

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD IN EDDERTON VILLAGE HALL, TAIN ON 20 OCTOBER 2021

Present:	Malcolm Mathieson	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	James Scott	Commissioner
	Archie MacNab	Commissioner
	Bill Barron	Chief Executive Officer
	Aaron Ramsay	Head of Digital & Improvement
	David Findlay	Commission solicitor
	John Toal	Head of Policy (by Teams)
	Joseph Kerr	Head of Regulatory Support
	Heather Mack	Head of Operations and Minute taker (closed session)
	Mary Ross	Regulatory Support Manager & Minute taker (open session)
	Gordon Jackson, Scottish Government (open session)	
	Six members of the public attended (3 in person and 3 via Teams)/	
	10 staff (8 via Teams, two in person) (open session)	

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English.

Apologies were received from Cyril Annal, Commissioner; Neil Macdonald, Head of Finance and Jane Thomas, Head of Compliance.

The Convener mentioned that it was John Toal's last Board Meeting and on behalf of the Board he would like to thank John for his excellent contribution over his many years of service.

2 DECLARATION OF INTERESTS

No interests were declared in the public part of the meeting.

3 BOARD MINUTES FROM 10 AUGUST 2021

The minutes of this meeting were approved and were brought to the meeting for information only.

The minutes of the meeting held on 15 September would be discussed in the closed session.

4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETINGS 10 AUGUST 2021

The Chief Executive Officer (CEO) said that the majority of the Action Points had been completed but specifically mentioned two:

Action point 1 - *“Consider a rota so that Regulatory staff can take turns as Duty Officer on phones”* – Following further consideration and discussion with the Regulatory staff, the CEO suggested that it was better to continue training the Commission’s receptionist to deal directly with callers. This would allow all Regulatory staff to concentrate on progressing applications.

Action Point 10 - *“Provide Board with weekly update on workload management in Reg team”* – Following further consideration, the CEO suggested that we continue with monthly statistics. He said little would have moved on in one week and the time required to prepare and issue weekly statistics would be counterproductive.

The Board accepted the CEO’s suggestions on both of these action points.

The Action Points from the meeting held on 15 September would be discussed in the closed session.

5 MATTERS ARISING FROM PREVIOUS MINUTES

Commissioner Holt referred to Section 13 of the minutes – *“Commissioners supported the idea in principle of more localism, with staff based in remote locations if possible. The CEO explained this was not cost-neutral and confirmed that a policy on Remote Working was in development and would come back to the Board in a few months’ time.”*

Commissioner Holt asked if there was a plan for when this would be coming back to the Board for consideration. The CEO said that it would be early next year. There were a number of considerations that would affect the discussion: the Workforce Review that is underway, the future budget which will be known in December 2021 and one issue that needs further consideration is that currently it is SG policy staff must be assigned to an office rather than exclusively working in a home environment. While our new officers in the Western Isles have a base in the local SGRPID offices, there could be capacity issues in other areas. In response to a question by Commissioner Scott, the CEO explained that one of the reasons is that officers need an official base for basing Travel and Subsistence claims.

Commissioner Neilson raised the issue of training in a home environment and said it could be difficult for new staff to learn their role. The CEO responded and said that experienced staff tended to work better at home but accepted it could be challenging for new staff. The Head of Operations suggested that moving forward there should be more clarity in our recruitment adverts indicating where staff would normally work in an office environment, home working or a hybrid arrangement. This could encourage a wider field of candidates.

Commissioner Holt said that given the success of the new development team in the Western Isles, additional officers should be considered for other areas which will be an advantage for the crofting community as well as the Commission as they will have local knowledge that they could bring to the role.

Action – CEO to arrange for a paper to be presented to a Board meeting by Easter 2022

Action – More clarity needs to go into recruitment adverts in connection with home working opportunities.

