

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE AT 9:00 ON 4 OCTOBER 2023

Present:	Rod Mackenzie	Chair
	Andrew Thin	Commissioner
	Mairi Renwick Mackenzie	Commissioner
	Duncan Gray	Commissioner
	Iain Maciver	Commissioner (via Teams)
	Duncan Macaulay	Commissioner (via Teams)
	Colin Kennedy	Commissioner
	Donald Macdonald	Commissioner
	Bill Barron	Chief Executive
	Jane Thomas	Director of Corporate Services & Minute-taker
	Aaron Ramsay	Director of Operations
	David Findlay	Commission Solicitor
	Heather Mack	Head of Policy, Grazings & Development (item 10)
	Joseph Kerr	Head of Regulatory Support (items 9,11,14)
	Aileen Rore	Scottish Government (via Teams)
	Observers	Members of staff, Assessors and public via Teams

### 1 APOLOGIES AND WELCOME

As the Convener was on leave, Commissioner Rod Mackenzie had been asked to chair the meeting. He welcomed everyone to the meeting, with a greeting in Gaelic, followed in English.

Apologies were received from the Convener, Malcolm Mathieson and from Christopher Reynish, Director of Policy.

### 2 DECLARATION OF INTERESTS

No interests were declared.

### 3 DRAFT BOARD MINUTES FROM 16 AUGUST 2023

The Minute-taker was asked to adjust the wording at the end of the text on item 9, to show that Commissioner Kennedy had abstained on the item.

The Minute was proposed by Commissioner Gray and seconded by Commissioner Renwick Mackenzie.

### 4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING

Director of Corporate Services went through the Action Points, most of which had been discharged or were on the agenda for the Board meeting. Item 3 relating to the circulation of Rules of Procedure for Tier 3 meetings is outstanding. The CEO agreed that this action will be discharged before the end of October.

A 'date completed' should be added to the paper wherever possible and the wording of the Action Point should be identical to that captured in the Minute.

## **5 MATTERS ARISING FROM PREVIOUS MINUTES**

An email was circulated to Commissioners on 12 September, to discharge Action Point 4, on milestones for digital applications. Commissioners wished to record that they accepted the information and expect it to be kept under review, as things change.

## **6 REGULATORY CASEWORK UPDATE**

Commissioners expressed their thanks to the authors of Board papers for taking on board their request for shorter papers, incorporating hyperlinks to more detailed information.

Director of Operations took the Board through the information provided in the paper, explaining that great efforts are being made to understand the breakdown of open cases. This was particularly in relation to the table shown on page 3 of the paper, which illustrates that regulatory applications are just one of a series of case types worked on by staff. Notifications, for instance, make up quite a significant percentage of the recorded casework.

Director of Operations explained that the work being undertaken is part of a journey to fully understand what the staff resource is covering. Commissioners found the information very helpful in the way it was set out and supported the Director's work on developing 'in month' performance statistics to help forecast planned activity. The Director explained that new performance measures are being introduced, to quantify average processing times, taking on board the Commission's risk appetite, for instance in relation to closing incomplete cases.

The Director confirmed that the agreed 28-day change has been enacted but, as the new process has only been live since the beginning of September, it was unlikely that any cases would yet have been closed under this initiative. It was agreed that this information would be reported by email to the Board on a monthly basis.

<b>Action Point 1</b>	<b><i>Email Board with the number of incomplete cases closed after 28-day reminder issued (on a monthly basis).</i></b>
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## **7 ANALYSIS OF DELAYED CASES**

The Director of Operations explained the paper has been put together in response to a request from the Board and tries to answer the question, 'what is a delayed case?'. It looks at the average time to clear a case at Tier 1. The historic indicative target used for most application types is 16 weeks but has not been met in recent years. A better baseline is needed to check that 16 weeks is still the correct target.

Some analysis has been done, which was shown in the graphs on page 2 and 3 of the paper, and while it is not yet possible to break this down fully into all Commissioner areas, it will be in future.

Commissioners welcomed the clarity of the information and the focus of the analysis and suggested that elected Commissioners receive a breakdown for their area once cases go over an agreed deadline. The need to support and encourage staff at all levels to take decisions was emphasised, as making no decision because a case is delayed for a variety of reasons has no benefits.

