



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

EDDERTON VILLAGE HALL, STATION ROAD, TAIN

20 OCTOBER 2021

**CROFTING COMMISSION MEETING
IN THE EDDERTON VILLAGE HALL, STATION ROAD, TAIN
20 OCTOBER 2021 AT 0930 hrs**

AGENDA

- | | | | |
|-----------|--|----------------|-----------------------|
| 1 | APOLOGIES | <i>Oral</i> | <i>Standing Item</i> |
| 2 | DECLARATION OF INTERESTS | <i>Oral</i> | <i>Standing Item</i> |
| 3 | MINUTES FROM 10 AUGUST 2021 (<i>already published</i>) | <i>Minutes</i> | <i>For info</i> |
| 4 | REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (<i>of 10 August</i>) | <i>Paper</i> | <i>For info</i> |
| 5 | MATTERS ARISING FROM PREVIOUS MINUTES | <i>Oral</i> | <i>Standing Item</i> |
| 6 | PROPOSED CHANGES TO DELEGATED DECISION MAKING PARAMETERS | <i>Paper</i> | <i>For discussion</i> |
| 7 | UPDATE ON MEETINGS WITH SPONSOR DIVISION | <i>Paper</i> | <i>Standing Item</i> |
| 8 | REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES | <i>Paper</i> | <i>For info</i> |
| 9 | REVIEW OF KEY PERFORMANCE INDICATORS Q2 2021/22 | <i>Paper</i> | <i>For info</i> |
| 10 | CONSIDERATION OF THE MARKET IN THE ASSIGNATION OF CROFT TENANCIES | <i>Paper</i> | <i>For discussion</i> |
| 11 | REPORTS FROM HEADS OF TEAMS | | |
| | <i>(a) IS Team</i> | <i>Paper</i> | <i>For info</i> |
| | <i>(b) RALU & Reg Support</i> | <i>Paper</i> | <i>For info</i> |
| | <i>(c) Operations</i> | <i>Paper</i> | <i>For info</i> |
| | <i>(d) Grazings, Planning and Development</i> | <i>Paper</i> | <i>For info</i> |
| | <i>(e) Compliance</i> | <i>Paper</i> | <i>For info</i> |
| 12 | COMMS PRESENTATION BY ALANA BLACK (JANE CRAIGIE MARKETING) | <i>Oral</i> | <i>Presentation</i> |
| 13 | DATE OF NEXT MEETING
2 December 2021 – Teams | | |
| 14 | ANY URGENT BUSINESS | | |
| 15 | EXCLUSION OF THE PRESS AND PUBLIC | | |

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD BY TEAMS AT 9AM ON TUESDAY 10 AUGUST 2021

Present:	Malcolm Mathieson	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Vice Convener
	Archie MacNab	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal	Commissioner
	James Scott	Commissioner
	Bill Barron	Chief Executive
	Anne Williamson	Business Analyst (open session)
	David Findlay	Commission solicitor
	John Toal	Head of Policy & Grazings
	Joseph Kerr	Head of Regulatory Support
	Neil Macdonald	Head of Finance
	Karen MacRae	Crofting Development Officer (open session)
	Jane Thomas	Head of Compliance and minute taker
	Gordon Jackson/Aileen Rore Scottish Government (open session)	
	Assessors/staff/members of the public (open session)	

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. Commissioner MacNab was warmly welcomed to his first Board meeting.

Apologies were received from Head of Crofting Development, Head of Digital & Improvement and Head of Operations & Workforce, who were all on annual leave.

2 DECLARATION OF INTERESTS

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

3 BOARD MINUTES FROM 13 MAY, 20 MAY, 3 JUNE, 8 JUNE, 22 JULY

The Minutes of these Board meetings (13 May Public and the remainder Special Board meetings held in private) had already been approved and were brought to the Board for information. There were no questions on the Minutes.

4 REVIEW ACTION POINTS FROM 13 MAY 2021

All Actions had been progressed and the updates were confirmed as accurate.

5 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising from previous meetings not dealt with on the agenda.

6 APPROVAL OF ANNUAL REPORT AND ACCOUNTS 2020/21

The Convener commended the report and the quality of the information it contained and the assurance it gave on financial controls within the organisation. Finance Manager explained that the draft report had previously been circulated to members and considered by the Audit & Finance Committee. It came before the Board for final approval and sign off.

Pat Kenny, representing the external auditor, gave a brief overview of the report, reflecting that it was of a very high quality and that he was happy to commend it to the Board.

The Commission formally approved the Annual Report & Accounts.

The Convener thanked all those who had been responsible for pulling the information for the report together to such a high quality.

Decision	<i>The Commission formally approved the Annual Report & Accounts for 2020/21</i>
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7 AUDIT & FINANCE COMMITTEE REPORT

(a) Update from Vice Chair

This was Commissioner Campbell’s first report to the Board as Vice Chair of the committee. He explained that the committee met on 27 July 2021 and had a full agenda, which included consideration of the final accounts. He wished to commend the work of the Finance Manager.

He confirmed that the committee is concerned about the timeline for IT projects, but this would be discussed later in the meeting.

The Convener thanked Commissioner Campbell for stepping into the Vice Chair role, adding that this provided welcome continuity.

(b) Draft Minutes of 27 July 2021

There were no questions on the draft Minutes.

(c) Review of Key Performance Indicators Q1 2021/22

The Convener confirmed that this was the last time the KPI’s would be considered separately by the committee and that they would now be coming straight to the Board on a quarterly basis.

There were no questions on the report.

(d) Annual Report on Committee Activity

The Convener trusted everyone had read the report, explaining its purpose. The Board was content with the report.

8 UPDATE ON PEATLAND & WOODLAND PROJECTS

The Commission solicitor led the discussion on this topic, reminding members that there had been a paper a few months earlier. He commented that government funding for peatland restoration is likely to increase over the coming years, given the emphasis on the need to combat climate change.

He reported on discussions held with the John Muir Trust, which had been attended by staff and Commissioner Holt and had been very positive from a crofting point of view. As estate landlords, the trust is keen to see crofters benefit from peatland work carried out on the estates and wish to take a collaborative approach to land management.

The Commission, though not a major player, is willing to engage with other stakeholders and one focus could be to develop closer relationships with community land- owners. Scottish Ministers have also been in discussions with the Commission on ensuring crofters benefit from developments on their estates.

Issues are also being discussed with Scottish Government and Forestry agencies, around woodland crofts.

Commissioners agreed the need to be kept informed of these developments, as considerable investment will be required if crofters are to see benefits, for instance to compensate for reduced livestock numbers on common grazings, because of restoration work or tree planting. It was feared that there could be negative impacts on the rights of shareholders in common grazings, which made it important for the Commission to engage on these issues.

It was agreed that, wherever possible, there should be Commissioner participation in meetings with external agencies on these issues.

9 STRATEGIC RISK REGISTER

The Chief Executive introduced the paper and provided the background for Commissioner MacNab. He explained the distinction between the Operational Risk Register, scrutinised by the Audit & Finance Committee and the Strategic Risk Register circulated to the Board, which reflects the Business Plan Objectives, via 5 Outcomes.

The Register had been updated in June, so the CEO explained where there has been change since then. He highlighted the inclusion of a risk around CIS and the work needed to mitigate this. A risk to cover Covid had been added but was now likely to reduce in its impact. The risk of most strategic concern is around regulatory throughput of casework and this, along with issues around CIS, would be discussed later in the meeting.

10 COMMUNICATIONS REVIEW

The CEO led the discussion, explaining that the paper provides the background on a review carried out by Jane Craigie Marketing. It has been a long time since there was any professional review of the Commission's communications. The review focused on external comms but also touched on internal communication.

The review found that the complexity of crofting regulation creates a communication challenge, which requires on-going attention. A percentage of respondents reported that the Commission feels remote and difficult to contact but also singled out the Grazings team, praising its work on stakeholder engagement.

The CEO was pleased to report that a new Comms Officer will be starting in post on 16 August and one of her priorities will be to act on some of the recommendations in the review.

The review suggested softening the image of the Commission, but Board members agreed this was not always appropriate, as the Commission needs to be seen as the enforcer of Duties. There was concern about the perception that the organisation is remote and hard to contact and support for the idea of a Duty Officer, to be available to take calls during office hours. Commissioners would like to see this role filled by Regulatory staff on a rota basis.

Responding to a question on the continuing input of Jane Craigie Marketing, the CEO confirmed the company has been engaged on a short-term basis to cover the period when there was no Comms Officer in post.

It was agreed that the Board need to consider a detailed Communications Plan at their next meeting. This was captured as an Action Point.

11 PROCESSING ARRANGEMENTS FOR CROFTING CENSUS 2021

The Board had previously received a paper on this issue and so the CEO wished to ensure public confirmation of the decision to outsource the processing of the 2021 Crofting Census. This was agreed.

Commissioners discussed the need to press on with plans for digital returns only, even if this means that this will result in a lower response rate. The CEO confirmed we would repeat the exercise of telephoning a selection of individuals who may not return a form, based on previous years and that we would not issue a returns envelope this year.

There was discussion around the possibility of involving the Fiscal's office in issuing fines or acting against non-returners. It was agreed to ensure any Comms campaign made the legal duty to complete the form clear and the sanction should be clearly stated on the form.

12 GAELIC LANGUAGE MONITORING PLAN – ANNUAL REVIEW

Head of Business Support explained that the Gaelic Language Plan is monitored by the SMT on a quarterly basis and comes to the Board once a year for review, before a report is written for Bord na Gaidhlig in September.

Members were content with the activity being undertaken to meet our commitments in the GLP. In answer to a question, Head of Business Support confirmed that the main telephonist is a Gaelic speaker. This is an Essential Criteria for the post.

13 STAFF TURNOVER

The Chief Executive introduced the item, explaining that the perception is that there has been quite a turnover of staff over the last few months, certainly compared to last year, when there was very little. Looking at the patterns over the last 5 years, he explained that there is little movement at B2 grade and above and the highest turnover is at A grade. Some of these officers will be getting promotion within the Commission and others largely leaving for promoted posts within SG.

The Commission is recruiting actively to fill any vacancies that arise, using agency staff when appropriate, training staff and supporting a call for a review of the A band grading, from A3 to A4, for the Regulatory team.

The CEO reported that a challenging longer-term effect of Working from Home and the probable development of hybrid working patterns is that more civil service and potentially other posts could become location neutral in future, meaning that our staff could be attracted to vacancies previously closed to them, if located in the central belt, for example.

Commissioners expressed concern that staff may be leaving because their workloads are too high and want this to be looked at, so that workloads are shared. It was confirmed that there is a template for Exit Interviews, and these should be carried out; one Commissioner suggesting that they should be carried out by an independent person, rather than a line manager.

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.

14 BOARD MEETING DATES 2022

The Convener welcomed the opportunity to get the meeting dates fixed for next year, with the obvious caveat that a new group of Commissioners may need to review this in April 2022. It was confirmed that the present Commissioners will join the new members for their meeting on 31 March and this date will be highlighted in comms around the election.

The only date which appears to be an issue is 3 February so an alternative to this would be arranged. The Board agreed all of the other dates.

15 UPDATE FROM APPLICATION FORM REDESIGN STWG

Head of Regulatory Support introduced the item, explaining the background to the project and why it was decided to focus on applications made under Section 58(A) to begin with. These were prioritised because the individual requires the consent of the Commission to do something. As the function types also have similarities, it made sense to group them together.

Eight application types have been looked at and the STWG was helpfully joined by 2 members of the IS team, both with Regulatory backgrounds. Work on several application types is now 100% complete, for form redesign. Commissioners were very pleased to hear that we are close to being able to demonstrate what the new online forms will look like, and it is hoped that a demonstration will be possible as part of the public meeting in Lairg on 19 October. Officers agreed to take this forward.

The outstanding modules are now being looked at, a sub-group has been set up and the non-58(A) application types will be considered. There is at the same time a lot of work being done by the IS team and a contractor, to cover the digitising element of the project.

The Board commended the work of the STWG and the IS team and look forward to seeing this very significant project move forward to its target date for completion.

16 REPORTS FROM HEADS OF TEAMS

(a) IS Team

The CEO gave an update, based on the paper supplied to the Board. He drew attention to the 4 topics highlighted and paid tribute to the team, as these projects are all significant in scale and importance to the organisation. He explained that the work completed on the website and on the digital forms has prompted the Commission to look at processes, to see if any streamlining is possible.

On CIS, timescales continue to slip, which is disappointing, but progress is being made. The migration to the Cloud is a large project which brings benefits, but some issues have been uncovered, which need to be addressed.

Commissioners were pleased to hear that the website improvements had made the RoC searches intuitive and that the online forms would be pre-populated as much as possible, to reduce the risk of error by the applicants. The Business Analyst also confirmed that the applications received are now on the website and that Decisions will be soon.

(b) RALU & Regulatory Support

Head of Regulatory explained what had been identified on the crofting census spreadsheet now that the returns had been analysed for 2020. The total number of cases for the team to follow up is 908, with 421 self-certified non-residents being the first to be tackled. Everything is in place to follow the cases up to the next stage. The team require more information on some categories and are liaising with the IS team for data reports on these.

Commissioners want to be sure crofters are aware of this work and so it must be part of the organisation's Communication Plan. This was agreed.

