

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 10 MAY 2018

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Iain Maciver	Commissioner
	Cyril Annal	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulatory Support
	Jane Thomas	Head of C&CS
	Fiona MacDonald	Minute-taker
	Betty Mackenzie	Communications Officer
	Margaret Williamson	Observer

### 1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting in Gaelic and then in English. He also welcomed Margaret Williamson as an observer to the meeting. He then took the opportunity to thank everyone for their contribution in the first year of their term.

Apologies were received from John Toal, Head of Policy.

### 2 DECLARATION OF INTERESTS

Commissioner Maciver declared an interest in Item 15(c).

### 3 APPROVAL OF DRAFT BOARD MINUTE OF 8 FEBRUARY 2018

The Minute of the Meeting of 8 February 2018 was approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
1	2	1	'father' should be amended to 'father-in-law'

The Minute of the meeting of 22 March 2018 was approved with no amendments.

### 4 MATTERS ARISING FROM PREVIOUS MEETING

There were no matters arising.

## **5 ADVANCED PAPER FOR APPROVAL – CODE OF CONDUCT**

The Code of Conduct was approved.

## **6 AUDIT & FINANCE COMMITTEE REPORT**

### **(a) Update from Malcolm Mathieson**

Commissioner Mathieson provided an overview of the last Audit & Finance committee (AFC) meeting:

- The Disaster Recovery Plan was discussed with a particular focus on previous concern that had been raised as to what would happen if systems went down. The AFC were content that there were procedures in place and, in addition, as we have now moved to the 'Cloud', they were content that appropriate back-up was in place.
- Commissioner Mathieson asked those who had not filled in the Board Evaluation Questionnaire to please complete it as soon as possible.
- There had been concern about delays to Internal Audit points and the Deputy CEO had carried out a review to update the dates to ones that are more achievable for SMT. All outstanding points were non-critical.
- The Year End Accounts were very good. The GDPR presentation was well received. Internal and External Audit Plans were looked at and approved.

### **(b) Draft Minutes from 18 April 2018**

The draft Minutes were noted and approved.

### **(c) Risk Register**

The contents of the Risk Register were noted.

### **(d) Key Performance Indicators**

Concentration was on the 'red' indicators, but there were not many of these.

### **(e) Complaints Handling Report**

Commissioner Holt complimented the Commission on the low amount of complaints received.

### **(f) Terms of Reference**

Commissioner Mathieson explained that the Terms of Reference for the AFC were included so that everyone is aware of what their remit is.

Commissioner Scott complimented the committee on the quality of the information received.

Commissioner Campbell raised the question of standing down in one year's time (ahead of the end of his 3-year appointment) to allow someone to take his place to get experience serving on the committee and it was agreed that this would be put on the agenda for the next AFC meeting

## 7 ROUND THE TABLE UPDATES BY COMMISSIONERS

**Commissioner Neilson:** Busy working on the croft for the last six weeks. Will be attending the Quality Meat Scotland meeting and asked if there were any issues from Commissioners for him to take to the meeting.

**Commissioner Mackenzie:** Busy lambing for the last six weeks. Visit to Harris with Commissioner Campbell and Convener interviewing candidates in connection with the re-letting of a croft. Has been approached by RSABI to be a Trustee. Would take up a lot of her time but it was thought this would be good for the profile of the Commission.

**Commissioner Campbell:** Attended the re-letting of a croft along with Commissioner Mackenzie and Convener, and stated that it was good to see the re-letting process. Attended the Audit & Finance committee meeting.

**Commissioner Scott:** Attended Cross Party Group with Fergus Ewing. Attended Tier 3 casework meeting. Would also like to raise more awareness regarding Health & Safety on croft land.

A short debate on CCAGS followed and it was agreed that this would be put on the Agenda for the next meeting on 28 June 2018.

**Commissioner Maciver:** Attended Tier 3 casework meeting. Has a visit to SGRPID, Uist on 23 May re changes to the apportionments process. Has been asked to become Vice-Chair of the Crofting Law Group. Has signposted various people to GGH for help and guidance.

**Commissioner Mathieson:** Has been speaking to various people who are very supportive of the Commission and on the decisions taken on casework.

**Commissioner Holt:** Busy lambing. Is trying to put pressure on council regarding the school on Papa Stour to do video-conferencing, which would be beneficial to him as he wouldn't have to travel to the mainland so often.

**Commissioner Annal:** Raised concern about only one Assessor now in Orkney. Also raised the question regarding owner-occupier grants, which Commission Solicitor advised the Commission would try to push from Phase 2 to Phase 1 of legislative reforms.

**Convener:** Busy lambing/calving last six weeks. Visited crofting community for re-letting case. Prices good for sheep and cattle. Visited Shetland for cattle sale on 4 April.

A short discussion followed regarding bringing a development role back to the Commission. CEO noted that the Scottish Government's preferred terminology was a 'promotional role', in line with the wording of the Act.

Convener went on to talk about Commission attendance at the Black Isle Show on 2 August. The question was raised as to what other shows could be attended. Several possible examples were discussed and CEO said that Comms Team would investigate the pros and cons of these and work out a programme, dependent on costs and resources.

## 8 GDPR COMPLIANCE

Jane Thomas, Head of C&CS, gave a presentation on GDPR Compliance talking about the target date of 25 May for implementation and the impact on the Commission and Commissioners about the way we operate as an organisation.

The Commission has an Action Plan in place to show evidence that we are complying and there will also be an online training module for all staff to access.

Convener thanked Head of C&CS on how far we have come in the process.

## **9 ASSESSORS: REPORT ON INITIAL MEETINGS AND NEXT STEPS**

The Convener introduced this paper, explaining that there were two items to discuss – the roles that assessors need to carry out and the late applications received by six applicants.

### **Duties (Annex A)**

The afternoon at the Kingsmills was very successful, with all assessors interacting well and putting forward good ideas on how they see their role developing.

The various suggestions and comments made by Assessors at their initial meeting were discussed and it was agreed that it was important that Assessors act as an information exchange e.g. as a first port of call, to guide crofters to our website with any queries as this provides the most up-to-date information. Also, it was agreed that a pack for Assessors which includes all our factsheets and guidance on different regulatory applications should be developed.

The following points were also discussed and agreed:

- Assessors could function as an information exchange – with the appropriate training (GDPR will have an impact on this) and they should be provided with clear guidance around what they can and can't say.
- They can be there to help answer crofter's questions and guide crofters to get help with legislation or signpost them to other organisations.
- Assessors should not be tied to a specific area.
- We should ensure that they are accessible.
- They could be a valuable source of good stories about crofting in their area, perhaps providing contacts for case studies.

It was confirmed that Assessors did not need separate indemnity insurance, if they acted in good faith, in their Commission role.

The importance of keeping in touch with Assessors was raised and it was agreed that, as a first step, the Deputy CEO would arrange for phone numbers to be circulated to Commissioners so that they can each get in touch with three Assessors in order to start an ongoing dialogue with them.

### **Job Description (Annex B)**

The job description was accepted.

## Late applications received

Six applications were received past the deadline. Various options were discussed, centred on the following:

- Accept all late applications
- Accept one of the late applications due to the applicant having extenuating circumstance and include the other five in a potential second recruitment within the next year.

The following was decided:

- One of the applications (Argyll) would be accepted
- The other five would be informed that the Commission plan to do another recruitment within the next year where their applications would be considered.

Commissioner Neilson asked for a meeting of the assessor sub-group to decide on final numbers for the assessor panel before the next meeting of the Board on 28 June.

<b>Decision</b>	<b>Deputy CEO would arrange for phone numbers to be circulated to Commissioners so that they can each get in touch with three assessors in order to start an ongoing dialogue with them.</b>  <b>Contact the six late applicants, confirming the appointment of one and explaining to the others that they are not being appointed at this time, but should the Commission decide to run another recruitment, they would automatically be included in that.</b>  <b>A meeting of the assessor sub-group will be arranged before the next meeting of the Board on 28 June</b>
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## 10 COMMISSION LETTING PROCESS

The Head of Regulatory Support introduced the paper referring to sections 23(5B) and 23(5C) of the Crofters (Scotland) Act 1993 which relates to the Commission taking on the letting of vacant crofts at its own hand. The background to this paper was that the procedure adopted in relation to this function was last reviewed by the Board in June 2016. At that time the Commission had taken over the letting of three crofts and the new tenants had all been selected through an interview process. A review was undertaken because of a number of factors including:

- Cost factors (three Commissioners supported by officials undertook the interviews in the crofting township)
- Commissioners and the then CEO wished to revisit the process in the light of the experience of letting the three crofts
- The number of complaints received by and on behalf of unsuccessful applicants.

