



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***3 DECEMBER 2021***

**CROFTING COMMISSION MEETING via TEAMS  
3 DECEMBER 2021 AT 0900 hrs**

**AGENDA**

<b>1</b>	<b>APOLOGIES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>2</b>	<b>DECLARATION OF INTERESTS</b>	<i>Oral</i>	<i>Standing Item</i>
<b>3</b>	<b>MINUTES FROM 20 OCTOBER 2021 (<i>already published</i>)</b>	<i>Minutes</i>	<i>For info</i>
<b>4</b>	<b>REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (<i>of 20 October 2021</i>)</b>	<i>Paper</i>	<i>For info</i>
<b>5</b>	<b>MATTERS ARISING FROM PREVIOUS MINUTES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>6</b>	<b>UPDATE ON MEETINGS WITH SPONSOR DIVISION</b>	<i>Oral</i>	<i>Standing Item</i>
<b>7</b>	<b>AUDIT &amp; FINANCE COMMITTEE REPORT <i>Update from Vice Chair of Committee</i></b>	<i>Oral</i>	<i>Standing Item</i>
<b>8</b>	<b>STRATEGIC RISK REGISTER</b>	<i>Paper</i>	<i>For info</i>
<b>9</b>	<b>REVISED STANDING ORDERS</b>	<i>Paper</i>	<i>For approval</i>
<b>10</b>	<b>COMMISSIONERS' TRAINING PLAN</b>	<i>Paper</i>	<i>For approval</i>
<b>11</b>	<b>ON-BOARD TRAINING ACTION PLAN</b>	<i>Paper</i>	<i>For approval</i>
<b>12</b>	<b>UPDATE ON CHANGES TO THE COMMISSION'S SCHEME OF DELEGATION</b>	<i>Paper</i>	<i>For discussion</i>
<b>13</b>	<b>UPDATE ON DELOITTE AND PUBLIC AUDIT COMMITTEE</b>	<i>Oral</i>	<i>Standing Item</i>
<b>14</b>	<b>COMMISSION FRAMEWORK DOCUMENT</b>	<i>Paper</i>	<i>For approval</i>
<b>15</b>	<b>DATE OF NEXT MEETING 8 February 2022 – Teams</b>		
<b>16</b>	<b>ANY URGENT BUSINESS</b>		
<b>17</b>	<b>EXCLUSION OF THE PRESS AND PUBLIC</b>		

# APOLOGIES – ORAL

## **DECLARATIONS OF INTEREST – ORAL**

# CROFTING COMMISSION

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

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

### 1 APOLOGIES AND WELCOME

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

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

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

### 2 DECLARATION OF INTERESTS

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

### 3 BOARD MINUTES FROM 10 AUGUST 2021

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

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

#### 4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETINGS 10 AUGUST 2021

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

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

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

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

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

#### 5 MATTERS ARISING FROM PREVIOUS MINUTES

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

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

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

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

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

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

## 6 PROPOSED CHANGES TO DELEGATED DECISION MAKING PARAMETERS

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

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

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

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

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

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

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

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

These changes will take effect immediately.

## **7 UPDATE ON MEETINGS WITH SPONSOR DIVISION**

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

## **8 REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES**

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

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

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

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

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

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

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

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

## **9 REVIEW OF KEY PERFORMANCE INDICATORS Q2 2021/22**

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

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

## **10 CONSIDERATION OF THE MARKET IN THE ASSIGNATION OF CROFT TENANCIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **11 REPORTS FROM HEADS OF TEAMS**

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

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

### **(a) IS Team**

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

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

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

**(b) RALU & Reg Support**

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

**(c) Operations**

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

**(d) Grazings, Policy and Development**

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

**(e) Compliance**

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

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

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

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

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

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

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

### **13 DATE OF NEXT MEETING**

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

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

### **15 EXCLUSION OF THE PRESS AND PUBLIC**

### **14 ANY URGENT BUSINESS**

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

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

## CROFTING COMMISSION MEETING

### 3 December 2021

Report by the Chief Executive

### Review of Action Points from 20 October 2021

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE
1	Malcolm noted that the issue of remote working / home working should be on an agenda for February next year to review	Jane/Fiona	Fiona has put on planner
2	Plans to expand the Development role beyond the Western Isles to be integrated into next year's corporate plan	Bill	Summer 2022 (initial discussion 8 Dec 2021)
3	Census letter needs to clarify what cultivation is, and comms needs to reflect this starting within the next two weeks	Aaron/Kirsteen/Lynne	By beginning of Nov
4	SMT to advise the Board on the presentation for the cabinet secretary for the Dec Board meeting – focus on Duties expansion and the benefits in relation to croft prices, and the expansion of development work	David/SMT	ASAP (now included as a Board paper for 3 December)
5	HOD updates to cease going to the Board, to be replaced by a singular quarterly update co-ordinated by Fiona and approved by Bill	Bill/Fiona	From now
6	A short report on the census data and how the output is used and the benefits of it for Feb Board	Aaron/Joseph/Garry	Fiona has put on planner
7	Kirsteen to produce a weekly summary of all SM posts and print media articles, and a monthly update on followers, re-tweets etc	Kirsteen	Now
8	Agreement that the forthcoming board and strategy days should be in person – CC to arrange venue	Fiona	Rearranged to Teams meetings
9	Paper to come back to the Dec Board saying what has already been done on delegating refusals	Joseph	Fiona has put on planner
10	Paper for Feb 22 on what the next steps to full DDM for T3 might look like	Joseph	Fiona has put on planner
11	Every Board member is to be supplied all Board minutes, draft or otherwise (Jane)	Jane/Fiona	Dec onwards
12	Bill to explore the use of external contractors for doing reports where RPID cannot	Bill/Joseph	Bill and Joseph have discussed and will report back to the Board as a matter arising

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

**UPDATE ON MEETINGS WITH SPONSOR DIVISION – ORAL**

## **AUDIT & FINANCE COMMITTEE REPORT**

### **7(a) Update from Vice-Chair of Committee – Oral**

## Strategic Risk Register (SRR)

		20-25 High																
		10-16 Medium																
		4-9 Low																
		1-3 Very Low																
Risk No	Corporate Outcome	Risk Description (what is the thing that could jeopardise the outcome being achieved?)	Potential Consequences	Untreated Score (how bad if we were doing nothing at all)			Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)	Current Control Actions in place	Current Score			Risk Movement	Additional Planned Actions	Achievable Score (once all our current plans are implemented)			Owner	Last updated
				Impact	Likelihood	Total			Impact	Likelihood	Total			Impact	Likelihood	Total		
001	Crofts are occupied and managed	Not enough momentum can be gained to see a clear improvement, and/or an increase in legal challenges slows process.  Resources have been reallocated away from the RALU team since October 2019 and this has been exacerbated by the impacts of Covid-19.	Crofting will continue to decline with land not being managed and communities shrinking Reputational - seen to not be doing enough to address or conversely could be perceived as being too heavy handed.  Managing Expectations - could expend a lot of resources but with little overall impact, crofting may continue to decline anyway.  Financial - increased legal challenges could not only impact the resources but also have financial implications	4	5	20	An appropriate balance is found which sees real delivery on this outcome that is viewed in a positive light without any significant adverse affect on the resources and costs of the organisation.	Systematic approach for dealing with those who confirm through the census that they are in breach of duties. Established process for investigating breaches reported under section 26A of the 1993 Act.  Resolving outstanding successions to croft tenancies.  Videos made of Convenor and staff explaining the requirement to comply with statutory duties residence and land use duties and explaining options for resolving any breach. Increased staff resources within the RALU Team from September 2020.  In October/November 2020 processes were streamlined to escalate cases at an earlier stage to the statutory enforcement provisions at Sections 26C(1) to (5) of the 1993 Act. Process for escalating cases from regulatory casework tier 3 to RALUT to commence enforcement action, where appropriate, introduced. In September 2021, the RALU Team, in accordance with the recommendation of the SWTG considering future action, extended the engagement with census returners, to include owner-occupier crofters, breaches of cultivation and non-census returners.  However, from November 2021, 40% of RALU team time is being deployed to help address the regulatory casework backlog.	4	5	20	Increasing	In December 2020 and February 2021 the Board accepted and prioritised the 12 recommendations of the Short Term Working Group on expanding the work of the RALU Team, early priorities being initiating action on non-census returners, owner-occupier crofters and referrals from casework where information relating to a possible breach of duty emerges during the course of processing of a regulatory application.  Targeted action with those who have repeatedly failed to return the census.  Selected follow-up of resident non-users of their crofts  Consideration being given to the appropriate use of sublets; short term lets and consents to be absent, as short/medium term resolutions of absentee cases.	4	3	12	Head of Regulatory Support	Nov-21
002	Common grazings are regulated and shared management practices are encouraged.	Changes in crofting practices and support see a continued decline and move away from common grazings being utilised and managed.  Covid-19 pandemic causes difficulties to arrange meetings and form grazings committees.  Covid19: reduction in resource capacity due to caring responsibilities and other aspects of home working	Common grazings will see a continued decline in use and management.	3	5	15	Grazing committees are enabled to generate a recovery in the productive communal use of common grazing land.	Template grazings regulations made available.  Grazings guidance published February 2019.  Direct support provided to grazings committees/ townships that encounter problems.  Support and encouragement to get grazings committees back into office.  Training for grazings clerks/committees being delivered online.  New policy agreed to enable appointment back to office of outgoing grazings committees by Commission under powers of section 47(3) of the 1993 Act- this option still being used by those who do not wish to hold a physical meeting. In addition, a minority are now using the standard s47(1) process.  However, part of a B1 has been loaned to regulatory to help address the casework backlog.	3	5	15	Increasing	Agreed recommendations from Commission Meeting of February 2021.  Improve register of common grazings.  Invest in developing skills and capacity in crofting areas to support and retain the basic structures for managing common grazings.  Ensure that the particular needs of common grazings are recognised within future support systems.	3	3	9	CEO	Nov-21

20-25		High		Strategic Risk Register (SRR)														
10-16		Medium																
4-9		Low																
1-3		Very Low																
Risk No	Corporate Outcome	Risk Description (what is the thing that could jeopardise the outcome being achieved?)	Potential Consequences	Untreated Score (how bad if we were doing nothing at all)			Desired Outcome (to prevent the risk from materialising or from having too much adverse effect)	Current Control Actions in place	Current Score			Risk Movement	Additional Planned Actions	Achievable Score (once all our current plans are implemented)			Owner	Last updated
				Impact	Likelihood	Total			Impact	Likelihood	Total			Impact	Likelihood	Total		
003	Crofting is regulated in a fair, efficient and effective way	Volume and complexity of casework exceeds CC's ability to deliver high standards of customer service due to budgetary constraints - currently exacerbated by the effects of Covid-19.	Reputational - decline in performance either in quality of decision making or turnaround times.  Resources - staff may feel under increasing pressure and stress may become an issue.  Sponsor Relationship - decline in performance may lead to tension between the Commission, Sponsor Branch and the Cabinet Secretary.	5	5	25	Continued process improvement supported by use of digital service delivery provide enough capacity to absorb future budget pressures whilst maintaining good service provision. Additional temporary resources to be made available during pandemic to mitigate the effects of home working, since March 2020 the number of applications received remains higher than the number of applications being discharged. Daily support for staff to progress work by way of Skype and Teams during Covid-19 period.	Additional permanent post added to regulatory team as part of new money from summer 2020. Resilience provided from an experienced member of staff to support the team during periods of pressure.  Provision of Register of Crofts Online, including Decrofting directions hosted publicly.  Ongoing process reviews  Monitoring of turnaround times through KPI quarterly report to provide early warning of issues. During Covid-19, weekly monitoring of application/notification receipt and allocation of applications/notifications to staff. Monthly monitoring of applications/notifications received, discharged and outstanding. Attention being given to cases that have been outstanding longer than 12 months but have not yet reached conclusion.  IS team providing technical support as homeworking issues arise.	5	5	25	Static (because already at max)	Independent Review of Workforce has recommended a substantial increase to regulatory staffing to compensate for turnover challenges and address the backlog in the medium term. Funding for this would need to be secured from SG. In the meantime, training has been accelerated, staff have been loaned from other team, and overtime is being worked most weekends.  Additional FTA post added to regulatory team for 2021/22. Further review of staffing complement for the Regulatory Team  Ongoing work with RoS to improve registration processes  Full review of application forms to make them more fit for purpose, with planning ongoing to facilitate a full digital return to remove the requirements for manual duplication of work entering into the CIS  Limited trial of digital payments headed up by head of finance with a limited number of trusted agents. If successful this will lay the groundwork to examine digital payments for all  Further review of MI products, including scoping missing requirements.	4	4	16	Head of Operations	Nov-21
003a	Crofting is regulated in a fair, efficient and effective way	Commission does not have the capacity either to enhance CIS and MARS in timely fashion, or to replace them. This was highlighted in the recent Azets audit of the CIS	Resource impact on Regulatory, RALU and other teams, exacerbating risks 001 and 003 which could result in reputational damage.  Ongoing weaknesses in our management of information with the risk of a data protection breach, which could have legal, reputational and financial implications for the Commission.	3	5	15	Delivery, testing and implementation of release 1063 with a fully functional retention schedule incorporated.  Establishment of internal resource positions to plan and delivery future changes, including Product Owner, Product Sponsor, Scrum Master and resilience within Coding capacity	Specification for release 1063 has been redone to cover all aspects of document attaching and retention  User Acceptance Testers identified and full UAT training delivered  A full action plan to audit recommendations has been formed by the UAT group, signed off and approved by the Board  A series of small, stand alone tools have been implemented that realise some of the biggest productivity gains for other teams ahead of the full release (planned release of next CIS delayed as a result of backlogs in Regulatory casework)	2	4	8	New	New Product Owner role to be introduced to lead future development of the CIS internally, advert being drafted and post to sit in Regulation  Future planned work to fully explore alternatives to internal CIS development in late 2022  Revise the requirements group TOR and deliver full training to the Business Systems Analyst and requirements group similar to the UAT training	2	2	4	Head of Digital & Improvement	Nov-21
004	We inform and support the future of active crofting	Conflicts arise due to clash between the crofting system, the modern environment and economy and different stakeholder agendas. <b>Failure on the part of the Commission to agree any collective view on supporting the future of active crofting.</b>	Crofting legislation and other systems don't improve.  SG, SCF and NFUS have low regard for the Commission.	4	3	12	Commission positions on key issues for the future of crofting are developed, involving discussion with partner organisations.  Commission implements an effective 'development' role, including the outward facing posts in the Western Isles	Development officers recruited in Spring 2021, now taking forward work on a range of issues including out of office grazings committees, resident non-cultivators, agents selling crofts, and Agritourism.  Regular meetings between Convener/CEO and key stakeholders.  Participation in Cross Party Group on Crofting and Crofting Stakeholder Forum.  Web presence and videos.  Input given to Law Society review of aspects of crofting law	4	2	8	Static - but the focus has changed from the 'future of crofting' work to the National Development Plan and the Commission's expanded role	Work with development officers and partner organisations to implement a new stream of Commission work  Promote the interests of crofting in further engagement with SG about support for crofting.	4	2	8	CEO	Nov-21



# CROFTING COMMISSION MEETING

## 3 December 2021

Report by the Chief Executive

### Annual Review of Standing Orders

#### SUMMARY

The Standing Orders governing Commission meetings are reviewed on an annual basis, for approval by the Board. An issue regarding Standing Orders was highlighted as a result of the Wider Scope audit, which is addressed in the paper.