(c) Operations & Workforce

The CEO did not propose to say a lot in addition to the paper prepared by the head of the team, as the issues on workload and turnaround times would be discussed in more detail later in the meeting. As an update, he was able to confirm that the statistics for July were a little better and that a notice has been placed on the website, asking customers for patience. It was confirmed that the numbers of cases shown as open after 12 months is reducing because of focused action.

(d) Grazings & Policy

Head of Team hoped Commissioners had found the paper of interest. The team had been helped from February to April by an agency member of staff, who had been able to contact out of office committees. The interim arrangement for appointing committees where they could not meet had helped and the Board would be asked if it wanted to continue with this. The paper indicates the type of issues which come to the team. There is quite a variety.

The previous training undertaken by the team would be looked at again, with a view to face-to-face delivery combined with virtual sessions.

Commissioners commended the positive work being completed by the team.

(e) Crofting Development

Crofting Development Officer introduced the paper, explaining that news releases are being prepared on a weekly basis, for the Commission's social media platforms. The leaflet created by the team has been well received and a good news story from RALU has been issued today regarding a case on Colonsay.

Team members are experiencing more direct contact with the public, raising their profile. Letters have gone out to 50 grazings committees which have been out of office for some time, with the aim being to help them resume office if possible. There have also been meetings with HIE, and more work is needed to find practical ways to collaborate.

(f) Compliance

Head of Business Support explained that the quarterly statistical report on how the Commission meets its compliance obligations as a Scottish Public Body is emailed to SMT and Commissioners but, following an audit recommendation, it will now come to a Board meeting once a quarter. The Complaints statistics and report also go separately to the Audit & Finance Committee. Statistics and other information on Complaints and FOI/EIR requests are posted on the website every quarter.

In answer to a question, Head of Business Support said she would consider how a report could be compiled for the Board showing how and when other non-statutory governance documents are updated and reviewed.

17 DATE OF NEXT MEETING

The next public Board Meeting will be held on 20 October in Lairg, preceded by an evening public meeting on 19 October. There will be a special private Board Meeting on 15 September 2021 at the Beaufort Hotel, Inverness.

18 ANY URGENT BUSINESS

No urgent business had been notified.

The Convener thanked everyone for their contribution and closed the public part of the meeting at 12:00.

19 EXCLUSION OF THE PRESS AND PUBLIC

This brought the business of the meeting to a close. The Convener thanked everyone for their participation and closed the meeting at 14:15.

APOLOGIES – ORAL

DECLARATIONS OF INTEREST – ORAL

ACTION POINTS FROM BOARD MEETING 10 AUGUST 2021 – UPDATED FOR 20 OCTOBER 2021 BOARD MEETING

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE
1	Consider a rota so that Regulatory staff can take turns as Duty Officer on phones	Mary	Report back to Board in Sept
2	Bring detailed Comms Plan to Board meeting – to include comms on RALU work	HM?	Paper for Sept Board
3	Clarify what annual notice form says about sanction/non-compliance	AR	DONE
4	Alter date in Feb for Board meeting	Jane	DONE (FM emailed)
5	Make sure election comms mention date (31 March) for first Board meeting.	HM?	Include in Election Comms campaign
6	Online application form live demo- arrange for Lairg public meeting. Need large screen.	AR/Jane	FM asked to follow on re large screen AR email 11/08 refers
7	Investigate how to provide evidence to Board that governance policies/documents are reviewed and updated by CEO/SMT.	Jane/Neil	Email to Board – Workplan for AFC DONE
8	Steering Group to submit report on options,	AR input	DONE
9	Delegated decision-making (re Tier 3) Paper required.	JK	Oct Board
10	Provide Board with weekly update on workload management in Reg team. Consider bringing back recent retirees.	BB/MR	Weekly
11	Request a preliminary view from SLC on private companies and o-o crofter issue.	DF	Case study sought

MATTERS ARISING FROM PREVIOUS MINUTES – ORAL

CROFTING COMMISSION MEETING

20 October 2021

Report by the Chief Executive

Proposed changes to delegated decision making parameters

SUMMARY: DELEGATED DECISION MAKING

Part of the CEO's Report at the Board Meeting held on 10 August 2021 included the action that *"The Regulatory Support Team will carry out a review of the current parameters of delegation for each of the regulatory functions, to determine whether changes can be introduced to reduce the number of cases which require to be escalated to the higher tiers."*

This paper comes to you to discuss and agree suggested changes to the current parameters of delegation

1. Amendment to parameter relating to the following regulatory functions

**Decrofting Part Croft by a landlord or tenant (Sections 24(3) and 25(1)(a));
Decrofting Part Croft h by an owner-occupier crofter (Section 24A and 25(1)(a)).**

1.1 The current parameters in relation to both functions includes the following:

Current Parameter: *Does the application relate to dwelling houses or amenity ground?*

If **no**, the case should be escalated to the second tier of decision making.

If **yes**, the case can be considered at the first tier of decision making **providing** the combined area of dwelling house and amenity ground does not exceed 0.20(ha).

The proposal is to replace this with the following:

Proposed Parameter: *Has the applicant applied for an area of 0.20 hectares or more?*

If **no**, the case can be considered at the first tier of decision making.

If **yes**, the case should be escalated to the second tier of decision making.

Reasoning:

We sometimes receive applications to decroft small areas of croft land which meet the reasonable purpose criteria but which do not come under the category of dwelling houses or amenity ground. This change will enable all applications for reasonable purpose to be considered at tier one, where the area does not exceed 0.20 hectares. There is an existing separate parameter to capture whether the application is for a reasonable purpose or not.

We would also propose 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.

1.2 The current parameters in relation to both functions include the following:

Current Parameter: *Has demand been expressed for the tenancy of the croft?*

If **no**, the case can be considered in the first tier of decision making.

If **yes**, the case should be escalated to the second tier of decision making.

The proposal is to replace this with the following:

If **no**, the case can be considered at the first tier of decision making.

If **yes**, but all the other parameters are complied with, the case can be considered in the first tier of decision making.

If **yes**, and one or more of the other parameters are not met, the case should be escalated to the second tier of decision making.

Reasoning:

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 one. This will help increase the number of cases dealt with at Tier One, while ensuring it is only the more problematic cases which are escalated through the higher tiers of delegation.

2. Amendment to parameters relating to the following regulatory functions:

Assignment (Section 8)

Letting by landlord (Section 23(3))

Letting by Owner-Occupier Crofter (Section 29A)

Current Parameter: *Has evidence been provided as to whether the landlord has consented to any new purposeful use by the proposed tenant?*

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.

The proposal is to replace this with the following:

Proposed Parameter: *Has the proposed tenant provided suitable evidence that they will cultivate the croft or put the croft (or part of it) to another purposeful use?*

In considering this evidence the current use of the croft should be taken into account along with the proposed tenant's plans for the future use of the croft, taking into account the size and quality of the land and whether the croft tenancy includes common grazing rights.

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: There are three reasons for this proposed change:

- a) 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.
- b) It is open to the landlord to object to the application either as a result of the written notification of the application from the tenant or in response to the public notification of the application in a newspaper.
- c) We receive a high number of assignation and letting applications where the proposed tenant makes reference to a purposeful use activity as part of their plans to utilise the croft. However, on further investigation most of these prove to be small scale activities ancillary to the main cultivation proposals for the croft, and/or or they are possible mid to long term proposals which are not intended to be implemented until sometime in the future.

The above changes will be reflected in changes made to the digitalised on-line application forms.

3. Amendment to parameters relating to the following regulatory functions:

Division by Tenant (Section 9)

Division by Owner-Occupier Crofter (Section 19D)

Current Parameter: *Are there concerns over the proposed use of the crofts created by the division?*

If **no**, the application can be dealt with at the first tier of delegated decision making.

If **yes**, the application should be escalated to the second tier.

We are not proposing to replace this parameter, instead we are proposing simply to remove this parameter in its entirety.

Reasoning: There are two reasons for the proposed change

- a) The applicant may not be aware of what the plans are for all of the new crofts created by the division. The tenant's plan may, following the division, be to apply for Commission consent to assign the croft; or to renounce the tenancy of the croft. An owner-occupier crofter may intend to transfer ownership to another person or to market the new croft(s) created by the division for sale. In either case, the Commission would then consider when dealing with the subsequent assignation or letting application received following renunciation, whether the proposed tenant will cultivate the croft and/or or out the croft to a purposeful use. The census returns will make the Commission aware of whether any newly created owner-occupied crofts are being cultivated or being put to another purposeful use.
- b) The Commission in dealing with division applications should focus primarily on the parameter that requires the case to be escalated if ***the Commission have concerns about the size and quality of the proposed new crofts to be created by the division.*** A case should be escalated where one or more of the crofts created would be:
 - Less than 3 hectares without a grazing share;
 - Less than one hectare with a grazing share.

Again, the above changes will be reflected in changes made to the digitalised on-line application forms.

4. Amendment to parameters relating to the following regulatory functions:

Consent to be absent (Section 21B)

Extension of consent for absence (Section 21C)

Variation of condition in consent for absence (Section 21D)

Current Parameter: *Has the applicant demonstrated how the land use duties will be met during the period of consent?*

If **yes** and the applicant will personally fulfil the land use duties, the case can be dealt with at the first tier.

If **yes**, but the land use duties will be fulfilled by someone other than the applicant, the case should be escalated to the second tier.

If **no**, the case should be escalated to the second tier.

Proposed Parameter: The proposal is to retain the parameter *Has the applicant demonstrated how the land use duties will be met during the period of consent?* but to change the options by removing the reference to who will fulfil the land use duties during the period of absence to:

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

If **no**, the case should be escalated to the second tier.

Reasoning:

Consent to be absent only gives an applicant consent to be absent from the duty to be ordinarily resident on or within 32 kilometres of the croft. It does not exempt the applicant from complying with the duty to cultivate and maintain the croft or put it to another purposeful use. We therefore require the applicant to satisfy the Commission that the land use duties would be met during the period of consent. As however 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 one 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.

RECOMMENDATION

To discuss and agree whether to accept the changes to delegation parameters set out in this paper.

Date 15 September 2021

Author Joseph Kerr, Head of Regulatory Support

CROFTING COMMISSION MEETING

20 October 2021

Report by the Chief Executive

Report on meetings with Sponsor Division

SUMMARY

This paper lists CEO meetings since the last Board meeting, which have involved Sponsor Division.

BACKGROUND

Among other themes in the Deloitte report was the need to improve the reliability of communications between Sponsor, CEO/SMT, the Convener and the Board, to ensure that the Board as a whole were kept informed of all relevant developments. Various actions have been taken forward to ensure communication improves as recommended, including adoption of a principle that the Convener or another Commissioner should normally be present at all meetings with Sponsor. While the most important of these changes was to ensure improved communication *in live time*, a backstop system is also being implemented whereby each Board meeting will receive a report to summarise meetings that have taken place involving both the SG and the CEO, since the previous Board meeting.

RECENT MEETINGS INVOLVING CROFTING COMMISSION CEO AND SPONSOR/SCOTTISH GOVERNMENT

Topic and Date	Commissioners attending	Lead SG officer(s)	Agenda items	Key outcomes
Routine Sponsor meeting, 18 August	Convener, Vice convener	Gordon Jackson	Azets report, Deloitte report, Elections, National Development Plan, Land Matching Service, Regulatory backlog	Minutes emailed to Commissioners by Bill 1430 on 7 October
Framework Document, 11 August & 24 August	Convener	John Kerr, Gordon Jackson	Revisions to Framework Document to clarify role of the Board, CEO and Sponsor	CC sent SG proposed changes; Malcolm has shared these with other Commissioners. Some of CC's points are still under discussion
Deloitte handling, 30 August	Convener, Vice convener	John Kerr, Gordon Jackson	Probable timing of release of s22 and Deloitte report, and proposed handling	Agreed that both sides' media comments will include a strong focus on the progress that has been made with the CC's action plan
CEO meeting with Cabinet Secretary, 1 September	none	Andrew Scott, Derek Wilson, Gordon Jackson	Personal meeting between Cabinet Secretary and CEO	Agreed that there should be closer communication between SG and CC through the Convener
CC budget and Land Matching Service, 22 September	none	Gordon Jackson	What bid should be made for CC budget in 22/23	Email to Convener 23 Sept at 1046. Sponsor will bid for 5% increase, which could potentially be increased following the Independent Review. Also agreed that SG requests for CC involvement in the Land Matching Service must go through Commissioners.
Elections, 28 September	none	Gordon Jackson Maria McCann (elections lead)	Whether to postpone or proceed with March 2022 elections	Outcome emailed to Commissioners by Bill 1629 on 28 September. Agreement to proceed in March through a commercial elections company if the councils are unable to deliver it
On-Board training, 5 October	7 commissioners	John Kerr, Gordon Jackson	Roles of various parties in the governance and leadership of an NDPB, and relationships between the parties	A few specific actions; the outcome will also feed into the ongoing work of revising the Framework Document.

IMPACT

Regular provision of these reports will ensure that all Commissioners are informed of discussions between the CEO and the SG.

RECOMMENDATION

The Board is invited to comment on the format and content of this report.

