

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 8 FEBRUARY 2017

Present:	Colin Kennedy	Convener
	IG Macdonald	Vice-Convener
	David Campbell	Commissioner
	Marina Dennis	Commissioner
	Murdo MacLennan	Commissioner
	James Scott	Commissioner
	Malcolm Mathieson	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulation
	Posy MacRae	Communications Manager
	Jane Thomas	Head of C&CS and Minute-taker
	Gordon Jackson	Scottish Government
		BBC
		BBC
	One member of the public	

1 APOLOGIES AND WELCOME

Apologies were received as follows:

Apologies received from John Toal and Trudi Sharp. Commissioner Pirie had suffered a family bereavement and sent his apologies. The office would send condolences on behalf of the Board. Commissioner Sinclair's flight from Shetland had been diverted to Aberdeen so she would not be able to make the meeting.

The Convener welcomed the two newly appointed members of the Commission, Mr Scott and Mr Mathieson, to their first meeting and handed over to Commissioner Dennis to say a few words on the passing of Mr Donnie Ross, former Commissioner, who died recently. Commissioner Dennis spoke for the whole Commission in reflecting that Donnie Ross had been a true friend of crofting and highland culture, whose death was a sad loss not only to his local community, which he knew so well but to the whole of crofting life.

2 DECLARATION OF INTERESTS

The Vice-Convener maintained the interest he has declared in Mangersta since 2012, as he has a family connection with Finlay Macleod.

Commissioner MacLennan declared an interest in Mangersta because of a current Standards Commission investigation.

Commissioner Dennis declared an interest in Bohuntin because of a family connection with a shareholder in the common grazings.

Commissioner Campbell questioned whether he had a conflict of interest caused by communications received from Mr Kennedy's solicitors which may threaten legal action against the Board. The Convener declared an interest and left the room at this point (10:30). Commissioners agreed to the Vice-Convener taking the Chair.

See Annex A affixed as a contemporaneous explanatory note.

The Convener then returned to the room (10:50).

Commission solicitor declared an interest in 31 Camuscross, as he had previously acted for one of the parties.

3 APPROVAL OF DRAFT BOARD MINUTE OF 14 DECEMBER 2016

The Minute of the Meeting of 14 December 2016 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
1	1	Final	Commissioner MacLennan requested the insertion of the following wording on legal advice:

“Commissioner MacLennan expressed concern about the process by which legal advice on the status of the Brora meeting had been obtained. He felt that as one Commissioner was challenging the Commission’s position on the validity of that meeting, it was anomalous for that same Commissioner to be involved in advising on the questions on which legal advice was sought. The Chief Executive confirmed that the final decision on the framing of those questions had been taken by himself with the Commission’s solicitor, after considering all points raised by Commissioners.”

At 10:55 the Convener adjourned the meeting to discuss an issue with CEO. The CEO and Convener left the room, joined by the Commission solicitor, returning at 11:03.

Due to the absence of elected Commissioners Pirie and Sinclair, the Board could not be quorate if an elected member declared an interest and left the room (Standing Orders 11.4). This meant no business could be conducted by the Board until it was again quorate. It was therefore agreed that the discussion which took place in the absence of the Convener would not form part of the Minute of the meeting but would be annexed to the Minute as a contemporaneous explanatory note.

4 MATTERS ARISING FROM PREVIOUS MEETING

Commissioner MacLennan referred to page 2 of the Minute of 14 December and questioned whether Colin Kennedy was aware of emails sent from his solicitor prior to the Board meeting in December, as the Minutes stated there was no legal threat at that time. Commissioner MacLennan asked if this is a true statement, that there was no legal threat, “at this moment in time”. The Convener confirmed the situation was as stated in the Minute. He then declared an interest and left the room at 11:11. The meeting was no longer quorate.

See Annex B

The Convener returned to the room at 11:16 and made a statement on the personal conduct of members of the Board, which he stated was bordering on disorder. He reminded Commissioners that under item 14 of Standing Orders, the Convener has the discretion to close a meeting.

Commissioner MacLennan received confirmation from the Chief Executive that e-mails from solicitors acting for Mr Kennedy had not been withdrawn.

In answer to a request made at the December Board meeting, the Head of Corporate and Customer Services explained that hard copies of press cuttings which had appeared since the Board meeting of 28 September 2016 were available for Commissioners to peruse. They were being held by the Communications Manager.

5 SHORT TERM WORKING GROUPS UPDATE

There had been no meetings of Short Term Working Groups.