6 PROPOSED CHANGES TO DELEGATED DECISION MAKING PARAMETERS

The Head of Regulatory Support introduced the paper, described how the parameters were initially developed and rolled out. He explained a great deal of experience and knowledge has been gained by operating the Tier system and the proposed changes will reduce the number of cases going to the higher Tiers and will speed up the decision making processing without compromising the quality of decisions. In addition to this, one of the parameters was being changed because of work in connection with the digital applications project and legislative anomaly.

- i. The change relates to reasonable purpose decrofting part croft applications and the proposal, to remove reference to a house site or amenity ground and instead make reference to the extent of 0.2 ha. This change will enable all applications for reasonable purpose to be considered at Tier one, where the area does not exceed 0.20 hectares. In addition to this it is proposed that where the area applied for exceeds the 0.20 hectares figure by 10% or less, that the case should still be escalated to Tier 2, but that a full case paper would not have to be prepared by the Casework Officer. It would be sufficient for the Casework Officer to set out in the covering e-mail the reason for the case being escalated - **Proposed change agreed by Board.**
- ii. The change also relates to reasonable purpose decrofting part croft applications and relates to expressions of demand for the tenancy. If an application is found to be for a reasonable purpose in relation to the good of the croft, the estate, the public interest and the interests of the crofting community and the public interest, and the area applied for is not found to be excessive in relation to that purpose, the case should be dealt with at Tier 1. This will help increase the number of cases dealt with at Tier 1, while ensuring it is only the more problematic cases which are escalated through the higher tiers of delegation.

Commission Neilson sought clarification on how demand is measured. The Head of Regulatory Support advised demand is either specifically expressed for the tenancy of the croft following public advertisement or in cases where we request an RPID report, the reporting officer will, from their knowledge, advise of local demand. While not formalised in the Commission's Policy, it is accepted that there would be demand for croft tenancies in every area throughout the croft counties. The Commission's solicitor advised in a number of SLC decisions it has been accepted that there is assumed demand based on official's knowledge. The Head of Regulatory Support said that the SGRPID assessment of demand has been cited as a factor in the majority of decrofting refusals. However, it would not be the only ground for refusal. **Proposed change agreed by Board.**

- i. The change relates to the functions of assignation and letting where a new entrant indicates that they may use his croft for a purposeful use. The proposal, to remove reference to the landlord consenting to any new purposeful use by the proposed tenant. Under section 5C(4) of the 1993 Act, it is only a tenant who can apply to the landlord for consent to put all or part of the croft to a purposeful use, a proposed tenant has no statutory mechanism to do so.

Commissioner Holt asked how is evidence evaluated? The Head of Regulatory Support confirmed that if there were concerns we would commission an RPID report. It was accepted that we can not guarantee that their proposals will be followed through but if they do nothing, duties action can be instigated. The Commission's solicitor clarified that both cultivation and purposeful use are defined in the Act but it is accepted that purposeful use has a wide definition – **Proposed change agreed by Board.**

- i. The change relates to the division function and the reference to the proposed use of the crofts. The proposal, to remove reference to the proposed use of the crofts and to focus on the size and sustainability of the croft. Following division crofts can change hands through change of ownership, assignation, renunciation and subsequent letting and at the point of division it is not always known specifically how the new crofts created as a result of the division will be used.

Commissioner Mackenzie said division helps with housing issues and not all crofts are created for working the land only. Commissioner Campbell said we should not be so strict about a croft having to be 3 hectares (without a grazings share). We should focus on what is being proposed. The Convener said that these proposed changes are about escalating to the appropriate Tier for decision making and is not about refusing cases – **Proposed change agreed by Board.**

- ii. The change relates to the consent to be absent function and the reference to how the land duties will be met during the period of consent. The proposal, to remove reference to the crofter meeting this duty personally. As the applicant is not going to be resident for the period of consent, it is highly unlikely that they will personally carry out the land use duties during the period of absence. In the majority of cases, the applicant will have arranged for the land use duties to be met by a neighbouring crofter or a family member. This change will therefore allow the majority of cases to be dealt with at Tier 1 where the reason for consent complies with the policy examples, while enabling the case to be escalated where the Casework Officer has concerns that the applicant has failed to demonstrate that the land use duties will be complied with during the period of absence – **Proposed change agreed by Board**

These changes will take effect immediately.