Date 7 October 2021

Author Bill Barron, CEO

CROFTING COMMISSION MEETING

20 October 2021

Report by the Chief Executive

Report on Progress against Strategic Outcomes

SUMMARY

This paper invites the Board to consider an overview of progress against the aims set out in the Corporate Plan.

BACKGROUND

In February 2020, Scott-Moncrieff submitted a generally favourable review of Best Value in the Crofting Commission. However, the report recommended that *“In addition to the regular reporting of performance measures and milestones, management should report into the governance structure on the overall progress against the strategy, utilising the corporate outcomes as a basis for reporting.”* The Commission has accepted this recommendation and it has been agreed to report the overall progress against the Corporate Strategy to the Board, every six months.

The Commission’s Corporate Strategy is set out in the Corporate Plan, which has to be produced every five years and must be agreed by the Cabinet Secretary before it is published. The current Plan, which runs to 2022, was initially approved in 2017, and revised in 2019 to better reflect the current Board’s priorities, including their emphases on residency and land use and on communications with crofters, including through assessors. It has been suggested that more frequent, perhaps annual, reviews of the Corporate Plan may be useful to ensure it keeps pace with the changing priorities, opportunities and challenges for the Commission and the Scottish Government.

The Plan identified a number of success factors for each outcome, and these are the basis for the attached report.

Of course, the Plan made no mention of adapting to Covid-19 or of the expanded development role.

PROGRESS AGAINST CORPORATE OUTCOMES

The attached report (**Annex A**) describes overall progress against the aims set out by the Board in the Corporate Plan. This is the third such report, and we have reflected on progress made throughout the term of this Board, as well as the latest 6 month period, and quoting from the 2021-22 KPIs as appropriate.

IMPACT

The priorities and aims set out in the Corporate Plan provide the context for the allocation of the Commission's resources on an ongoing basis.

RECOMMENDATION

The Board is invited to comment on the report and give a steer on the priorities for the next 18 months.

Date 7 October 2021

Author Bill Barron, CEO

PROGRESS AGAINST CORPORATE PLAN OUTCOMES AND SUCCESS FACTORS

Outcome and Success Factors from 2019 Corporate Plan	Overall Progress to November 2020	Update June 2021/October 2021
<p>Outcome 1: Crofts are occupied and managed</p> <ul style="list-style-type: none"> We see reported breaches of duty being resolved successfully with a positive outcome We see a reduction in the number of vacant crofts We see higher rates of residency and cultivation of crofts We see a high return rate on the annual Crofting Census 	<p>The KPI reports record the RALU Team’s success against this measure: in 2019-20, 32 absentees took up residency on their crofts, 28 assigned their crofts, 88 sublet them, and 6 breaches were resolved through termination by the Commission. This work continues, and the RALU Team has also been engaging with selected estates and landlords of vacant crofts. A recent Board decision to limit the use of sublets as a way of resolving breaches should help the RALU Team’s work to have more lasting beneficial impact.</p> <p>We do not have effective measures of the overall rates of residency and cultivation across the crofting counties. However, despite the increased activity by the RALU Team, it is not possible to have confidence, let alone evidence, of an overall improvement in residency and land use – it is perfectly possible that the Team’s gains in a few hundred crofts may be outweighed by reverses elsewhere. The Commission has therefore agreed to increase the RALU Team’s resources and to broaden its work.</p> <p>The response rate fell dramatically for the 2017 census (spring 2018), but has since recovered to the higher level seen in 2016 (76% response rate).</p>	<p>This work has been hampered by Covid-19, but a further 49 breaches were resolved by RALUT action during 2020-21: 16 new consents to be absent, 15 sublets, 12 assignments, 2 crofters taking up residency and 4 terminations. The breadth and pace of the work has increased in 2021/22.</p> <p>Plans to expand the RALUT work were set out in detail in the 2021-22 Business Plan and recruitment of two additional staff is taking place, with the first of these now appointed and based in Benbecula.</p> <p>The response rate for the 2020 census slipped to 73%, perhaps affected by Covid. 73% is, however, still a little above the average response rate for the previous 5 years (71%). One in five returns was submitted online, a sharp increase from the previous year. The decision has been made to conduct the 2021 census almost entirely online. This may weaken the response rate but will improve efficiency and reduce costs.</p>

Outcome and Success Factors from 2019 Corporate Plan	Overall Progress to November 2020	Update June 2021/October 2021
<p>Outcome 2: Common grazings are regulated and shared management practices continue</p> <ul style="list-style-type: none"> • We see an increase in adoption of the new grazings regulations • We see an increase in the number of regulated common grazings <ul style="list-style-type: none"> • We see an increased number of common grazings registered on the Crofting Register 	<p>In 2019/20, proactive work by the grazings team secured a significant increase in the number of grazings committees in office, and they continue to focus on this despite the issues resulting from Covid restrictions in the crofting communities. Revision of grazings regulations in the light of the new template has been gradual but steady. The team continue to give practical assistance and advice to grazings committees and shareholders as necessary.</p> <p>The Commission has not made this a priority and only one additional grazings has been registered since 2016. The Commission is about to launch a review of this work</p>	<p>The grazings team has used powers under the Act to facilitate the continuation of grazings committees or the appointment of new ones, despite covid lockdown. As a result, the number of grazings committees in office has continued to rise. At October 2021 there were 510 grazings committees in office but covid and capacity issues may make it hard to see this rise any further. The team has also delivered online training to grazings committees and continued to research shareholder positions. Together with the template and guidance, which of course remain available, the result is that grazings committees are in a much healthier position than in 2017.</p> <p>No update</p>

Outcome and Success Factors from 2019 Corporate Plan	Overall Progress to November 2020	Update June 2021/October 2021
<p>Outcome 3: Crofting is regulated in a fair, efficient and effective way</p> <ul style="list-style-type: none"> • We see improved turnaround times for Regulatory applications • We see improved quality of applications and improved Customer Satisfaction rates • When our decisions are challenged, the great majority of them will be upheld by the Land Court • We see an increase in services available to crofting communities and other stakeholders through digital delivery • Empowerment of staff to take decisions at the appropriate level, continues to enhance customer service 	<p>The improvement of the regulatory services to customers has been a consistent priority for the Board throughout its term, and especially since the ‘backlog’ difficulties of summer 2018. Considerable progress has been made on a number of fronts:</p> <ul style="list-style-type: none"> - The Tiered system of decision making is now well established and working well. - Priority has continually been given to the staffing of the regulatory team, and in the last year dedicated resources have been devoted to training. The number of cases being processed was at a high level in both 2018/19 and 2019/20, though it will decline this year because of the impact of Covid-19. Turnaround times have improved. - Improvements have been made to the processes for handling difficult cases. In particular, the publication of parameters and the triaging system have increased the overall speed of responses, by anticipating and resolving problems at an early stage. - The Register of Crofts went online in 2017 and details of decroftings were added in 2019. - The Legal and Regulatory Support team have worked hard to ensure decisions are soundly based in the law and explained in strong grounds. Only two appeals have gone against the Commission in the 3½ since the current Board took office. - An improvement project in autumn 2019 identified a number of smaller areas for improvement, which have been implemented. 	<p>Regulatory casework processing was substantially affected by covid-19 during the year, as at various times in the year it affected staff availability, mail processing and connectivity.</p> <p>As a result, median turnaround times significantly worsened: from 8 to 11 weeks for an assignation, and from 13 weeks to 23 weeks for a part-croft decrofting. Besides covid, other causes may have included a more restrictive Commission policy on decrofting applications.</p> <p>The total number of cases discharged during the year 2020-21 was 1033, 500 fewer than the previous, pre-covid, year. However, the number of applications received also fell, by nearly 400, so the increase in the number of cases in progress has been limited to around 100.</p> <p>In 2021/22 volumes of outstanding work have continued to increase, resulting in a critical backlog. There have been many causes of this, including the covid disruption (particularly in 2020), the diversion of staff resource onto IT and other projects, and staff turnover. SMT is giving urgent attention to containing this problem, including by identifying resources for the regulatory team, proposing simplifications to some processes/parameters, and seeking to reduce the number of contacts that are made to chase progress. In the longer term the introduction of online applications should help, but the overall resourcing remains a critical issue and this is being examined as part of the Independent Review of staffing.</p>

	<ul style="list-style-type: none"> - The initial responses to the Customer Satisfaction questionnaire were very favourable. - We have continued to handle complaints and cries for help with sensitivity and skill. The number of complaints being upheld is currently very low. <p>The current priority is to build on these improvements through delivering interactive application forms and an improved release of CIS. Work on both of these is ongoing.</p>	<p>Customer service feedback continues to be positive and complaints numbers continue to be low.</p> <p>Three major projects to deliver online applications, the next release of CIS, and migration to the cloud, are progressing. In addition, an internal audit report has recommended a review of governance of planning and delivery of enhancements to CIS, which is now being considered by a Board led Steering Group.</p> <p>On the advice of the Steering Group, the Board has decided to continue with inhouse development of CIS for at least the next 12 months, but to strengthen its governance, with the establishment of a new Product Owner role and (subject to resources) the recruitment of a second coder.</p>
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<p>Outcome and Success Factors from 2019 Corporate Plan</p>	<p>Overall Progress to November 2020</p>	<p>Update June 2021/October 2021</p>
<p>Outcome 4: The future of active crofting is supported by well-informed engagement with stakeholders</p> <ul style="list-style-type: none"> • We see an increase of collaborative working with Highlands & Islands Enterprise and other stakeholders, on joint initiatives • Crofters and others engage with Commissioners and assessors in an open and constructive debate about the future of crofting. • There is continued recognition of the value of crofting in sustaining biodiversity and reducing food miles 	<p>Perhaps the Commission’s main achievement under this heading has been to restore our credibility. The current Board took office in 2017 at a time when the Commission was poorly regarded by many crofters and crofting organisations, and the new Board made it a priority to be open for dialogue with crofters, for example by attending shows and hosting public meetings. Staff and commissioners have played an active role in the Cross Party Group, the Crofting Stakeholder Forum, the Crofting Bill Group and the Law Society review of aspects of crofting law. We have had an active presence on social media, upholding the values of crofting and of the Commission. As a result, while we still incur criticism for some of our decisions, the Commission’s voice now carries weight and respect.</p> <p>The resources recently provided by the Scottish Government for an expanded development role provide the opportunity for the Commission to progress Outcome 4 in new ways.</p> <p>However, there have also been disappointments. The Commission has not taken forward any substantial joint work with HIE or the Land Commission; It has proved difficult to maintain communications with assessors at the level we had intended; and the considerable work we put in to advising on a Phase 1 crofting Bill has been parked, along with the Government’s progress towards that Bill. The Commission has not been much involved in the debates about the future of support payments, despite this being of huge significance for the future of crofting.</p> <p>The Commission has discussed how crofting can respond to the biodiversity and climate change crises, but arguably could take a stronger public lead on these issues.</p>	<p>A Crofting Development team has been established, with a B3 manager in Inverness and two newly-recruited Crofting Development Officers in the Western Isles. Plans for the work of this team include:</p> <ul style="list-style-type: none"> • Develop a signposting portal within Commission website in order to direct crofters and the public to relevant websites and information related to crofting. This was done as part of the website refresh • Produce information about choices for crofters who are considering passing on their croft. (Currently in draft form) • Investigate reasons why crofts are not passed on (temporarily or permanently) when duties are not met and develop strategies to promote croft turnover. • In addition the team has been meeting with various bodies to identify opportunities to work together. These include Rural Payment and Inspections Division, Scottish Crofting Federation, Farm Advisory Service, HIE, Visit Scotland, NatureScot, Comhairle nan Eilean Siar, Community Land Scotland and several community landlords

Outcome and Success Factors from 2019 Corporate Plan	Overall Progress to November 2020	Update June 2021/October 2021
<p>Outcome 5: Our workforce has the right skills and motivation to perform well, and our governance processes are best practice</p> <ul style="list-style-type: none"> • We see proactive Workforce Planning used within the organisation • Continued investment in the development of staff and the Board • We see increased job satisfaction across the organisation 	<p>A Workforce Plan was approved by the AFC in January 2020, and most of the actions in it have been implemented. The one gap – succession planning – is to be addressed in the next 2 months.</p> <p>In 2020 there has been renewed emphasis on training for regulatory staff and for Commissioners.</p> <p>The overall barometer provided by the annual Staff Surveys showed improvements in spring 2018, a deterioration in spring 2019 (following the ‘backlog’ of the previous summer) and then a marked improvement in 2020. Action plans to address the problematic issues are agreed with staff each year.</p>	<p>A revised Workforce Plan was prepared for AFC in January 2021 and was welcomed by AFC and Audit. However, it has been suggested that this should be revised further to include a more definite forecast of the staffing position that the Commission wishes to achieve in a few years’ time. An Independent Review of Staffing has been commissioned and is taking place in October and November 2021. This will inform the rewriting of the Workforce Plan.</p> <p>An external audit report in May 2021 made several recommendations to improve the governance of the Commission including the working relationship with Scottish Government. Training for Board and management was a strong theme within that report and several training events have already taken place or are scheduled.</p> <p>A staff survey in April 2021 showed a further marked rise in the engagement score, with particular improvements for the quality of line management and inter-team working. A renewed staff survey action plan is currently being developed by the Staff Engagement Group. The October SG-wide staff survey will give a further update. There has been a marked increase in turnover of staff since Spring 2021, which causes its own challenges, but we continue to attract high quality recruits.</p>