#### BACKGROUND

Standing Orders represent one of the key governance documents in the Commission. They are shown at **Annex A** and were last reviewed in August 2020. The annual review offers an opportunity for the Commission to ensure every member of the Board is familiar with the details contained in Standing Orders.

#### CURRENT POSITION

The wider scope audit completed by Deloitte earlier this year identified an issue which it recommended, at 4.10, could be addressed by revising Standing Orders. It recommends that Standing Orders should clearly set out how informal, private meetings of the Board can be called, how they should be conducted, any records which should be kept and emphasise the importance of the Board not using these meetings to in essence take Board decisions.

Suggested revised text is highlighted in the document at **Annex A**.

Impact:	Comments
Financial	No financial implications.
Legal/Political	The Commission is required to adhere to Standing Orders as a Scottish Public Body.
HR/staff resources	The Standards Officer is responsible for ensuring the Board adheres to the provisions set out in Standing Orders.

#### RECOMMENDATION

The Board is asked to confirm approval of revised Standing Orders or agree alternative revisions.

Date 10 November 2021

Author Jane Thomas Head of Compliance & Business Support



# **CROFTING COMMISSION**

## **STANDING ORDERS** **Relating to the Conduct of Meetings**

**VERSION 1.3**

Last Review: August 2020

Next Review: August 2021

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## PART 1: PRELIMINARIES

- 1.1. The purpose of these Standing Orders is to ensure the orderly and effective conduct of formal meetings of the Crofting Commission and that of its constituted committees.
- 1.2. These Standing Orders apply and are effective from 24 June 2015.
- 1.3. The Standing Orders will be reviewed on an annual basis. Any amendments must be agreed by a majority of members present at a meeting of the Crofting Commission.

Amendment to these Standing Orders (other than at an annual review) shall be made only by resolution of which 14 days' notice has been given.

- 1.4. The Standing Orders may be amended by resolution carried by a majority of members present at a meeting of the Commission.
- 1.5. Where the word "**Convener**" is used in the Standing Orders, it includes any interim Convener appointed by the Scottish Ministers.
- 1.6. Where the word "**Chair**" is used in the Standing Orders in connection with a specific individual, it includes, as appropriate, the Convener (or any interim Convener) or any person appointed in terms of Standing Order 3.1 in place of the Convener to chair any meeting of the Commission or any of its committees.

## PART 2: CALLING MEETINGS

- 2.1. Generally, Notice of a meeting of the Commission will be given to every member of the Commission by, or on behalf of, the Chief Executive, at least 7 days prior to the date of the meeting. The Notice will be in written form and will provide the place, date and time of the meeting. The Notice will be delivered by post, fax or any accepted form of electronic communication to a member's usual place of residence or to any other address provided in writing by a member to the Chief Executive.
- 2.2. **Public Notice** of a meeting of the Commission will normally be given by posting a Notice on the Crofting Commission website at least 4 days before the meeting.

The Notice of Meeting will include:

- a) The date, time and place of the meeting, and
  - b) Information on the availability of the Agenda and accompanying reports.
- 2.3. **Public Notice** will not be required where a **Special Meeting** is convened to deal with a matter of a particularly sensitive or urgent nature.

- 2.4. The Chief Executive will call a **Special Meeting** of the Commission when required to do so by the Convener of the Commission. A Special Meeting will also be called by the Chief Executive if in receipt of a written request stating the business of the meeting from another Member of the Commission and seconded by a majority of the Commission. The meeting will be held within 21 days of the receipt of the requisition by the Chief Executive.
- 2.5. Where a Special Meeting is called under Standing Order 2.4, the Chief Executive may call the meeting without giving the 7 days' notice normally required at 2.1 above where there is particular urgency, provided every effort is made to contact Members to give as much notice as possible prior to the meeting.
- 2.6. The Convener may wish to consult with the Board by holding an informal private meeting, for Board members only. He/she must inform the Chief Executive that such a meeting has taken place and the general nature of the discussion. Though no formal Minute will be taken, the Convener should draft a contemporaneous Note of the discussion, including who attended and forward this to the Chief Executive for saving. This ensures that the provisions of the Freedom of Information (Scotland) Act are adhered to. No Board decisions can be taken outside formal Board meetings.

## Place of Meetings

- 2.7. Board Meetings of the Commission and meetings of its Committees will normally be held at the Crofting Commission headquarters, Inverness, on the days fixed by the Commission or by the Convener in consultation with the Chief Executive. Meetings may also be held at an alternative location or via video-link, tele-conference or other digital means. If this is the case, this will be clearly stated on the public Agenda and noted in the subsequent Minute of the meeting. Where practicably possible, the Commission will also hold at least one public meeting a year outwith Inverness in another part of the Crofting Counties, in addition to public Board meetings in Inverness.

## Meeting Agenda

- 2.8. The Convener or Chief Executive will generally determine the agenda for a meeting of the Commission, but the decision of the Chief Executive as to content of the agenda for such a meeting will be final. The agenda will be provided along with the Notice of Meeting. A Commissioner wishing to submit an item for the agenda of a Commission meeting must generally ensure that it is submitted in writing at least 14 days prior to the day of the meeting concerned, and by 5pm on the final day available. The agenda item must be communicated in writing to the Chief Executive and copied to the Convener. Where a Commissioner submits an item for the agenda fewer than 14 days prior to the day of the meeting concerned, he or she must provide a reasonable explanation as to why the item was submitted fewer than 14 days prior to the day of the meeting concerned. The Convener and the Chief Executive will make reasonable endeavours to include any such submitted item on the agenda for a meeting of the Commission, but the decision of the Chief Executive as to whether or not to include the item on the agenda will be final. This is without prejudice to Standing Order 3.7 governing Commission decisions and voting.

## **Urgent Business**

- 2.9. No business other than that specified on the agenda will be transacted at the meeting, other than that which the Convener or the Chief Executive has accepted as urgent in advance of the meeting (with the decision of the Chief Executive on the matter being final). Any such accepted urgent items will be dealt with under the Any Other Business (AOB) agenda item. The circumstances for including such urgent business shall be recorded in the minute of the meeting.

## **PART 3: ATTENDANCE AT MEETINGS**

### **Chair**

- 3.1. The Convener must, if present, chair meetings of the Commission and any of their committees. If the Convener is not available to chair a meeting of the Commission or a committee, the Convener is to appoint another member of the Commission to chair the meeting.

Where the Commission has nominated a Vice-Convener, he or she may chair meetings in the absence of the Convener where the Convener has not nominated another member of the Commission to chair proceedings. Where both the Convener and Vice-Convener are absent and no member has been nominated, the Chief Executive will preside over the nomination of another member to chair from the members present.

Members of the press and the public are entitled to attend meetings of the Commission. However, the Commission may decide or determine (in terms of Standing Order 3.7) that matters of a confidential or sensitive nature should be considered without the press or the public in attendance. The agenda for a meeting of the Commission may contain items that are marked in advance for consideration in the exclusion of press and public, but any decision or determination of the Commission (in terms of Standing Order 3.7) as to whether or not a matter is confidential or sensitive and is to be considered in the exclusion of press or public will be conclusive of the matter.

### **Quorum**

- 3.2. A meeting of the Commission must consist of at least five members. Where there are three or more elected members, the quorum must include no fewer than three such members.

Meetings shall, subject to the presence of a quorum, start at the time set out in the Notice of the meeting. If a quorum is not present, the Convener may allow ten minutes before adjourning the meeting and fixing a time, then or afterwards, for it to take place. Where the Convener is not present and no other member has been nominated to chair the meeting, the Chief Executive, in consultation with members present, may adjourn the meeting or record that owing to the lack of quorum, no business could be transacted.

Whenever it is drawn to the attention of the Convener that a quorum may not be present, the Convener will halt proceedings to establish the situation, and only continue should the Commission be quorate.

No item of business can be transacted at a meeting of the Commission unless there is a quorum present.

## **Conduct of Meetings**

- 3.3. The person in the Chair must be respected by all members at a meeting of the Commission. The Chair has the authority to rule on any points of order or matters of procedure. It is the responsibility of the person chairing the meeting to ensure that members obtain a fair hearing and that order is preserved. In the event of any disorder, the Chair may adjourn the meeting for a suitable period.

In the event of any member failing to respect the authority of the person in the Chair or being guilty of obstructive or offensive conduct, the Chair may seek an apology or have a short adjournment. If necessary, a motion may be moved to suspend the member for the remainder of the meeting. The member will then be required to leave the meeting.

## **Sederunt**

- 3.4. The Chief Executive or another officer will record the names of the members present at each meeting of the Commission, as well as those who have submitted apologies for their absence.

## **Order of Business/Adjournment**

- 3.5. The business of the meeting of the Commission will normally be conducted in the order set on the agenda. However, where the members consent, the order may be altered for the benefit of the meeting. The Chair may, with the consent of the members, also adjourn the meeting to another time and date and place, if necessary. In the event of any disorder, the Chair has absolute discretion to adjourn the meeting, and his or her quitting the Chair in the event of such disorder will bring the meeting to an end.

## **Declarations of Interest**

- 3.6. A member of the Commission, or any officer working on behalf of the Commission, who has a direct or indirect interest in a matter being considered at a meeting of the Commission or a committee of the Commission, must disclose the nature of the interest to the meeting. Members who are crofters are not excluded from taking part in discussions relating to crofting.

Any disclosure of interest must be recorded in the minutes of the meeting.

Anyone declaring an interest should not take part in any deliberation of the matter, unless that is confined to general principles, as opposed to the specifics of the case. Such deliberation on general principles should only be with the consent of the other members.

Anyone declaring an interest must not take part in any decision of the Commission or of any committee of the Commission in respect of the matter to which the disclosure relates. Consideration should also be given to removal from the room while the matter is being discussed and determined. Any removal from the room following a declaration of an interest, and at what stage in proceedings, should also be recorded in the minute of the meeting.

## **Commission Decisions and Voting**

- 3.7. Whenever possible the Commission will seek to make decisions by reasoned debate and consensus. Only in situations where it is not possible to reach a conclusion in this manner will voting be required.

Where it is clearly understood what the members are voting on, formal motions from members will not be necessary.

Where an item of business that requires a decision has been given full consideration, and all members have had the opportunity to make their contribution, any member may propose a motion and seek a seconder. Any amendments to the motion must also be proposed and seconded. A member cannot move or second both the motion and amendment, or likewise more than one amendment.

Any motion or amendment to a motion must be written down and read out prior to any vote being taken.

Once moved and seconded, a motion or amendment will not be withdrawn without the consent of the mover or seconder.

Where there is a vote between the motion and amendment, the vote for the amendment will be taken first. If there is more than one amendment, the vote may be taken against each amendment, before being taken against the motion or, if determined by the Chair, each may be taken individually against the motion.

The vote of the Commission will normally be taken verbally or by a show of hands. If any member objects to the vote being taken in this manner, and a majority of those present and entitled to vote agree, the vote will be taken by ballot.

The person chairing a meeting of the Commission or any committee of the Commission has a casting vote.

For the avoidance of doubt, Standing Order 3.7 shall not apply to the provision of instructions to a solicitor (whether an in-house solicitor or an external firm of solicitors) unless the Chief Executive brings a particular matter for decision on which a specific instruction is required to be given to a solicitor/ solicitors acting on behalf of the Commission. The Chief Executive is required to set out the nature of the instruction that is sought or required before any decision is made to provide such an instruction.

## **Recording Dissent from Decision**

- 3.8. A member may have his or her dissent to a decision of the Commission recorded, provided that such a member requests immediately (or as soon as reasonably possible) after the item is disposed of that such dissent is recorded.

Once a decision has been reached, all members have a corporate responsibility to recognise and accept the decision as that of the Crofting Commission. Corporate responsibility entails that members must adhere to and accept such a decision until it is otherwise altered.

## **Minutes of Commission Meetings**

- 3.9. A minute of a meeting of the Commission will be taken on behalf of the Commission. The minutes will record the names of members in attendance and those apologising for their absence, and the business transacted at the meeting. A draft copy of the minutes will be circulated to members by email, for comment and suggested amendment. A final version of the minutes will then be circulated to members as the approved minute of the meeting and will be made available to the public on the Crofting Commission's website. A copy of the approved Minute will be available to members at the next Board meeting, for information and reference.