In June 2016, the Commission agreed to adopt a random selection process. Since then, the Commission has re-let a further seven crofts; six of these crofts were let through the random selection process and in one case the Board decided to hold interviews on the basis that one of the applicant candidates was using the croft which was the subject of the let.

Following discussion and consideration it was agreed that the Commission would adopt the following policy position:

## Conditions

It was agreed that the Commission would retain the policy of only letting on the standard conditions set out at schedule 2 of the 1993 Act. It remained open to the landlord and tenant to agree alternative conditions depriving the tenant of rights, providing they were compliant with the provisions of section 5(3) of the 1993 Act.

## Assessment of Rent

It was agreed that the only aspect of the letting the Commission would consult with the landlord on was the rental assessment. It was further agreed that the rent would be set on the basis proposed and set out at Part 1.3 of the Board Paper.

Commissioner Campbell made the point that we have experience on the Board to set rents ourselves. It was also noted that it is open to the landlord to apply to the Scottish Land Court under section 23(6) of the 1993 Act for a variation of the terms and conditions fixed by the Commission (which includes rent).

## Assessing suitability of candidates (sift)

It was agreed to bring the process of assessing the suitability of applicants more in line with our regulatory processes in determining the suitability of proposed tenants in assignation and letting applications by adopting a number of the factors set out in section 58A(7) of the 1993 Act which the Commission are required to have regard to when considering applications. The factors the Commission would focus on are:

- (a)(i) whether any person is or will be ordinarily resident on, or within 32 kilometres of, the croft
- (ii) whether the croft is being or will be cultivated or put to such other purposeful use as is consented to under section 5C(4)
- (c) the interests of the crofting community in the locality of that land
- (d) the sustainable development of that crofting community
- (g) any plan of the Commission approved and published under section 2C
- (h) any other matter which the Commission consider relevant.

## Determining to which of the candidates to let the croft

Following discussion, it was agreed to retain the current random selection method as the preferred method of selection but to disapply this policy where circumstances would warrant a different approach (i.e. interviewing candidates who pass the sift). Examples when random selection may not be appropriate could include where one of the applicants has a prior connection with the croft to be let, where Commission staff apply as candidates for the tenancy of the croft etc.

Commission Solicitor emphasised that SG are pushing for more enforcement work from the Commission, which could potentially result in more of these cases where the Commission have to take on the letting of the croft at its own hand.

<b>Decision</b>	<b>To retain the current random selection method as the preferred method of selection but to disapply this policy where circumstances would warrant a different approach (i.e. interviewing candidates who pass the sift).</b>
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## 11 PERFORMANCE/TURNAROUND TIMES

Deputy CEO introduced the paper. This had been provided for a variety of reasons but in particular to help address one of the questions often raised about the time taken to process applications. The different stages were explained and how circumstances can lengthen the time taken to process e.g. regulatory application along with croft registration, incorrect applications and maps having to be returned, time taken to process cheques, time waiting for SGRPID reports, which can vary given the time of year, whether it needs to be advanced from Tier 1 through to Tier 3.

The guidance for timescales is provided within the application guidance but it is proposed that this information be put on to the website in a much more visible and detailed way to help customers to understand the process and manage their expectations.

Various ideas were discussed about further information that could help mitigate common problems such as publishing checklists and parameters for different application types; educating solicitors and other agents; reviewing the timeline and process for handling objections.

## 12 BOARD MINUTES DISPLAY ON WEBSITE

Commissioner Campbell suggested that four Board meetings per year were not enough as this meant that minutes were not put on the website timeously.

It was suggested that a short Board meeting could take place before each Strategy meeting, but the risk here was that the Board meeting would carry on later than intended and reduce time for Strategy.

After further discussion it was agreed that the minutes would be agreed by e-mail, thereby ensuring that they are put on the website in a reasonable timescale after each Board meeting has taken place. The format of Board/Strategy meetings would be discussed at the June meeting.

<b>Decision</b>	<b>Minutes would be agreed by e-mail, ensuring they are put on the website in a reasonable timescale after each Board meeting has taken place.</b>
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## 13 DATE OF NEXT MEETING

28 June 2018 (Strategy Meeting – Great Glen House)

## 14 AOB

There was no urgent business to discuss.

## 15 EXCLUSION OF PRESS AND PUBLIC

The Convener thanked everyone for their input and closed the meeting at 1545hrs.



# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 22 AUGUST 2018

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Iain Maciver	Commissioner
	Cyril Annal	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulatory Support
	Jane Thomas	Head of Compliance
	John Toal	Head of Policy
	Fiona MacDonald	Minute-taker
	Betty Mackenzie	Communications Officer
	Conor Healy	Deloitte
	Reporter and Camera woman	BBC
	Member of the Public	

### **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting in Gaelic and then in English.

There were no apologies.

### **2 DECLARATION OF INTERESTS**

Commissioner Maciver declared an interest in Item 15(c).

### **3 MATTERS ARISING FROM PREVIOUS MEETING**

There were no matters arising from the minutes (already approved) of the meeting on 10 May 2018.

#### **4 ADVANCED PAPERS FOR APPROVAL**

##### **(a) Delegated Decision Making:**

- (i) Extending range of functions and decisions
- (ii) Reviewing Parameters

Head of Regulatory Support advised that as this paper was discussed at the Strategy Meeting on 28 June, it came today for ratification and approval. *(Please see note of decision at end of Minutes).*

Commissioner Campbell raised the point that it would be helpful if the Board could have some form of mechanism in place where they could get a structured report on cases. Head of Regulatory Support advised that this would be done for the outcome of Tier 2 casework decisions along the same lines as the Tier 3 report.

The paper was approved.

##### **(b) Gaelic Language Plan**

It was pleasing that there was only one action point at amber and Head of Compliance advised that this could now be classed as green, if Bòrd na Gàidhlig agreed.

Convener asked if there were any plans for further Gaelic Awareness courses and Head of Compliance confirmed there were.

Commissioner Maciver commended the staff for buying into the Gaelic Language Plan and this was echoed by the Convener.

The paper was approved.

#### **5 ANNUAL REPORT (SIGNING OFF)**

Conor Healy attended from Deloitte and the CEO signed off the Annual Report. Commissioner Mathieson wished it to be known that the Audit & Finance Committee were very pleased with the quality of the annual report.

#### **6 AUDIT & FINANCE COMMITTEE REPORT**

##### **(g) Update from Malcolm Mathieson**

Commissioner Mathieson provided an overview of the last Audit & Finance committee (AFC) meeting, which Commissioner Neilson had attended as an observer. He noted that progress against a number of the previous Internal Audit recommendations were behind schedule, but also that none of these was critical or contentious.

##### **(h) Draft Minutes from 15 August 2018**

The draft Minutes were noted and approved.

##### **(i) Risk Register**

The main item on this was the backlog of work and the risk aspect for the reputation of the Commission. The AFC were concerned about the standard of service and the reputational risk that could result. CEO noted these concerns and added that extra resources have already been put in place and the backlog is decreasing.

Commissioner Campbell wished it noted to staff how well they are dealing with the backlog.

The contents of the Risk Register were noted.

**(j) Key Performance Indicators and Business Plan 2018-19**

AFC had not discussed these at this meeting as it felt there were quite a few gaps. CEO explained that work was continuing on both and that he had passed a new draft of the Business Plan to AFC members today.

Conor Healy left the meeting at 1005hrs.

**(k) Complaints Handling Report**

The contents of the report were noted. The numbers of complaints in Q1 of 2018-19 remained very low.

However, Head of Compliance warned that the figure for Q2 would be much higher, as the backlog had resulted in a number of complaints about speed of processing applications.

**Other items**

The Board also noted the results of the self-assessment questionnaire, which was found to have interesting answers and indicated where more support could be provided.

**7 COMMON GRAZINGS REGISTRATIONS AND RECTIFICATIONS**

CEO began by talking about rectifications. He explained that two years ago marked the end of the main programme of common grazings registration applications by the Commission. However, the Commission are still receiving requests for rectification of these, typically where errors in the mapped boundary have come to light. If the error results from a mistake by the Commission, the policy has always been to apply to RoS to rectify it, but it is far more common for the error to have arisen in the information provided to the Commission in the first place.

Accordingly, since 2017 the Commission had also been making rectification applications to RoS in cases where it had made no mistake, provided there was unanimity by interested parties regarding the correction required, and with those parties encouraged to try and avoid repeated corrections. CEO invited the Board to confirm this approach.

Convener asked how many requests to correct grazings registrations there had been and Commissioner Maciver stated that a lot of common grazings registrations are not correct at this present time.

Solicitor explained that the Scottish Government Bill Team were hoping to use the new Bill to give RoS a wider power to rectify inaccuracies in the crofting register, which should in due course reduce the demand for rectifications by the Commission.