<ul style="list-style-type: none"> We see robust risk management in line with best practice 	<p>Our risk management policy and processes are now embedded and working well, and were supported by the Assurance Analysis late in 2019. Audit reports have continued to highlight much good practice within the Commission, in areas such as our finance processes, efficient use of resources, GDPR/Data protection, complaints handling, and our Annual Report.</p>	<p>Our risk processes are well structured but there is scope to improve the content of the registers. Refreshed risk training was provided to commissioners and SMT in September 2021 and the risk appetite and risk registers are to be reviewed in the light of that training.</p>
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CROFTING COMMISSION PERFORMANCE REPORT

QUARTER 2 – OCTOBER 2021

SUMMARY

Our Outcome		1. CROFTS ARE OCCUPIED AND MANAGED	RAG Status	Page
Key Milestones	1a September 2021 – Create workflows, processes and supporting documentation to support investigations and engagement with landlords (owners of vacant crofts) who are suspected of not being resident and/or not cultivating their crofts.		AMBER	5
	1b June 2021 – Review 2020 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		GREEN	5
	1c August 2021 – Write to a selection of 2020 census respondents who have advised us they are in breach of their duty to be ordinarily resident, obtaining their plans and intentions for resolving the breach and establishing whether there is a good reason not to issue a notice of suspected breach of duty under section 26C(1) of the 1993 Act.		GREEN	6
	1d October 2021 – Write to a selection of crofters and owner-occupier crofters who have not responded to the 2020 census and whose address would indicate they are in breach of the residence duty. Should correspondence confirm that they are in breach then the case would be followed up in terms of 1c above.		GREEN	6
	1e December 2021 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2020 crofting census returns that they are complying with the duty to be ordinarily resident but who are not cultivating the croft, giving information about their options.		GREEN	6
	1f February 2022 – Follow-up with a selection of resident crofters whose crofts are not in use to encourage, and where necessary enforce, the requirements for crofters to cultivate and maintain the land.		GREEN	6
Performance Measures	1.1	Number of formerly vacant crofts let by the landlord or the Commission following the Commission initiating action under the unresolved succession (section 11) or vacant croft (section 23) provisions of the 1993 Act.	GREEN	7
	1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected.	GREEN	8
	1.3	Initiate correspondence with landlords (owners of vacant croft) who are failing to reside on and/or cultivate their vacant crofts.	GREEN	8
	1.4	Number of RALU breaches resolved by a crofter or an owner-occupier crofter in breach of their residency duty taking up residence on their croft.	GREEN	9
	1.5	Number of RALU breaches resolved by the assignation of the croft, or the letting or sale of an owner-occupied croft.	GREEN	9

	1.6	Number of RALU breaches resolved by the Commission giving consent to the sublet of a tenanted croft, the short-term lease of an owner-occupied croft, or by a consent to be absent being given to a tenant or an owner-occupier crofter.	AMBER	10
	1.7	Number of RALU breaches escalated to the issue of a Notice of suspected breach of duty (section 26C), or a Notice providing an Undertaking (section 26D).	GREEN	10
	1.8	Number of RALU breaches concluded by tenancy terminations orders (section 26H), or approval of letting proposals submitted by owner-occupier crofters following a direction to do so (section 26J).	AMBER	11

Our Outcome				
2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE				
			RAG Status	Page
Key Milestones	2a Ongoing	Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee	GREEN	12
	2b Ongoing	Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification.	GREEN	12
	2c Ongoing	Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.	GREEN	12
	2d Ongoing	Encourage grazings committees to adopt the revised template for grazings regulations.	RED	12
Performance Measures	2.1	Increase in number of common grazings with a Committee in office	GREEN	13
	2.2	Increase in number of grazings committees who have adopted the new template regulations	RED	13
	2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings.	GREEN	14
	2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	GREEN	14
	2.5	Develop and assist with training and other events for grazings committees and the management of common grazings.	GREEN	15

Our Outcome		3. CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY		RAG Status	Page
Key Milestones	3a August 2021 – Next build of the Crofting Information System released and upskilling delivered, and CIS migrated to the cloud			RED	16
	3b August 2021 – Digital system implemented for notifications			AMBER	16
	3c November 2021 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented.			GREEN	16
	3d December 2021– First 8 application types available digitally			GREEN	16
Performance Measures	3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)		RED	17
	3.2	Decrease in number of live regulatory cases at a point in time		RED	18
	3.3	Decrease in number of regulatory cases outstanding after 12 months		GREEN	18
	3.4	Customer satisfaction rates		GREEN	19

Our Outcome		4. THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS		RAG Status	Page
Key Milestones	4a August 2021 – Develop a signposting portal within Commission website in order to direct crofters and the public to relevant websites and information related to crofting.			ACHIEVED	20
	4b September 2021 – Produce information about choices for crofters who are considering passing on their croft.			GREEN	20
	4c December 2021 – Investigate reasons why crofts are not passed on (temporarily or permanently) when duties are not met and develop strategies to promote croft turnover. Establish a cross-organisation working group via COHI (Convention of Highlands and Islands) to look at croft turnover and entry into crofting..			GREEN	20
	4d Ongoing - Consider the affordability and accessibility of croft land to aspiring crofters, particularly the legal, policy and financial factors that influence croft prices.			GREEN	20
	4e September 2021 - Establish a cross-organisation working group via COHI to identify opportunities to reduce carbon emissions, increase carbon capture and enhance biodiversity within the crofting sector.			AMBER	21
	4f Ongoing – Participate in discussions with stakeholders and SG on crofting interests and particularly the development of future support systems for crofting.			GREEN	21
Performance Measures	<i>There are no Key Performance Measures for this Outcome</i>				

Our Outcome		5. OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE	
		RAG Status	Page
Key Milestones	5a April 2021 – Publish a report about the steps taken by the Commission to encourage more female Board members	ACHIEVED	22
	5b June 2021 – Develop and implement continuity planning for key posts	AMBER	22
	5c July 2021 – Develop a Commission policy on the location of our workforce over the next period	GREEN	22
	5d August 2021 – Implement automated retention schedule procedures within revised CIS	RED	22
	5e August 2021 – Complete implementation of 2020 Staff Survey action plan	GREEN	23
	5f December 2021 - Highlight the opportunities for election to the Board, across the crofting counties and encouraging nominations from both women and men	GREEN	23
Performance Measures	5.1 Increase in staff engagement rating	ACHIEVED	24
	5.2 Corporate carbon emissions	GREEN	24
	5.3 Redeploy efficiency savings within £3.2m core budget	GREEN	25

DETAILED PROGRESS REPORTS

The following sections provide a detailed report on both the milestones and performance measures for each Outcome.

Our Outcome	1. CROFTS ARE OCCUPIED AND MANAGED By ensuring crofters are compliant with their Duties and by working with crofting communities and stakeholders, we can increase the number of crofts that are occupied and well managed.															
Milestone	Covid Effect	RAG Status	Responsible Manager	Details												
1a September 2021 – Create workflows, processes and supporting documentation to support investigations and engagement with landlords (owners of vacant crofts) who are suspected of not being resident and/or not cultivating their crofts.		AMBER	Joseph Kerr	<p>In the first quarter of the year, the workflows on CIS for engagement with tenants and owner-occupier crofters have been reviewed and updated as required. Work is continuing on reconciling letters generated by CIS and template versions held by the Team. This work required to be completed and prioritised prior to progressing to landlords of vacant crofts.</p> <p>In the second quarter discussions were held with regard to agreeing a process to enable the team to progress written reports of non-residence and non-cultivating in relation to vacant crofts, to take the case to the stage of either the croft being occupied and used or the Commission issuing a notice under section 23(5) require proposals for letting of the vacant croft. The next stage is for the process and workflows to be developed on cis with supporting documentation prepared</p>												
1b June 2021 – Review 2020 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		GREEN	Joseph Kerr	<p>The RALU Team received the 2020 Census report on 17 June 2021, work has now commenced on analysing the data and scoping the census follow-up work for the year ahead.</p> <p>The report has been analysed and the different categories of breach identified which will form the basis for the selection of tenant and owner-occupier crofters to be written out to. The Team have identified the following number of cases in the different categories to be investigated further:</p> <table border="1" data-bbox="1142 1257 1921 1449"> <thead> <tr> <th>Category</th> <th>Numbers</th> </tr> </thead> <tbody> <tr> <td>Non-resident/non-cultivating tenants</td> <td>60</td> </tr> <tr> <td>Non-resident owner-occupier crofters</td> <td>40</td> </tr> <tr> <td>Non-resident tenants</td> <td>34</td> </tr> <tr> <td>Resident Non-cultivators tenants</td> <td>46</td> </tr> <tr> <td>Total</td> <td>180</td> </tr> </tbody> </table>	Category	Numbers	Non-resident/non-cultivating tenants	60	Non-resident owner-occupier crofters	40	Non-resident tenants	34	Resident Non-cultivators tenants	46	Total	180
Category	Numbers															
Non-resident/non-cultivating tenants	60															
Non-resident owner-occupier crofters	40															
Non-resident tenants	34															
Resident Non-cultivators tenants	46															
Total	180															

<p>1c August 2021 – Write to a selection of 2020 census respondents who have advised us they are in breach of their duty to be ordinarily resident, obtaining their plans and intentions for resolving the breach and establishing whether there is a good reason not to issue a notice of suspected breach of duty under section 26C(1) of the 1993 Act.</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>Currently on track, revised template letters were prepared.</p> <p>The first tranche of letters went out in September. Further letters will go out in a twice weekly basis throughout October and November. The initial letters went out to non-resident/non-cultivating tenants.</p>
<p>1d October 2021 – Write to a selection of crofters and owner-occupier crofters who have not responded to the 2020 census and whose address would indicate they are in breach of the residence duty. Should correspondence confirm that they are in breach then the case would be followed up in terms of 1c above.</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>letters have been prepared and process developed for this work.</p> <p>RALUT are now awaiting the preparation of the spreadsheet showing non-census returners, in order to select cases to take forward.</p>
<p>1e December 2021 – Write to a selection of tenant and owner-occupier crofters who have indicated in their 2020 crofting census returns that they are complying with the duty to be ordinarily resident but who are not cultivating the croft, giving information about their options.</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>This is on track to take place on or before the target date.</p>
<p>1f February 2022 – Follow-up with a selection of resident crofters whose crofts are not in use to encourage, and where necessary enforce, the requirements for crofters to cultivate and maintain the land.</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>This is on track to take place on or before the target date.</p>

PERFORMANCE MEASURES -

Number	Aim	Baseline	Target/Indicator	Measure
1.1	Number of formerly vacant crofts let by the landlord or the Commission following the Commission initiating action under the unresolved succession (section 11) or vacant croft (section 23) provisions of the 1993 Act.	7	15	Records of administrative action.

PROGRESS:

- a) In the first half the Commission issued **3** section 11(4) notices proposing to terminate the tenancy of 2 crofts in **Kilmallie** and **1** croft in **Applecross** which will result in terminations and lets if they progress to the section 11(8) termination order stages.
- b) In the first half the Commission issued **3** section 11(8) termination 1 in **Shetland** which resulted in proposals to let to a new entrant to crofting being submitted by the landlord and approved by the Commission, and 2 in **Kilmallie** where we are currently awaiting proposals from the landlord to let the crofts.
- c) **1** section 23(5) notice was issued to a landlord in **Sutherland** which resulted in proposals to let to a new entrant to crofting being submitted by the landlord and approved by the Commission.
- d) The Commission have been working with a landlord in **Skye** to let 3 long term vacant crofts constituted as “New Crofts” under section 3A. During the first **half of the year, one of the 3** crofts was let to a new entrant to crofting, applications have been submitted to let the other **2 crofts** and are currently being processed.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected.	77 in 2019-20	Initiate RALU correspondence with 100 new cases	Records of administrative action.

PROGRESS

The Commission commenced correspondence with **27** crofters in the first half of the year. 16 as a result of the 2020 Census returns, **3** as the result of receipt of reports of suspected breach of duty, and **8** as a result of a report from a Grazings Committee in Skye under section 49A. We met with the latter and identified **31** cases in total, a mixture of breach of the residence duty, failure to cultivate, and cases where both duties are reported as being breached. We agreed a programme for prioritising and commencing a rolling programme of enforcement action in these cases. We are due to issue further letters to 2020 Census returners, and the next tranche of **12** case reported by the Grazings Committee in Skye in the next quarter.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.3	Initiate correspondence with landlords (owners of vacant croft) who are failing to reside on and/or cultivate their vacant crofts.	Baseline to be established after review.	Initiate correspondence with 30 cases	Records of administrative action

PROGRESS

This measure is due to commence later in the year.

Covid Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.4	Number of RALU breaches resolved by a crofter or an owner-occupier crofter in breach of their residency duty taking up residence on their croft.	17 (average over the previous 2 years)	17	Records of administrative action

PROGRESS:

In the first half 4 crofters resolved their breach of duty by taking up residence.

Covid Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.5	Number of RALU breaches resolved by the assignation of the croft, or the letting or sale of an owner-occupied croft.	20 (average over the previous 2 years)	20	Records of administrative action

PROGRESS

In the first half 9 crofters resolved their breach of duty by assigning the tenancy of their crofts.