6 REPORT FROM COMMISSIONERS – EVENTS PLANNED AND/OR ATTENDED

Vice-Convener Macdonald had attended the Complaints Quality Assurance committee meeting and would attend a Hearing in March and a Muirburn event in March.

Commissioner MacLennan attended a meeting of the Audit & Finance committee and will be at the Elections count in Stornoway in March.

Commissioner Dennis attended an interview at St Andrew's house to select the new Chief Executive and will attend a Hearing in March.

Commissioner Campbell attended the Audit & Finance committee, the Complaints Quality Assurance committee meeting, the Cross-party group and a Scottish Land & Estates meeting.

The Convener had attended the Complaints Quality Assurance committee meeting and will be at the Hearing in March, which Commissioner Mathieson will also attend as an Observer.

7 CASEWORK UPDATE

The Deputy Chief Executive presented the paper, explaining that quite a lot had been worked on since this was last considered by the Board. The report shows that the highest incidence of cases in the over 3 month category are Croft Registration cases.

Commissioners discussed suggestions for improving reports and the continuing issue of third party delays which impact on Commission statistics. Head of Regulation confirmed that steps are being taken to prioritise cases over 24 months old. Deputy Chief Executive explained lots of things impact on casework, including turnover of staff, if new staff need to be trained but that there are only a very small percentage of cases outstanding at 24 months and that average turnaround times are not increasing, despite an increase in the number of applications.

8 ENVIRONMENTAL OBLIGATIONS

The Commission solicitor provided the context for this paper, explaining that environmental law does impact on crofting and we need to ensure the Commission is compliant with the law. A lot of croft land is subject to environmental designations and the new Board of Commissioners will need to consider an SEA as part of their deliberations on a Policy Plan.

The Commission discussed interaction with SNH on developments on croft land and the responsibility of the individual applicant to ensure consents are in place. Head of Regulation confirmed that application forms have been revamped to put the onus on the applicant.

It was agreed that a further paper should be brought to the new Board, with advice in advance from SG on the SEA and the Policy Plan and that the Commission solicitor should provide examples of various scenarios to aid the Board discussion.

9 LOCATING JOBS IN THE WESTERN ISLES

The Chief Executive presented the paper, explaining the options outlined, suggesting this was a provisional discussion ahead of the election of the new Board.

Commissioner MacLennan clarified that it was a Board decision to consider this matter and it should be seen in the context of the turnover of staff in recent years. Stornoway has been used as an example but the point was to ask whether it is right for the economic benefit of the Commission to reside in Inverness, when crofting activity is largely located in peripheral areas, which would proportionately benefit more if high value jobs were placed there.

Commissioners accepted there is merit in decentralising where possible but that this has to be balanced by the need to pool resources and achieve value for money.

It was agreed that the Chief Executive would consider the issue further and bring a paper to the new Board in due course.

10 AUDIT & FINANCE COMMITTEE REPORT

(a) Update from Chairperson

Commissioner MacLennan introduced the papers, confirming that the audit plans are running to time. He explained that the Commission is still waiting for the internal audit report into Governance and Risk Management and that this, along with the SG Governance Review, is expected soon. In due course, as part of the Annual Report and Management Accounts, the Governance Statement covering the last year will be important.

(b) Approval of draft Minutes

The Board noted the draft Minutes.

(c) Risk Register

The Chair explained that all items marked in green on the Risk Register indicated changes. Item 150 was highlighted as standing at the maximum risk score but the committee was reassured by the confirmation on indemnity from sponsor division. The Chair explained that in light of the legal action then being threatened by the Convener, the Chief Executive had clarified that any legal costs of action against the Commission or Commissioners, would be met by the Crofting Commission. The Chief Executive was thanked for this clarification and the Chair asked that this be highlighted to the new Commissioners, in terms of financial indemnity, given that the Commission has lost its status of having Crown Immunity.

The Commission discussed the 2016 Census and were disappointed that third party errors had caused extra work for staff and confusion to customers. It was confirmed that the costs associated with the errors were being borne by the third party, excluding the staff costs.

(d) Key Performance Indicators

Deputy Chief Executive presented the paper, highlighting items which now had an amber tag and reflecting that the Commission is now starting to achieve some of the Milestones set by the indicators. It was unfortunate that one target now sat at red (delayed FOI responses).

(e) Approval of Crofting Commission 2017/18 budget

The Chief Executive explained details of the budget for 2017/18 and the division between core and pressure funding, further explaining that the real questions were over what the budget will look like for 2018/19. Senior managers are meeting to consider options based on a variety of scenarios.