The Director of Operations confirmed that the Commission is learning from other regulators and targeting older and more difficult cases, checking those cases which appear not to have moved for some time. Every regulator wants to clear cases, so analysing blockages is a focus.

There was support for the direction this work is heading in, with Commissioners wishing to get involved in helping to resolve local issues. It was agreed that there should be a further update on this.

<b>Action Point 2</b>	<b><i>Provide further update to the Board on delayed cases by area.</i></b>
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## **8 QUICK FIRE REVIEW ON IMPACT OF SHORT-TERM MEASURES**

The Director of Operations presented the paper and was thanked for the update. There were no questions.

## **9 RESIDENCY AND LAND USE TEAM UPDATE**

The Commission solicitor presented the paper, which had been written by the Head of Regulatory Support. It sets out the work of the team, which works to change things on the ground in crofting communities.

There is a direct link between the results of the Annual Notice and much of the work of the team, and there is also a current focus on long-term unresolved succession cases. The team is being more pro-active and going on to do more work on owners of vacant crofts.

Commissioners felt this small team should be congratulated on what they have achieved and would like to see good news stories in publications like The Crofter.

The Head of Regulatory Support reflected that the team has been extending into new areas year on year. For example, since the paper was written, the team has terminated 2 tenancies whose crofters were originally contacted because they had not returned the census. Commissioners thought this is evidence of good progress.

<b>Action Point 3</b>	<b><i>Draft good news story on work of RALU team and keep feeding stories through on the work of the team.</i></b>
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## **10 PROGRAMME FOR GOVERNMENT AND DEVELOPMENT TEAM PRIORITIES**

The Commission solicitor introduced the paper, explaining that it had been written by the Head of Policy, Grazings & Development, who joined the meeting via Teams. The paper asked for direction from the Board on the priorities for the Development team. The priorities set out in the paper have been integrated with the Programme for Government and, over the two years since the team was formed, the focus has been on 'promoting active crofting' and 'visibility of crofting and the Crofting Commission'.

Commissioners recognised the cross-cutting themes in the paper and hoped to see some targets set for the future, so that the achievements of the team could be measured, in the same way that it is possible to measure progress for RALU.

Commissioners then went on to discuss peatland restoration and the issues this throws up for crofting communities and grazings committees. There was agreement that there is a lot of misunderstanding on peatland issues and that the Code does not fit crofting well. There is also a degree of urgency in helping to ensure that any benefits to be derived from new opportunities on carbon capture, biodiversity, and natural capital, as well as woodland and peatland restoration, are shared with crofters.

The Chair brought the meeting back to consider the Recommendations set out in the paper, with members agreeing the priorities outlined and also agreeing that a steering group, potentially also involving CCARs, is set up to oversee work on the Future of Crofting priority.

<b>Action Point</b>	<b><i>Establish steering group comprising staff and Commissioners and potentially CCAR's, to oversee work on the Future of Crofting priority (revised at the meeting on 6 December from a Decision to an Action Point).</i></b>
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<b>Action Point 4</b>	<b><i>Draft discussion paper on opportunities and challenges for crofting communities to benefit from government aspirations on carbon capture, peatland restoration and the peatland code.</i></b>
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## 11 PARAMETERS IN APPLICATIONS

The CEO introduced the paper, explaining that it is about the system of parameters, based on the Policy Plan. The paper explains how parameters work for the two most common application types, using the Tier 1 checklist. If cases need to be escalated to Tier 2, there is not a backlog to hear them but there is an involved process to prepare cases for Tier 2. To address this, changes have been made so that it is no longer necessary to prepare a full case paper.

Commissioners were concerned that the Action Point from the August meeting was to come back with a paper reviewing the parameters, which it was felt the paper did not do. The CEO explained that to set out all the parameters would produce a long list, with a lot of duplicated information.

Discussion then focused on the 0.2ha parameter used in decrofting applications. Decisions for cases under 0.2 could be taken at Tier 1 but anything over that limit required extra consideration. The CEO thought extending the parameter would result in a lot of large house sites. However, Commissioners did not agree, citing topography in rural areas, ground source heat pumps and byres as examples of reasons for requiring larger sites, feeling that the application of a 0.2 limit was being applied too rigidly.