Covid Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.6	Number of RALU breaches resolved by the Commission giving consent to the sublet of a tenanted croft, the short-term lease of an owner-occupied croft, or by a consent to be absent being given to a tenant or an owner-occupier crofter.	61 (average over the previous 2 years)	No target (this is not a priority in its own right)	Records of administrative action

PROGRESS

In the first half of the year, **8** crofters were given consent to sub-let their crofts. **10** crofters were given either consent to be absent or an extension of consent to be absent.

Q1	Q2	Q3	Q4
GREEN	AMBER		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.7	Number of RALU breaches escalated to the issue of a Notice of suspected breach of duty (section 26C), or a Notice providing an Undertaking (section 26D).	26 (based on 2020/21)	No target (this is an intermediate phase en route to KPI 1.8)	Records of administrative action

PROGRESS

In the first half of the year, the Commission issued **7** Notices under section 26C(1); Made **6** decisions under section 26C(5) that a duty was not being complied with, and issued **2** Notice providing an undertaking under section 26D(1).

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.8	Number of RALU breaches concluded by tenancy terminations orders (section 26H), or approval of letting proposals submitted by owner-occupier crofters following a direction to do so (section 26J).	4 (based on 2020/21)	4	Records of administrative action

PROGRESS

There were no termination orders or notice requiring letting proposals under these statutory provisions in the first half of the year.

Q1	Q2	Q3	Q4
AMBER	AMBER		

Responsible Manager: Joseph Kerr

Our Outcome

2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE

Shared management and productive use of common grazings are important for the sustainability of crofting. The Commission works with grazings committees and crofting communities, providing both guidance and support, to ensure the effective management and use of common grazings.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
<p>2a Ongoing - Contact all Grazings Committees whose terms are about to end, encouraging them to arrange the appointment of a new Grazings Committee</p>		<p>GREEN</p>	<p>John Toal</p>	<p>Contact is made before the end of committees’ terms in office, and also afterwards if no appointment has been agreed. Special measures have been put in place to ensure that grazings committees demitting office during the Covid pandemic can be appointed by the Commission under section 47(3) of the Crofters (Scotland) Act 1993.</p>
<p>2b Ongoing - Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification.</p>		<p>GREEN</p>	<p>John Toal</p>	<p>This publication remains available on the Commission website and all new committees are provided with a copy of it.</p>
<p>2c Ongoing – Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.</p>		<p>GREEN</p>	<p>John Toal</p>	<p>There are current difficulties for shareholders meeting to form new committees where there has not been one in place recently which would enable the Commission to appoint a retiring committee. However, it has been possible for the Commission to appoint committees in some other instances, but this requires the consent of all shareholders where it has not been possible to hold a public meeting.</p> <p>The Development Officers in the Western Isles are engaged in contacting shareholders of common grazings without committees to advise on why there are none in place and indicate support wherever possible.</p>
<p>2d Ongoing – Encourage grazings committees to adopt the revised template for grazings regulations.</p>		<p>RED</p>	<p>John Toal</p>	<p>A more pro-active approach has been devised but it is currently difficult to effect with covid restrictions and the temporary redeployment of Grazings Team members.</p>

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure								
2.1	Increase in number of common grazings with a Committee in office	500 Grazings Committees in office on 31 March 2021	Maintain the number of Grazings Committees in office (notwithstanding the pandemic)	Administrative records								
<p><u>PROGRESS</u> There are currently 510 grazings committees in office</p> <p>Covid Effect There are obvious difficulties in expanding the numbers in office beyond the Commission appointment of committees demitting office.</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: John Toal</p>					Q1	Q2	Q3	Q4	GREEN	GREEN		
Q1	Q2	Q3	Q4									
GREEN	GREEN											

Number	Aim	Baseline	Target/Indicator	Measure								
2.2	Increase in number of grazings committees who have adopted the new template regulations	3 in 2020-21	Increase by at least 10 Commission approvals of new regulations submitted by committees based on the template.	Number of new grazings regulations approved which are based on the new template.								
<p><u>PROGRESS</u> Four new sets of regulations has been approved and others are now in process.</p> <p>Covid Effect The difficulties experienced by grazings committees in holding meetings makes this difficult and is not generally a priority for most committees. This also hampers a more pro-active approach by the Grazings Team itself, as does the fact that its resources have been reduced to provide support in other parts of the organisation.</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>RED</td> <td>RED</td> <td></td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: John Toal</p>					Q1	Q2	Q3	Q4	RED	RED		
Q1	Q2	Q3	Q4									
RED	RED											

Number	Aim	Baseline	Target/Indicator	Measure
2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings.	12 in 2020-21	No numerical target as this is in large part demand led.	Records of administrative action. (Note that this covers different types of Commission intervention: getting Committees into office; resolving medium size queries; and helping to address deeper issues.)

PROGRESS

There are currently 7 situations that can be considered substantial, however, approximately 120 other individual inquiries and issues dealt with or assisted per quarter. It might be considered an indicator of success in dealing at an early stage with the variety of issues arising the number that do not require any on-going substantial engagement.

Covid Effect

It has not been possible to attend meetings in person, but some meetings with members of grazings committees have been held via Teams and this has proven beneficial.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure
2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	15 in 2020-21	10 more townships researched in 2021/22	Records of administrative action

PROGRESS

Accurate shareholding situation have been researched and established on 6 common grazings during this period, providing an overall total of 11. Confirmation of the completion of others in the pipeline was not provided in time for inclusion in this update.

Covid Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure								
2.5	Develop and assist with training and other events for grazings committees and the management of common grazings.	5 in 2020-21	5 events in 2021/22	Records of administrative action								
<p><u>PROGRESS</u> A number of planning meetings have taken place with SAC for an Autumn/Winter programme of training for grazings clerks and committees that can be supported by Farm Advisory Service funding. Dates have been agreed for the provision of a series of on-line training.</p> <p>Covid Effect</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	AMBER	GREEN		
Q1	Q2	Q3	Q4									
AMBER	GREEN											
Responsible Manager: John Toal												

Our Outcome

3. CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY

We are committed to providing a quality and professional service to all our customers, especially those that make regulatory applications to us or who send us applications for registration of their croft, for us to review and forward to the Registers of Scotland. We are committed to fairness in all our decision-making, and we monitor turnaround times for all the different types of process.

We are also committed to continuous improvement of our internal processes, to deliver consistent and fair decision making that is compliant with legislation, and that also delivers value for the public purse. By changing and expanding how we deliver our services to customers, we can provide a faster, more consistent and more informative service to our customers, thereby improving customer satisfaction and confidence.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
3a August 2021 – Next build of the Crofting Information System released and upskilling delivered, and CIS migrated to the cloud		RED	Aaron Ramsay	First in-team technical testing has been carried out, final testing build due to be complete and passed to User Acceptance Testers in early November. Upskilling for testers complete. CIS migrated fully to the cloud has been achieved.
3b August 2021 – Digital system implemented for notifications		AMBER	Aaron Ramsay	Change of address functionality built on target, however go live with public notifications is not realistic currently as most of the are currently handled outside of the CIS.
3c November 2021 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented.		GREEN	Joseph Kerr	Commission and RoS officials have agreed (a) amendments to content of the croft registration forms and (b) changes to procedures whereby the fees will be obtained following the checks carried out on the application which opens up the possibility of alternative methods of payment. The matter is now with RoS to progress with SG colleagues.
3d December 2021 – First 8 application types available digitally		GREEN	Aaron Ramsay	On track. Assignment application type fully built and is undergoing testing by internal staff and a limited selection of external solicitors and partners.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)	Figures for 2020-21: Assignment – p10.7 weeks Decrofting CHSGG – 13 Decrofting Part Croft – 22.6	Reduce medians to: Assignment – 9 weeks Decrofting CHSGG – 11 Decrofting Part Croft – 16	Time taken from application to notification of decision, <i>for cases where no registration is required</i>

PROGRESS

Pressures within the regulatory team has led to increases in outstanding work, which has affected turnaround times. The median turnaround times are similar to last year's figures. These timings may slip further due to the increase in outstanding cases.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	RED		

	Approx Number of cases per year	Median weeks (2020-21)	Median weeks (2021-22 to date)
Assignment	c125	10.7	10.3
Decrofting Croft House Site	c50	13	13.9
Decrofting Part Croft	c100	22.6	21.9

Responsible Manager: Heather Mack

Number	Aim	Baseline	Target/Indicator	Measure
3.2	Decrease in number of live regulatory cases at a point in time	807 on 31 March 2021	Reduce to 732 (the level from June 2020)	Number of live regulatory cases on 31 March

PROGRESS

The number of cases outstanding (which have not yet reached decision) has increased to 933. The significant increase in outstanding cases is due to pressures within the team in particular to knock on effects of staff leaving which means movement of staff to fill posts and brand new staff. The long training period means that the team has effectively been working at a reduced capacity for this last quarter.

Covid Effect

Q1	Q2	Q3	Q4
RED	RED		

Responsible Manager: Heather Mack

Number	Aim	Baseline	Target/Indicator	Measure
3.3	Decrease in number of regulatory cases outstanding after 12 months	159 on 31 March 2021	Reduce to 140	Number of live regulatory cases on 31 March, which are more than 12 months since first received by the Commission

PROGRESS

Excellent progress has been made with this and the number of cases outstanding (yet to reach decision) has reduced to 100.

Covid_Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Heather Mack

Number	Aim	Baseline	Target/Indicator	Measure
3.4	Customer satisfaction rates	100% satisfaction reported from a limited number of responses in 2020-21	At least 80% of responses positive	Proportion of respondents answering 5 or 4 on the 5-point scale for overall satisfaction

PROGRESS

Only a very small number of forms have been received for the year and these have been positive.

Covid Effect

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Heather Mack

Our Outcome

4. THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS

The Commission has a responsibility to promote the interests of crofting, and to advise the Scottish Government about crofting issues. We welcome collaborative initiatives with other organisations in order to contribute towards the sustainable development of crofting

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
<p>4a August 2021 – Develop a signposting portal within Commission website in order to direct crofters and the public to relevant websites and information related to crofting.</p>		<p>ACHIEVED</p>	<p>John Toal</p>	<p>This has been completed and launched under ‘Useful links’ section of the website. Updates have also been made to the ‘Frequently asked questions’ section. The website is subject to continual update and review.</p>
<p>4b September 2021 – Produce information about choices for crofters who are considering passing on their croft.</p>		<p>GREEN</p>	<p>John Toal</p>	<p>A document on this has been drafted and is currently in progress.</p>
<p>4c December 2021 – Investigate reasons why crofts are not passed on (temporarily or permanently) when duties are not met and develop strategies to promote croft turnover. Establish a cross-organisation working group via COHI (Convention of Highlands and Islands) to look at croft turnover and entry into crofting..</p>		<p>GREEN</p>	<p>John Toal</p>	<p>A survey looking at croft under-use and availability to new entrants was completed in May 2021, which had over 400 responses.</p> <p>Communications to highlight the issue and communicate crofting duties and the benefits of new entrant opportunities, to both crofters and the public is underway.</p> <p>Investigation into how prospective croft purchasers are made aware of crofting duties has been undertaken. This will be followed up with a project to raise awareness of crofting duties to prospective croft purchasers.</p> <p>Discussions have begun on creating a working group to look at these issues.</p>
<p>4d Ongoing - Consider the affordability and accessibility of croft land to aspiring crofters, particularly the legal, policy and financial factors that influence croft prices.</p>		<p>GREEN</p>	<p>David Findlay</p>	<p>The Commission is going to produce a paper for consideration by the Board by end of February 2022, which will involve contacting the Land Commission on issues of the sale and marketability of land and market controls, and which will also examine possible Commission initiatives or law reform that would facilitate accessibility of land, particularly for new entrants.</p>

<p>4e September 2021 - Establish a cross-organisation working group via COHI to identify opportunities to reduce carbon emissions, increase carbon capture and enhance biodiversity within the crofting sector.</p>		<p>AMBER</p>	<p>John Toal</p>	<p>Discussions have begun on creating a working group to look at these issues.</p>
<p>4f Ongoing – Participate in discussions with stakeholders and SG on crofting interests and particularly the development of future support systems for crofting.</p>		<p>GREEN</p>	<p>John Toal</p>	<p>Discussions with stakeholders on various crofting issues have taken place. Including Rural Payment and Inspections Division, Scottish Crofting Federation, Farm Advisory Service, HIE, Visit Scotland, NatureScot, Comhairle nan Eilean Siar, Community Land Scotland and several community landlords.</p>

There are no Performance Measures for Outcome 4

Our Outcome

5. OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE

By ensuring that our staff and Board Members have appropriate training and continued investment, we can develop a high-performing workforce. We will ensure that our organisation fulfils its legal requirements and contributes to the Scottish Government’s broader objectives for Scotland.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
5a April 2021 – Publish a report about the steps taken by the Commission to encourage more female Board members		ACHIEVED	Jane Thomas	The Report was published in April 2021 and a copy forwarded
5b June 2021 – Develop and implement continuity planning for key posts		AMBER	Bill Barron	This work has been delayed. There has been an initial exchange of views with the Convener, and the strategy will be based on developing existing staff in preparation for applying for posts that will become available at unpredictable times. The next step is to form concrete plans within that broad approach.
5c July 2021 – Develop a Commission policy on the location of our workforce over the next period		GREEN	David Findlay	SMT discussed a paper by David Findlay on 21 July 2021. SMT has agreed that there will be an element of hybrid working indefinitely, and CC has given notice to NatureScot that we require a smaller floorplate from April 2021. The location of posts in other areas in the crofting counties remains an aspiration to be further considered when there is more clarity about the covid situation and the availability and cost of office spaces.
5d August 2021 – Implement automated retention schedule procedures within revised CIS		RED	Aaron Ramsay	As per CIS progress update, not likely to be in place prior to Jan 22 when the new CIS goes fully live.