In between the dates of Board Meetings, to assist with administration and the efficient use of Commission time and resources, the Convener and Chief Executive may determine that routine papers can be circulated electronically or by post for Commissioners' comment, approval or rejection. It will be incumbent upon each Commissioner to respond within the agreed period of time, unless the Commissioner has already intimated his or her non availability. Where a Commissioner has not received an e-mail, it is permissible to request that the matter is discussed at a meeting of the Commission.

In the event that the Commissioners responding to the emailed/posted paper confirm their approval of any Recommendation(s) made in the paper, this will be accepted as the Decision of the Commission, with immediate effect. In order for the Commission to act with transparency, any Decision agreed in this way will be intimated at the next Public Board Meeting, to allow the Decision to be recorded in the Minute of the meeting and therefore made public.

In the event of a paper not receiving approval by a majority or if a Commissioner raises an unacceptable risk to the Commission relating to the paper, it will be remitted in the first instance to the Convener and/or Chief Executive, before deferral to the next meeting of the Board for full deliberation and decision.

## **PART 4: COMMISSION COMMITTEES**

### **Committees**

- 4.1. The Commission must establish –
- a) an audit committee; and
  - b) such other committees as it considers appropriate.

The Commission may combine its audit and financial obligations, to provide an Audit & Finance Committee. This committee and any other committee of the Commission must comply with any directions given to it by the Commission. The Commission may appoint individuals who are not members of the Commission to its committees. However, no committee may consist solely of non-Commission members.

The provisions of the Standing Orders, with the obvious exception of what constitutes a quorum, will apply to committees as the Commission considers appropriate. Other sub-committees and working groups need not operate to the same formal level. Such groups will not have any delegated authority and will

report back to the Commission or make recommendations for Commission approval.

Decisions of a committee will not take effect until these decisions have been reported to the Commission, and been approved by the Commission, unless falling within the following category:

- a) A matter included in the delegation to or remitted with powers to the committee;
- b) Any matter that the committee considers to be urgent, which although not included in the annual budget does not entail major expenditure and has the approval of the Chief Executive and the Convener, and complies with the delegated responsibilities afforded to the Chief Executive of the Commission;
- c) Any routine matter that does not involve a change in policy.

## **Minutes of Committees**

4.2. The minutes of meetings of such committees will be made available to all members. In addition, a report explaining the deliberations of each committee will be provided at a meeting of the Commission.

The minutes of meetings of committees will be submitted to the next meeting of the Commission by the Chair of the committee (a) for confirmation in respect of business delegated or remitted with powers and (b) for approval in respect of matters referred. Any matter arising from the minutes should be addressed by a member of the committee who was present at the relevant meeting. The Commission will consider such matters and take decisions with immediate effect.

## **PART 5: MISCELLANEOUS**

### **Non-attendance at Meetings**

5.1. Members should tender their apologies to the Convener and to the Chief Executive, if possible in writing (by letter or electronically) as soon as practically possible, once they become aware they will be unable to attend a meeting.

If a Member of the Commission has been absent from meetings of the Commission for a period of six months without the permission of the Convener, the Chief Executive will draw the matter to the attention of the Scottish Ministers, to consider removing the Member by giving him or her notice in writing. This is in line with Schedule 1 of the Crofting Acts.

### **Delegation of Powers**

5.2. The Crofting Reform (Scotland) Act 2010, Schedule 1, Section 15(1) provides for the Commission to delegate its functions to: any of its Members; any of its committees; its Chief Executive; any person whose services are provided to it by the Scottish Ministers; and any of its employees. The Commission will have the ability to determine the type of functions it can delegate and the extent to which these functions can be carried out on its behalf. Section 15(2) specifies that the Commission continue to have responsibility for the exercise of its functions even after a function has been delegated.

The Chief Executive has the power to refer for further consideration by the Commission, by way of a Notice of Referral, any decision taken which may be considered by the Sponsor Division as giving rise to or likely to give rise to a contravention of a statute or any Code of Practice, or maladministration. This Standing Order is without prejudice to the Chief Executive's role as Accountable Officer.

## **Members' Code of Conduct**

- 5.3. All members of the Commission will be bound by the provisions of the Commission's [Code of Conduct](#), approved by the Standards Commission for Scotland.

# CROFTING COMMISSION MEETING

## 3 December 2021

Report by the Chief Executive

### Annual Review of Commissioner Training Plan

#### SUMMARY

The Board is asked to consider the Training Plan at Annex A and confirm it is a complete record from Year 1, and to advise on the selection of training to be prioritised in 2022/23.

#### BACKGROUND

A comprehensive training programme was put in place for Commissioners in 2017 and has been added to each year. The training delivered is shown in detail on the table at **Annex A**.

#### CURRENT POSITION

Following the Wider Scope external audit earlier this year, the Deloitte Report recommended at 2.9 that the Commissioner training plan should be subject to Board approval and updated annually. The Board should further set out clearly how the training plan has been decided upon.

The table at **Annex A** covers the training delivered to date. If Commissioners identify any omissions, these can be added.

Several Board members have expressed concern at the amount of training delivered in Year 1, reflecting the time required for new Board members to begin to understand their role. The Board is therefore asked to consider in particular the items highlighted in yellow at **Annex A** and indicate whether they agree that these items should be covered in Year 1, following crofting elections in 2022, bearing in mind the need to ensure there is clarity around roles and responsibilities at an early stage in the life cycle of the Board.

Following this consideration and confirmation of the current training plan, a proposed training plan for Year 1, to cover 2022/23 will be drawn up and preparations made for the Induction of new members to the Board in March 2022.

Impact:	Comments
Financial	A proportion of training can be delivered in-house. In addition, there is a separate training budget to cover the Board.
Legal/Political	Some of the training detailed is mandatory.
HR/staff resources	Several members of staff are engaged in either delivering training or arranging its delivery.

**RECOMMENDATION**

**Board members are asked to confirm whether the Training Plan at Annex A is complete and to confirm the elements of training to be prioritised for the Board in 2022/23.**

Date            9 November 2021

Author          Jane Thomas, Head of Compliance & Business Support

**COMMISSIONER TRAINING PROGRAMME – from Year 1 to November 2021**

TOPIC	YEAR	DURATION/DELIVERY	COMMENTS	COMPLETED
<b>GOVERNANCE/ROLES &amp; RESPONSIBILITIES</b>				
Induction Programme	27 April 2017 (inc photos)	Full day, inc 2-hr media session	Organised following best practice guidelines and complemented by comprehensive Induction Reference Pack	Completed
Induction Pack	Available electronically (in hard copy on request)	Pre-session supporting materials	Make Induction Pack available to Commissioners as soon as appointment/election confirmed	Completed
'On Board' training	22 June 2017 Year 1 Refresher Year 2 2018	Full day	Organised at Kingsmills Hotel	Completed
NDPB/SMT/Sponsor div joint training on Roles & responsibilities + Strategic/Operational split	2-day joint training events in Oct/Nov 2021	2 x full days	Sessions booked on 5 Oct/2 Nov 2021 for SMT, Board + Sponsor Division representatives, to be delivered by David Nicholl	These sessions follow the recommendations in the Deloitte Report 2.6, 2.8, 3.6, 3.7, 3.8.
Public Boards (best practice)	From Sept 2021	online	Access to Public Bodies Unit Governance Portal, which includes standard good practice modules + range of additional modules to support the Board members	Board members can log in and have full access.
Standards Commission – Ethical Standards Framework in Scotland	4 May 2017	Half-day	Supporting 'On Board' learning, GGH, booked.	Completed
Explaining Performance appraisals - Convener	To take place once Convener appointed, led by sponsor division	2-hours	Specific training session going over responsibilities of Convener in Appraisal system. Set date once Convener announced. Done.	Materials provided to Rod and Bill - completed (materials subsequently provided to Malcolm)
Explaining Performance appraisals - Board	Cover at Sept Strategic meeting (20 Sept 2017)  Added to Board Planner and info pack to be forwarded in August	1 hour		Completed
Equality & Diversity and the Board	As above for Convener + cover Gaelic in workplace at Dec 2017 strategic meeting. Jane has arranged with BnG.	Mixed	Initial session on Diversity for Convener + SMT followed by Gaelic in the workplace session with BnG (in Dec).  Twice yearly Gaelic Awareness sessions organised for staff, Commissioners invited.  2 Commissioners attended Gaelic for Beginners classes 2017-2021.  Unconscious Bias training delivered to Commissioners Nov 2020.  Commissioners to be included in all-staff session led by HR-Welfare, to cover Bullying & Harassment  Commissioners have access to Public Bodies Unit Governance Portal, which will include an Equality & Diversity Toolkit from Autumn 2021  Direct Equality & Diversity training being sourced via SG pathways	BnG session delivered 13/12/17  Commissioners have attended Gaelic Awareness sessions delivered each year 2017-2020.  New awareness session will be delivered 13/10/21. All commissioners invited.  3 Board members attended Unconscious Bias training.  To be delivered late Sept/early Oct 2021  Commissioners to complete review of Equality & Diversity toolkit for public Boards Autumn 2021  It is hoped to deliver SG Pathways training to Board in Autumn 2021

TOPIC	YEAR	DURATION/DELIVERY	COMMENTS	COMPLETED
<b>GOVERNANCE/ROLES &amp; RESPONSIBILITIES</b>				
Shadow/observe work of committees	Rota arranged for AFC observation		Rota established to allow every Board member in sit-in on at least one committee meeting.	Successful and on-going. Everyone except Commissioner Annal has attended. He has been invited to the next AFC meeting (Nov 2021).
Committees – self assessment	2018-2022	Annual assessment by committee members and Board members	Outcomes brought to full Board. Included in AFC worklist.	Completed each year
Board – self assessment	2019-2022			
Finance responsibilities for non-finance members	Year-1 and Year 5	Course for Commissioners who are not on AFC	Training needed so that full Board can carry out scrutiny role	Completed by 2 non-AFC Commissioners.  In addition, to be delivered in Nov 2021 to all AFC Commissioners
Risk management and appetite	Year 1	Session at Feb Board meeting 2018.  Revisited as 5-hour session for SMT/Commissioners on Risk Appetite and policy + SPFM	Jan Polley delivered in 2018 and 2019. Delivered by internal auditors in 2021	FEB 2018 and follow up in Year 2, 2019.  All Commissioners requested to attend session on 22 Sept 2021.
Essential skills for Audit committees	Year-1	1-day course	Ensure members have necessary skills to carry out role	Delivered by David Nicoll and completed by AFC Board members.  New AFC Board member to be offered course (2021)
'Group to Team'	28 March 2017	afternoon session	Facilitated pre-Board workshop exploring individual motivations and values, helping to build a strong team. Booked with Margaret Williamson.	Completed
Team profile – individual profiles	August-Dec 2017	Introduction in August (15 mins)	Facilitated by Margaret Williamson, intro session followed by online completion, one-to-one feedback, concluding with group session in Dec 2017.	Completed
Insight Profiling/Personal Development	Nov/Dec 2020	2-hour sessions x 2	Delivered by Margaret Williamson	Completed by 2 or 3 Commissioners
Effective meetings	28 March 2017	Pre-Board	Facilitated session looking at best practice, with Margaret Williamson	Completed
Media training	26/27 April 2017	Full day for CEO/Deputy CEO/HofC/AFC Chair + Gaelic spokesperson (26 April), 2-hour session as part of Induction for full Board  Additional half day training course provided in 2020	In Year 1 link to Ethical Standards and need to embed adopted Media Protocol. Followed by providing Commissioners with training in working with the media, including use of social media/blogs etc.	Completed  2020 course attended by 5 Board members.
Joint training for Chairs and CEOs	Scheduled for Year 1 but did not take place		Chased up for Year 5, email to BB/MM 25/8/21 refers.	Convener decided there was no need to go ahead with this as joint working arrangements had been established.
Compliance – the Commission and Complaints Handling/FOI responsibilities/GDPR	Induction day in Year 1 – use Dec strategic meeting 2017 (put on Planner)	Deliver every 2 years, in-house	An overview of procedures and the legislation. Quarterly Compliance Report now goes to the Board (from August 2021) GDPR refresher offered annually.	Completed. In addition, Commissioners are asked to complete an in-house online GDPR refresher each year.

<b>STRATEGIC FOCUS</b>				
Meet the staff	May 2017	Informal all-staff session	Establish relationships and understand roles	Completed
Scottish Government National Framework	Sept strategic meeting 2017 – put on Planner and ask Gordon Jackson if he will cover	Delivered by SG in 2017.	Session to help provide Board with overview of political context, linking to organisational pressures and priorities.	Done in Year 1. Completed in Year 5 as part of Framework Doc revision.
Away-day	Fix date for Year-1 and 2	Full day	Learning and development day for whole organisation, contributing to Corporate Plan Objectives	Completed – annual event for 2017-2018.
Corporate Planning	2-4	Half-day sessions	Use non-business meeting days	Included in strategy meetings
Understand our partners, understand our Stakeholders	2-5	Virtual sessions	Series of informal visits with other Boards/interest groups	Outstanding. To be organised as virtual meetings.
Gaelic Language classes	Year 1-5	1-hour classes	Access offered to Commissioners on same basis as staff	Convener Mackenzie attended training and Commissioner Neilson has attended classes
NXD Directors	Year 2-5	1-day event for NDPB's	Utilise network established by SG Public Bodies Unit	Convener Mackenzie attended events, which were paused in 2020.
Public Bodies Unit peer training	2017	1-day event for NDPB Chairs	Commissioner Mackenzie attended	Completed
<b>TECHNICAL AND PRACTICAL TRAINING</b>				
The Crofting Acts & the Commission & the SLC	4 May 2017 -morning	In-house training with Commission solicitor	Establish legislative framework Board operates within	Completed
Commission Policy and Procedures	March 2017 onwards	Delivered in-house	Establish policy/regulatory framework	Completed
Formulating Grounds in Decision-making	May 2017 onwards	In-house	Looking at each regulatory function	Completed
Natural Justice and EHRC	Sept 2017	In-house	Establish understanding in relation to SLC appeals and decision-making	Completed
Crofting Law reform	Attend Crofting Law Group annual conference in June 2017	Conference with staff and stakeholders	Network and establish understanding of need for reform of legislation.	Completed
IT and Remote Working	From March and inc 4 May morning 2017 and onwards	Face-to-face and virtual	Tailored session for each Commissioner (also links to IT protocol) in 2017/18, followed by annual offer	Completed
IT related training	2020-2021	Most sessions 1-2 hours	Training offered: Sharepoint June 2020, Microsoft Teams July 2020, Teams etiquette Nov 2020, Outlook Training 1 Jan 2021, Outlook Training 2 January 2021, Windows 10 Dec 2020 OneNote training 2020	Completed
Mandatory training – Information Security and Data Handling	Year 1-5	Online + Policy review	Mandatory annual training – IT Acceptable Use policy	All Commissioners confirmed review in 2021.
How T&S works	Year 1, Year 3, Year 5	Pre-Board + virtual session	Additional refresher session offered in Autumn 2021	Completed
Better Time Management	Year 4	1-hour session		Completed
<b>SUCCESSION PLANNING</b>	Year 5		Unconscious Bias training delivered in 2020, obligations under Gender Representation Act taken forward with Board and STWG 2020-2021.	Completed but on-going within the Elections process from Autumn 2021.