The Commission solicitor drew attention to the fact that for historic reasons a lot of the crofts in the Western Isles, and in particular the Isle of Lewis, are smaller than the average extent in other areas, (many being less than 1.5ha) so a consequence of increasing the parameter could have a disproportionate effect on the area with the largest number of crofts. He also reminded the Board that reasoning associated with the relevant parameter must be consistent with the 1993 Act.

Head of Regulatory Support explained that if the figure was revised upwards, the Board could be delegating approvals for large house sites.

However, Commissioners reflected that few applications to decroft end up being refused but much time is taken to reach the point of approval, so extending the parameters would streamline the process. The CEO, however, pointed out that there was a higher rate of refusals for decroftings than most other application types.

The Commission solicitor asked for clarification on whether the proposal to extend the relevant parameter from 0.2 to 0.4 hectares was for section 25 (1)(b) applications only, not for Reasonable Purpose applications, which are dealt with under section 25(1)(a) and require the Commission to consider a much wider range of factors.

Board members discussed the proposal from the point of view of applying the change to existing statutory house sites only and it was also noted that there is a danger that an application could allow for speculative house sites without any scrutiny. After some discussion, most Commissioners agreed that the consideration related to the relevant parameter for the existing statutory house site.

It was agreed the proposal covered Croft House Site and Garden Ground applications only. This decision was agreed, with Commissioners requesting a paper reviewing other parameters, so that the Board can think things through.

<b>Decision/ Action Point</b>	<b><i>Alter parameter from 0.2 hectares to 0.4 hectares in CHGG decrofting applications</i></b>  <b><i>(Changed from Decision to Decision/Action Point. This change is acting on an instruction issued at the Board meeting on 6 Dec).</i></b>
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<b>Action Point 5</b>	<b><i>Draft paper reviewing existing parameters.</i></b>
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## 12 FORWARD BUDGET ISSUES

The CEO presented the paper, which is a position statement. The paper sets out the pressures that the Commission is under, with a year of protection from inflation required if we are to build on efficiency and productivity improvements.

Commissioners highlighted that this was a stand still budget statement and also that there are concerns about staffing levels in the Grazings team. The CEO confirmed that the Commission will shortly be recruiting a new officer for the team to fill a vacancy.

There was some concern about the need to focus more on planning ahead for 5 years, rather than to focus on 24/25. The CEO referred to the Medium-Term Financial Plan, which goes to the AFC for consideration. This is a 5-year plan and perhaps should be discussed with the Board as a whole.

In answer to a question on whether savings from online applications are factored into the MTFP, the CEO said that efficiencies have not been modelled until the backlog is reduced. And on the question of submitting a bid for a capital allocation, especially to cover IT infrastructure investment, Director of Operations replied that costs and risks would need to be worked out first but that an audit is being carried out in early 2024 looking at this issue.

## 13 RoS AND DIGITAL APPLICATIONS ROLL OUT

Director of Operations introduced the paper, which is for information, providing the Board with an update on discussions taking place with RoS, to try to reduce or eliminate a misalignment between the online application system and the current requirement for applicants to complete a paper form for first Registration.

Agents in particular have stated that they will not use two different methods of application, so it is important to do all we can to work with RoS on a solution. Changes to the RoS application system require secondary legislation, which will take approximately 18 months. The Commission is asked to continue to work with RoS to this end.

There is also the issue of verification, with RoS employing a different system to the one used by the Commission. This question is currently with the legal team at RoS. Negotiations will continue.

## 14 EXTENDING THE SCHEME OF DELEGATION

Head of Regulatory Support provided the context for the paper, explaining that the Scheme of Delegation needs to be extended if the Board wishes to delegate cases such as the two grazings committee cases brought to the Board earlier this year.

The situations are covered under section 47(8) of the 1993 Act and section 52(1) to 52(1E) of the 1993 Act.

In addition, Head of Regulatory Support introduced new delegation parameters in relation to previously delegated functions carried out by the RALU team, under section 11(4) to 11(8) and section 23(5) to 23(5ZB) of the 1993 Act.