<p>5e August 2021 – Complete implementation of 2020 Staff Survey action plan</p>	<p>The 2020 survey was delayed due to Covid and was issued in August 2020. The 2021 survey was realigned to the normal scheduling and was issued in April 2021.</p>	<p>GREEN</p>	<p>Mary Ross</p>	<p>Following the April 2021 survey an updated action plan was agreed and issued to staff. Good progress has been made, progress updates are as follows:</p> <ul style="list-style-type: none"> • Independent Review of Bullying and Discrimination complete, action plan issued, with SG scheduled to provide training and guidance for all staff by end of November. • Staff meetings and Show and Tell meetings continuing. Communications Officer considering options for new ways of communicating within the CC. • CIS steering group in place and considering options for future releases of the system. New CIS in development and testers identified and training has been provided. • Form Based Change Management system in place for considering suggested changes by SMT. Change Management training provided for SMT in July 2021. • Ongoing assessment of workloads. Training in CroftView complete. Independent Review of staffing situation taking place in Oct/Nov 2021. • Leadership training still to take place. • SG new line management programme available and is being rolled out to staff with Line Management responsibility. • Regulatory Material in development. Regulatory Training Officers in place and providing consistent planned training. • Monthly conversations taking place. Staff Engagement Group considering events that support wellbeing. • Ongoing discussions with NatureScot in connection with a phased return to an office environment.
<p>5f December 2021 - Highlight the opportunities for election to the Board, across the crofting counties and encouraging nominations from both women and men</p>		<p>GREEN</p>	<p>Bill Barron</p>	<p>A questionnaire looking at the barriers to women on boards has been completed. Plans for a campaign to raise awareness of the elections will progress in the next 2 months.</p>

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
5.1	Increase in staff engagement rating	57% in Summer 2020	Maintain or surpass the record high achieved in 2020	Average scores for a set of fixed questions in the annual staff survey

PROGRESS

Covid Effect

The 2021 staff survey took place in April 2021. The staff engagement rating increased to 65%.

Q1	Q2	Q3	Q4
ACHIEVED			

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
5.2	Corporate carbon emissions	15 tCO ₂ e in 2019/20	Reduce by 90% in pandemic year 2020/21	Emissions from business travel by staff and Commissioners

PROGRESS

The Commission calculated and submitted its Public Sector Report on Compliance with Climate Change Duties to the Scottish Government for 2020/21 in September 2021 (ahead of the 30 November deadline). As anticipated there has been a dramatic fall in carbon emissions because of Covid-19 restrictions on travel. The Commission recorded 0.3 tCO₂e emissions for 2020/21. This relates to colleagues travel on specific Crofting Commission business and does not capture private travel to place of work or emissions based on the Commission working from home.

Q1	Q2	Q3	Q4
GREEN	GREEN		

Responsible Manager: Neil MacDonald

Number	Aim	Baseline	Target/Indicator	Measure								
5.3	Redeploy efficiency savings within £3.2m core budget	3.4% (£95k) 2020/21	3%	Funding redeployed as a result of efficiencies in existing operations								
<p><u>PROGRESS</u></p> <p>On target as at Q2. Examples include:</p> <ul style="list-style-type: none"> IS Team undertaking compliance review of on-line applications in-house, rather than having to rely upon Scottish Government assistance which was initially quoted at £17k. The funding is being redirected towards CIS User Acceptance Training/Testing and a cyber security assessment of Azure and Amazon Web Services (CIS move to the Cloud). Crofting Census transitioning to a digital only platform (estimated efficiency savings £27k) Restructure of Finance Team (estimated efficiency savings £10k to £20k). Options currently being explored. Travel & Subsistence spend less than originally anticipated when budget set in January 2021 (estimated savings £15k to £20k) Staff Turnover (Either due to post(s) not being replaced in current format/new starts assuming post at bottom of pay grade band/lead in time to recruitment) Economies of Scale within on-line application project (£10k to £20k estimate at this time) Efficiency savings by utilising SG Framework Contracts as appropriate (estimate efficiency savings approx. £5k) <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td></td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	GREEN	GREEN		
Q1	Q2	Q3	Q4									
GREEN	GREEN											
Responsible Manager: Neil MacDonald												

Key to RAG definitions

R – Red A – Amber G – Green

AMBER means the objective is likely to fall short of successful delivery, in timescale or target or both; but the shortfall is expected to be modest.

GREEN is anything better than AMBER: no shortfall is anticipated;

RED indicates that we are seriously delayed or heading for a significant shortfall.

Once an objective has been completed during the financial year, we mark it **ACHIEVED**, even if it was late in the delivery.

Any tasks scheduled for later in the year, and so not started in Q1, can be marked **GREEN**, unless there is already a reason to think we may not be able to deliver them as intended.

CROFTING COMMISSION MEETING

20 October 2021

Report by the Chief Executive

Consideration of the Market in the Assignment of Croft Tenancies

SUMMARY

Some background detail on the emergence of a developing market in croft tenancies is considered in the context of crofting legislation and how this has periodically debated over a number of years is covered in this paper. Previous attempts by the Crofters Commission to control prices within the tenancy assignment process and to devise a formula for assessing the value of crofts is considered. What the Commission can do within the confines of current legislation is also assessed and various options for Commission determination are provided.

BACKGROUND

The right to assign the tenancy of a croft to a person of one's choice was viewed as beneficial when introduced by the Crofters (Scotland) Act 1955. It provided the opportunity for the transfer of crofts from crofters to non-family members and enabled people to become involved in crofting at an earlier age.¹ The case for a tenant's right to purchase their croft, made possible 21 years later by the Crofters (Scotland) Reform Act of 1976, was premised upon allowing crofters to benefit from wider development opportunities and use croft ownership as collateral for doing so. While both may have been well intentioned in enabling crofting progression, both have also had unintended consequences that are viewed as threatening the longer-term future of the crofting system.

Increasingly, a market has developed within crofting that has often put the acquisition of a croft beyond younger people within crofting areas unless a family croft is transferred or inherited. This situation is not new, indeed it led to the abandonment of sections of the Crofting Reform Bill in 2006 and the setting up of the Committee of Inquiry on Crofting (Shucksmith Report) the following year. The situation is most succinctly summarised in part of the submission by Professor Jim Hunter to the then Environment and Rural Development Committee. Reflecting on the change in circumstances that has made crofts desirable and capable of fetching prices well beyond their apparent value, he advised:

*"Like all change, this development has downsides as well as upsides. It has provided existing crofters with valuable assets in the shape of holdings that were previously of little worth. But it has also made it hard for aspiring crofters – especially younger Highlands and Islands residents of modest means – to enter crofting. Hence the strong feelings engendered by the present Crofting Bill's failure to do anything about the fact that the crofting system (in existence only because an earlier set of market forces were fenced out of it) now has operating (inside the fence erected by previous crofting legislation) a new set of market forces which, by some people's reckoning, could be every bit as destructive of crofting as the market-derived threats eliminated in 1886."*²

¹ "The statutory condition of tenancy prohibiting assignment was relaxed to a certain extent by the 1911 Act which allowed a landholder who was unable to work his holding through illness, old age or infirmity, with the consent of the Court, to assign his tenancy to a member of his family." D Flynn & K Graham, Crofting Law, p8. Explains limited pre 1955 situation.

² [SPICe Briefing \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/all-committees/environment-and-rural-development/committees-reports-and-publications/2006-07-08-spice-briefing), Scottish Parliament, Environment & Rural Development Committee, 19/04/2006

Recognition that some of the rights – other than those established in 1886 – now available within crofting might pose a threat to the system as a whole formed part of the conclusions of the Shucksmith Report: *“The 1955 Act was therefore the origin of the “market” in crofts, with cash payments soon appearing. The 1976 Act took this a stage further, by introducing the right to buy their crofts and introducing decrofting possibilities. If these changes are now seen to be threatening the future of crofting, a central question to us is whether these rights (to assign, to decroft, to buy the landlord’s interest) have worked to the detriment of crofting and the wider community as a market has developed in crofts and croft land.”*¹

Without becoming involved in the detail, the Shucksmith proposals would have been for different area boards to adopt in relation their areas’ circumstances. The Government did not accept such recommendations and its own diluted version of residency burdens on land removed from crofting, as well as other potential reforms, were dropped en route to the 2010 Act.

Consideration within Crofting Legislation in 21st Century

One of the claims of the 2010 Act is that it brought parity to regulation between owners and tenants by the introduction of owner-occupier crofter status. In terms of respective residency and land use duties that may be true, but it did not do so in terms of assignation/transfer of crofts. In fact, all tenants, even when assigning within the family, are required to go through a scrutinised assignation process that is not required of those who have purchased their crofts and wish subsequently to sell them on. Effectively, the back door remains open and, even if, the 2010 Act had introduced direct measures to control the prices at which croft tenancies are assigned, for which there appears to be no evidence, the alternative route through the purchase of the croft would be available. Admittedly, the Act did extend the clawback period for which a croft purchaser would have to compensate the former landlord if the croft was transferred outwith the crofter’s family from 5 to 10 years.

The 2010 Act also enabled executors to transfer croft tenancies to any natural person and removed the requirement for Commission approval to such a transfer by an executor. It is understood that executors consider themselves to be under a legal responsibility to maximise the value of the estate for onward distribution to the beneficiaries. This could involve marketing the croft tenancy on the open market and transferring the croft to the highest bidder, a process that an executor is free to do without seeking the consent of either the Commission or the landlord.

There is recognition that the 2007 Act did not address the market in croft tenancies. In response to an MSP question during the ERD Committee stage, the senior civil servant responsible for the Bill, Shane Rankin, who also happened to be CEO of the Crofters Commission stated that: *“It has been possible to sell croft tenancies for many years and the bill does not set out to prevent that.”* Had the Bill and subsequent Act addressed the issue, it would not have required the considerable effort of the Committee of Inquiry on Crofting to recommend solutions, which proved divisive within crofting and were not taken forward. The lack of consensus within crofting entailed that the issue was not directly addressed within 2010 Act, which instead appears to have put faith in the introduction and enforcement of crofting duties.

The results of the consultation process for a proposed Crofting Reform Bill in 2017 might appear to indicate that the elephant had left the room. There were specific questions relating to Assignation within the Scottish Government consultation, although none specifically directed at monetary value of croft tenancies. Nevertheless, it would have provided the opportunity for the matter to be raised if it remained a continuing threat to the future of crofting. The “Analysis Report: Crofting Consultation 2017, Scottish Government, March 2018,” gives no indication of anything specifically raised in this respect in relation to its Assignation responses. In a

¹ [Committee of Inquiry on Crofting: Final Report \(consult.gov.scot\)](https://www.consult.gov.scot/)

summary of a section on Bringing “New Blood” into Crofting Communities, it reported that: “A small number of respondents commented on the cost of accessing a croft, including that croft prices are unaffordable to lower income families (individual). It was suggested that the right to buy has led to an increase in more affluent buyers.”

There appears to have been little comment from other parties regarding this element, notably none apparently from any that might be considered significant crofting stakeholders. Likewise, the Scottish Government Crofting Stakeholder Forum, drawn from organisations attending the Crofting Cross Party Meetings, while promoting capacity for new entrants to crofting did not identify the market for crofts as an impediment in its Vision for the Future of Crofting Statement in 2016.

The Commission itself did broach the issue in response to questions on standard securities. It recognised the issue had been critically raised at the Bill stage of the 2007 Act and in the subsequent Shucksmith Inquiry. It advised:

The Commission believes it is highly desirable that those aspiring to the crofting lifestyle should be able to access crofts. If this is to be achieved, there needs to be a strategic decision at Government level, as to whether the solution is to be:-

- *very radical action to suppress croft prices, in the spirit of Professor Hunter’s 2006 proposals; or*
- *a significant expansion of financial support for entrants to crofting, in cash or in kind; or*
- *a balanced combination of the two, in the spirit of the Shucksmith proposals.¹*

Now that the issue has appeared to reignite in the context of a more recent rise in the price of housing and land within the Highlands and Islands, with associated rise in the demand and prices for crofts, the one body that advised that the matter should be addressed within new crofting legislation is being criticised for not addressing the issue within the current legislation.

CURRENT POSITION

The question then becomes of one of what does the current legislation allow the Commission to do and is this being done in this context.

Previous Attempt to Control the Price of Assignment

It is worth noting that the former Crofters Commission had begun to ask for detail of the sum being exchanged for the assignation of a tenancy in the mid-90s. In December 1996, it was agreed that this should be formalised on the basis that the Commission should have regard to the money being offered for a croft tenancy, unless the value was less than £5000.