The Board agreed the 2017 approach to rectifications. .

<b>Decision</b>	<b>The Board agreed the 2017 approach to rectifications.</b>
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CEO went on to talk about new registration of common grazings. He explained that there had been a four-year push between 2012 and 2016, supported by additional funding from SG, with the aim of registering all of 1000 common grazings. However, in the event only one-third had been put through in that timescale, due to the unforeseen complexities of the task, particularly regarding mapping, lists of shareholders, and details of apportionments and resumptions..

SG have asked the Commission to make its own decision regarding this so the question now arises as to whether or not we bring common grazings registration back?

This is a difficult job to do on a small scale and although it was previously pushed as a priority, CEO believed that it did not currently rank as the highest priority for our stakeholders.

CEO asked the Board what their view was on giving this priority at this present time.

Responding to Commissioner Scott, CEO confirmed that this was currently identified as a priority in the Corporate Plan. Despite this, the Board agreed that this should not be prioritised at present. CEO would explain this to SG Sponsor Division.

<b>Decision</b>	<b>The Board agreed that this should not be prioritised at present. CEO would explain this to SG Sponsor Division.</b>
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## **8 CROFTING AND PLANNING**

CEO introduced the paper by explaining that there ought to be a harmonious connection between the Commission and the planning world because the roles were complementary, both aimed at supporting appropriate, and preventing inappropriate, development.

The general question he raised was what is our basic message to planning and housing colleagues and how do we connect with it? The second aspect was how do we seek to engage with it, which has proved challenging for the Commission in the past.

Looking at the recent history it seems that at the time the 2011 regulations were being drawn up, there was a big push by stakeholders for the Commission to comment on individual planning applications; but SG had warned that this might be difficult to resource and this has proved to be the case in practice.

Commissioner Mathieson made the point that the Commission should be involved in planning issues as early as possible, based on his experience of the cases that come to Tier 3 meetings.

Commissioner Campbell explained that he had attended a Highland Council planning seminar and afterwards had spoken to a couple of people (one who was head of planning) and the message coming back was that they didn't feel that the Commission was engaging with them. Commissioner Campbell had advised them to contact the CEO.

Head of Policy explained that the Commission is consulted at main issues stage and then again at the draft stage, and makes general and specific comments on the draft plans, direct to planning authorities.

Commissioner Holt said that it may be a good idea to make applicants and planning authorities aware at the start of the process to bear in mind that it may be crofting land and therefore the application may not be approved. However, Head of Policy explained that often it is not known whether a proposed development is on croft land or not.

CEO wished it put on record that the Commission are not resourcing looking at individual planning applications, except in individual cases brought to our specific attention. This was because our experience was that the resource input far exceeded the limited influence it achieves. However, this policy will be kept under review and can be revisited.

## **9 PROCESSING OF GENERAL QUERIES UNDER FOISA/EIR**

Head of Compliance explained the process regarding the wide variety of general queries received (3000), the majority of which are straightforward. Under Freedom of Information (FOISA) and Environmental Information Regulations (EIR), the Commission processes around 80 per year, some of which could incur a charge depending on the time taken to process the enquiry.

There is not an expectation from the Scottish Information Commissioner that every case will be treated as an FOI or an EIR, as this would be too resource intensive. The way to distinguish cases is for the query to be looked at within certain parameters. If the request is simple and straightforward, this can be done very quickly. If the request is going to involve a lot of work e.g. redaction and/or investigating, or there is a risk that the customer is not going to be satisfied, then these queries must be dealt with under FOISA or EIR. No protection is in place for a customer if they are not processed under these regimes, so if the query is going to take at least a day to process then it should be processed under FOISA or EIR.

Head of Compliance explained that there had only been three cases so far where charging had been proposed. Of these, once the three people in question received a fee notice and had time to think as to whether they really needed the information, one was withdrawn; one was narrowed down and one never came back for the information.

The Board agreed that they were content.

At this point, the meeting went into closed session and Commissioner Maciver and member of the public left the room at 1215hrs.

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

Commissioner Maciver returned to the room at 1330hrs.

The meeting went back into Open Session at 1355hrs – member of the public did not return to the meeting.

## **11 INSTRUCTIONS TO SOLICITOR**

Solicitor introduced the paper seeking guidance on when he would seek advice from the Board. Examples were put forward as to which types of decision would come before the Board and which could be decided by management.

Discussion followed about advertising applications and do they need to be advertised in a local newspaper as this proves costly. Head of Regulatory Support advised that the Act requires adverts to be advertised in a local newspaper circulating in the district. Deputy CEO advised that the website lists the applications received on a weekly basis.

The Board agreed that they were content with the proposal but that it would be kept under review.

<b>Decision</b>	<b>The Board agreed that they were content with the proposal but that it would be kept under review.</b>
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Solicitor left the meeting at 1410hrs.

## 10 ASSESSORS

Deputy CEO introduced the paper, explaining that after the last Board meeting she had met with the working group to discuss next steps. There were four suggestions in the paper that the Board were asked to consider:

- Whether the Board felt there was good value in continuing with phone calls to Assessors from Commissioners.
- An action to e-mail Assessors to gauge level of interest in participating in one of two focus groups – the Crofting Bill and online applications.
- Raising the profile of Assessors through our website/social media.
- To consider whether to proceed with a second recruitment phase.

Convener made the point that Assessors need to be involved more as soon as possible.

Commissioner Scott suggested that Assessors could disseminate information regarding the backlog of work.

Deputy CEO advised that information packs are in the process of being completed which would include factsheets about various applications explaining the timescale of applications.

Commissioner Mackenzie explained that some Assessors were feeling that nothing much had happened since they had got together in February and would it be a good idea to have a meeting in, for example, the Aros Centre in Skye where Commissioners and staff could come along and update Assessors on the backlog situation and hand out information packs?

Commissioner Mackenzie suggested that a representative from CHGS come to the next Board meeting to give a presentation.

It was agreed that Commissioners organise meetings in their locality during September/October and phone Assessors inviting them along as follows:

- Group One – Skye
- Group Two – Argyllshire
- Group Three – Lairg/Bonar Bridge/Dornoch
- Group Four – Northern Isles

Sigurd Thomson would be invited to the external meeting in Kirkwall.

It was also agreed to leave the second recruitment phase for another few months and to set up a closed Facebook page to facilitate discussion between Assessors, Commissioners and staff.

With the external meetings taking place in Thurso and Kirkwall in October, it was agreed to include an invite in the advert for anyone interested in applying to be an Assessor to come along.

<b>Decision</b>	<p>It was agreed that Commissioners organise meetings in their locality during September/October and phone Assessors inviting them along as follows:</p> <p><b>Group One – Skye</b>  <b>Group Two – Argyllshire</b>  <b>Group Three – Lairg/Bonar Bridge/Dornoch</b>  <b>Group Four – Northern Isles</b></p> <p><b>Sigurd Thomson would be invited to the external meeting in Kirkwall.</b></p> <p><b>It was also agreed to leave the second recruitment phase for another few months; and to set up a Closed Facebook page.</b></p> <p><b>With the external meetings taking place in Thurso and Kirkwall in October, it was agreed to include an invite in the advert for any Assessors interested in applying to come along.</b></p>
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**12 DATES FOR 2019 BOARD MEETINGS**

The following dates were agreed:

<b>2019 Board Meetings</b>
Thursday 7 February
Thursday 21 March
Thursday 9 May
Thursday 27 June
Monday 19 August
Monday/Tuesday/Wednesday 7, 8 and 9 October – Tiree, Appin or Mull (location to be confirmed)
Thursday 28 November

**13 DATE OF NEXT MEETING (1-3 OCTOBER – THURSO/KIRKWALL)**

There was a discussion on the external meeting at Kirkwall as to where the Board were going to visit on Tuesday 2 October. After various options were suggested, it was left open for the Convener and Commissioner Annal to discuss and decide where the Board were going to visit that afternoon.

The question was raised as to what message the Board wished conveyed at the public meetings. It was agreed that both public meetings would begin with a presentation (possibly landlords of vacant crofts for Kirkwall) and that thought would be given as to who to invite from outside the organisation.

**14 AOB**

Deputy CEO advised the Board that Heather Donnachie, Executive Support would be leaving the Commission on Friday 31 August. The Board wished their thanks to be recorded for Heather’s efficient and expedient work while in the post.

## 15 EXCLUSION OF PRESS AND PUBLIC

Commissioner Maciver suggested that the Commission should contact Murdoch MacLeod, SG's Location Director for the Western Isles.

The Convener thanked everyone for their input and closed the meeting at 1520hrs.