The paper contained 4 proposals. All were approved.

<b>Decision</b>	<b>Proposal 1</b>
	<p data-bbox="435 875 719 902"><b>To delegate to Tier 2</b></p> <ul data-bbox="435 947 1391 1216" style="list-style-type: none"> <li data-bbox="435 947 1391 1010">• <b>A decision on whether it is deemed necessary to make an enquiry.</b></li> <li data-bbox="435 1014 1391 1111">• <b>Where an inquiry is made, a decision on whether or not the committee members or the grazings committee are properly carrying out their duties.</b></li> <li data-bbox="435 1115 1391 1216">• <b>A decision on whether it is appropriate to draw up an action plan with the grazings committee to identify and resolve any issues to enable the duties to be properly carried out.</b></li> </ul> <p data-bbox="435 1249 655 1276"><b>Not to delegate:</b></p> <ul data-bbox="435 1321 1391 1417" style="list-style-type: none"> <li data-bbox="435 1321 1391 1348">• <b>A decision to remove from office any members or clerks.</b></li> <li data-bbox="435 1352 1391 1417">• <b>A decision to appoint or provide for other persons in their place.</b></li> </ul> <p data-bbox="435 1451 584 1478"><b>Proposal 2</b></p> <p data-bbox="435 1523 719 1550"><b>To delegate to Tier 2</b></p> <ul data-bbox="435 1594 1391 1830" style="list-style-type: none"> <li data-bbox="435 1594 1391 1657">• <b>A decision on whether or not a shareholder has contravened or failed to comply with any common grazings regulation.</b></li> <li data-bbox="435 1662 1391 1724">• <b>A decision on whether to require the shareholder to conform with the grazing regulation in question.</b></li> <li data-bbox="435 1729 1391 1830">• <b>A decision on specifying a timescale for requiring the shareholder to make good any damage which has directly resulted from their contravention or failure.</b></li> </ul> <p data-bbox="435 1863 719 1890"><b>To delegate to Tier 3</b></p> <ul data-bbox="435 1935 1391 2069" style="list-style-type: none"> <li data-bbox="435 1935 1391 1998">• <b>A decision to determine that all or part of a shareholder's share in the common grazings be suspended.</b></li> <li data-bbox="435 2002 1391 2069">• <b>A decision to determine that all or part off a shareholder's share in the common grazings be terminated.</b></li> </ul>

	<p><b>Proposal 3</b></p> <p><b>To add the following to the parameters for delegation for this regulatory function</b></p> <p><b>Parameter: Were representations received following the issue of the notice proposing to terminate the tenancy and declare the croft vacant?</b></p> <ul style="list-style-type: none"> <li>• <b>If No, the case can continue at Tier One who can proceed with giving the notice to terminate the croft tenancy and declare the croft vacant.</b></li> <li>• <b>If Yes, the case should be escalated to Tier Two to consider whether it is appropriate to give notice to terminate the croft tenancy and declare the croft vacant.</b></li> </ul> <p><b>Proposal 4</b></p> <p><b>Parameters: Has the landlord submitted a proposal to re-let the whole of the croft?</b></p> <ul style="list-style-type: none"> <li>• <b>If Yes, the case can continue at Tier One, to consider whether to accept or reject the proposal to re-let the croft.</b></li> <li>• <b>If No, the case should be escalated to Tier Two to consider whether or not to accept or reject the proposal to re-let part of the croft.</b></li> </ul>
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## 15 REPORT ON MEETINGS WITH SPONSOR DIVISION

The CEO reported on a meeting with the new Minister, which had been positive. And there had been a good debate that Commissioner Renwick Mackenzie joined, with the Bill team, discussing joint tenancies.

## 16 SHOULD FUTURE COMMISSIONER ELECTIONS BE STAGGERED?

The CEO provided the context for a discussion on this topic, which had first been raised during a training session on Commission roles and responsibilities. Under the present system, there is a possibility that every 5 years all 6 elected members could change, potentially creating a risk. A Commissioner reflected that in fact one year 8 out of 9 Commissioners changed, due to 2 appointed members stepping down at the same time.