The Commission approved the budget for 2017/18.

Decision	The Commission approved the budget for 2017/18
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11 COMPLAINTS QUALITY ASSURANCE COMMITTEE UPDATE

(a) Update from Chairperson

Vice-Convener Macdonald took the Commission through the items considered by the Complaints Quality Assurance committee, which met for the last time under the present Board in January.

Since the meeting, the SPSO had concluded their investigation into the 14 Glen case and had not upheld the complaint against the Commission.

The Commission appreciated the efforts made by staff to resolve complaints, noting it was good to see over 20 members of staff come forward to receive training on complaints handling recently.

On lessons learnt, the Commission would feedback to RPID that delays in receiving reports from area offices continue to result in complaints from our customers.

No new Stage 2 complaints for investigation had been received in the present quarter.

The Convener wished to record his thanks to Commissioner Macdonald and Commissioner Campbell for their work on the committee and appreciated the improvements that had been made in this area of business over the last few years.

(b) Approval of draft Minutes from 25 January 2017

The draft Minute was noted by the Board.

12 CORPORATE PLAN

Deputy Chief Executive presented the revised plan, explaining the timing since the last Stakeholder feedback. The Plan will need to go to the Minister with the inclusion of some high level indicators, to be agreed. It will be submitted with the Business Plan. This was agreed.

13 BUSINESS PLAN

This was due to be tabled at the meeting but is still being worked on and will be considered with the revised Corporate Plan. It will be forwarded for discussion at the Board meeting in March.

14 DATE OF NEXT MEETING

29 March 2017 – Great Glen House

The Chief Executive explained the format for the final meeting of the Board will be different because the elections to the new Board take place on 17 March. New members will therefore be invited to join the current Board members on the day. There will be a limited amount of business, which they will observe, followed by informal discussions.

15 ANY URGENT BUSINESS

- **Deemed crofts**

Commissioner Sinclair had requested this item was brought back for further discussion. However, other members of the Board and officers thought it had been dealt with in September. The Chief Executive would therefore clarify the points Commissioner Sinclair wished to raise.

- **Crofting Roadshows**

This had also been requested by Commissioner Sinclair. Updates had been given from each area where a Roadshow took place and the Communications Manager had pulled together an Evaluation report, which she would forward to Commissioners. She would speak to the officer who accompanied Commissioner Sinclair to the Roadshow in Shetland, to see if the Evaluation covered the issues raised by the Commissioner.

- **Grazings Census**

The Grazings Census is ready for committees to complete. The Commission confirmed this should go live before the end of March.

Decision	The Board agreed that Grazings committees should be alerted that the Grazings Census is now ready for completion
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The Board broke for lunch and Commissioner Scott offered his apologies for the rest of the meeting.

16 EXCLUSION OF PRESS AND PUBLIC

The Chief Executive alerted the Commission to the publication of the Scottish Government's Governance Review of the Commission, which would be made public on 10 February.

The Convener then closed the meeting, wishing the new Board every success in their term and thanked everyone for all their efforts over the last 5 years.

Contemporaneous Explanatory Note – Annex A (see Item 3)

The Chief Executive confirmed that the emails referred to had not been withdrawn but concluded they did not raise a particular threat against Commissioners. He confirmed he had written to ask for the emails to be withdrawn. Commissioner Campbell's concern centred on his ability to take part in the meeting in a fair, open and equitable way if Mr Kennedy was also taking part and had not instructed his solicitor to withdraw the threat of legal action.

The advice of the Standards Officer was that the Commissioner may wish to consider his position when the meeting reached item 16(b) on the Agenda, if there was any debate on the item.

Commissioner MacLennan also wished to record his concern regarding the emails received from Mr Kennedy's solicitor on 7 and 13 December, as a material fact. The Chief Executive confirmed that Commissioners were not made aware that the emails had been received until 16 December. Commissioner MacLennan felt there may be a potential conflict if the Convener is present for item 10 on the Agenda, as well as item 16 (b).

The Chief Executive confirmed that the emails referred to the Board meeting of 28 September.

Mr Jackson gave an assurance regarding the indemnity which would cover Board members in the case of legal action in these circumstances. Commissioners reflected that these are complex issues but agreed they felt a duty to carry on and take part in the meeting.

Contemporaneous Explanatory Note – Annex B

In the absence of the Convener, who had declared an interest and left the room, Commissioners discussed page 2 of the Minute of December 2016 and concerns regarding whether or not there was a legal threat against the Board.