***Note of Decision taken at Strategy Meeting on 28 June 2018 (relating to 4a(i) and (ii) of these Minutes)***

### DELEGATED DECISION MAKING

#### (a) Extending the range of delegated functions/decisions

The Board agreed to delegate the following functions/decisions with immediate effect:

Section	Decision	Reasoning
11(8)	Whether to serve a notice to terminate a tenancy due to a failure of statutory succession.	Because this follows a requirement set out in the Act, rather than a discretionary decision. Section 11(4) states that the Commission... <b>“shall</b> give a notice...” proposing to terminate a tenancy. Sections 11(5) to 11(7) thereafter set out the circumstances in which a final notice may not be issued, and in the absence of any of these issues we should simply proceed to issue the notice under section 11(8).
23(5)	Whether to serve a notice on the landlord of a vacant croft requiring re-letting proposals.	We will shortly have the facility to distinguish between a landlord of a genuinely vacant croft, and a pre-2010 owner-occupier. We should take the view that genuinely vacant crofts should be occupied and serve a notice accordingly.
29(3)	To decide whether to issue an order allowing a former subtenant to remain in occupation of a croft for up to one year following the termination of a subtenancy.	We can have a simplified parameter whereby officials can grant the order where all parties agree, and it would only be escalated to Commissioners where the landlord, an executor or a successor tenant opposed the application.
58A(4)	To refuse to accept objections from individuals who the Commission consider do not have a relevant interest in an application.	There has not been a single case to date where Commissioners have recognised anyone outwith the crofting community as having a “relevant interest” in an application. The recommendation is to delegate the right not to accept an objection to officials, and to escalate to Commissioners where they consider that there is a compelling reason(s) for accepting an objection under these provisions.

The Board further agreed that staff prepare papers setting out parameters for delegating the following functions/decisions for discussion and agreement to a future Board Meeting:

Section 5C	Consent for Purposeful Use
Section 25(3)	Issuing an Order bringing land back into crofting
Section 50A	Joint Forestry Ventures
Section 51	Enlargement of Common Grazings
Section 58B	Variation of conditions on approval or consent

**(b) Reviewing Parameters**

The Board agreed to extend the parameters for delegated decision making in relation to “Decrofting Whole Croft (Only where it relates to a residual house site)”, to include the decrofting of any small residual site extending up to 0.75(ha) (including sites where there is no house or a site for a reasonable purpose). These decisions can be made at Tier 2.

The Board noted the change to the parameters for delegated decision making in relation to “Decrofting House Site and Garden Ground” to reflect that fact that, following legal advice, we no longer accept applications for statutory dwellinghouse sites on common grazings, unless the land has previously been apportioned.



# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT THE AYRE HOTEL, KIRKWALL ON WEDNESDAY 3 OCTOBER 2018

Present:	Rod Mackenzie	Convener
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Iain Maciver	Commissioner
	Cyril Annal	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulatory Support
	Fiona MacDonald	Minute-taker
	Gordon Jackson	Scottish Government
	Michael Nugent	Scottish Government
	Reporter	Alba
		Radio Orkney
	Member of the public	

### **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting in Gaelic and then in English. He also welcomed the member of the public and BBC reporters until Item 13.

The Convener wished to record his thanks to Donnie MacDonald, Taldale; Ian Sinclair, South Ronaldsay and Commissioner Annal and his son for their warm welcome on the Commission's visits.

There were apologies from John Toal, Head of Policy and Jane Thomas, Head of Compliance.

### **2 DECLARATION OF INTERESTS**

There were no interests declared.

### **3 BOARD MINUTES FOR 22 AUGUST 2018**

The Board Minutes had been approved and published on the website.

## **4 MATTERS ARISING**

### **4.1 Assessors**

There was an update on assessors from the previous meeting.

Convener and Commissioners Campbell and Mackenzie had met with four assessors in the East Highland area and this had been very worthwhile. Commissioner Campbell commented on the encouraging level of knowledge of the four assessors. They were very interested in helping the Commission with the work that the Residency and Land Use Team were carrying out in connection with duties.

It had been intended to hold a meeting in Skye for assessors in the surrounding areas to attend but it had now been decided to hold this in Harris for convenience. If the Skye assessors couldn't attend this one, they could join another meeting.

The Convener and Commissioner Holt would arrange one for the Northern Isles.

### **4.2 Delegated Decision Making**

Head of Regulatory Support advised that following the decision made to extend delegated decision making to resolving long standing unresolved successions, the Commission had advertised in the Orcadian a notice issued under section 11(4) of the Crofters (Scotland) Act 1993 proposing to terminate the tenancy of a croft and declare it vacant. The Residency and Land Use team were currently engaging with the landlord to ensure that he will be in a position to submit letting proposals when the formal notice is issued.

### **4.3 Complaints**

Deputy Chief Executive advised that frontline complaints have risen due to the backlog but there had been no corresponding increase in formal complaints. Commissioner Mathieson advised that these would be discussed further at the next AFC meeting.

## **5 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS**

The Convener had been in contact with assessors. Attended the livestock sales in Shetland. He said there had been a real 'feel good' factor there. People want crofting to exist!

Commissioner Holt agreed with the Convener re livestock sales. It was good to see young people there. He had also been busy with sheep handling: drenching, vaccinating, checking teeth and feet, sorting for sales and other pre tupping checks.

Commissioner Scott had attended sheep dipping courses. He said that it feels as if it is sharing a labour lost in communities. How do we get that back?

Commissioner Annal commented on owner-occupied crofts. The Convener thanked him for bringing this to the Commission's attention previously.

Commissioner Campbell had attended the Cross Party Group where there was a presentation from Gwyn Jones re the work he had done for the Commission which prompted some debate. Commissioner Campbell noted that it had been good to have this in Inverness rather than Edinburgh. It was agreed that it would be good to have the draft Agenda earlier so that Commissioners could plan ahead to attend if there were particular items of interest.

Michael Nugent, Scottish Government (SG) said that there would be a stakeholders' meeting with a focus on housing and an invite would be extended to the Commission. The meeting would hopefully be held in Great Glen House or at HIE's office.

Commissioner Mathieson had attended the Lochaber Show for the first time. He also attended the Lochaber Mart. He said he had heard very positive comments re Gwyn Jones' report as regards pro-activity. He had also visited a croft in Argyll to discuss a boundary dispute.

Commissioner Mackenzie said she was very interested in getting involved re planning. She had attended the dog trials and spoke to the Agricultural Officer there, who advised there is a huge backlog in the Department. Head of Regulatory Support advised that there was more follow-up training planned for the Department.

Commissioner Maciver had attended some shows where there were some interesting discussions regarding the casework backlog. There was a lot of anxiety over the future of crofting. He is currently waiting to hear from the Crofting Law Group about whether there will be a conference this year. He also re-iterated the importance of the assessors network.

Commissioner Neilson, working for QMS, has come across the huge problem with sea-eagles in Ardnamurchan and on the island of Skye; these were areas where farm and croft assessments were carried out. On general livestock trade, sheep/cattle sales were much harder on the year as sheep prices were down £5, cattle prices – average drop £40-£50, followed by a steep rise in fertiliser prices, up 25% on the year. Crofters with jobs are slightly cushioned from the financial strains. A croft buy-out scheme was suggested, along similar lines as the old croft house loan scheme – this idea needs development and Commissioner Neilson promised to fill out the bones of this and share around for further discussion. Commissioner Campbell stated that a croft buy-out scheme would be good to allow access to finance.

## **6 PHASE 1 OF CROFTING BILL WORK**

Solicitor introduced the paper. The purpose was to inform the Board about Phase 1 and identify issues which the Bill team is likely to take forward and others that could be assigned to Phase 2. The Annex identified which areas could be included in Phase 1, if the Bill team take the matters identified forward.

The solicitor outlined that deemed crofts cause problems as they are not understood by crofters and solicitors.

Owner-Occupier status – the 2010 Act Section 19B contains a definition of owner-occupied crofter that excludes certain categories of occupiers of crofts, probably in order to prevent landlords and landowners becoming owner-occupier crofters.

There may be a minor change to the Crofting Register introduced to enable the Keeper to rectify the Register where there is an inaccuracy.

There was a small discussion about standard securities over croft tenancies. Discussion was ongoing between SG and banks.

Solicitor stated that in the 2010 Bill, although it is understood that the banks were broadly positive, key crofter stakeholders had reservations about the proposals.

Commissioners may wish to discuss some of the topics in more detail, and this will be facilitated as necessary.

It was agreed that discussions regarding specific Bill team Phase 1 proposals would be done outside formal Board meetings and by e-mail or group discussions involving several Commissioners.