# CROFTING COMMISSION MEETING

## 3 December 2021

Report by the Chief Executive

### On-Board Training Action Plan

#### SUMMARY

The Board is invited to consider and agree the Action Plans drawn up by David Nicholl of On-Board Training, following the Training sessions in October and November.

#### BACKGROUND

Five of the key recommendations of the Deloitte report in May recommended joint training, for the Board and SMT, in some cases with Sponsor Division as well. This training was delivered in two workshops by On Board Training. The outcome of these workshops was a joint Action Plan for delivery by the Commission and Sponsor, and a list of actions for the Commission arising from the second workshop. These are attached to this paper, for consideration and approval by the Board.

Some of the action points relate to new ways of working which can be implemented immediately. Others will need to be delivered in the coming weeks and months. Following Board consideration of these plans, deadlines will be assigned to those actions not already delivered.

Impact:	Comments
Financial	No direct financial implications
Legal/Political	Adopting these changes should enhance the Commission's functioning as an NDPB by clarifying and supporting the key relationships involved in Governance and leadership of the organisation.
HR/staff resources	The workload added by these recommendations is modest.

#### RECOMMENDATION

The Board is invited to:-

- discuss and agree the contents of this combined action plan;
- commit the organisation to delivering its Actions from Workshop A and all of the Actions from Workshop B; and
- note and make any comment on the Actions for Sponsor from Workshop A.

Date 23 November 2021

Authors Bill Barron, CEO

**CROFTING COMMISSION: ACTION PLAN FOR IMPROVEMENT**  
(CREATED AT GOVERNANCE WORKSHOP A, 5 OCTOBER AND  
2 NOVEMBER 2021, WITH CC BOARD AND SMT,  
AND REPRESENTATIVES FROM SG SPONSOR)

No	Recommendation	Priority rating (H/M/L)	Responsible	Status
1	In future, the Convener of the Crofting Commission will be appointed by the Minister following a robust selection process	M	Head of Sponsor Team	
2	Wherever possible, the Commission website and all internal written and oral communications should not distinguish between Elected and Appointed Commissioners	L	Chief Executive	
3	Sponsor Team will investigate whether it is possible to introduce regulations to stagger the election of the six Commissioners and, if it is, work with the Commission to introduce such regulations as a matter of urgency	H	Head of Sponsor Team	
4	Irrespective of the fact that he is not an employee of the Board, the Chief Executive is accountable to the Board and reports to the Board. This is his primary line of reporting and accountability and should be clearly set out in all governance documentation (e.g. the Framework Document) and the Chief Executive's personal objectives	H	Head of Sponsor Team and Convener	
5	The annual appraisal of the Chief Executive will be undertaken jointly by the Scottish Government and the Convener of the Commission	H	Head of Sponsor Team and Convener	
6	All parties – Convener, Board, Chief Executive and Sponsor Team – will operate a rule of 'no surprises'. This goes beyond the formal documentation of roles and responsibilities. The operation of this new culture of openness and transparency and the resultant improvement in lines of formal and informal communication will be monitored regularly by the Convener, Chief Executive and Head of Sponsor Team	H	Convener, Chief Executive, Head of Sponsor Team	
7(a)	Any significant communication from the Chief Executive to the Sponsor Team or Directorate will be copied to the Convener and any significant communication from the Sponsor Team, Directorate etc. to the Chief Executive will also be copied to the Convener	H	Chief Executive and Head of Sponsor Team	
7(b)	Any Ministerial Directions or formal Directions from the Directorate will be issued to the Convener (and copied to the Chief Executive)	M	Head of Sponsor Team	
8	The Commission will review its current training and development plan for Commissioners and in particular the timing of same. All induction training should be clearly linked to enabling Commissioners to discharge their roles effectively	L	Convener and Chief Executive	

No	Recommendation	Priority rating (H/M/L)	Responsible	Status
9(a)	The Board will agree a revised Performance Appraisal system for Commissioners for submission to the Scottish Government. The training and development needs of Commissioners (individually and corporately) will be identified as part of this process	M	The Board	
9(b)	The Convener will undertake performance appraisals of all Commissioners in line with the agreed timetable and will himself be appraised by the Director or Deputy Director of the Directorate, informed by the views of Commissioners	M	Convener and Head of Sponsor Team	
10	The Convener will review the Agenda in detail before each Board meeting to ensure that it focuses on 'strategic' issues. The Convener will rein in any Commissioner who gets into too much operational detail at a Board meeting and will be supported by other Commissioners in so doing	M	Convener	
11	The Board will formally review the Corporate Plan at least annually	H	Convener	
12	The Board will review the Scheme of Delegation with a view to reducing the number of applications (Tier 3) that Commissioners are currently required to review. However, the Board retains the right to 'call in' any application that is significant or controversial or poses a reputational risk to the Commission. Senior management should also take the initiative and refer any such applications to the Board	H	Board and Chief Executive	
13	<p>The Commission will make it clear to all those standing for election as Elected Commissioners that they have a corporate role and not a lobbying role. The Commission will include this in pre-election briefing material</p> <p>The Commission will provide clarification to Commissioners on how (and with whom) they can raise issues referred to them by 'constituents'</p>	M	Chief Executive	
14	The Commission will liaise with Sponsor Team re any ambitious proposals that are outwith normal Commission activity (and grant-in-aid) but for which there is a clear need and/or public benefit. The Commission will prepare a business case to support any such proposal in line with the SPFM	M	Convener, Chief Executive (Accountable Officer) and Sponsor Team	
15	The Commission will develop a media strategy designed to promote the successes of the Commission and positive news stories	L	Chief Executive	
16	<p>The Convener will meet the Cabinet Secretary at least annually and the Sponsor Team will facilitate this</p> <p>The Cabinet Secretary will be invited to meet the Board annually</p>	M	Head of Sponsor Team and Convener	
17	The Commission will investigate the feasibility of re-establishing the Stakeholders' Forum	M	Convener and Chief Executive	

## **GOVERNANCE WORKSHOP B CROFTING COMMISSION BOARD AND SMT (2 NOVEMBER 2021)**

The following key actions were agreed during Governance Workshop B:

- The Board will approve a Scheme of Delegation and Schedule of Matters Reserved for the Decision of the Board. This document will be reviewed and updated annually.
- All staff will be trained on this new Scheme of Delegation etc. and this training will provide staff with an awareness of the delegated limits that apply across the Commission and also an understanding and appreciation of the authority of the Board.
- The Audit and Finance Committee will monitor compliance with the Scheme of Delegation etc. and provide the requisite assurances to the Board.
- The outcomes of the four scenarios (discussed on 2 November) should be considered as a blueprint for the approach to be taken by the Chief Executive (and Convener) to dealing with these types of situation in future: (1) significant issue(s) relating to the Chief Executive's employment with the Commission; (2) a staff restructuring; (3) any secondment opportunity for staff; (4) the drafting, clearance (including quality control) and issue of strategic letters of engagement to key stakeholders.

As new and different scenarios arise and are dealt with by the Board and SMT, the approach agreed should be added to this 'repository of organisational memory and knowledge' for future reference and guidance.

- On joining the Commission, all Commissioners and senior managers should receive training on the roles and responsibilities of all parties – the Board; the Convener; the Chief Executive; the Minister and Scottish Government (Sponsor Team).
- The Board and SMT should continue to discuss and debate sensitive or controversial issues and:
  - If a difference of opinion arises during a Board meeting e.g. over whether an issue is strategic (Board) or operational (Chief Executive), document the discussion and/or disagreement in the minutes as a record for the future.
  - If a new scenario arises where there is disagreement or the potential for disagreement, hold a mini-workshop before or after a meeting involving Commissioners and management, with mixed groups to discuss the particular issue and understand each other's position.
  - Where the matter cannot be resolved internally, take external advice.

# CROFTING COMMISSION MEETING

3 December 2021

Report by the Chief Executive

## Further delegation of decision-making

### SUMMARY

To provide an update on progress made following the decision at the Board Meeting on 20 October 2021 to amend the model of delegation to extend authority to refuse applications to officials.

### BACKGROUND

In 2015, the Commission adopted a Scheme of Delegation which sought to delegate to officials, subject to parameters agreed by the Board, the authority to approve, modify and/or condition regulatory applications. The decision to refuse was to be reserved to Commissioners.

At the Board meeting on 20 October 2021, as part of a process aimed reducing the level of Commissioner involvement in regulatory decision making, it was agreed to amend the model of delegation to include the authority for officials to refused regulatory applications where:

- The application was clearly contrary to Commission Policy (e.g., paragraph 99 of the Policy Plan – “*Applications that are made only for the reason of taking the croft, or part of the croft, out of crofting tenure are unlikely to be approved*”

and

- There is no compelling evidence as to why the policy should not be applied.

### PROGRESS MADE SINCE THE BOARD DECISION TO DELEGATE REFUSALS

The following documents were updated to reflect the change:

- The Scheme of delegation (Annex A attached):
- Leaflets on delegated decision making and escalating cases on:
  - Decrofting House site and garden ground;
  - Decrofting Part Croft;
  - Decrofting whole croft;
  - Division;
  - Short term letting by an owner-occupier crofter;
  - Subletting by a tenant.

## SUBSEQUENT TIER 2 CASEWORK MEETINGS

Since the decision to delegate refusals to officials to officials, there have been three Tier 2 casework group meetings considering a total of 22 cases.

In two of those cases, the group decided to provide the applicant with the opportunity to modify their applications so that it complied with the Commission's Policy Plan and Delegation parameters. We have made it clear that failure to do so may result in the application being refused. Tier 2 will consider whether to refuse the applications should the applicant's decline to modify their applications.

There were a further two cases where the applicants had previously been advised that if they declined to modify their applications, the case would be referred to Tier 3 which was the only Tier which had authority to refuse applications. We were conscious that where the Commission have lost appeals, it has tended not to be concerning the merits of a case, but rather due to a procedural failure. It was agreed therefore, that for consistency, we would continue to escalate those cases to Tier 3 as we had previously indicated we would to the applicants.

## NEXT STEPS

The next stage of the process of reducing Commissioner involvement in regulatory decision making is to extend further the regulatory functions and decisions included in the Scheme of Delegation. It is proposed therefore that a paper setting out the delegation parameters for the, currently, non-delegated functions to be included in the Scheme of Delegation will come to the Board for approval in February 2022:

- **Whole Croft Decroftings** (except for residual sites extending to less than 0.75(ha) – Section 24(3) and Section 24A)
- **Duties Enforcement:** Whether to divide a croft prior to taking action to terminate a croft tenancy or to seek letting proposals from an owner-occupier crofter (Section 26G)
- **Duties Enforcement:** Whether to issue an Order terminating a croft tenancy (Section 26H)
- **Duties Enforcement:** Whether to direct an owner-occupier crofter to submit letting proposals (Section 26J)
- **Croft Registration:** To decide not to forward an application for registration to the Keeper of the Registers of Scotland (RoS) (Section 7(5) of the 2010 Act).

<b>Impact:</b>	<b>Comments</b>
Financial	There would potentially be opportunity costs in the freeing up of Commissioner's time from regulatory decision making to focus more on strategic issues. There may be grading issues involved in greater delegation of the decision making role to staff
Legal/Political	There could potentially be reputational benefits for the Commission in cases being dealt with more quickly
HR/staff resources	While Commissioners time on regulatory decision making would reduce their may be a need to increase staff input to the regulatory decision making role.

## **RECOMMENDATION**

**To note the progress made in implementing the Board's decision to delegate the right to refuse regulatory applications for decision, and to agree the next stage in the process of reducing Commissioner involvement in regulatory casework decision making.**

Date            7 November 2021

Author        Joseph Kerr, Head of Regulatory Support



# **CROFTING COMMISSION'S FUNCTIONS AND DECISIONS:**

# **SCHEME OF DELEGATION**

UPDATED NOVEMBER 2021

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## INTRODUCTION

Up until October 2015 all decisions on regulatory applications were taken by Commissioners; either by a single Commissioner, a Casework Group comprising three Commissioners or the full Board, the level of decision-making being determined by the Commission's Instrument of Delegation.

From November 2015 a rolled-out programme of devolved decision making was introduced to enable Commissioners to focus on those issues which relate to the strategic leadership of the organisation.

The potential benefits of such an approach being:

- Frees up Commissioner's limited time
- Decisions are made quicker
- Decisions are more consistent across the organisation
- Decisions are supported by more robust grounds
- Staff are empowered.

How it works is that parameters for each function are agreed by the Board of Commissioners, and if a case falls with the parameters, it can be dealt with by officials.

Initially 8 functions and decisions were included in the Scheme of Delegation, but over the last 6 years this has been extended to include the majority of functions and decisions set out in the Crofters (Scotland) Act 1993.

## HOW THE SCHEME OF DELEGATION OPERATES

There are 3 tiers of delegated decision making within the Commission.