According to the relevant Commission Plenary minute, the paper stated: “*In addressing the value of a croft tenancy, the Commissioners have been faced with a growing volume of evidence that, in areas of the Highlands and Islands, croft tenancies were changing hands for amounts of money considerably in excess of what local people of ordinary means could expect to offer. Although the Act did not address the subject directly, it was clear that the purpose of crofting legislation and hence the Crofters Commission was to ensure, so far as possible, that families in crofting areas were able to continue in those areas. The high price of croft tenancies represented a threat to that purpose.*”

¹ Commission Response to Scottish Government Crofting Consultation 2017. One other individual response did advise in detail that a Bill would provide an opportunity to remove the market from crofting tenancies. Not all responses are publicly available and not all of those that are, have been read by the writer. However, the conclusion remains that this was not perceived as a major issue by most respondents 4 years ago.

By contrast it was also accepted that: *“there was an inherent monetary value in the legislative protection afforded to the tenancy and that was to be found in the tenant’s ability to apply to assign to the person of one’s choice.”*¹ In 1997, it was indicated that the policy was operating successfully, in that by proposing to refuse an application, the price would be reduced. The rationale for doing so was that it “exceeded the value of the permanent improvements” and approval “would be detrimental to the long-term interests of the township by raising expectations of payments in future applications in the area and reducing the likelihood of new young entrants obtaining tenancies.” At face value, prices were reduced, and there is evidence of these applicants coming back with a reduced price to the Commission and the assignation being approved, although particular difficulties arose when a croft house was also part of the permanent improvements.

It has to be appreciated that at this time there was no right of appeal to the Land Court against a Commission refusal to approve an assignation. The process then was for the Commission to make a proposed decision and if there was a change in circumstances or new evidence provided, that could influence final decision. The apparent reduction in the asking price for the tenancy would often appear to ensure approval.

The fact that the Commission invited the North-West Region District Valuer to advise on a formula for assessing the value of crofts in 1998, would indicate that there may have been problems with the Commission’s own process. The resultant commissioned research indicated that it would be problematic to devise formulae for valuing croft tenancies and as long as owner-occupiers remained outwith any process it could prove counterproductive.

*“Unless the supply side of the market equation for crofting tenancies is stabilised by de-crofting being restricted, and sales by owner occupiers to non family purchasers being made subject to the same scrutiny as assignations by tenants to non family assignees, the restriction of assignation prices can be expected to lead to a reduction in the supply of crofts for let. This in turn will apply further upward pressure on prices and a movement towards purchase and subsequent sale rather than assignation.”*²

What could impact the supply of crofts and consequent price reduction, it was suggested, along with the creation of new crofts, was dealing effectively with absenteeism and dereliction. In the same context, it was intimated that pursuing the letting of owner occupied crofts affected by absenteeism and dereliction, along with a prevailing presumption against decrofting would have an impact on prices. *“The market would then perceive both an owner-occupied croft and a tenanted croft as affording something significantly less than the degree of control and security enjoyed by an owner of similar land in the open market with vacant possession.”* With the exception of any scrutiny of the transfer of owner-occupied crofts, most of the mechanisms suggested are now technically available. Indeed, much of the counter argument against criticism of the lack of direct market control previously had been that such provisions would provide the necessary balance.

Nevertheless, the Crofters Commission did seek an indication of what it would cost for valuations to be undertaken by the District Valuer, but realised that such undertaking would have to be the exception rather than the rule. A review of the situation early in 2000, indicated that of the 46 assignations that had been refused by the Commission in the previous 5 years, only 5 were on the basis of the price. It was also being indicated by the Faculty of Solicitors for the Highlands that the policy of trying to restrict the price of tenancies was leading to under the counter payments which both undermined the policy aims and caused difficulties for solicitors.

¹ Quotations from Minutes of Crofters Commission Plenary, December 1996. Actual paper referenced is not available online.

² Michael W Gimson FRICS, District Valuer, Scotland North West: Consultancy Research on the Valuation of Croft Assignations, March 1999.

Derek Flynn, a then practicing solicitor in the Highlands, specialising in crofting law, expanded on this when giving evidence to the Environment and Rural Development Committee in April 2006.

I have difficulty with the issue of valuation. There is conflict between people's general rights under the law and trying to regulate an unusual system of tenure. The bill allows for the market value of a croft to be identified for succession purposes. Since I have been dealing with crofts and their purchase, they have, whether purchased or tenanted, been given a market value in Scots law. Under the law of succession, many people might be entitled to inherit the estate of a deceased person. If a crofter dies, their tenancy is valued at the market value. The Crofters Commission may resist seeing a market value, but the Inland Revenue has not ceased to see that value and will maximise the value of the tenancy for inheritance tax purposes. I am a lawyer who deals with Scots law and such things are not unusual to me. People are entitled to maximise the value of their assets.

That directly contradicts what Brian Wilson has said about regulating that value and somehow finding an unreal value for the asset when it changes hands at assignation, for example. The Crofters Commission has asked assignors—outgoing crofters—what payments they were receiving from the proposed assignee, which were put into application forms to go before the commission. It became normal to advise assignors that the chances were that the Crofters Commission would refuse the assignation if a high price was put in. The market then went underground, payments went under the table and people, having assigned their crofts, were left not knowing whether they would be paid for their asset. I cannot subscribe to such a system and have complained about it.

The faculty of solicitors of the Highlands held a seminar to which the Crofters Commission, the district valuer and SEERAD were invited. We discussed the financial value of crofts. It seemed to be inescapable that where there is demand, people will pay money to get the assignation of a croft, and that imposing a false value was unacceptable to the district valuer and the Inland Revenue.

The attempt to influence the price at which croft tenancies were assigned for the longer term benefits of crofting were essentially abandoned at the start of this century. As already indicated, the debate on this subject had considerable impact upon the Bill leading to the 2007 Act and thereafter.

Current Assignation Process

The legislation resulting from the 2007 Act required that many applications requiring Commission consent would be approved unless there were objections or where the Commission consider that certain general conditions would be adversely affected. These included:

- i. the interests of the estate which comprises the land
- ii. the interests of the crofting community in the locality of that land
- iii. the interests of the public at large
- iv. the sustainable development of the crofting community so mentioned.

All Commission decisions were made subject to appeal to the Land Court. The 2010 Act continued with this criteria but requires that the Commission assess each application against that along with additional criteria as to:

- Whether any person will be ordinarily resident;
- Whether the croft will be cultivated or put to another purposeful use
- Whether there any objections within the defined category
- Whether the Commission has an approved and published plan
- Any other matter the Commission considers relevant.

In addition, all assignations, including assignations within families which were previously by notification, are subject to the same criteria.

Essentially, applications to assign can be straight forward approvals where:

- *The proposed tenant will be ordinarily resident within 32 kilometres of the croft, or will be within 18 months of obtaining the croft tenancy*
- *The proposed tenant does not already have more than two crofts and demand has not been expressed for the tenancy*
- *Evidence has been provided they will cultivate the croft*
- *Evidence has been provided that the landlord has consented to any new purposeful use by the proposed tenant*
- *The proposed tenant has the skills to carry out their proposals for the croft*
- *There have been no objections.*

To be able to process the number of applications received, along with registrations requirements, it is essential for the Commission's process to be as streamlined as possible. It is possible to suggest that it is not in the interest of crofting communities or their sustainable development to have the asking prices for croft tenancy assignments at such levels that are considerably beyond the apparent crofting value and the prospect of individuals from crofting localities obtaining tenancies. In addition, there may associated detriment to the cultural and social cohesion of crofting communities and the associated public benefits. However, these are more general and might be associated with a bigger picture perspective, while decisions have to be made on the detail of an individual case. It might be instructive to consider the advice of the Land Court in this regard, albeit relating to a decrofting case.

*The Commission therefore have to engage meaningfully with the facts and circumstances of each individual case and without any preconceptions and, for their decision to be sustainable they must be able to show that they have done so. **MacDougall -v- Crofting Commission, Scottish Land Court, 2016.***

It is clearly evident in contested cases that the Commission follows such guidance. In the one assignment case that was appealed to the Land Court in 2013 where some points of the appeal upheld, there was also reference to the evidencing and explaining of Commission decisions. These lessons have clearly been learnt. However, the Land Court also advises that it the merits and circumstances of each case that can determine decisions and that there can be "tipping points reached in the sustainability of crofting communities." What that should entail is that previous results do not predetermine or subconsciously influence the consideration of applications, as was the case with the Crofters Commission for many years in relation to determining decrofting applications that had planning consent.

At face value there is much more criteria for the Commission to have regard to in respect of tenancy assignments following the 2007 and 2010 Acts than there was previously. It could be argued that there are more considerations that an application has to satisfy in seeking approval. That might appear to provide a weighting in favour of more refusals. However, if we take the figures sourced from the five - year period between 1995 and 2000 and the figures provided from the 5 most recent Commission Annual Reports from 2016 – 2021, that indicates there were 46 refusals compared to the more recent 4. As indicated previously, the circumstances for decision making, with no right of appeal to the Land Court, were different. There is no doubt a robust process in terms of evidence assessment currently in place. However, its efficacy in terms of how it ensures the sustainability of crofting communities and how such terms are interpreted, as indeed, what other matters the Commission might consider relevant (**Section 58A(7)(h)**) could be assessed.

Looking solely at this from a statistical basis, there have been 1304 tenancy assignment decided in the past 5 years (all figures in this regard relate to the croft and not to the assignment of a share in a common grazing). Of these only 4 have been refused, and on average only about 5 per annum reach the tier 3 level of decision making. There is no implication that these are not decided properly, but it could imply that a lot of resources are involved in changing very little in reality.

Earlier reference has been made to the District Valuer study on croft valuations in 1999. This indicated that unless there is similar scrutiny of the transfer of owned crofts as there is of tenanted ones, it would be futile trying to control the price at which croft tenancies are assigned. This disparity was not addressed in the 2010 Act, and it is logical that a regulated systems should include all crofts operating within the system. However, it could just as easily be argued the other way, on the basis of statistics, that equalization should allow tenancy transfer to operate on a similar basis to that which owned crofts do currently. For avoidance of any doubt, this paper is not advocating such a proposition, it merely points out what could be advanced on the basis of statistics.

Commission's Recent Consideration of Open Market and Croft Access

One other aspects in terms of the apparent influence of the open market in determining who might acquire a croft tenancy, is the fact that the open market is actually referenced within the Act. Commission Solicitor, David Findlay, has observed that in section 25(2) regarding decrofting, the Commission is required to have regard *"to the demand, if any, for the tenancy of the croft from persons who might reasonably be expected to obtain that tenancy if the croft were offered for letting on the open market..."* The open market would appear to have a role in determining what might be constitute suitable demand for croft tenancy in this part of the Act. While it is explicit in this part of the Act, it may well be implicit in others unless there are other criteria or factors that the Commission must have regard to which counter such understanding.

While the issue of an open market and its apparent adverse impact upon crofting is topical, it might be recalled that the issue of the cost of croft entry and speculation on croft land was discussed along with a background paper at a Commission Strategy Meeting on 23 April 2020. This had picked up on the statement at a previous meeting in 2019 that *"the value of tenancies is a huge issue that we must look at seriously"*. The subsequent discussion was much more nuanced, with the general view being that the best means available to the Commission of influencing such issues was to use the duties enforcement powers to best effect and to be robust with regard to decrofting. The actual assignation process itself was not viewed as being of any real significance in this respect.

Since then, there has been significant investment in the resources deployed for duties enforcement, with greater emphasis on the use of the specific powers available. In that context, consideration could be given to a swifter follow up to checking on residency after the 18-month period allowed for at the assignation of a tenancy. There is evidence that some long-term absentee tenancies assigned after a period of grace within the previous absentee programme have gone to new absentees who have not taken up residency and subsequently remarket the croft tenancy. When advising during the application for approval that no local interest had been expressed for the tenancy, it is possibly overlooked that the asking price may have prohibited that. Allowing plenty of time to take up residence ensures that there is no element of risk for such a purchaser, because where plans do not come to fruition the croft can be sold on in five years' time at considerable profit. In this way the cycle can be repeated with little consequence unless the enforcement process is effectively employed and individuals are required to give undertakings to take up residence and work the croft in question. Essentially, if the Commission considers that the enforcement of duties provisions are the main tools at its disposal, these have to be made available and suitably used.

OPTIONS FOR CONSIDERATION

A number of potential options that may assist the current situation to some extent but also look more specifically at the issue for the longer term are provided.

- a. The Commission could undertake a review of the tenancy assignation process to satisfy itself that it is fully considering all required criteria and the process is working to best effect.
- b. The Commission could give greater priority to checking on the residency situation after the 18- month period that is allowed. It might also have a hierarchy of priorities in this regard.
- c. The Commission might seek funding for an easily administered Outgoer/New Entrant scheme for particular crofting areas. These have successfully operated in the past but would not necessarily require an entrant package. The process of croft release and transfer has become increasingly complicated and an outgoer package that would assist the process and professional costs for those not putting their croft on the open market could be beneficial. This would also provide opportunities for younger people to establish themselves on crofts and ensure that economic, cultural and social benefits of crofting are continued.
- d. The Commission could ask that the Scottish Government's Crofting Stakeholder Group consider the issue and attempt to build understanding and consensus around any proposals.
- e. The Commission could ask the Scottish Government to appoint an expert panel to examine this specific issue and provide recommendations prior to the process for any new crofting legislation. This is in line with what the Commission recommended in its response to the Crofting Reform Consultation in 2017, that the matter needed to be determined by a strategic decision at Scottish Government level.
- f. The Commission should continue to concentrate its resources on the current legislation, with particular regard to Duties Enforcement, and use it to best effect.