The pros and cons of moving to a more staggered system of elections from 2027 were discussed but there were no firm views in favour of change at this time, given other priorities and the likelihood of increasing budgetary constraints. It was hoped that the Minister would bear in mind the preference for staggering the terms of appointed Commissioners.

<b>Action Point 7</b>	<b>CEO to feedback outcome of discussion on staggering elections to sponsor division</b>
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## 17 HYPOTHETICAL EXAMPLES OF RISK APPETITE IN CASEWORK

The Commission solicitor led the discussion, emphasising that the purpose of the exercise was not to conclude what the decision in the cases should be but to look at how to get there.

### Example 1

This concerned an apportionment application and Commissioners were asked to consider the risks involved in reaching one decision as opposed to another. The example illustrated uncertainty over the status of land, which is an issue that comes up sometimes in real cases.

There was general discussion and agreement amongst Commissioners that attention needed to be paid to what was in the public interest and the views of the grazings committee, with the question raised as to why staff would not come to the same conclusion. The Commission solicitor explained that there can be an element of aversion to risk in the culture of the organisation, which is illustrated by a nervousness in coming to a decision quickly in cases where there are ambiguities.

It was agreed that staff need to be given the confidence to take managed risks, which align with the risk appetite statement agreed by the Board. It was agreed that speeding up the process to a decision is in everyone's interests.

### Example 2

The Commission solicitor explained that the example is not dissimilar to cases that come to Tier 3. If approved, there is a reputational risk, so officers may not know what to advise.

Commissioners felt the role of the planning authority was important and the fact that planning permission had been granted should carry weight in the decision-making process. They would hope that the planning authority would take crofting issues into account and several Commissioners wished to see a greater understanding develop between the Commission and planners, especially regarding the development of Local Plans.

The CEO reflected that it is not possible for the Commission to commit sufficient resources to consider a high number of planning applications but could look at how to be more involved at the Local Plan stage. Commissioners wished to take a pro-active approach, though in the view of the CEO the distinctive roles of the Commission, for crofting and planning authorities for housing development are not always going to align.

A strategic question was raised about the view of the Commission towards housebuilding on owner-occupied crofts, what the Act requires the Commission to do and whether cultivation or housing for the population takes precedence.

### Example 3

This example illustrated a case where there were a high number of objectors and, because of serving comments back and fore, a decision on the case was being delayed. Commissioners were in favour of restricting this dialogue in order to take decisions more quickly. It was agreed that to be even-handed, there needs to be an acknowledged stop point, where no further representations are accepted.

The CEO thanked Commissioners for a clear steer to tighten up this process, which he will discuss with the relevant officers.

<b>Action Point 8a</b>	<b>Consider how the Commission can engage with Planning Authorities</b>
<b>Action Point 8b</b>	<b>CEO to discuss with relevant officers a process for truncating the period during which objections from interested parties will be considered and make the Board aware of the outcome.</b>

## 18 ANY URGENT BUSINESS

After the staff away day, the CEO and Board members wished to consider how to build stronger positive relationships between members and staff. Commissioners hoped that staff might want more engagement with the Board, while respecting the need to avoid directing the work of individuals. There was support for more structured opportunities to interact, especially as so many staff have been recruited since 2020 and have not regularly worked from the office base. The Board members now feel at a greater distance from the staff.

It was agreed that if the only time staff see the Board is at a Board meeting, they are not seeing a rounded view, with few officers being present at external stakeholder meetings, for instance.

Several Commissioners wished to be put in touch with the case officers for their area, which the CEO agreed to, so that the Board member has a clearer view of what is going on in the area. Board members were invited to the Christmas lunch on 8 December, and it was agreed that we would ask staff for their suggestions of how they wish to engage with the Board, as well as setting up a FIKA style session.

<b>Action Point 9</b>	<b>Ask staff for suggestions of how they wish to engage with the Board and set up a FIKA style session between Commissioners and staff.</b>
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## 19 DATE OF NEXT MEETING

The next meeting will be held in Great Glen House at 9am on 6 December 2023.

The Chair then thanked everyone for their contributions throughout the day and closed the meeting at 3:02pm.