7 UPDATE ON MEETINGS WITH SPONSOR DIVISION

The CEO introduced the paper and reminded the Board that this paper was introduced following an audit recommendation. Both the Convener and CEO attended meetings with Sponsor. As this is the first time the paper had come to the Board, the CEO asked if the format of the paper was what the Board wanted and did they feel more informed? The CEO further highlighted two potential issues (1) the minutes of the routine meeting (prepared by Sponsor) were not available for 6-8 weeks following the meeting and (2) sometimes at short notice, a meeting is arranged and it is not possible to invite anyone other than officials. The Convener confirmed he issued a brief note, giving an overview of the meeting to the Board, in advance of the official minutes being released. The Board members were of the view that this was suffice. In relation to the short notice meetings, the Board accepted that this would happen from time to time and keeping everyone in the loop was key. The discussion concluded with Board members content with the format of the paper and confirmation that they did feel more informed.

8 REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES

The CEO introduced this paper. He highlighted the updates for October were in red and said that good progress is being made. However, two areas of concern are the backlog of work in the Regulatory Team and the CIS governance. Progress is being made to address these points but a fix is not imminent.

Commissioner Holt asked how we know there is a reduction in vacant crofts? The CEO responded that we do not know in every croft but we can measure the work we are doing and the numbers are going up. The census returns are an indication of activity on a croft but it is acknowledged that only 75% of crofters return the census.

Commissioner Campbell said that he found the progress of the development team encouraging and found the presentation at the open meeting on the 19 October informative. However, he understood that the development officers were appointed to serve all of the crofting counties and not just the Western Isles. The CEO responded and said that Covid 19 had restricted travel and some pilot projects were being carried out in the Western Isles. Moving forward it will include all areas. There is also a desire (budget allowing) for additional development officers to be recruited for other areas.

Commissioner Neilson referred to the Census and asked could it be considered a 'breach of duty' not to complete the census? The Head of Regulatory Support advised that it is an offence not to complete the census. The Commission's solicitor advised that it could not be considered a breach of duty.

The Board accepted that a return of 75% was high for a Census. The Head of Digital and Improvement confirmed that following a pilot that was carried out last year, his team again intended to follow up by telephone, crofters who had failed to return their census for the past 3 years. The pilot had proved successful with the vast majority of crofters contacted returning their form.

Commissioner Maciver said we should not lose sight of the good the census is doing. He is aware of crofters who accept they are in breach of their duties and voluntarily do something about it.

Commissioner Mackenzie said that it was vital that we educate crofters as to the definition of cultivation. Many think this only refers to crops and we need to correct this.

Action – Comms Team need to issue information about the definition of cultivation in advance of the census going out.

9 REVIEW OF KEY PERFORMANCE INDICATORS Q2 2021/22

The CEO introduced the paper and highlighted the one with RAG status in red.

Commissioner Scott asked why Grazings Committees could not meeting to discuss the creation of Grazings Regulations? The Head of Policy responded that some Committees were meeting in person but we can not compel them to do so. We have afforded them an option of appointing Committees in the normal manner (at a meeting) or by the re-appointment of the existing committee by Commission Order. We have already advised Committees that this is an option until February 2022.

10 CONSIDERATION OF THE MARKET IN THE ASSIGNATION OF CROFT TENANCIES

The Head of Policy introduced and summarised the paper. The issue of croft prices has previously been an issue as it is now. Much of this paper provided background and context and concluded that the matter had not been directly dealt with within crofting legislation. Also, the Commission solicitor has noted that in a part of the Act covering decrofting, the open market is recognised as the appropriate measurement.

The paper also looked at a previous attempt by the Crofters Commission to control assignation prices and the difficulties involved. While that was in terms of the legislation then in place, current legislation may actually have more requirements within the assignation process. However, statistically it now appears easier to acquire Commission consent.