### TIER ONE

#### Who makes the decision at Tier One?

- The Area Case Officer.

#### What decision can be made at Tier One?

- To approve applications which comply with the parameters agreed by the Board in relation to the relevant regulatory function.

#### When are decisions (generally) made?

- On a daily basis.

**N.B. If one or more of the parameters are breached, the case must be referred to Tier 2.**

## **TIER TWO**

### **Who makes the decision at Tier Two?**

- A Casework Group normally consisting of the Head of Regulatory Support, the Regulatory Support Manager, and the B1 Case Officer.

### **What decision can be made at Tier Two?**

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function.
- To refuse applications which are clearly contrary to the Commission Policy as agreed by Commissioners, and there is no compelling evidence as to why the policy should not be applied.
- To escalate cases to Tier Three.

### **When are decisions (generally) made?**

- On a weekly basis.

## **TIER THREE**

### **Who makes the decision at Tier Three?**

- A Casework Group consisting of 3 Commissioners, supported by the Commission Solicitor, Head of Regulatory Support, the Regulatory Support Manager, and the B1 Case Officer.

### **What decision can be made at Tier Three?**

- To approve, condition or modify applications having considered the parameters agreed by the Board in relation to the relevant regulatory function
- To refuse applications
- To escalate cases to the full Board of Commissioners.

### **When are decisions (generally) made?**

- On a monthly basis.

**N.B. Only Tier Two and Tier Three have the delegated authority to refuse an application.**

## FUNCTIONS AND DECISIONS WHICH ARE INCLUDED IN THE SCHEME OF DELEGATION

*Decisions in these functions can be made at any of the 3 Tiers (depending on the consideration of the agreed parameters) or can be escalated to the full Board of Commissioners.*

The following functions and decisions are included in the Scheme of Delegation:

- Constituting non-croft land as a new croft (Section 3A)
- Constituting non-croft land as a new common grazings (Section 51A)
- Enlargement of Crofts (Section 4)
- Exchange of crofts or parts of crofts (Section 4A)
- Assignment (Section 8)
- Division of a croft by a tenant (Section 9)
- Division of a croft by an executor to create 2 or more crofts (Sections 9 & 10)
- Division of a croft by an owner-occupier crofter (section 19D)
- Whether to serve a notice to terminate a tenancy due to a failure of statutory succession (Section 11(4) to 11(8))
- Commission consent for absence from croft (Section 21B)
- Extension of consent for absence from croft (Section 21C)
- Variation of condition for absence from croft (Section 21D)
- Letting of a vacant croft by a landlord (Section 23(3))
- Letting proposals by a landlord (Section 23(5))
- Letting proposals by an owner-occupier crofter (Section 26(J))
- Short term letting by owner-occupier crofters (Section 29)
- Letting of an owner-occupier croft (other than on short lease) by an owner-occupier crofter (Section 29A)
- Decrofting house site and garden ground by a landlord or tenant (Section 24)
- Decrofting part croft by a landlord or tenant (Section 24)
- Decrofting house site and garden ground by an owner-occupier crofter (Section 24A)
- Decrofting part croft by an owner-occupier crofter (Section 24A)
- Decrofting House site and garden ground in feu of which was granted under Section 17 or 18
- Subletting (Section 27)
- To decide whether to issue an order allowing a former subtenant to remain in occupation of a croft for up to 1 year following the termination of a sub-tenancy (Section 29(3))
- Use of common grazings for forestry purposes (Section 50)

- Use of common grazing for other purposes (Section 50B)
- Apportionment (Section 52(4))
- Review of apportionment (Section 52)(12)
- Dealing with Late Objections (Section 58A(5A))
- Dealing with objections from individuals who the Commission consider do not have a relevant interest in an application
- To decide whether a reported breach of duty is frivolous or vexatious. (Section 26A(5))
- To decide whether a notice should be served informing the crofter that the Commission consider a duty is not being complied with (Section 26C(1))
- To decide whether a duty is being complied with, having provided the crofter with the opportunity to make representations (Section 26C(5))
- To decide whether to accept an undertaking by a crofter to resolve the breach (Section 26D(4))
- Confirming, making, or amending grazing regulations (Section 49(7)).

## **FUNCTIONS AND DECISIONS WHICH ARE EXCLUDED FROM THE SCHEME OF DELEGATION**

*Decisions in these functions can only be made by Tier 3 or by the full Board of the Crofting Commission.*

**The following functions and decisions are exempt from the Scheme of Delegation. These decisions have to be made by the Board of the Crofting Commission.**

- Complaints as respect Breach of a crofter's statutory conditions (Section 5A)
- Schemes for development (Section 19A)
- Whole Croft Decroftings (except for residual sites extending to less than 0.75(ha) – Section 24(3) and Section 24A)
- Whether to divide a croft prior to taking action to terminate a croft tenancy or to seek letting proposals from an owner-occupier crofter (Section 26G)
- Tenancy Termination procedure (Section 26H)
- Owner-occupier crofter: seeking croft letting procedure (Section 26J)
- Reorganisations Schemes (Section 38)
- To determine whether any or all members of a grazings committee (or the grazings clerk) are properly carrying out the duties imposed on them by the 1993 Act (Section 47(8))
- To determine whether a person has contravened or failed to comply with any common grazings regulations (Section 52(1C))
- Whether to suspend a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1D))
- Whether to terminate a person's share in a common grazings following a determination that they have contravened or failed to comply with any common grazings regulations (Section 52(1E))
- Jurisdictional provisions i.e., whether to make reference to the Land Court for a determination on any question of fact or law (Section 53).

## DOCUMENTS AND AUTHORISED SIGNATORIES

### DIRECTIONS AND ORDERS WHICH OFFICIALS ARE AUTHORISED TO SIGN

The table below sets out the identified directions and orders and the proposed authorised signatories:

<b>Statute: Crofters (Scotland) Act 1993</b>	<b>Description of Direction or Order</b>	<b>Title of officers/level of authorised signatory</b>
Section 24(3)	Direction:  Decrofting house site and garden ground by a landlord or tenant	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 24(3)	Direction:  Decrofting part croft or whole croft by a landlord or tenant	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 24B(1)	Direction:  Decrofting house site and garden ground by an owner-occupier crofter	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 24B(1)	Direction:  Decrofting part or whole croft by an owner-occupier crofter	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 24(3)	Direction:  Decrofting House site and garden ground in feu of which was granted under Section 17 or 18	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 52(4)	Order:  Apportionment	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 26H(1)	Order:  Termination of a croft tenancy	Chief Executive Officer Head of Regulatory Support Residence & Land Use Team Manager

<b>Statute: Crofters (Scotland) Act 1993</b>	<b>Description of Direction or Order</b>	<b>Title of officers/level of authorised signatory</b>
Section 26J(1)	Direction: Seeking proposals for letting an owner-occupied croft	Chief Executive Officer Head of Regulatory Support Residence & Land Use Team Manager
Section 25(3)	Direction: Recrofting land following a breach in conditions	Chief Executive Officer Head of Regulatory Support Regulatory Support Manager Residence & Land Use Team Manager
Section 49(7)	Order: Confirming, making of amending grazings regulations	Chief Executive Officer Head of Policy Grazings Manager
Section 47(8)	Order: Removing a clerk or members of a grazings committee.	Chief Executive Officer Head of Policy Head of Regulatory Support.
Section 52(1E)	Order: Terminating a person's share in a common grazing.	Chief Executive Officer Head of Policy Head of Regulatory Support.
Section 38(8)	Order: Preparing a Scheme for the reorganisation of a township.	Chief Executive Officer Head of Regulatory Support Head of Policy

**UPDATE ON DELOITTE AND PUBLIC AUDIT COMMITTEE - ORAL**

# CROFTING COMMISSION MEETING

## 3 December 2021

Report by the Chief Executive

### Commission Framework Document

#### SUMMARY

**The Board is invited to consider and agree the revisions to the Framework Document (Annex A) to fulfil a recommendation of the Deloitte report.**

#### BACKGROUND

The Commission's Framework Document was due for a routine triennial review by March 2021. However, it was agreed with the Scottish Government that the review should be delayed until the recommendations of the Deloitte report could be taken into account.

At the end of May, the Deloitte report recommended that the Framework Document should indeed be revised to clarify the unique governance arrangements for the Commission, including the reporting arrangements for the CEO. The Convener, Vice Convener, CEO and other members of SMT have discussed this with Sponsor Division and the SG's Public Bodies Unit, and the proposed new framework document is attached for consideration by the Board. The Framework Document can be adopted after formal approval by both the Board and the Scottish Ministers.

All significant changes since the 2018-2021 version are shown as tracks. The main changes concerning the governance relationships within the Commission are between paragraphs 13-33, though there are a few track changes elsewhere in the document.

<b>Impact:</b>	<b>Comments</b>
Financial	No implications
Legal/Political	Adopting these changes should enhance the Commission's functioning as an NDPB by clarifying and supporting the key relationships involved in Governance and leadership of the organisation.
HR/staff resources	No implications

#### RECOMMENDATION

**The Board is invited to consider and approve the revisions to the Framework Document.**

Date 23 November 2021

Author Bill Barron, CEO

**DRAFT Framework Document**

**CROFTING COMMISSION**

**December 2021 – November 2024**

*(revisions since the previous version are tracked)*

**Introduction**

1. This framework document has been drawn up by the Scottish Government (SG) in consultation and agreement with the Crofting Commission. It sets out the broad framework within which the Crofting Commission will operate and defines key roles and responsibilities which underpin the relationship between the Crofting Commission and the SG. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, and at least every 2-3 years. Any proposals to amend the framework document either by the SG or Crofting Commission will be taken forward in consultation and in the light of SG priorities and policy aims. Any question regarding the interpretation of the document shall be determined by the SG after consultation with the Crofting Commission. Legislative provisions shall take precedence over any part of the document.

2. References to the Crofting Commission include any subsidiaries and joint ventures owned or controlled by the Crofting Commission. The Crofting Commission shall not establish subsidiaries or enter into joint ventures without the express approval of the SG.

3. Copies of the document shall be placed in the Scottish Parliament Information Centre. It shall also be published on the Crofting Commission website.

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**Purpose**

4. The Crofting Commission is to contribute to the achievement of the SG's primary purpose of increasing sustainable economic growth by aligning its aims and objectives with the Programme for Government, Scotland's Economic Strategy and National Performance Framework.

**5. The functions and duties of the Crofting Commission**

The Crofters (Scotland) Act 1993, as amended, (the 1993 Act) gives the Crofting Commission the following:

- Functions of:
  - a) regulating crofting,
  - b) reorganising crofting,
  - c) promoting the interests of crofting, and
  - d) keeping under review matters relating to crofting, and such other functions as conferred on them by the 1993 Act or under any enactment;
- Duties to:

- a) keep under general review all matters relating to crofts and crofting conditions, including, without prejudice to the foregoing generality, land settlement;
- b) collaborate so far as their powers and duties permit with any body or person in the carrying out of any measures for the economic development and social improvement of the crofting counties;
- c) advise the Scottish Ministers on any matter relating to crofts and crofting conditions which they may refer to them, or on which they may think fit to submit advice to them; and
- d) exercise the powers conferred on them by the 1993 Act, in such manner as may seem to them in each case desirable.

### **The Crofting Commission's purpose, strategic aims and objectives, as agreed by the Scottish Ministers**

6. The Crofting Commission's overall aim is to secure a long term future for crofting and for communities in the crofting areas, achieved through: good regulation; promoting occupancy of crofts; active land use; and shared management by crofters as a means of sustaining and enhancing rural communities.

7. In doing so the Crofting Commission helps to deliver the Scottish Government's primary purpose of increasing sustainable economic growth and aligns with the [National Outcomes](#) The Crofting Commission contributes to many of the outcomes including:

- Our public services are high quality, continually improving, efficient and responsive to local people's needs;
- We have strong, supportive and resilient communities where people take responsibility for their own actions and how they affect others; and
- We live in well designed, sustainable places where we are able to access the amenities and services that we need.

8. The Crofting Commission also contributes to the Scottish Government's [strategic objectives](#), in particular:

- [Greener](#) - Improve Scotland's natural and built environment and the sustainable use and enjoyment of it; and
- [Safer and Stronger](#) - Help local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life.

9. Through fair, transparent and consistent regulation and enforcement of the crofting duties, the Crofting Commission can support the long-term future of crofting and crofting communities. It can also help to enable the promotion of good crofting practice and of successful working relationships between crofters and landlords.

### **Relationship between Scottish Government and Crofting Commission**

10. Effective strategic engagement between the SG and Crofting Commission is essential in order that they work together as effectively as possible to maintain and improve public services and deliver improved outcomes. Both the SG and the Crofting Commission will take all necessary steps to ensure that their relationship is developed and supported in line with the jointly agreed principles set out in the statement on ['Strategic Engagement between the Scottish Government and Scotland's NDPBs'](#).

## Governance and accountability

11. The Crofting Commission is established under the provisions of the [Crofters \(Scotland\) Act 1993](#) as amended by the [Crofting Reform etc. Act 2007](#), the [Crofting Reform \(Scotland\) Act 2010](#) and the [Crofting \(Amendment\) \(Scotland\) Act 2013](#) as an executive non-departmental public body (NDPB). For national accounts purposes the Crofting Commission is classified to the central government sector. The constitution and general functions of the Crofting Commission are set out in [Section 1 of the Crofters \(Scotland\) Act 1993](#), as amended. The Crofting Commission does not carry out its functions on behalf of the Crown.

## Ministerial responsibilities

12. The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities and performance of the Crofting Commission and for its use of resources. They are not, however, responsible for day to day operational matters. Scottish Ministers' responsibilities include:

- [Agreeing](#) the Crofting Commission's strategic aims, objectives and key targets as part of the corporate planning process;
- [Agreeing](#) the Crofting Commission's policy plan on how they propose to exercise their functions;
- [Agreeing](#) the budget and the associated grant in aid requirement to be paid to the Crofting Commission, and securing the necessary Parliamentary approval;
- [Carrying](#) out responsibilities specified in the 1993 Act, including appointments and elections to the Board, approving the terms and conditions of Board members, appointment of the Convener, appointment of the Chief Executive, and approval of terms and conditions of staff; and
- Other matters such as approving the Board members' daily fees in accordance with Pay Policy for Senior Appointments, and laying of the Annual Report and Accounts before the Scottish Parliament.