**7 DELEGATED DECISION MAKING – ESTABLISHING PARAMETERS TO EXTEND THE RANGE OF DELEGATED FUNCTIONS**

Head of Regulatory Support introduced the paper, by confirming that the August Board agreed that a further nine regulatory functions/decisions be included in the delegated decision making process. Four were introduced with immediate effect and five were to come back to the Board for discussion and agreement once parameters for delegation had been drafted by officials.

There were three here today:

**(a) Consent to Purposeful Use**

Parameters agreed. If there were no objections received by landlord or the crofting community following consultation, then this could proceed under Tier 1.

**(b) Recrofting Land**

Parameters agreed. It was noted that there have generally only been three or four cases annually which fall into this category. It is not so much the parameters but the validity checks which were the main issue here e.g. only if the reasonable purpose Direction had been issued within the last 20 years, could a recrofting be considered. The case would be escalated if the crofter challenged the assertion that a breach in the direction had occurred.

**(c) Enlargement of Common Grazings**

Parameters agreed. This would generally be dealt with at Tier One where there was a demonstrated benefit to shareholders and the common grazings, and there were no access issues involved. If there was no universal agreement, the case would be escalated to determine whether an enlargement could proceed but only involving those shareholders who were in agreement (in such a case any enlargement may require a separate list of shareholders and distinct regulations).

Commissioner Scott wished it recorded how delegated decision making was working more widely and this was good for staff morale.

The Board decided to approve this paper.

<b>Decision</b>	<b>The Board decided to approve this paper.</b>
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## **8 ISLANDS BILL AND LOCAL GOVERNANCE REVIEW**

Solicitor introduced the paper. The Commission may, in certain circumstances, have to carry out an Islands Communities Impact Assessment (ICIA). It would be for the Commission to decide whether its policy, strategy or services will impact one or more islands differently from the mainland or other islands.

Commissioner Campbell said that the Act would potentially require the Commission to think in a new way about a range of issues that impacted on islands. For example, next time the Commission discussed the pros and cons of locating selected posts outwith Inverness, the Islands Act would be relevant.

Commissioner Holt asked is there is a template for the Island Communities Impact Assessment?

Commissioner Campbell commented on the issues of road equivalent tariffs for the Northern Isles, potentially available through the so-called "Islands Deal". CEO said officials would find out a bit more about the Islands Deal.

CEO advised that the Commission already considers the impact of its policies and services on all the communities it serves, including island communities and remote mainland communities, such as Ardnamurchan and NW Sutherland.

Solicitor noted that the identification of owner-occupier crofters and status concerning them was an example of the Commission taking into account the particular facts and circumstances of all the crofting areas served by the Commission.

Convener asked the Solicitor how he wished it to be taken forward and the Solicitor replied by stating that officials would, in the first instance, identify if any policy, strategy or service would likely have a significantly different effect on any particular island community

Michael Nugent, SG advised that protecting and promoting the islands was a high priority for the Scottish Government.

## **9 CEO MEETINGS**

CEO began by advising he had attended many SG meetings, one of which had brought public bodies together to be warned of the pressures on SG's budgets for future years.

He had also discussed the backlog with Michael Nugent, Gordon Jackson and Ian Davidson. SG had suggested an improvement project regarding the process of the handling of casework and officials were now considering how to scope such a study.

The Away Day at Cantraybridge College was well received and had built a sense of togetherness within the organisation.

Attended Cross Party Group.

Had been struck by a comment by a crofter whose paid job was in forestry, that demand for wood would likely outstrip supply within a decade. Should crofters be encouraged to do more with wood?

Attended the annual conference of the Highland Small Communities Housing Trust. He had been struck by the very hard work required of volunteers to drive community initiatives forward – the conference had highlighted successes in Achiltibuie (crowd-funded for a wind turbine) and Strontian (raised funds, built school and rented it to Highland Council to use as a primary school). In crofting, grazings committees were designed to play a strong community role – could they be empowered to do so more?

He had met with Hamish Trench of the Scottish Land Commission and agreed that the two organisations would produce a joint paper drawing out common themes, including the democratisations of land rights.

Convener and CEO going to meeting on Monday to have preliminary discussions with HIE.

## **10 REFLECTION ON SHOWS**

Commissioners attended various shows which were well represented with Commissioners and staff.

Commissioner Neilson said that there was a lot of positive feedback.

Commissioner Holt asked that if they were to return to the Cunningsburgh show, could it be in a more prominent place? Regulatory staff got a lot of good questions and it was very beneficial for staff to be there with their regulatory knowledge.

Commissioner Scott said that it was good to speak face to face and Commissioner Campbell said it was also very beneficial on a personal level.

Commissioner Annal said that the County Show went down well.

Commissioner Campbell said that official gilets were good for smaller shows and Commissioner Mackenzie said it was more beneficial walking around meeting people rather than standing at a stall.

Convener said the Cabinet Secretary's visit to our stall at the Black Isle Show had helped to highlight the Commission.

Commissioner Maciver made the point that it would be more advantageous having a stall in the middle of the show. He had spoken to a lady who was annoyed that her CCAGS application had been disallowed, not understanding that this is no longer the Commission's remit.

Convener asked to formulate a plan for next year's shows and Commissioner Campbell made the suggestion that we could share a stall with some other organisations.

It was agreed that the Board would decide on the number of shows and locations, and to work round the holidays for these.

## **11 DATE OF NEXT MEETING**

29 November 2018 – Great Glen House

## **12 ANY URGENT BUSINESS**

The Board would like to record their thanks to Fiona MacDonald for organising the external public/board meetings and the external trip.

At this point, the meeting went into closed session and the BBC Alba reporter, Radio Orkney reporter and member of the public left the room.

## **13 EXCLUSION OF PRESS AND PUBLIC**

The Convener thanked everyone for their input and closed the meeting at 1310hrs.



# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 29 NOVEMBER 2018

Present:	Rod Mackenzie	Convener
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Iain Maciver	Commissioner
	Cyril Annal	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission solicitor
	Joseph Kerr	Head of Regulatory Support
	Jane Thomas	Head of Compliance
	John Toal	Head of Policy
	Fiona MacDonald	Minute-taker
	Betty Mackenzie	Comms Officer
	Garry Laws	Head of Residency and Land Use Team
	Morag Menzies	Residency and Land Use Team Officer
	Reporter & Camera person	Alba

### **1 APOLOGIES AND WELCOME**

The Convener welcomed everyone to the meeting in Gaelic and then in English. He also welcomed the BBC reporter and camera person until Item 9.

There were apologies from Commissioner Holt.

### **2 DECLARATION OF INTERESTS**

Convener asked if anyone had any interest to declare in the public part of the meeting, explaining that any interests to declare at item 9 should be made known when the Board went into private session.

No interests were declared.

### **3 BOARD MINUTES FOR 3 OCTOBER 2018**

The Board Minutes have been approved and published on the website.

#### **4 MATTERS ARISING**

Item 6 – CEO said that there had been discussion at the last meeting re the Phase 1 Bill. He explained that Solicitor and himself had a meeting the day before and that things were progressing well. CEO would keep everyone in touch regarding this.

Commissioner Neilson asked whether there would be the opportunity to comment and CEO said that there would be. He also asked if there could be a summary drawn up of the stage we are at now and it was agreed that this would be done.

Item 7 – Head of Regulatory Support gave an update on extending the list of delegated functions to include resolving long standing unresolved successions. An unresolved succession (termination of tenancy) had been resolved through the letting of the croft to a young person.

Item 13(b) – Head of Regulatory Support advised that Mary Ross, Regulatory Manager, was going to tidy up the Tier 2 report to focus on decisions being made. This would be e-mailed to Commissioners at the end of the year, with the focus then being on e-mailing the report quarterly.

Commissioner Campbell said that he was keen to see an annual summary for each function. Deputy CEO advised that these are detailed in the annual report.

Item 4.1 – Convener asked that an item come to the next Board meeting for an oral update on the progress being made on Assessors.

#### **5 AUDIT AND FINANCE COMMITTEE REPORT (AFC)**

##### **(a) Update from Malcolm Mathieson**

Commissioner Scott had been welcomed as an observer to the last AFC meeting.

The 2018-19 Business Plan had been amended with the requested alterations and AFC welcomed the decision to start work on the 2019-20 Business Plan . The KPIs were reviewed. Commissioner Mathieson advised that a trial would be done for electronic papers at the January meeting and he would report back to say how this had gone.

There had been an increase in complaints over the summer, due to the backlog but the majority had been handled at the early stage.

There were no issues arising with the Internal Audit Report. He advised that Internal Audit also got audited and they had received a glowing report, which is good for the Commission.

Compliance Manager gave an update on complaints, saying that the third quarter was now back within normal expectations.

##### **(b) Draft Minutes from 24 October 2018**

The draft Minutes were noted and would be approved at the next AFC meeting.