The 2010 Act itself was considered to provide powers to tackle speculation on croft land. In terms of croft assignation this is covered by the provision of section 58A(7). While noting the streamline process, the initial option provided in the paper, suggested that the assignation process might be scrutinised to ensure it operates to best effect.

The other option in terms of current legislation is to look at the duties enforcement provisions. It was the consensus when the Commission previously looked at access to crofts and affordable crofting at a strategy meeting last year that duties enforcement was where the Commission could have most effect. While the Commission has increased the resources in this area, much greater use of the legislative provisions is required if it is to make a wider impact.

In terms of assignations, there needs to be a meaningful follow up through the duties legislation once any time allowed for taking up residency has expired.

A further option might be to pilot some easily administered Croft Outgoer/Entrant Schemes. These would have the benefit of operating at a more local market level, with all the benefits remaining in the locality and the assurance that crofts are resided on and invested in.

Finally, the Commission had previously advised in 2017 that the matter of croft prices would require addressing at Scottish Government level. It was suggested that if the matter was considered to be a threat to the future of the crofting system that the Commission recommend that the Government set up a specialist panel to specifically examine this topic and to propose options for future legislation.

Commissioner Campbell said we cannot look at this in isolation. Throughout the western world young people are being prevented from accessing property/housing because of funding issues. We need to recognise it is a difficult issue and we cannot solve it ourselves. It is a complex social economic problem. There is an increased drive from croft tenants to purchase their crofts. Tenants are feeling vulnerable, given the investment that many have put into their crofts; they want to own them rather than rent them from a landlord.

Commissioner Scott said in many ways the damage has already been done. The tenant's right to buy introduced in 1976 changed the landscape. However, in his view, the remedy is in the crofter's own hand and they could pass their crofts over for a reasonable price. However, the question remains, how do you regulate the price without affecting the individual's human rights? The answer may be regulation by way of Duties.

The Commission's solicitor said any regulation does suppress the value and regulation has had an effect on the buy to let market.

Commissioner Holt said Duties enforcement was the way forward as it will potentially make more crofts available and will have an impact on prices.

Commissioner Mackenzie said she agreed with Commissioner Campbell, there is no easy answer. She has invested 30 years of her life into the croft and she, like many others, would want a return for her asset if she had no-one to pass it on to and the option was to market it on the open market. In contrast many crofts are changing hands within families for little or no financial cost.

Commissioner Scott said even crofts without investment exchange for high prices as a house site with a good view would command a high price.

The Convener said it is a commercial market and there is little the Commission can do to influence it.

Commissioner Neilson suggested perhaps a supported Croft Entrant Scheme or loan scheme may be the way forward. However, this would require SG support and possibly a change in legislation.

Commissioner Maciver said the Commission should not get involved. While there is an issue with young persons' accessing crofts because of costs, many existing crofters do not see the issue as their problem.

Commissioner Scott suggested that many new entrants are only looking for a house site and it may be the Commission could consider releasing croft land in a planned way to satisfy demand.

Commissioner Neilson added that the Crofting System is envied in agricultural circles.

Commissioner Mackenzie said it hasn't always been that way as in the 1960s, 1970s and 1980s, crofts were readily available.

Commissioner Campbell said the housing policy in relation to social housing changed in 1979 and this reduced the availability of social house adding to the pressure.

The Convener commended the Head of Policy on his paper. He summarised the discussion. The Commission can not regulate prices. There needs to be a greater understanding of what the Commission can and cannot do. Taking Duties action is an option for increasing the availability of land. To achieve increased duties action, additional funding will be required from SG. As the paper has suggested, it would be helpful to follow up with new crofters at a fixed period after they have taken up their tenancy to establish how they are getting on. It was suggested that changes of ownership should be regulated, however this would require a legislative change. There was also an acknowledgement that while in some areas there is a lack of employment opportunities, in other areas there is a lack of available people to carry out essential support work within communities.

Action – Presentation for Cabinet Secretary who is attending an upcoming Board meeting.