## The Crofting Commission Board's Responsibilities

13. Crofting legislation prescribes that the Crofting Commission Board will have at least 5 and a maximum of 9 members, including the Convener. At least 2 Board members will be Ministerial appointments, and no more than 6 Board members elected directly by crofters, as set out in Schedule 1 (3) of the 1993 Act. All appointments are made in line with the [Commissioner for Ethical Standards in Public Life in Scotland Code of Practice](#). [The next crofting elections are due to take place in March 2022.](#)

14. The role of the Board is to provide leadership [and](#) direction [for the Commission, and](#), to ensure the Crofting Commission delivers its functions effectively and efficiently and in accordance with the aims, policies and priorities of the Scottish Ministers. [When performance is falling short, the Board will call for remedial action from the CEO and may alert the Scottish Government.](#)

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15. The Crofting Commission [Board](#) has corporate responsibility, under the leadership of the Convener, for the following:

- Taking forward the strategic aims and objectives for the Crofting Commission as agreed by the Scottish Ministers;
- Ensuring that the Scottish Ministers are kept informed of any changes which are likely to impact on the strategic direction of the Crofting Commission or on the attainability of its targets, and determining the steps needed to deal with such changes;
- Approving the Annual Accounts and ensuring Scottish Ministers are provided with the Annual Report and Accounts to be laid before the Scottish Parliament. The Chief Executive as the Accountable Officer is responsible for signing the said accounts and ultimately responsible to the Scottish Parliament for [his or her](#) actions.
- Ensuring appropriate standards of corporate governance in the work of the Board and the organisation as a whole, including observance of collective responsibility for Board decisions.
- Promoting the efficient, economic and effective use of staff and other resources by the Crofting Commission consistent with the principles of [Best Value](#), including, where appropriate, participation in [Shared Services](#) arrangements
- Ensuring that any statutory or administrative requirements for the use of public funds (i.e. all funds falling within the stewardship of the Crofting Commission) are complied with; that the Board operates within the limits of its statutory authority and any delegated authority agreed with the sponsor Directorate, in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Board takes into account relevant guidance issued by the Scottish Ministers;
- Ensuring that effective arrangements are in place to provide assurance on risk management (including in respect of personnel, physical and cyber risks/threats/hazards), governance and internal control. (The board must set up an audit committee chaired by a non-executive member to provide independent advice and assurance on the effectiveness of the internal control and risk management systems- in accordance with the guidance on Audit Committees in the SPFM. Specific details of arrangements at the Crofting Commission in this regard are set out at para 16);
- Ensuring that the Board receives and reviews regular financial information concerning the management and performance of the Crofting Commission; is informed in a timely manner about any concerns regarding the activities of the Crofting Commission; and ensures that the Chief Executive provides positive assurance to [the Board and, through or on behalf of the Board, to](#) the sponsor Directorate, that appropriate action has been taken on such concerns; and
- Ensuring that the Crofting Commission has policies in place to deliver fair, reasonable and transparent decisions on regulatory matters affecting crofters, their landlords and any other parties with legitimate interests.

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- [Approving any structural changes to the senior management team, proposed by the CEO.](#)

16. Specific details about the Crofting Commission's Audit and Finance (AFC) Committee are as follows:

- The Board has established an AFC as a Committee of the Crofting Commission Board to support it in its responsibilities for issues of risk, control and governance and associated assurance through a process of constructive challenge. The AFC will also provide support to the Board by detailed scrutiny of financial statements, budgets and other financial proposals.
- The AFC will comprise a minimum of three non-executive Board Members with a quorum of two. The Commission Convener or nominee shall Chair the AFC. Appointments to the AFC will be made by the Commission. The AFC will be provided with a secretariat function by the Chief Executive.
- Having the Convener in the Chair of the AFC, while in accordance with legislation, is directly against good practice, as the AFC should feel free to review the governance of the organisation as a whole. To address this conflict the AFC will therefore elect a Vice-Chair. The Convener offers a standing apology for non-attendance and nominates the Vice-Chair to chair all meetings.
- The AFC meet formally four times a year and will also agree subsequent additional meetings throughout the year based on need. This will be in accordance with the AFC work programme. AFC meetings will normally be attended by the Accountable Officer and the Finance Manager. External Audit has the right to attend any meeting of the Board or its Committees if it so requires.

17. Further guidance on how the board should discharge its duties is provided in appointment letters and [On Board - A Guide for Members of Statutory Boards](#) .

### **The Convener of the Crofting Commission**

18. The Convener is appointed by Scottish Ministers, or Scottish Ministers delegate selection of the Convener to the full Board, as set out in Schedule 1 of the 1993 Act. The appointment/selection is made in line with the [Commissioner for Ethical Standards in Public Life in Scotland Code of Practice](#).

19. The Convener is accountable to the Scottish Ministers and, in common with any individual with responsibility for devolved functions, may also be held to account by the Scottish Parliament. The Convener shall ensure that the Crofting Commission's policies and actions support the wider strategic policies of the Scottish Ministers; and that the Crofting Commission's affairs are conducted with probity. The Convener shares with other Board members the corporate responsibilities set out in paragraph 15.

20. The Convener has a particular leadership responsibility on the following matters:

- Ensuring that the Crofting Commission fulfils the aims and objectives set by the Scottish Ministers;
- Formulating the Board's strategy;
- Ensuring that the Board, in reaching decisions, takes proper account of guidance issued by the Scottish Ministers;
- [Advising the Scottish Government on appointments to the position of CEO; and assessing the performance of the CEO, jointly with the CEO's Scottish Government reporting officer;](#)
- Promoting the efficient and effective use of staff and other resources;
- Encouraging high standards of propriety and regularity;
- Acting as an ambassador / spokesperson for the Crofting Commission, representing the views of the Board to the general public; and
- Promoting diversity throughout the organisation.

21. The Convener shall also:

- Ensure that the work of the board is subject to regular self-assessment and that the board is working effectively;
- Ensure that all members of the Board, as part of their induction, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities, and receive appropriate training, including on the financial management and reporting requirements of public sector bodies and on any differences which may exist between private and public sector practice;
- Advise [Sponsor Team](#) of the needs of the Crofting Commission when Board vacancies for appointed members arise, with a view to ensuring a proper balance of skills appropriate to directing the Crofting Commission business, in accordance with recognised good practice in corporate governance;
- Assess the performance of individual Board members on a continuous basis and undertake a formal appraisal at least annually. Support Board members in accessing any additional development or training identified as part of this process.

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22. The Convener shall also ensure that, as the Crofting Commission conforms to the provisions of the Ethical Standards In Public Life etc (Scotland) Act 2000, there is a Code of Conduct, approved by Scottish Ministers, for Board Members in place; and that Board Members are fully aware of, and abide by, that Code of Conduct.

23. Communications between the Board and the Scottish Ministers shall normally be through the Convener. The Convener shall ensure that the other Board members are kept informed of such communications. [In addition, communications between officials of the SG and the Crofting Commission shall be copied to the Convener, unless they are purely routine and have no strategic implications.](#)

## Individual Board Members' Responsibilities

24. Individual board members should act in accordance with the responsibilities of the board as a whole and comply at all times with the code of conduct adopted by the Crofting Commission and with the rules relating to the use of public funds and to conflicts of interest. In this context, "public funds" means not only any funds provided to the Crofting Commission by the Scottish Ministers but also any other funds falling within the stewardship of the Crofting Commission, including trading and investment income, gifts, bequests and donations. General guidance on board members' responsibilities is summarised in their appointment letters and is also provided in [On Board- A Guide for Members of Statutory Boards](#).

## Crofting Commission Chief Executive responsibilities

25. The Chief Executive of the Crofting Commission is appointed by the Scottish Ministers after consultation with the Convener, [and is normally a Scottish Government civil servant](#). [Notwithstanding this, he/she is accountable to the board for, and reports to the Board on, the performance of the Crofting Commission, as well as being the Board's principal adviser on the discharge of the Board's functions](#). His/her role is to provide operational leadership to the Crofting Commission and ensure that the board's aims and objectives are met and the Crofting Commission functions are delivered and targets met through effective and properly controlled executive action. His/her general responsibilities include the performance, management and staffing of the Crofting Commission. General guidance on the role and responsibilities of the chief executive is contained in [On Board- A Guide for Members of Statutory Boards](#). Specific responsibilities of the Chief Executive include:

- Advising the board on the discharge of its responsibilities - as set out in this document, in the 1993 Act (as amended) and in any other relevant instructions and guidance issued by or on behalf of the Scottish Ministers - and implementing the decisions of the board;
- Ensuring that financial considerations are taken fully into account by the board at all stages in reaching and executing its decisions, and that appropriate financial appraisal and evaluation techniques, consistent with the [Appraisal and Evaluation](#) section of the [Scottish Public Finance Manual](#) (SPFM), are followed;
- Ensuring that the Crofting Commission adheres, where appropriate, to the SG's [Programme and Project Management \(PPM\) Principles](#);
- Having robust performance and risk management arrangements - consistent with the [Risk Management](#) section of the SPFM - in place that support the achievement of the Crofting Commission's aims and objectives and that facilitate comprehensive reporting to the board, the SG and the wider public. Risk management arrangements should include full consideration of organisational resilience to physical, personnel and cyber risks/threats/hazards;
- Ensuring that adequate systems of internal control are maintained by the Crofting Commission, including effective measures against fraud and theft consistent with the [Fraud](#) section of the SPFM;

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- Establishing appropriate documented internal delegated authority arrangements consistent with the [Delegated Authority](#) section of the SPFM, which are notified to all staff, together with a system for regularly reviewing compliance with these delegations;
- Establishing a robust performance management framework which supports the achievement of the Crofting Commission's aims and objectives as set out in the corporate and business plans; and which enables full performance reporting to the Board, the sponsor Directorate and the wider public;
- Ensuring that effective human resource management policies are maintained and that strategic human resource planning is related to the Crofting Commission's objectives;
- Preparing the Crofting Commission's corporate and business plans, in the light of the strategic aims and objectives agreed by the Scottish Ministers;
- Ensuring effective relationships with SG officials; [and keeping the Convener informed of communications to and from SG officials](#);
- [On behalf of and subject to the authority of the Board](#), informing the sponsor unit of the Crofting Commission's progress in helping to achieve the Scottish Ministers' policy objectives and in demonstrating how resources are being used to achieve those objectives; and
- Ensuring that timely forecasts and monitoring information on performance and finance are provided to the sponsor unit; that the sponsor unit is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the sponsor division in a timely fashion.
- The Chief Executive may delegate the day-to-day administration of his/her Accountable Officer responsibilities to other employees in the Crofting Commission, but will ultimately remain accountable in all circumstances.

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### **Crofting Commission Accountable Officer responsibilities**

26. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) will designate the Chief Executive as the Accountable Officer for the Crofting Commission. Accountable Officers are personally answerable to the Scottish Parliament for the exercise of their functions, as set out in the [Memorandum to Accountable Officers for Other Public Bodies](#). These include:

- Ensuring the propriety and regularity of the Crofting Commission's finances and that there are sound and effective arrangements for internal control and risk management;
- Ensuring that the resources of the Crofting Commission are used economically, efficiently and effectively and that appropriate arrangements are in place to secure Best Value and deliver Value for Money for the public sector as a whole;

- Ensuring compliance with relevant guidance issued by the Scottish Ministers, in particular the SPFM;
- Signing the annual accounts and associated governance statements;
- A statutory duty to obtain written authority from the Board / Convener before taking any action which he/she considered would be inconsistent with the proper performance of the Accountable Officer functions. The Accountable Officer should also notify the relevant Portfolio Accountable Officer; and
- Giving evidence when summoned before Committees of the Scottish Parliament on the use and stewardship of public funds by the Crofting Commission.

27. The Chief Executive is responsible for informing the **Sponsor Team** about any complaints about the Crofting Commission accepted by the Scottish Public Services Ombudsman for investigation, and about the Crofting Commission's proposed response to any subsequent recommendations from the Ombudsman.

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### Joint and multiple accountability

28. In respect of key responsibilities such as propriety, performance and stewardship of public funds, the Board and Accountable Officer are both, independently, responsible. The Accountable Officer has a personal responsibility to the Scottish Parliament, and the Board likewise is responsible to the Scottish Ministers (and ultimately to the Scottish Parliament) for the efficiency and effectiveness of the Crofting Commission.

29. The Accountable Officer has three lines of accountability: he/she can be held to account for his/her decisions and actions by the Board, by the Scottish Government's Principal Accountable Officer, or by the relevant Committee of the Scottish Parliament.

30. It is incumbent on the Chief Executive to combine his/her Accountable Officer responsibilities to the Scottish Parliament with his/her wider responsibilities to the Board. The Board / Convener should be fully aware of, and have regard to, the Accountable Officer responsibilities placed upon the Chief Executive, including the statutory duty described above.

### **The Portfolio Accountable Officer**

31. The Director-General for Economy is designated by the Principal Accountable Officer for the Scottish Administration as the Portfolio Accountable Officer for parts of the SG including the sponsor Directorate for the Crofting Commission. The responsibilities of a Portfolio Accountable Officer are set out in detail in the Memorandum to Accountable Officers for Parts of the Scottish Administration. He/she is personally answerable to the Scottish Parliament for ensuring that:

- The financial and other management controls applied by the SG are appropriate and sufficient to safeguard public funds and, more generally that those being applied by the Crofting Commission conform to the requirements both of propriety and of good financial management;

- The key roles and responsibilities which underpin the relationship between the SG and the Crofting Commission are set out in a framework document - and that this document is regularly reviewed;
- Effective relationships are in place at Director and Deputy-Director level between the SG and the Crofting Commission in accordance with the strategic engagement principles; and
- There is effective continuous assessment and appraisal of the performance of the Convenor of the Crofting Commission, in line with the requirements of the Code of Practice for Ministerial Public Appointments in Scotland.