##### **(c) Key Performance Indicators**

Noted.

**(d) Complaints Handling Report**

Commissioner Annal asked about the progress of the backlog and he was advised that the crisis was now past and good progress was being made.

**(e) Scheme of Financial Delegation**

Commissioner Mathieson explained the document was before the Board for approval and it was approved.

**(f) Standing Financial Instructions**

Commissioner Mathieson explained the document was before the Board for approval and it was approved.

**(g) Anti-Fraud Policy**

Commissioner Mathieson explained the document was now up-to-date and it was approved by the Board.

CEO advised that the Business Plan has now been published.

**6 RESIDENCY AND LAND USE**

Head of Regulatory Support introduced the paper, setting out the background to the range of duties and initiatives involved.

He explained that the team had been helping out with the regulatory backlog during the summer but management recognised the priority the Board give to this work and intended that in future the team concentrates solely on their team duties.

Residency and Land Use Team (RALUT) Manager explained the weekly working of the team members, stating that two team members had been progressing RALUT actions and two were looking at the work processes e.g. updating template letters, amongst other things. By early in 2019 it was anticipated that all staff would be engaged in core RALUT casework.

Head of Regulatory Support stated that an information paper would be brought to a future Board meeting regarding the steps taken in terminating a tenancy, which can be quite lengthy.

The census returns were helpful in getting cases moving quickly as people were pointing out on their form that they were in breach of their duty.

Working with crofting landlords – this hasn't progressed as much as the Commission would have liked – Jura was an example. RALUT Manager advised that Scottish Government Estates need to be investigated to find out which crofts are vacant and any outstanding successions.

Solicitor advised that, in a legal context, work must be done on these cases, not just cherry-picked.

Commissioner Mathieson asked that if the applicant of a Tier 3 case (decrofting) is found to be in breach of duties, can the application be stopped? The answer was no.

RALUT Manager advised he was waiting on a report from the IS Team on stats and that he would e-mail the Board once he got the results back from them. There were two stages: 'letter one' (first breach) and 'letter two' (second or more consecutive years in breach). He advised that there were around 100 'letter ones', and to date 137 'letter twos', and that 112 had been resolved – the majority of which were 'letter one'.

Commissioner Mackenzie asked if there was any benefit in making the census biennial and Deputy CEO advised that a request had been put forward to Phase 1 to move it to every two or three years. There was a lot of work and cost involved in the process of putting the census out annually and there would be financial benefit and staff time saved if the process could be moved beyond the yearly census.

Convener asked the Head of Policy to gather the stats from 2010-2014 for new entrants.

Commissioner Scott raised the point as to whether the non-returns of census forms should be investigated (about 3000 have never returned their forms). Head of Regulatory Support explained that the intention was to start addressing some of these cases in the near future. He also asked if we have sufficient data information sharing agreements with RPID (as breach of GAEC is one of the conditions for satisfying neglect) to enable these breaches to get back to the Commission.

Head of Policy explained that in a previous initiative, over 2000 files were investigated for non-residence.

Convener asked what the Board could do to help allay people's fears of being approached by the RALUT. A suggestion was made that awareness is raised at roadshows, meetings etc helping people to understand that it is not a scary process. Could Assessors be used to promote this?

Head of Regulatory Support advised that meetings with PAOs would be done bi-annually.

Convener asked that this item be put on the agenda frequently for Board meetings over the next few months.

Commissioner Scott asked if we could widen our options and take something forward re communication on the options for subletting etc for non-active crofters and it was agreed that the Comms Manager could put a video together regarding this.

The Board decided that the RALUT continue with the process.

<b>Decision</b>	<b>The Board decided that the RALUT continue with the process.</b>
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## **7 DATE OF NEXT MEETING**

7 February 2019 – St Kilda, Great Glen House

## **8 ANY URGENT BUSINESS**

Commissioner Campbell asked if a surgery could be put in place for solicitors, agents, SAC etc for ¾ of an hour before the meeting in Skye. It was felt to be too close to the date to contact Solicitors etc for the Skye meeting, but it was agreed this would be considered for future public meetings.

At this point (1045hrs), the Board went into Closed Session and the BBC reporter, camera person, Residency and Land Use Manager, Residency and Land Use Officer and Comms Officer left the room.

## **9 EXCLUSION OF PRESS AND PUBLIC**

Convener thanked everyone for their input and closed the meeting at 1550hrs.



# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT 09:30 ON 7 FEBRUARY 2019

Present:	Cyril Annal	Commissioner
	Andy Holt	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Rod Mackenzie	Commissioner
	Iain Maciver	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission Solicitor
	John Toal	Head of Policy
	Joseph Kerr	Head of Regulatory Support
	Jane Thomas	Head of Compliance & Minute-taker
	Betty Mackenzie	Communications Manager

### **1 APOLOGIES AND WELCOME**

The Convener opened the meeting with a bilingual greeting and explained that the Commission wishes to reduce the amount of paper used at Board meetings. A paperless meeting had been trialled by the Audit & Finance committee and several Commissioners had decided to use Commission iPads today, rather than hard copy papers.

The Convener also explained that Matt Goddard of CTI was in the building today, meeting staff as part of an organisational development project. He would attend some of the Board Strategy day on 8 February, the format for which was a trial.

Apologies were received from Mairi Mackenzie and Fiona MacDonald (Minute-taker).

### **2 DECLARATION OF INTERESTS**

There were no interests to declare in the public part of the meeting.

### **3 BOARD MINUTES OF 29 NOVEMBER 2018**

The Minute of the Meeting of 29 November 2018 had been approved by e-mail and published on the website. It was brought to the meeting for information only.

Commissioners discussed the style of Board Minute, agreeing they would prefer a less personalised style, focusing on the collective nature of discussion and decision-making.

### **4 MATTERS ARISING FROM PREVIOUS MEETING**

There were no matters arising to note.

## **5 AUDIT & FINANCE COMMITTEE REPORT**

### **(a) Update from Malcolm Mathieson**

The Vice-Chair of the committee explained that the meeting in January had trialled the use of electronic papers successfully.

The major item to bring to the attention of the Board was the budget reduction for 2019/20; the impact of which is being discussed with SMT members, so that it can be managed carefully. Attention was also drawn to the Workforce Plan, which had been considered for the first time. It was noted that this is a key document for an organisation as small as the Commission as even slight shifts, such as an increase in staff turnover, can have important consequences.

The Self-Assessment exercise undertaken last year by AFC members is being repeated shortly and will then be rolled out to the full Board. It is important for every member to engage in the exercise, to allow a useful reflection on where the Board is at present.

### **(b) Draft Minutes from 23 January 2019**

The draft Minute had been tabled. The Chief Executive commented on news from the external auditor Deloitte, that due to changes required by Scottish Government, future audits would increasingly be looking at broad organisational governance, as well as financial management.

The Commission was content with the draft Minute but would ask the Finance Manager to revisit the wording of bullet point 5 on scenario planning and Scottish Government policy.

### **(c) Operational Risk Register & Issues Log**

Commissioners were content with the information set out in the Register and Log.

### **(d) Key Performance Indicators**

There were no comments on the report.

### **(e) Complaints handling report**

Commissioners considered the statistical report, which showed an increase in complaints at Stage 2 but with numbers still low. They were content with the procedure for investigating formal complaints.

### **(f) 2019-2020 Budget**

The Commission is facing quite a high percentage budget reduction in the next year, which will be managed to try to minimise the impact on the staff side of the budget. The Chief Executive explained how, traditionally, underspends can occur on staff budget forecasts because of staff turnover and delays in recruitment. Given this experience, management planned to over-budget at the beginning of the year and look for savings outside the staff budget. This approach had been explained to the external and internal auditors.

The Chief Executive was not aware whether the same percentage cut had been applied across Scottish Government but reflected that many departments and organisations had faced budget cuts for several years.

Commissioners were content that, given historic staff turnover rates, the approach outlined was sensible. It was further noted that the departure of the deputy CEO/ Head of Operations in March represented a risk to the organisation, which has been captured in the Issues Log.

<b>Decision</b>	<b>The Commission approved the budget for 2019-2020.</b>
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## 6 (a) REVISIONS TO CORPORATE PLAN

The Chief Executive introduced the paper, explaining that changes had been made as a result of previous discussions with Commissioners. It was expected that a few more revisions would be necessary before the draft was ready to submit to Sponsor Division for approval, for instance on the text setting out the Commission's Vision. More work is also needed on the Measures.

After discussions with staff, the Commission Values have been revised to 5:

- Caring about crofting communities
- Positive teamwork
- Commitment to service quality and improvement
- Encouraging staff development
- Being fair and impartial.