Impact:	Comments
Financial	Some options do have financial implications, but it is not intended that the Commission would be directly responsible for funding the likes of an Outgoer/Entrant Scheme or for costs of an expert panel to consider the crofting market.
Legal/Political	While there are legal aspects to this and debate as to what powers are available to the Commission, it is ultimately much more political in nature. Essentially, irrespective of legislative realities, the Commission will be held responsible for the continuing rise in the price of croft assignations
HR/staff resources	Some Commission staff time would need to be dedicated to be dedicated to most options.

RECOMMENDATION

It is recommended that the Commission consider the options provided and indicate those it wishes to take further.

Date 23 September 2021

Author John Toal, Head of Policy

CROFTING COMMISSION MEETING

20 October 2021

Report by the Chief Executive

Team updates

SUMMARY

The annexes to this paper contain brief written updates from each of the Commission's main teams.

BACKGROUND

Since August 2020, Team leads have been asked to give a brief report to the Board at each meeting. Hitherto, these have been done orally, which allows a fully up-to-date presentation on each occasion. However, auditors have recommended that a more structured approach should be adopted, with a written report from each team circulated with the Board papers, and presented (with any necessary update) at the Board meeting.

The annexes to this paper provide updates from the following teams:

Annex A – IS Team

Annex B – RALUT

Annex C – Operations & Workforce

Annex D – Grazings, Planning and Development

Annex E – Compliance Report (this is in the format of the Compliance reports which are regularly presented to SMT)

RECOMMENDATION

The Board is invited to note the content of the Annexes and to comment on:-

- (a) The format of these reports; and
- (b) Any of the issues raised in them.

Date 30 September 2021

Author Senior Management Team

IS TEAM

Website refresh

New applications received are now live on the Commission website, with full historic CIS history searchable. This work is now complete.

Grounds are in the process of being revised to be added to the Commission website as they are produced, estimated to go live during October 2021.

The accessibility review from the Shaw Trust has come back and highlighted a number of areas to be addressed for full compliance. These are planned to be addressed through October 2021.

Census

Planning work on the next census is underway, with quotes received for the costing of a revised digital return only process. Initial plans have been drafted to handle customer queries by allocating IS resource (extension to temporary contracted staff) who will answer queries, supported by revised Teams phone line options.

Digital applications

The core basics of an online account system is now functional, with built processes for a change of details and approximately 90% of an Assignment application. Subletting is ready for digital implementation. w/c 20/09/2021, the first in a planned series of early test and review sessions with a limited number of external Solicitors and agencies commenced to get feedback on the online account portal and change of details digital steps.

By Friday 24/09/2021, a revised PDF version of the Assignations application form is expected to be proof ready, to be finalised and hosted by the end of September 2021.

CIS

Work continues on the coding, with a testable build planned for mid November.

External training User Acceptance training has been delivered, and work is due to start on formation of the first testing scripts with a full day's external support.

Cloud migration

The Virtual Desktop trial has completed, and a survey of staff has been largely very positive with a definitive wish to stay with it. The Commission is now planning a 3 year commitment to this to complete the cloud migration, estimated realisation Oct 2021.

Date: 21 September 2021

Author: Aaron Ramsay

RALUT

- 1 **Western Isles post:** The B1 Casework Officer started in post in North Uist on 6 September 2021. The Officer is based in the SGRPID office in Benbecula and has started training on the main duties of the post.
- 2 **Crofting Census returns for 2020:** The team have received the report on the 2020 Crofting Census returns. The report has been analysed and the different categories of breach identified which will form the basis for the selection of tenant and owner-occupier crofters to be written out to. The Team plan to write out to the following:

Category	Numbers
Non-resident/non-cultivating tenants	60
Non-resident owner-occupier crofters	40
Non-resident tenants	34
Resident Non-cultivators tenants	46
Total	180

In addition, the Development Team will initially write to a further 20 resident/non-cultivating tenants. This will mean the Commission engaging with a total of 200 Census returners who have indicated in the latest census that they are in breach of one or more of their statutory duties. The Team will exclude those cases where:

- The croft is less than one hectare and does not have an associated grazing share;
- Where the tenant or owner-occupier crofter has only recently taken on the tenancy or ownership of the croft.

Letters are going out in a rolling programme, commencing week beginning 20 September 2021.

- 3 **Next steps:** The team are still awaiting a report on:

3.1 Non-census returners: which will form the basis of a further tranche of work in relation to writing to a selection of non-census returners whose address indicates that they are in breach of the residence duty.

3.2 Vacant crofts: To differentiate between those crofts which are held by a crofting landlord and available for letting, and those crofts owned by individuals who do not meet the three conditions to qualify for owner-occupier crofter status.

- 4 **Grazings Committee Report:** Update on progress with casework on the first tranche of cases following a virtual meeting which was held with the Grazings Committee and Shareholders in Skye, following a report identifying 31 potential breaches of duty. We agreed an initial tranche of 8 cases would be written to. Of these the RALU Team:

- Have issued two Section 26C(1) notices of suspected breach of duty.
- Have requested two SGRPID Reports.
- Are awaiting one assignation application, one subletting application and one change of ownership notification.
- Are trying to obtain a current address for the remaining case.

The Team have also identified 12 cases which will form the next tranche of cases investigated by the team. This work will commence once the 2020 census returners have been written to.

Date: 21 September 2021

Author: Joseph Kerr, Head of Regulatory Support

OPERATIONS

Staffing and training

Four experienced staff have left the Regulatory team recently or are soon to do so (three B1s and one A3). This has meant recruitment of staff at both B1 and A3 level and new staff are now filling these posts from both internal moves and those that are brand new to the Commission. Training is ongoing for three new A3 Regulatory staff which includes the processing of key stages of applications such as decroftings and assignments. The training programme and documentation for regulatory staff has been developing over recent months and it has been very effective. The length of time to train new regulatory staff is a year with consolidation going on for a further 6 months. Three new A3s have made an excellent start to their training and should be able to start some of their own cases for common application types by the end of October.

The three new B1s are settling in well but are still retaining large volumes of their previous A3 cases due to a lack of experienced staff to pass these on to. The training has started and will be ongoing for several more months and the experience required to become proficient will take at least a year.

Recruitment is ongoing for unfilled posts and those soon to be vacated, including one B1 and one A3 position in regulatory. Extra resource has been released to support the B1 work in the team in addition to extra resource in regulatory support. This is in addition to an additional B1 resource lent from the Grazings team. Some staff are also involved in other projects such as online applications and testing for the next CIS release.

Current outstanding work and steps to tackle this

There is a backlog of cases at the moment and the stats for the outstanding work was 894 for the start of September and may well increase further in coming months whilst new staff are in training. The level of work for staff in the team is very high and they are feeling under pressure. Changes within the customer services team along with backlog has meant that high volumes of enquiries are coming through to staff. This has a detrimental impact on their ability to process cases at their normal speed. This is being addressed by providing some regulatory training for customer services staff. There is also an additional temporary A3 staff member being recruited specifically to acknowledge applications which have not yet been started in order to keep customers informed.

A change to the early part of the process has been put in place as a temporary measure early in September, in order to get more of the unstarted cases underway. This has been a helpful collaboration between teams and involves GIS and the registration team processing cases at the start as well as registration helping with trigger Form As (first registration applications associated with another application). This has meant that several cases that would have remained unstarted have now been acknowledged and have had initial checks.

Longer trends in regulatory work

A trend since April 2020 has been a steady increase in outstanding cases held by the Commission (from 715 to 894 in the indicator statistics). This does not appear to be attributable to one single reason. This is being investigated alongside the need to identify ways to reverse or mitigate this trend where possible.

Date: 21 September 2021

Author: Heather Mack, Head of Operations

GRAZINGS

Grazings Committees

- Grazings Committees coming to the end of their 3 year term of office are now made aware that they can choose to call a public meeting for the appointment of a new committee if they wish, or that the Commission will continue to appoint a committee on the same basis as agreed in April 2020. This is in line with Commissioners' view that the latter option should continue to be available. Currently **512** Grazings Committees.
- Contacts being made by Development Team indicates that there are grazings which think they have committees but these have not been registered with the Commission and do not appear to have gone through the proper process for their appointment.

Guidance/Advice/Issue Resolution

- 7 significant cases current, covering issues such as:
 - Stocking issues/straying tups
 - Complaints re committee
 - Non compliance with regulations
 - Unsolicited developments on grazings
- Increase in the number of issues that relate to Access Code and are not manageable through Grazings Regulations.
- Considerable foundation work undertaken by member of Grazings Team on share position apropos crofts for development of Geary Township/Grazings project.
- **22** shareholding investigations are currently being carried out

Training

The Grazings Team is proposing to carry out several online events in the coming quarter focusing on the following subjects:

- Setting up of a Grazings Committee and basic good practice of managing the Common grazings
- Roles of the Grazings Committee and its members focusing on the Clerk.
- Managing and carrying out development options on common grazings.

Planning

To note of the 10 cases where the Commission provided a detailed response under the specific agreement with Highland Council in 2020:

- 6 applications were withdrawn by the applicants prior to a decision.
- one application is still awaiting a decision.
- 2 applications where the Commission was supportive were approved.
- Only one case where the Commission had concerns was approved.

In addition, the Commission was also for comment at the planning stage for the spaceport in Melness. The response was supportive, in line with the views of the Grazings Committee and many crofters in the area.

DEVELOPMENT

- Completed exercise to contact long term out of office grazings committees in the Western Isles and feedback provided to Grazing Team.
- Working with RALUT to carry out Western Isles pilot project: writing to crofters who indicated on their 2020 census returns that they were resident non cultivators.
- Development Team did presentation for CNES Crofting Joint Consultative Committee on 17th September 2021.
- Development team presentation to Community Land Scotland Outer Hebridean Housing Seminar on 26th August 2021.
- Development Work update provided at SCF/CC Meeting on 26th August 2021.
- Dedicated “Development” section on Commission Website designed in consultation with other teams.
- New Communications Officer took up her post on 16th August 2021 and has been working closely with the development team, including discussion around the upcoming 2022 Commissioner Elections. Social media accounts have now been handed over to Communications Officer.
- Responses submitted on Scottish Govt “Short Term Lets Licensing” consultation & CNES planning consultation.
- Working with FAS & SAC on promotional material on the benefits of a utilised croft & succession.
- Information drafted for Estate Agents who routinely market croft land to ensure prospective buyers are aware of the crofting system and their responsibilities.
- Meeting with Community Land Scotland (16/09/21). Potential for virtual seminar on with Western Isles Community Landlords on the role of landlords in crofting system to be considered.

Consultations

- Agricultural Transition in Scotland
- Local Food for Everyone

Date: 22 September 2021

Author: John Toal, Head of Grazings, Planning and Development

Here is the Q2 Compliance Report, which has been shared with SMT. Head of Business Support and Compliance will attend the meeting and address any questions.

COMPLIANCE REPORT – 06 OCTOBER 2021

FOI/EIR/SAR & COMPLAINTS

The Quarter 2 statistics have been captured in the below table:

	Period	Case Type	Received	Invalid / Withdrawn	Responded within statutory timescales	Review	Further Actions <i>e.g. if still dissatisfied CC to direct to SPSO</i>	Supervisory Authority Actions			Issues
								ICO	SICO	SPSO	
Q2	Jul-Sep 2021	SAR	-	-		-	-	-	-		
Q2	Jul-Sep 2021	FOI	6	-	4	-	-	-	-	-	2 cases is still in progress (deadlines: 29/10/2021 & 01/11/2021)
Q2	Jul-Sep 2021	EIR	4	-	2	-	-	-	-	-	2 cases have had "Fees Notices" issued - we are awaiting a response.
Q2	Jul-Sep 2021	Complaints: Frontline	5		3		-	-	-	-	
Q2	Jul-Sep 2021	Complaints: Stage 2	-	-	-		-	-	-	-	

GAELIC LANGUAGE PLAN

- GLAIF funding totalling £1200 received towards cost of language classes
- Final GLAIF report for 2020/21 submitted to BnG
- Annual Review of GLP carried out by Board on 10 August 2021
- Review report for 2020/21 submitted to BnG
- Intermediate language class suspended due to workload pressures
- Gaelic Awareness sessions arranged for October 2021.

STANDARDS & POLICY

- **Data Protection** – All new starts have received GDPR Training (*please note that they have also been given a Compliance Hub Overview*)

Date: 6 October 2021

Author: Jane Thomas, Head of Business Support & Compliance

**COMMS PRESENTATION BY ALANA BLACK
(JANE CRAIGIE MARKETING)**

DATE OF NEXT MEETING – THURSDAY 2 DECEMBER 2021 - TEAMS

ANY URGENT BUSINESS – ORAL

EXCLUSION OF PRESS & PUBLIC