### Scottish Government Director and Head of Division

32. The Director for Agriculture and Rural Economy (ARE) and Head of Agriculture Policy Division have responsibility for overseeing and ensuring effective relationships between the SG and the Crofting Commission which support alignment of the Crofting Commission's business to the SG's Purpose and National Outcomes and high performance by the Crofting Commission. They will work closely with the Crofting Commission's [Convenor and Chief Executive](#) and be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with the Crofting Commission, characterised by openness, trust, respect and mutual support. They will be supported by a sponsor unit in discharging these functions.

33. The Director ARE shall be responsible for assessing the performance of the Crofting Commission's Convenor at least annually. [The Convenor will assess the performance of the CEO, jointly with the CEO's Scottish Government reporting officer, which will be either the Director ARE or the Head of Agriculture Policy Division.](#)

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### Sponsor unit responsibilities

34. The SG sponsor unit for the Crofting Commission is the Agricultural Development and Crofting Unit. It is the normal point of contact for the Crofting Commission in dealing with the SG. The unit, under the direction of the Head of Division, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of the Crofting Commission and undertakes the responsibilities of the Portfolio Accountable Officer on his/her behalf. Specific responsibilities include:

- Discharging sponsorship responsibilities in line with the principles and framework set out in the document '[Strategic Engagement between the Scottish Government and NDPBs](#)' and ensuring that sponsorship is suitably flexible, proportionate and responsive to the needs of the Scottish Ministers and the Crofting Commission,
- Ensuring that appointments to the Crofting Commission board are made timeously and, where appropriate, in accordance with the [Code of Practice for Ministerial Appointments to Public Bodies](#) in Scotland, and putting arrangements in place, as necessary, for the election of Crofting Commissioners and / or Convenor;

- Proportionate monitoring of the Crofting Commission's activities through an adequate and timely flow of appropriate information, agreed with the Crofting Commission [Board and management](#), on performance, budgeting, control and risk management;
- Addressing in a timely manner any significant problems arising in the Crofting Commission, alerting the Portfolio Accountable Officer and the responsible Minister where considered appropriate;
- Ensuring that the objectives of the Crofting Commission and the risks to them are properly and appropriately taken into account in the SG's risk assessment and management systems; and
- Informing the Crofting Commission of relevant SG policy in a timely manner.

#### **Internal audit**

35. The Crofting Commission shall:

- Establish and maintain arrangements for internal audit in accordance with the [Public Sector Internal Audit Standards](#) and the [Internal Audit](#) section of the SPFM;
- Set up an independent audit committee of its board, in accordance with the guidance on [Audit Committees](#) in the SPFM to advise both the board and the Chief Executive in his/her capacity as the Crofting Commission Accountable Officer;
- Provide an annual assurance report summary within its Annual Report and Accounts; and
- Forward to the sponsor unit an annual report on fraud and theft suffered by the Crofting Commission; notify any unusual or major incidents as soon as possible; and notify any changes to its internal audit's terms of reference, its audit committee's terms of reference or its Fraud Policy and Fraud Response Plan.

36. The Scottish Government's Internal Audit Directorate has a right of access to all documents prepared by the Crofting Commission's internal auditor, including where the service is contracted out. The SG has a right to request access to all Crofting Commission's records and personnel for any purpose.

#### **External audit**

37. The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, the Crofting Commission's annual accounts and passes them to the Scottish Ministers who shall lay them before the Scottish Parliament, together with the Crofting Commission's annual report, the auditor's report and any report prepared by the AGS. For the purpose of audit the AGS has a statutory right of access to documents and information held by relevant persons.

38. The Crofting Commission shall instruct its auditors, if requested by SG, to send copies of all management reports (and correspondence relating to those reports) and responses to the Agricultural Development and Crofting Unit.

39. The AGS, or examiners appointed by the AGS, may carry out examinations into the economy, efficiency and effectiveness with which the Crofting Commission has used its resources in discharging its functions. The AGS may also carry out examinations into the arrangements made by the Crofting Commission to secure Best Value. For the purpose of these examinations the examiners have a statutory right of access to documents and information held by relevant persons. In addition, the Crofting Commission shall provide, in contracts and any conditions to grants, for the AGS to exercise such access to documents held by contractors and sub-contractors and grant recipients as may be required for these examinations; and shall use its best endeavours to secure access for the AGS to any other documents required by the AGS which are held by other bodies.

### **Annual report and accounts**

40. After the end of each financial year the Crofting Commission must publish an annual report of its activities together with its audited annual accounts. The report must also cover the activities of any subsidiary or joint venture under the control of the Crofting Commission. It should comply with the Government [Financial Reporting Manual](#) (FReM) and outline the Crofting Commission's main activities and performance against agreed objectives and targets for the previous financial year.

41. The accounts must be prepared in accordance with the Schedule 1 of the 1993 Act and other relevant guidance issued by the Scottish Ministers. Any financial objectives or targets set by the Scottish Ministers should be reported on in the accounts, and shall therefore be within the scope of the audit. Any subsidiary or joint venture owned or controlled by the Crofting Commission shall be consolidated in its accounts in accordance with International Financial Reporting Standards as adapted and interpreted for the public sector context.

42. The draft report and accounts shall be submitted to the sponsor Directorate for comment by 31 July each year and the final version shall be laid before the Parliament by the Scottish Ministers by 31 December in accordance with the statutory requirements contained within Section 2B and Schedule 1, respectively, of the 1993 Act. Whilst this statutory date for laying and publishing accounts audited by the AGS is by 31 December, following the close of the previous financial year, there is an expectation on the part of the Scottish Ministers that accounts will be laid and published as early as possible. The accounts must not be laid before they have been formally sent by the Auditor General for Scotland to the Scottish Ministers and must not be published before they have been laid.

43. The Crofting Commission shall be responsible for the publication of the report and accounts, including on the Crofting Commission's website.

### **Management responsibilities:**

#### **Corporate and business plans**

44. The Crofting Commission must ensure that a corporate plan, agreed with the Scottish Ministers, is in place and published on its website. The Crofting Commission

shall agree with the SG the issues to be addressed in the plan and the timetable for its preparation and review. The finalised plan shall reflect the Crofting Commission's strategic aims and objectives as agreed by the Scottish Ministers, any indicative budgets and any priorities set by the Scottish Ministers. It shall demonstrate how the Crofting Commission contributes to the achievement of the SG's primary purpose of increasing sustainable economic growth and alignment with the SG's [National Performance Framework](#) (NPF).

45. The corporate plan for the Crofting Commission should include:

- The purpose and principal aims of the Crofting Commission;
- An analysis of the environment in which the Crofting Commission operates,;
- Key objectives and associated key performance targets for the period of the plan, the strategy for achieving those objectives and how these will contribute towards the achievement of the SG's primary purpose and alignment with the NPF;
- Indicators against which performance can be judged;
- Details of planned efficiencies, describing how the Crofting Commission proposes to achieve better value for money, including through collaboration and shared services; and
- Other matters as agreed between the SG and the Crofting Commission.

46. The corporate plan should inform the development of a separate business plan for each financial year. The business plan for the Crofting Commission should include key targets and milestones for the year immediately ahead, aligned to the NPF, and linked to budgeting information so that, where possible, resources allocated to achieve specific objectives can be identified. A copy of the Crofting Commission's [draft](#) business plan should be provided to the sponsor unit prior to the start of the relevant financial year.

47. Subject to any commercial considerations the business plan shall be made available on the Crofting Commission's website.

### **Policy Plan**

48. The Crofters (Scotland) Act 1993, as amended, requires the Crofting Commission to produce a Policy Plan, to be agreed with the Scottish Ministers, within 6 months of the date of a crofting election.

49. The Crofting Commission will liaise with the sponsor unit on preparation of the Policy Plan to facilitate approval by the Scottish Ministers. The Crofting Commission will also liaise with the sponsor unit if any subsequent variations to the Plan are required, either at the request of the Commission or at the request of the Scottish Ministers. Once agreed by the Scottish Ministers, the Policy Plan will be published on the Crofting Commission's website and distributed in accordance with section 2C(5) of the said 1993 Act.

### **Complaints Handling Procedure**

50. Other than exceptional circumstances, complaints about the Crofting Commission will be investigated and a response to the complainant provided by the Crofting Commission, overseen by the Chief Executive where appropriate.

51. The sponsor unit will liaise with Crofting Commission on complaints, for example, in order to provide information to the Scottish Ministers, if appropriate. There may be occasions, for example when a case involves individual Board members, when the Crofting Commission may require to identify independent external assistance in dealing with a particular grievance or disciplinary case and should discuss with the sponsor unit the potential for support from elsewhere in the public sector. The sponsor unit should approach the Scottish Government's Head of Human Resources for advice as required.

52. As noted at paragraph 29, the Chief Executive is responsible for informing the Director-General for Economy about any complaints about the Crofting Commission accepted by the Scottish Public Services Ombudsman for investigation, and about the Crofting Commission's proposed response to any subsequent recommendations from the Ombudsman.

### **Budget management**

53. Each year, in the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year, the SG will send to the Crofting Commission a formal statement of its budgetary provision, and a note of any related matters and details of the budget monitoring information required by the SG. The terms of that letter, referred to as the Budget Allocation and Monitoring letter, should be viewed as complementing the content of this document. The monthly monitoring is the primary means of in-year budgetary control across the SG. As such, bodies must comply with the format and timing of the monitoring together with any requests for further information. The statement of budgetary provision will set out the budget within the classifications of resource Departmental Expenditure Limits (RDEL), capital DEL (CDEL) and Ring-fenced (non-cash) (RfDEL). The Crofting Commission will inform the sponsor unit at the earliest opportunity if a requirement for Annually Managed Expenditure (AME) budget is identified. The SG should also be advised in the event that estimated net expenditure is forecast to be lower than budget provision. Transfers of budgetary provision between the different summary classifications require the prior approval of the SG Finance Directorate. Any proposals for such transfers should therefore be submitted to the sponsor unit. Transfers of provision within the summary classifications may be undertaken without reference to the SG, subject to any constraints on specific areas of expenditure.

54. If the trading and other resource income realised (including profit or loss on disposal of non-current assets) – scored as negative RDEL, or the net book value of disposals of non-current assets – scored as negative CDEL is less than included in the agreed budget the Crofting Commission shall, unless otherwise agreed with the SG, ensure a corresponding reduction in its gross expenditure. (The extent to which the Crofting Commission exceeds agreed budgets shall normally be met by a corresponding reduction in the budgets for the following financial year.) If income realised is more than included in the agreed budgets the Crofting Commission must consult and obtain the prior approval of the Sponsor Unit before using any excess to fund additional expenditure or to meet existing pressures. Failure to obtain prior approval for the use of excess income to fund additional expenditure may result in corresponding reductions in budgets for the following financial year. The only

exception is where the income is from gifts, bequests and donations but this must be spent within the same financial year as the receipt, otherwise additional budget allocation will be required. In any event, income from all sources and all planned expenditure should be reflected in the monthly budget monitoring statement.

### **Cash management**

55. Any [grant in aid](#) (i.e. the cash provided to the Crofting Commission by the SG to support the allocated budget) for the year in question must be authorised by the Scottish Parliament in the annual Budget Act. Grant in aid will normally be paid in monthly instalments on the basis of updated profiles and information on unrestricted cash reserves. Payment will not be made in advance of need, as determined by the level of unrestricted cash reserves and planned expenditure. Unrestricted cash reserves held during the course of the year should be kept to the minimum level consistent with the efficient operation of the Crofting Commission - and the level of funds required to meet any relevant liabilities at the year-end. Grant in aid not drawn down by the end of the financial year shall lapse. Grant in aid shall not be paid into any restricted reserve held by the Crofting Commission.

56. The banking arrangements adopted by the Crofting Commission must comply with the [Banking](#) section of the SPFM.

### **Risk management**

57. The Crofting Commission shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of generally recognised best practice in corporate governance, and should develop a risk management strategy, consistent with the [Risk Management](#) section of the SPFM. Reporting arrangements should ensure that the sponsor unit is made aware of relevant risks and how they are being managed. The Crofting Commission AFC is also required, at the earliest opportunity, to notify the relevant SG Audit and Risk Committee if it considers that it has identified a significant problem which may have wider implications.

### **Organisational security and resilience**

58. As part of risk management arrangements, the Crofting Commission shall ensure that it has a clear understanding at board level of the key risks, threats and hazards it may face in the personnel, physical and cyber domains, and take action to ensure appropriate organisational resilience to those risks/threats/hazards. It should have particular regard to the following key sources of information to help guide its approach.

[The Scottish Public Sector Action Plan on Cyber Resilience](#)

[Having and Promoting Business Resilience \(part of the Preparing Scotland suite of guidance\)](#)

### **Fraud management**

59. The Crofting Commission should adopt and implement policies and practices to safeguard itself against fraud and theft, in accordance with the [Fraud](#) section of the SPFM. Application of these processes must be monitored actively, supported by a

fraud response plan and robust reporting arrangements. This includes the establishment of avenues to report any suspicions of fraud. In addition, the Crofting Commission should take risk-based and proportionate steps to appraise the financial standing of any supplier or other body with which it intends to enter into a contract or to provide funding.

### Performance management

60. The Crofting Commission shall operate management information and accounting systems that enable it to review, in a timely and effective manner, its financial and non-financial performance against the strategic aims, objectives, targets and milestones set out in the corporate and business plans. The results of such reviews should be reported on a regular basis to the Crofting Commission board and copied to the sponsor unit of the SG.

61. The Crofting Commission shall take the initiative in informing the sponsor unit of changes in external conditions which make the achievement of objectives more or less difficult, or which may require a change to the budget or objectives set out in the corporate or business plans.

