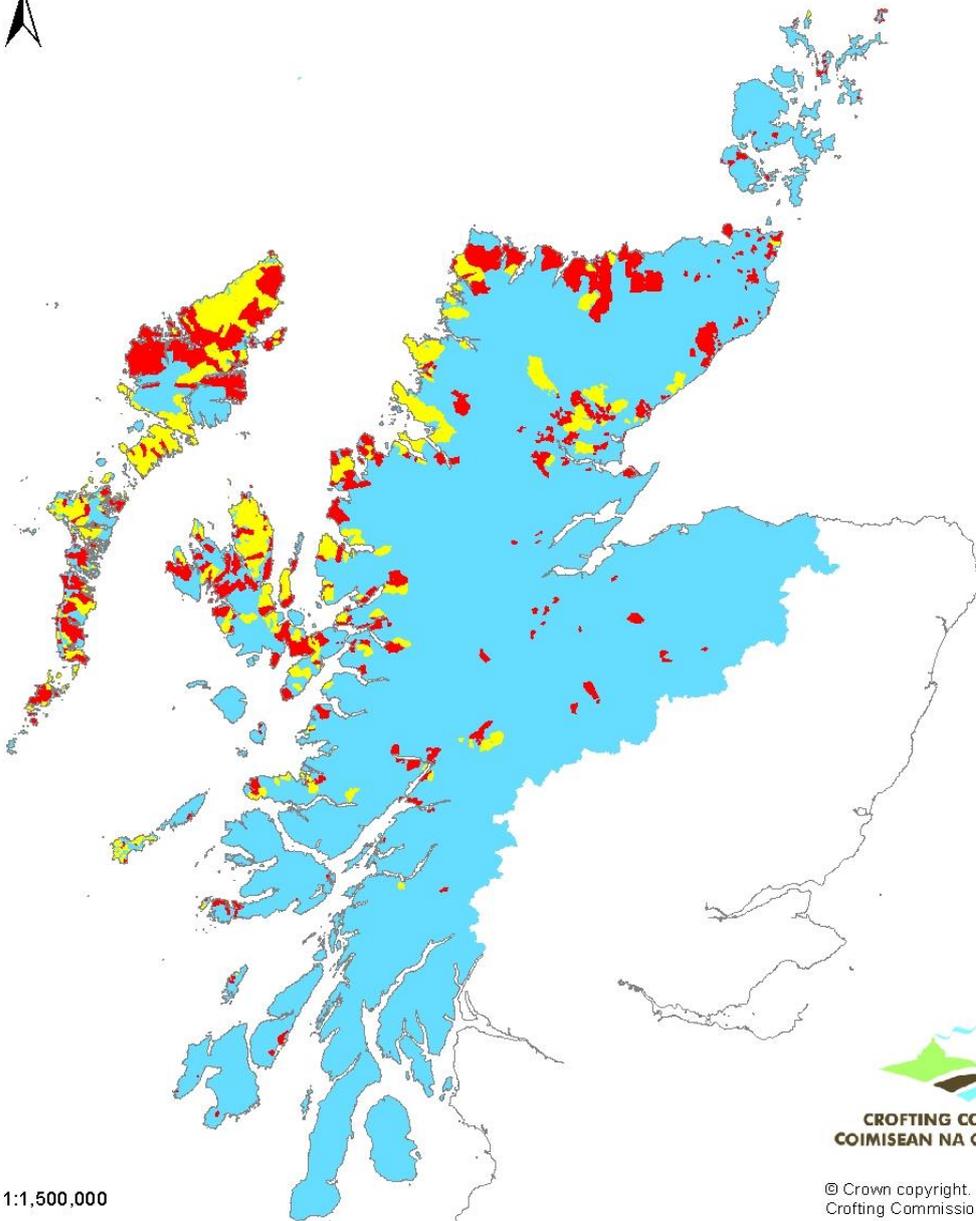
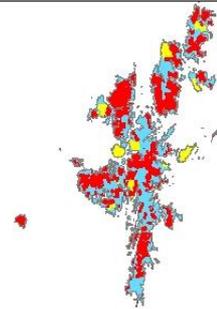
The Crofting Register was established in 2012 by the Keeper of the Registers of Scotland to provide a definitive geographical boundary for crofts, common grazings and land held in runrig. Crofts are usually registered by the crofter whereas common grazings can only be registered by the Crofting Commission. From 2012 to 2016 a project ran by the Crofting Commission to register common grazings resulted in the registration of 335 common grazings and runrig. This left over 600 common grazing and runrig unregistered on the map based Crofting Register and at present the Crofting Commission are not undertaking these. The below map shows the distribution of Common Grazings across the crofting counties and gives a visual of the registered and unregistered common grazings.