Commissioners discussed the role of the organisation and crofting with regard to the environment, deciding that the first Value should read, "Caring about crofting communities and environment." It was also agreed to add Commissioners to Value 4 on development.

The Chief Executive explained that Outcome 6 had been subsumed into Outcome 5 in the draft, which would be checked with Sponsor Division.

Commissioners agreed to forward comments on the draft to the Chief Executive by 21 February.

Joseph Kerr left the room at 10:30am.

## 6 (b) STRATEGIC RISK REGISTER

Deputy Chief Executive explained that this Register is for the Board as a whole to own, coming out of earlier discussions on the appropriate risk appetite for the organisation. This was the first time it had been presented to Commissioners, who confirmed they were happy with the format and content. It would be presented to the Board on a quarterly basis, to enable members to track the organisation's main activities and risks.

Commissioners discussed work being undertaken to follow up on non-returns of the Annual Notice. It was confirmed that the issuing of the Annual Notice is not connected with the Agricultural census and that a link had been considered before the 2010 Act was finalised but dropped from the legislation. Management agreed to raise the possibility of a link in the future with Sponsor Division.

Commissioners approved the format of the register and the Outcomes detailed.

<b>Decision</b>	<b>Commission approved format/content of Strategic Risk Register</b>
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Joseph Kerr returned to the room at 10:50am

## **7 PROGRESS WITH BUSINESS PLAN**

Deputy Chief Executive explained that it is not possible to finalise the 19/20 plan until the data for 2018/19 is complete. Quite a lot of updating will take place after the end of March but Commissioners were asked to comment on how the draft Business Plan for the coming year is shaping up. More work is needed on Milestones and the Key Performance Measures need to be agreed. Commissioners were encouraged to forward comments and suggestions to the CEO as soon as possible, as the intention is to have the Business Plan in place as early as possible in the new year.

Commissioners discussed the pros and cons of switching to a paperless environment and agreed that a more in-depth discussion should take place to consider our carbon footprint, later in the year.

## **8 CEO MEETINGS**

The Chief Executive gave a summary of meetings he had attended recently, including one with SAC before Christmas, various discussions with Scottish Government on Phase 1 of the new Act, Matt Goddard on organisational development and HIE.

Deputy Chief Executive provided an update to Commissioners on engagement with stakeholders on the plans to move to online applications. The stakeholders include agents and solicitors, as they are often completing forms for crofters. Shetland and Skye will be visited next week. The reception so far has been positive.

There are challenges, as the Crofting Registration forms belong to RoS and cannot be altered without a change to secondary legislation. Currently the law says the form has to be printed on paper. The Commission is engaged with RoS and SG to try to resolve this issue. The Commission is also speaking to RoS again about switching to online payments for croft registration, instead of cheques. This change also requires an amendment to the secondary legislation.

Deputy Chief Executive confirmed that shared services had been considered with SNH but did not prove practical and also that Sponsor Division would be approached if the cost of moving online was significant. It was hoped that it would not be too costly, and funds have been set aside in this year's budget to begin the development. It was also confirmed that, at least initially, crofters would have the choice of submitting a paper application if they preferred.

## **9 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS**

Commissioner Holt began the update, noting that he is pleased that the CEO is making progress with the SIC on enabling remote VC meetings from Shetland. This will allow him to take part in more meetings.

Commissioner Mathieson highlighted interesting points made in an IPSOS MORI presentation to the Cross- Party Group recently. Commissioners agreed it would be good to invite them to a future Strategy meeting of the Board.

Commissioner Scott highlighted several calls from crofters that he has received after his Commission blog was posted, mainly concerned with ways to formalise informal use of a neighbour's croft land.

Commissioner Neilson had visited many crofting units since the last Board meeting and wished to highlight how good it is to see a second generation of crofters coming through on Jura after work undertaken there by the HICES in the early 2000's had introduced 8 new crofters. He drew attention to the continuing issue of access to affordable housing for young people in crofting areas.

Commissioner Campbell highlighted a planning case which is causing concern in Easter Ross, where the views of the planners seem at odds with the need to retain croft land in the area. The results of a recent exercise by Albyn Housing Association show that people do want to live in rural communities.

Commissioner Maciver would be speaking to students at Lews Castle College and had spoken with people from various grazings committees. As had been mentioned by several other Commissioners, he finds it very common for crofters to believe that the Commission is still 'in charge' of grants. The message that this function was removed several years ago has not got through to everyone.

Convener Mackenzie had enjoyed engaging with Assessors at various roadshows. It was agreed that, if meetings between a Commissioner and local Assessors had not been possible, we would look at the logistics of inviting these Assessors to Inverness the evening before the scheduled meeting in March, to facilitate this.

The issue of increasing media coverage was touched on and would be discussed in more depth on 8 February.

## **10 ASSESSORS (INCLUDING 20-21 MARCH EVENT)**

The Chief Executive apologised for the paper being tabled. He explained that the focus was on the need to finalise the agreed role for Assessors, take stock of what is working well and confirm the Programme for the March event.

Regarding the role, it is expected that all Assessors will be asked to give general observations about crofting, housing and planning issues in their area and give the Commission their views on general crofting issues (points (a) and (b)) in the paper). In this way, Assessors will boost the pool of knowledge available to the Commission.

Items (c) and (d) in the paper are more specific, based on inviting Assessors to join two different types of focus group. The intention would be to convene meetings of the groups 3-4 times a year.

Item (e) in the paper concerns gaining information from Assessors, on a voluntary basis, to assist the Residency and Land Use Team. And (f) would see some Assessors engage in HIE-led local initiatives.

Commissioners discussed whether individual Assessors would be content for their name to be used on a 'Duty Compliance Notification' form and also how expectations would be managed if more cases of potential breaches were notified than the Commission had resources to respond to quickly.

The public role of the Assessor was discussed and issues around trying to de-personalise the information received, to protect the privacy of the individual. It was agreed that the solicitor would bring forward a paper on Openness and Transparency, in this context.

The Commission approved the approach set out in the paper by the CEO and looked forward to seeing the Assessors in March.

<b>Decision</b>	<b>Commissioners agreed to the setting up of two Assessor focus groups and the drafting of a new role description for Assessors.</b>
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Following the lunch break, the meeting re-convened at 1:15pm and members confirmed there were no interests to declare.

## **11 DRAFT GUIDANCE TO GRAZINGS COMMITTEES**

Head of Policy introduced the paper and stressed that it was guidance for committees and not instructions to them. Its aim is to help grazings committees and Commission staff, who are constantly asked questions by committee members and clerks. The main contentious issue that the Commission has been asked to intervene over in the past few years concerns the holding and distribution of funds by committees.

The paper, at page 110, sets out the Commission's position. It provides an example of the kind of support the Commission can give committees.

Head of Policy confirmed that committees receive a letter alerting them when they have gone out of office, followed up by a phone call.

Commissioners discussed the difficulties of getting new people to take on roles on committees, especially the clerk and the issue of lack of knowledge of the Regulations held by individual committees. This compounded the issues relating to the status of grazings committees, which has not evolved to match changes in circumstances, presenting concerns about liability and protection for committee members. As they do not have limited status, there are not the protections that Trustees, for instance, could have and there is no Crown Immunity. The position was likened to a barometer of what is happening in crofting, with less people choosing to work together. The lack of current flexibility in the status of grazings committees could be seen as frustrating opportunities in utilising the land asset managed by committees.

It was observed that there may not always be alignment between crofters' rights and the objectives of community land buy-outs and Commissioners agreed further wide-ranging discussions were needed on this important strategic issue.

The guidance produced was welcomed as helpful, clear and a useful resource for both staff and grazings committees. It was agreed that a press statement should be drawn up and the information disseminated to the key audiences in a variety of ways.

<b>Decision</b>	<b>The paper was approved by the Commission with no amendments.</b>
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## **12 HIE**

The Chief Executive introduced the item, reflecting that meetings with HIE followed the Cabinet Secretary's desire to see greater collaboration between the two bodies. Commissioners had a note of the most recent meeting, between the CEO and two officers from HIE.

Commissioners agreed that working with HIE on Phase Two of the Crofting Bill could give more local weight to discussions with SG and the same may be true on issues around future support for Scottish agriculture. The Commission is helping HIE in communities where the aim is to create new crofts and would use the Assessor network to help HIE's food and tourism initiative. There are, however, several areas where there are challenges to collaborative working.

Commissioners agreed there are merits in meeting with the HIE Board again and that the focus should be on trying to get across the Commission's objective of promoting crofting. It was agreed that it is important to keep channels open and that a conversation between the Convener and the HIE Chair would be beneficial.