62. The Crofting Commission's performance in helping to deliver Ministers' policies, including the achievement of agreed key objectives, shall be reported to the sponsor unit on a regular basis. The SG shall assess the Crofting Commission's performance, proportionately, on a continuous basis and hold a formal review meeting at least twice a year. The responsible Cabinet Secretary / Scottish Minister shall meet the Crofting Commission convenor at least once a year.

63. The Crofting Commission's performance against key targets shall be reported in the Crofting Commission's annual report and accounts. Other forms of reporting performance to the public should also be considered.

### Crofting Commission Staff Management

#### *Broad responsibilities for NDPB staff*

64. ~~The Crofting Commission can either use staff provided by the Scottish Ministers, or appoint its own employees. In any event,~~ the Crofting Commission shall have responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff are to ensure that:

- The recruitment of its staff is based on fair and open competition and equal opportunities. Personnel policies, practices and systems comply with employment and equalities legislation, and standards expected of public sector employers;
- The level and structure of its staffing, including grading and numbers of staff, is appropriate to its functions and the requirements of efficiency, effectiveness and economy (subject to the SG [Pay Policy for Staff Pay Remits](#));
- The performance of its staff at all levels is managed effectively and efficiently; they are satisfactorily appraised; and the Crofting Commission's performance appraisal and promotion systems are reviewed from time to time;

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- Its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the Crofting Commission's objectives;
- Proper consultation with staff takes place on key issues affecting them;
- Adequate grievance and disciplinary procedures are in place;
- Effective Whistleblowing policy and procedures consistent with the Public Interest Disclosure Act 1998 are in place;
- A code of conduct for staff is in place based on the document *Model Code for Staff of Executive Non-Departmental Public Bodies*. Staff supplied to the Crofting Commission by the Scottish Government will be expected to follow the civil service code of conduct ([Civil Service Code](#)).

65. The Crofting Commission is responsible for determining the number of staff required and the most appropriate organisational structure to deliver its remit economically, efficiently and effectively within the resources available to it. However, any significant changes in staff numbers or organisational structure must be approved in advance by the sponsor unit.

66. The SG, acting on behalf of the Crofting Commission (CC), ensures payment of the salaries to the Scottish Government staff working within the CC; and will provide these salaries in the form of direct payments made by the CC, paid directly into the employee's bank account from the CC bank account.

#### ***Pay and conditions of service***

67. The Scottish Government staff provided to the Crofting Commission will retain the terms and conditions of Scottish Government staff.

68. For [any](#) staff employed directly by the Crofting Commission, it shall submit to the Scottish Government's Finance Directorate for approval (normally annually unless a multi-year deal has been agreed) a pay remit within the terms and conditions set out in the Scottish Government's Public Sector Pay Guidance and negotiate a pay settlement within the terms of the subsequently agreed remit.

69. Proposals on non-salary rewards must comply with the guidance in the Non-Salary Rewards section of the SPFM. The Crofting Commission shall comply with the EU directive on contract workers "Fixed Term Employees Regulations (Prevention of Less Favourable Treatment)."

#### ***Pensions, redundancy and compensation***

70. Scottish Government staff provided to the Crofting Commission will retain the same pension, redundancy and compensation rights as other Scottish Government staff.

71. Superannuation arrangements for staff directly employed by the Crofting Commission are subject to the approval of the sponsor unit. The Crofting Commission's directly employed staff shall normally be eligible for a pension provided by membership of the Principal Civil Service Pension Scheme (PCSPS).

72. Any proposal by the Crofting Commission to move from existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the SG. Proposals on compensation payments must comply with the [Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. This includes referral to the SG of any proposed compensation payment being considered for an individual out with any existing approved scheme and before the individual is approached and any offer made either orally or in writing.

### **Asset and property management**

73. The Crofting Commission shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the [Property: Acquisition, Disposal & Management](#) section of the SPFM. Non-current assets should be disposed of in accordance with the SPFM. The SG's Property Division should be consulted about relevant proposed disposals of property that the Crofting Commission holds for operational purposes (rather than investment) at the earliest opportunity so it may be advertised internally. An [Internal Advertisement](#) form must be completed and submitted at least 1 month prior to property being advertised on the open market. Any proposal to acquire land, buildings or other rights in property should comply with the SPFM. The Crofting Commission is also subject to the [SG Asset Management Policy](#), including the requirement for acquisition of a new lease, continuation of an existing lease, decision not to exercise a break option in a lease or purchase of property for accommodation / operational purposes to be approved in advance by Scottish Ministers. The Property Controls Team should be consulted as early as possible in this process. Information concerning the Crofting Commission should be accurately recorded and updated as necessary by the Crofting Commission on the Cabinet Office [electronic Property Information Mapping System](#) (e-PIMS).

### **Delegated authorities**

74. The Crofting Commission's specific delegated financial authorities - as agreed in consultation between the Crofting Commission and the SG - are set out in the attached **Appendix**. The Crofting Commission shall obtain the SG's prior written approval before entering into any undertaking to incur any expenditure that falls outside these delegations. The Crofting Commission shall also comply with any requirements for prior SG approval included in the SPFM and/or this document. Prior SG approval must always be obtained before incurring expenditure for any purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.

### **Income generation**

75. The Crofting Commission shall seek to optimise income - grant in aid does not qualify as income - from all sources, including from the [European Union](#), and ensure that the SG is kept informed. Proposals for new sources of income or methods of fundraising must be approved by the SG. Fees or charges for any services supplied by the Crofting Commission shall be determined in accordance with the [Fees & Charges](#) section of the SPFM.

76. Gifts, bequests or donations received by the Crofting Commission score as income and should be provided for in the agreed resource DEL and capital DEL budgets, updated as necessary in consultation with the SG. However, the Crofting Commission should be able to demonstrate that expenditure funded by gifts etc is

additional to expenditure normally supported by grant in aid (i.e. SG core funding) or by trading and other income. Before accepting such gifts etc the Crofting Commission shall consider if there are any associated costs in doing so or any conflicts of interests arising. The Crofting Commission shall keep a written record of any such gifts etc and what happened to them.

### **Financial investments**

77. Unless covered by a specific delegated authority the Crofting Commission shall not make any financial investments without the prior approval of the SG. That would include equity shares in ventures which further the objectives of the Crofting Commission. The Crofting Commission shall not invest in any venture of a speculative nature.

### **Borrowing**

78. Borrowing cannot be used to increase the Crofting Commission's spending power. All borrowing by the Crofting Commission - excluding agreed overdrafts - shall be from the Scottish Ministers in accordance with guidance in the [Borrowing, Lending & Investment](#) section of the SPFM.

### **Lease arrangements**

79. Unless covered by a specific delegated authority the Crofting Commission shall not enter into any finance, property or accommodation related lease arrangement – including the extension of an existing lease or the non-exercise of a tenant's lease break - without the SG's prior approval. Before entering/ continuing such arrangements the Crofting Commission must be able to demonstrate that the lease offers better value for money than purchase and that all options of sharing existing public sector space have been explored. Non-property/ accommodation related operating leases are subject to a specific delegated authority. The Crofting Commission must have capital DEL provision for finance leases and other transactions which are in substance borrowing.

### **Tax arrangements**

80. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the SG. Relevant guidance is provided in the [Tax Planning and Tax Avoidance](#) section of the SPFM. The Crofting Commission must comply with all relevant rules on taxation, including VAT. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with tax deducted at source. It is the responsibility of the Crofting Commission to observe VAT legislation and recover input tax where it is entitled to do so. The implications of VAT in relation to procurement and shared services should be considered at an early stage to ensure that financial efficiency is achieved. The Crofting Commission must also ensure that it accounts properly for any output tax on sales or disposals.

### **Lending and guarantees**

81. Any lending by the Crofting Commission must adhere to the guidance in the [Borrowing, Lending & Investment](#) section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated limit the Crofting Commission shall not, without the SG's prior approval, lend money, charge any asset, give any guarantee or indemnity or letter of comfort, or incur any other contingent liability (as defined in the [Contingent Liabilities](#) section of the SPFM), whether or not in a legally binding form. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

### **Third party grants**

82. Unless covered by a specific delegated authority the Crofting Commission shall not, without the SG's prior agreement, provide grant funding to a third party. Such funding would be subject to the guidance in the [State Aid](#) section of the SPFM. Guidance on a framework for the control of third party grants is provided as an [annex](#) to the Grant & Grant in Aid section of the SPFM.

### **Impairments, provisions and write-offs**

83. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. Where an asset - and that includes investments - suffers impairment it is important that the prospective impairment and background is communicated to the SG at the earliest possible point in the financial year to determine the implications for the Crofting Commission's budget. Similarly any significant movement in existing provisions or the creation of new provisions should be discussed in advance with the SG. Write-off of bad debt and/or losses scores against the Crofting Commission's resource DEL budget classification and is subject to a specific delegated limit.

### **Insurance**

84. The Crofting Commission is subject to the SG policy of self-insurance. Commercial insurance must however be taken out where there is a legal requirement to do so and may also be taken out in the circumstances described in the [Insurance](#) section of the SPFM - where required with the prior approval of the SG. In the event of uninsured losses being incurred the SG shall consider, on a case by case basis, whether or not it should make any additional resources available to the Crofting Commission. The SG will provide the Crofting Commission with a Certificate of Exemption for Employer's Liability Insurance.

### **Procurement and payment**

85. The Crofting Commission's procurement policies shall reflect relevant guidance in the [Procurement](#) section of the SPFM and relevant guidance issued by the SG's Procurement and Commercial Directorate. Procurement should be undertaken by appropriately trained and authorised staff and treated as a key component of achieving the Crofting Commission's objectives consistent with the principles of [Best Value](#), the highest professional standards and any legal requirements. All external contracts over the value of £100,000 or any proposal to award a contract without competition (non-

competitive action) over the value of £10,000 must be approved in advance by the SG, in line with the Crofting Commission's "Specific Delegated Financial Authorities" detailed in paragraph 73 of this document, and the attached Appendix.

86. Any major investment programmes or projects undertaken by the Crofting Commission shall be subject to the guidance in the [Major Investment Projects](#) section of the SPFM [and is also subject to a specific delegated authority]. The sponsor unit must be kept informed of progress on such programmes and projects and Ministers must be alerted to any developments that could undermine their viability. ICT investment plans must be reported to the SG's Office of the Chief Information Officer.

87. The Crofting Commission shall pay all matured and properly authorised invoices relating to transactions with suppliers in accordance with the [Expenditure and Payments](#) section of the SPFM, and in doing so shall seek wherever possible and appropriate to meet the SG's target for the payment of invoices within 10 working days of their receipt.

#### **Gifts made, special payments and losses**

88. Unless covered by a specific delegated authority the Crofting Commission shall not, without the SG's prior approval, make gifts or special payments or write-off of losses. Special payments and losses are subject the guidance in the [Losses and Special Payments](#) section of the SPFM. Gifts by management to staff are subject to the guidance in the [Non-Salary Rewards](#) section of the SPFM.

#### **Clawback**

89. Where the Crofting Commission has financed expenditure on assets by a third party, the Crofting Commission shall make appropriate arrangements to ensure that any such assets above an agreed value are not disposed of by the third party without the Crofting Commission's prior consent. The Crofting Commission shall put in place arrangements sufficient to secure the repayment of its due share of the proceeds - or an appropriate proportion of them if the Crofting Commission contributed less than the whole cost of acquisition or improvement. The Crofting Commission shall also ensure that if assets financed by the Crofting Commission cease to be used by the third party for the intended purpose an appropriate proportion of the value of the asset shall be repaid to the Crofting Commission.

#### **90. State Aid**

State aid is a European Commission term which refers to forms of public assistance, given to undertakings on a discretionary basis, which has the potential to distort competition and affect trade between Member States of the European Union. Any activity that the Crofting Commission undertakes itself, or funds other bodies to undertake, that can be offered on a commercial market for goods and services is subject to state aid rules. A state aid assessment is therefore required prior to disbursing any funding and would be subject to the guidance in the state aid section of the SPFM.

#### **Board expenses**

91. Remuneration, allowances and expenses paid to board members must comply with the SG [Pay Policy for Senior Appointments](#) and any specific guidance on such matters issued by the Scottish Ministers.

Signed:

Bill Barron  
Chief Executive  
Crofting Commission

Date:

**CROFTING COMMISSION FRAMEWORK DOCUMENT: APPENDIX**

**SPECIFIC DELEGATED FINANCIAL AUTHORITIES**

	<b>Delegated Limit</b>
External business and management consultancies	£100,000
Single-tender contracts	<b>£10,000</b>
Capital Expenditure	<b>Within overall limit of its provision and subject to appropriate appraisal the Crofting Commission may approve expenditure on capital purchases and projects up to the following limits:</b>
Capital Goods and Equipment	<b>£40,000</b>
Capital Works	<b>£25,000</b>
Revenue Expenditure	<b>Within overall limit of its provision and subject to appropriate appraisal the Crofting Commission may approve expenditure on revenue purchases and projects up to the following limits:</b>
Items other than those noted below	<b>£100,000</b>
Refund of Monthly Staff Costs to the SG	<b>£250,000</b>
Write-Off of Losses	<b>The Crofting Commission has delegated authority to deal with, and write-off where appropriate, losses up to the following limits:</b>
Cash Losses – Losses of accountable stores, fruitless payments, and constructive losses	<b>£1,000</b>
Claims Waived or Abandoned	<b>£1,000</b>
Special Payments	<b>The Crofting Commission has delegated authority to make payments up to the following limits</b>
Extra-contractual and Ex-gratia payments to contractors	<b>£1,000</b>
Other Ex-gratia payments	<b>£2,000</b>
Compensation payments	<b>£1,000</b>
Extra Statutory and Extra Regulatory payments	<b>£1,000</b>
Gifts of stores and property	<b>£250</b>
Rewards for Return of Lost Public Property	<b>£250</b>

**DATE OF NEXT MEETING – THURSDAY 8 FEBRUARY 2022 - TEAMS**

**ANY URGENT BUSINESS – ORAL**

**EXCLUSION OF PRESS & PUBLIC**