Common grazings have been registered in the Register of Crofts since 1955 and this registration alongside the crofting legislation has meant common grazings are secured for future generations. Registration of the exact boundaries of grazings land brings even more security of rights to this land and is of particular importance in this digital age. It brings greater recognition to common grazings and its shareholders.

Common Grazings Registrations Progress

	Total	Extent (Ha)
 Registered Common Grazings	335	225,149
 Unregistered Common Grazings	565*	320,961
 Crofting Counties		

* final figures to be established



CROFTING COMMISSION
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1:1,500,000

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When the Register of Crofts was created in 1955 several holdings that could have qualified as crofts were not registered and so this land has lost the unique protection of crofting legislation. This demonstrates the importance of registration to crofting. Furthermore, there remains a lack of clarity over common grazings in the Register of Crofts. As described in a recent paper to the Board (Common Grazings: The Forgotten Land, Feb 2021) there is uncertainty about what constitutes a common grazing. Whilst the Commission know the majority of definite common grazings it does not have a definitive list. Completion of grazing registration in the Crofting Register will need to tackle this uncertainty and thereby establish a definitive list of grazings within crofting tenure.

Grazings committees and landlords from registered common grazings have reported the benefits of map based registration. For example on Annat Grazings in Torridon, there was an instance where there was potential for dispute regarding a proposed building site and the grazings clerk reported that the registration maps helped avoid this by providing clarity and fairness. The free public access to the register is of particular value and means that transfers of land are not held up due to the requirement to check the status of the land. Conflict can and does arise over boundaries between croft land and so as depicted by the proverb 'good fences make good neighbours' (Robert Frost), the benefits of clarity over boundaries can be huge.

However, there has been difficulties surrounding registration. Expectations for how quickly registrations would progress were not met by some way. Challenges primarily arose due to issues in establishing correct boundaries and difficulties in reconciling shareholder details that differed between the Commission and committees.

BIGGEST CHALLENGE

Putting a collective understanding on to paper

Registering a grazings boundary involves defining the collective understanding of the boundary. Identifying the correct boundary often takes significant time, discussion, sometimes disagreement and considerable back and forth between grazings committees, landlords and the Crofting Commission. In some cases the registration stalled entirely due to disagreement within grazings committees, between neighbouring grazings and between the landlord and the grazings committee. For example in the case of Garrynamonie Common Grazings a boundary conflict arose which resulted in considerable time and input by the Commission.

Despite the difficulties agreement was eventually reached in many cases and the boundaries did get defined resulting in registration. The project registered very few grazings in the first year and the majority of the grazings were registered in the final year that the project was running, which demonstrates the necessity of allowing sufficient time for the process of preparing a grazings for registration.

This issue is also reflected in the number of rectifications that were seen following registration and that are still needed despite several years passing since the last registration. Despite the initial consultation, neighbour notification and advertisement, problems with the registration still come to light long after a grazings is registered.

Whilst rectifications add to the administrative burden on the Commission and ROS they provide a valuable way for grazings to be updated in order to make the registration as correct and fair as possible. The problems flagged up by repeated numbers of rectifications show the importance of getting the registration as correct as possible to start with.

The time taken to prepare grazings for registration is needed in order to give all parties enough time to discuss the issues. Committees and landlords of registered grazings have reported the benefits of being given sufficient time and support from the Commission to do the important pre-registration work. Increasing resources to speed the registration process up may have some impact but this will be limited as the parties involved will always need time to discuss and agree boundaries. A balance must be found to allow sufficient consultation to ensure the initial registration is accurate whilst also using resources as efficiently as possible.