11 REPORTS FROM HEADS OF TEAMS

The Convener suggested that these operational reports are removed from the Board Meetings schedule and circulated by email. **The Board agreed.**

The Convener also thanked Aaron Ramsay, Anne Williamson and Lynne MacMillan for their informative and well presented presentations at the Open Meeting in Lairg on 19 October 2021.

(a) IS Team

The Head of Digital and Improvements summarised his paper. The final elements of the website refresh are being put into effect this week. The new questions have been added to the Census and two separate letters will be issued this year with information on how to submit a digital submission. The digital applications will be rolled out soon, with all applications being available by the end of March 22. Testing is underway with Commissioner Campbell and Commissioner Maciver being part of the external testing cohort. The Assignment application in PDF format will be finalised this week. CIS is progressing really well. Testers have been identified and training has been provided. Testing may take place during November but it is possible that the new version will be released without detailed testing given the demands on resources elsewhere within the office. The Dev Ops Engineer has introduced a new quicker facility to add documents to the system. This has been welcomed by staff.

It was raised that Assessors who helped out with phone calls to Census non-returners have not received feedback on how the pilot went.

Action – Feedback to be provided to Assessors who participated in the pilot scheme.

(b) RALU & Reg Support

The Head of Regulatory Support summarised his paper. He highlighted that Census returns rate of 75% (self reporting) is keeping the RALUT team fully tasked. They are working through the Commission's agreed priorities.

(c) Operations

The Head of Operations summarised her paper and advised there is still a big backlog of work. The team have lost a number of experienced staff and while some replacements have been recruited, more are required and staff who have recently joined the Commission are at an early stage of training. A job advert has been drafted for a new B2 member of the team which will include the role of Product Owner.

(d) Grazings, Policy and Development

The Head of Policy summarised his paper. The appointment of Grazings Committees are continuing, some are continuing in the usual way and some are being appointed by Order. The new Regulations are not progressing as quickly as hoped but this is due to issues surrounding committees meeting. Training given in the past will be given online this year in conjunction with FAS and SAC.

(e) Compliance

The CEO summarised the Head of Compliance's paper. He highlighted that despite issues with progressing casework there was no evidence of increased levels of complaints.

12 COMMS PRESENTATION BY ALANA BLACK (JANE CRAIGIE MARKETING)

Alana Black from Jane Craigie Marketing presented her findings following a review of the Internal and External Communications within the Commission. The stakeholder base she had used for the review was Crofters, SAC and Commission staff. In summary, for external communications, the Commission should increase knowledge and understanding of our role and create clarity. For internal communications, there was evidence of welcome methods of disseminating information such as the "All staff fortnightly meetings" and internal newsletter which has recently been relaunched. The appointment of a new Comms officer was also welcomed and she is receiving initial support from Jane Craigie Marketing. Social Media campaigns have started to provide information about our processes. The Development Officers' role is also seen as a positive step forward. The slides from the presentation, which include the detail, will be made available to the Board and Senior Management Team (SMT).

Alana also suggested that Board Members could also actively look for good news stories within their communities and pass them to the Comms Team for publication.

The Convener welcomed the review and thanked Alana for her presentation. He said it would be helpful if there could be an update for the Board on any social media campaigns.

Action – The Comms officer will provide the Board and SMT a weekly media round up of what is being released and how it is being received.

Action – Board members will pass any good news stories to the Comms officer.

13 DATE OF NEXT MEETING

The next meeting will be held on 2 December 2021 with the strategy day on 3 December. The Board agreed that both these days should be face to face meetings. However, joining via Teams would be an option. The Head of Digital and Improvement said that St Kilda in GGH would not be an option as the current capacity is only 12 people.

The public meeting was closed at 12.30 and reconvened at 1.15 for the private session.

15 EXCLUSION OF THE PRESS AND PUBLIC

14 ANY URGENT BUSINESS

There was a short discussion about the recent letter from the SCF to the Commissioners. There was some disappointment about this and comments that they had already discussed the issues with SCF at the recent meeting. It was agreed that no action would be taken in response to it.

The Convener thanked the participants and closed the meeting at 4pm.