OTHER ISSUES AND CONSIDERATIONS

Out of date shareholder information in the Register of Crofts

The information on grazings shareholders within the Register of Crofts is limited for several reasons. The main reason is how well the Commission has been kept up to date of shareholder changes. Other issues include lack of staff resource to investigate and chase up issues as well as ongoing development of the CIS system to accommodate all the update processes. Fixing these issues takes staff resource and time as regulatory applications may need to be submitted and processed in order to put the change in place officially.

During preparation of grazings for registration staff with specialist knowledge are often required to investigate discrepancies. A lack of resource for this specialised work meant that some grazings registrations stalled during the project. For effective use of staff resources in future registrations it is important to have the right balance of expertise for shareholder investigations, mapping and administration.

Engagement with grazings shareholders and owners

Grazings that present a particular challenge to registration include those which do not have a grazings committee in office (currently over 500) and those grazings which are unregulated (currently over 150). No unregulated grazings were registered during the project and few grazings without committees. In the few instances the Commission did engage grazings without committees it involved more input by Commission staff. For grazings without committees in Tiree the Commission arranged for maps to be displayed publicly and staff visited the area and held public meetings to allow shareholders and other individuals a chance to engage with the Commission. A challenge in respect of one of the Tiree grazings resulted in the Land Court finding no expenses due or by the Commission, which brings confidence to the Commission in dealing with future registrations of grazings without a committee in office.

Registration of grazings without committees is not specifically defined in the legislation and emphasis is on the Commission to consult with shareholders in a way that is deemed appropriate. Virtual meetings are commonplace now and they could offer a cost-effective way to allow the Commission to give shareholders and others the chance to input into this process. Another consideration might be that the incentive of the registration could be used to help encourage grazings to form committees, which would tie in with other Commission objectives.

Efficient mapping

Mapping was conducted for the project by preparing maps on GIS software and sending out large paper maps in the post to committees and owners. This is a good way for these different parties to engage with the mapping information, however there are some drawbacks including high use of printing and posting, which has financial and environmental implications. Also the paper maps are at a fixed scale so it is harder to see specific areas of the map in more detail, which potentially meant that small scale errors were missed leading to more rectifications. A different approach using an online map could help overcome some of these difficulties and would enable easier sharing of the map with multiple people. However, it would make it more difficult for shareholders or landlords to mark changes onto the map and it also might prevent engagement from individuals that are limited by the technology. An approach like this could be useful in certain circumstances, such as where a wider group of people are being consulted, or alongside a paper copy map which could be sent for the first and final maps only, rather than for every iteration of changes.

An issue that may become more of a problem in future is updates to the Ordnance Survey (OS) base map. This mapping is continually updated due to changes in real life features or updates to improve the standard of the mapping. Many common grazings boundaries sit on the lowest level of OS accuracy (1:10,000) and a future upgrade of this mapping by OS could mean grazings boundaries are put out of sync with the base map. The legislation does not allow for the Crofting Register to be updated with the OS base map unlike the Land Register.

Other ways to improve mapping efficiency could include work more closely with the RPID drawing office and more collaboration with Registers of Scotland to utilise map data that already exists on the Land Register.

Overlap of the registers

The 2010 Act dictates the information that should be held in the Crofting Register, which is primarily the geographical boundaries. Several other items of information are required including shareholder names, addresses and croft status, which is a duplication of information held in the Register of Crofts. This duplication has led to issues including instances of a mismatch of information between the two registers and confusion with respect to the differences between the statuses used to define croft type between the two registers. There is also an administrative cost in maintaining this information in two registers. There have been suggestions that on the Crofting Register the crofter details could be kept with the croft only, which would mean the grazings share references the croft and not the shareholder.

Longer term there have been discussions around the Register of Crofts ultimately being retired and the Crofting Register taking over entirely. This would eliminate some of the issues surrounding overlap of the registers although some inefficiencies would remain, including the need for two sets of applications, initially to the Commission and secondly to the Registers of Scotland. Whilst there are two registers in place it would be advantageous to remove duplications and instead use better virtual links between the two registers. This would be a way to make admin efficiencies and improve the user experience.

Rectifications

Rectification of a registered grazing can only be done by the Commission. Rectifications were higher than expected following registrations during and after the project. Frustrations have been reported from committees and owners regarding guidance and time taken to do these. To do these the Commission initially followed a similar approach to the pre-registration consultation, however this proved too resource intensive. Now the Commission asks whoever is seeking the rectification to provide all maps and evidence of agreement from relevant parties. For a limited time, the Commission adopted a policy to only process rectifications where it could be demonstrated that the Commission made a mistake. However, a wider view of 'mistake' as referred to in the legislation, is now taken, which is in the interests of ensuring accuracy.

Rectifications within the 9 month challenge period results in the challenge period being reset and means notifications should be re-issued. However, rectification after the challenge period does not reset the challenge period, which is an inconsistency in the legislation. This can be mitigated by the Commission ensuring that they are satisfied with the proposed rectifications the agreement of them from the committee, landlord as well as adjacent occupiers and owners.

Another issue brought to light has been where resumptions are sought on registered grazings that fall partially or entirely outside of the registered area. In these cases, a rectification is needed before the area can be resumed. This implies that areas may have been missed off registrations that aren't currently used as part of the grazings but still technically are such as road verges or areas around buildings. This is a concern and again demonstrates the importance of a thorough consultation period.

A consultation wider than just the committee and owner could help minimise the rectifications and challenges. For this to be effective, it would need to be carefully structured to ensure that contributions from other parties are time bound and that it was secondary to the main process as specified in the legislation, whereby the committee and landlord are consulted. In the case of disagreement there may be the option to make a section 53 reference to the Land Court to determining the boundary before proceeding with the registration.

HOW TO PROGRESS GRAZINGS REGISTRATIONS

The issues presented above indicate that a gradual approach to grazings registration may be most appropriate. A relatively slow pace to this work would give sufficient time for all the issues with boundaries and shareholders to be resolved. It would also mean that resources put into this work are kept to a minimum and the knock-on effects to other teams are small.

Suggested structure to progress grazings registrations:

1 B1 Grazings Officer
0.75 B1 GIS Mapper
0.5 A3 Administrator
0.2 B2 Manager

Staff costs	£97,050
Other costs (ROS fees, advertisements, printing, GIS license)	£5,000
Total	£102,050

The above costs reflect the full cost to the Commission. In practice there may be scope for flexible use of existing resources where there are overlaps with similar work already taking place in the Commission. The spending required would be at a similar level to other recent additions to the Commission staff compliment such as the two B1s to RALU (£82,000 + management requirements) and the two B2s to development (£98,000 + management requirements).

Keeping registrations to a small number of specialist staff should also mean better continuity for committees and landlords engaging in the process. This will hopefully minimise the frustrations that were reported by grazing committee members in Sleat and Ferrindonald surrounding communication and administration issues.

Based on the level of resources given above we can expect 10-25 grazings to be registered a year (based on the rate of registration and staff level in the previous project as well as the fact that the remaining grazings include more challenging grazings to register). This would likely mean over 30 years to complete all the registrations so there would need to be a long-term commitment to this work.

There would also need to be a lead in time factored in before grazings registrations can be expected. This is due to the time taken to prepare grazings for registration and the need to create new workflows as the old ones are on an out-of-date system, as well as adapting processes where appropriate. Establishing a definitive list of common grazings should also be tackled as an early part of this body of work.

Efficiencies could be found, for example by registering grazings that have recently had new regulations drawn up or by looking at adjacent grazings contemporaneously. There could also be consideration given to addressing grazings that the Commission would like to see better used and thereby engage the shareholders and get a better picture of the situation. This could build up a dialog and act as a springboard for Commission staff to encourage more effective use of grazing land.

CONCLUSION

Registration of grazings in the Crofting Register is an important step for crofting. It brings greater security of rights to grazings, which comprise the largest area of crofting land and nearly 7% of Scotland's total land mass. The long term value of registration is clear and tangible benefits have been reported by committees and landlords.

Some of the issues surrounding grazings registration have been explored and considered going forward. These have highlighted that the process for registration takes time and so a low level to this approach is recommended with two or three key staff rather than a large team.

Using technology and learning from experience could help improve the efficiency of the work. Of particular importance is having an effective consultation process to ensure the register contains accurate data and to minimise issues and further work later on.