### 13 DATE OF NEXT MEETING

21 March 2019 – Great Glen House

### 14 AOB

1. Deputy CEO explained that there has been a loss of access to the internal intranet and, due to the specialist nature of the fix, the issue cannot be resolved until April. Commissioners expressed concern that the Audit & Finance committee had not been informed.
2. Commissioners asked whether case-related work is beginning to build up again and whether this represents a backlog or reflects increased workloads. It was agreed that analysis should be carried out and Sponsor Division informed.

### 15 (b) ITEM TAKEN IN PUBLIC

The proposal to move from Tier-3 to Tier-2 the delegated authority for officers to refuse applications for 'Consent to be Absent' was considered and agreed by the Commission. Head of Regulatory Support confirmed that such cases would still be escalated to Tier-3 if there were any complex issues requiring Commissioner consideration.

<b>Decision</b>	<b>The Commission approved moving delegated authority from Tier-3 to Tier-2 where there is a proposal to refuse a 'Consent to be Absent' application.</b>
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### 15 EXCLUSION OF PRESS AND PUBLIC

The Convener thanked everyone for their engagement and closed the meeting at 3:45pm.



# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT THE KINGSMILLS HOTEL AT 09:00 ON 21 MARCH 2019

Present:	Cyril Annal	Commissioner
	Andy Holt	Commissioner
	Mairi Mackenzie	Commissioner
	Malcolm Mathieson	Commissioner
	James Scott	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Rod Mackenzie	Convener
	Iain Maciver	Commissioner
	Bill Barron	Chief Executive
	Donna Smith	Deputy CEO
	David Findlay	Commission Solicitor
	John Toal	Head of Policy
	Joseph Kerr	Head of Regulatory Support
	Jane Thomas	Head of Compliance & Minute-taker
	Betty Mackenzie	Event Organiser/ Communications Manager
	Fiona MacDonald	Event Helper
	John Gillies	Assessor
	BBC Alba reporter and cameraman	

### **1 APOLOGIES AND WELCOME**

There were no apologies and the Convener welcomed everyone to the meeting, in Gaelic and English, welcoming the BBC and Mr Gillies to observe proceedings.

### **2 DECLARATION OF INTERESTS**

No declarations of interest were made.

### **3 BOARD MINUTES OF 7 FEBRUARY 2019**

The Minute of the Meeting of 7 February 2019 had been approved by e-mail and published on the website. It was brought to the meeting for information only.

### **4 MATTERS ARISING FROM PREVIOUS MEETING**

Commissioners requested a formal update on Phase One of the Crofting Bill at the next Board meeting in May. It was confirmed that this would be placed on the Agenda.

It was noted that the recently published Guidance for Grazings Committees was being well received and proving useful.

The Convener and Commissioners wished to record a vote of thanks to Donna Smith, Deputy CEO, as this would be her last Board meeting before leaving the Commission at the end of the month. Donna was thanked for the significant contribution she has made to the work of the Commission over the last 8 years and Commissioners wished her well in her new venture.

## **5 ROUND TABLE UPDATES FROM COMMISSIONERS**

Commissioner Scott had attended a meeting of the Moorland Forum and Commissioners discussed the relative merits of remaining on this group, concluding that continuing engagement was hopefully beneficial.

Commissioner Campbell had attended a useful reception with the CEO on 19 March, with the SRUC in the Scottish Parliament, reflecting that it is important for the Commission to be visible at such events in order to promote the interests of crofting. It would benefit the Commission to share out attendance, to extend the experience of the Board and ensure maximum coverage of events.

Commissioner Campbell has recently joined a new housing forum, which is focused on reversing population decline in the Highlands. He will attend the first meeting, with the option that this can be shared in the future.

Commissioner Mackenzie was congratulated on being selected for and completing a Rural Leadership Programme, which she has found very beneficial. It was felt that the experience would bring benefits to the Board as a whole.

Commissioner Nielson explained that he is giving evidence to the 'Climate Change and Land Reform' committee, in his role as a land manager. He had given a presentation to Commission staff the day before, which was very well received. It was hoped the same could be repeated with other Commissioners later in the year.

Commissioner Annal raised a question concerning funding for crofting and the distribution of funding support by HIE. It was noted that officers from HIE will be attending the Board meeting in May and that the Highlands & Islands Croft Entrant Scheme had been a good example of collaborative working between organisations.

Commissioner Maciver wished to record his thanks to staff for organising a recent visit to the Uists to meet crofters and others. The meetings had been very positive, and this was a worthwhile initiative, helping communities to resolve issues.

Commissioner Holt had attended a meeting of the Agricultural Support Group in Shetland, where topics such as Brexit and LFASS had been discussed and where it was evident that there is still a lot of misunderstanding of the current Commission's remit. He would continue to attend, to listen and to try to raise awareness of what the Commission can and cannot do.

The Convener reflected that the updates show that Commissioners are attending a lot of meetings and events and would benefit from greater awareness of these by sharing notes. It was agreed that the best method of sharing and communicating would be investigated by officers and tuition provided to Commissioners on request.

The Convener had recently given a presentation at a training event run by the SCF in Portree, which was attended by 18 people, from those aspiring to become crofters, to new entrants and established crofters. He highlighted that it was easy to access misleading information on crofting, by visiting websites whose information on crofting and the Commission is out of date. It was agreed that the Commission would try to identify these and send them a link to our own website, to ensure information stayed up-to-date.

This led to a general discussion on the continuing challenge of getting clear messages out to the crofting public, which would be re-visited at the May Board meeting.

## **6 CEO MEETINGS**

The Chief Executive reported that, along with colleagues from the management team and Commissioner Campbell, he had attended a useful meeting with internal Auditors, Scott-Moncrieff regarding the new Assurance Framework, being drawn up to take a broader look at good governance in the organisation.

He had also had a wash-up meeting with Matt Goddard, whose work on organisational development had now been completed. A copy of the resulting report would be circulated to Commissioners.

As a result of a meeting with the Sponsor Division, Commissioners were asked if they wished to engage with SG on the question of constituency boundaries, ahead of new Crofting Commission elections. This would be prior to a broader consultation exercise. It was agreed that this should go ahead, with information circulated to Commissioners for future discussion.

## **7 DRAFT BUSINESS PLAN 2019-2020**

Deputy Chief Executive introduced the paper, explaining that the draft would come back to the Board for formal approval in May. Some changes had been made to Milestones and targets, with further information on performance targets to be added after the year end, in early April. Commissioners considered each draft Outcome in turn.

For Outcome One, it was felt that a little more narrative, in the form perhaps of an Explanatory Note, is needed where it is not clear why a particular target is pertinent. While it was accepted that targets must be productive and measurable, it was felt that they would convey a better message if the language was positive rather than negative. For instance, 'increasing occupation' is more positive language as a target than 'reducing the number of vacant crofts'.

Commissioners discussed how action is prioritised, for instance in relation to Crofting Census Returns, with current priority given to following up those returns reporting a possible breach of duty; Commissioners noting that action would be taken in other cases if potential breaches are reported by members of crofting communities.

Outcome Two concerns grazings and it was agreed that the Commission has to focus on management structures because market driven elements are not under the Commission's control. It was felt that there would be benefits in using the Assessor Network to engage with townships and grazings committees.

Outcome Three mainly related to process improvements in Regulatory work, with new performance measures being developed. Head of Regulatory Support explained that the triage system previously approved by the Board is being taken forward, with a pilot to test its effectiveness.

For Outcome Four, the Chief Executive explained that there are no measures, but Milestones have been identified. It was agreed that land reform should be given greater prominence and a meeting arranged with the Land Commission and that a further discussion was needed on 'Support for Crofting' ahead of any meeting on this with partners or SG. It was further agreed that a facilitator should be identified to lead this discussion at a future Board meeting.

For Outcome Five, Commissioners were reminded that the previous Outcome Six on the environment was now included in this Outcome. It was suggested that where positive action was measurable on environmental improvements, such as switching to more paperless meetings, this could be tagged with a 'green flag'. The desire to shift the balance from issuing documents and communicating by letter to more use of e-mail was discussed and will be investigated further.

## **8 ORGANISATION OF GENERAL EXTERNAL VISITS**

The Chief Executive introduced a brief paper outlining the current approach to external visits, with information on costs and the aims behind the various types of visit to crofting communities, undertaken by Commissioners and staff.

The Convener explained that, with increased pressure on budgets, the Commission needs to use resources carefully and decide which approach provides the best value for money.

Commissioners discussed the relative merits of the different types of visit currently undertaken, agreeing that the Commission must be a customer-facing organisation and that it is important to consider value as well as cost. Questions were raised as to whether it is necessary, for instance, for all Commissioners and several members of staff to be present at some external meetings, where the same outcome might be achieved by fewer people. It was suggested that this needs to be balanced by the symbolic nature of certain visits, especially as there is currently no live streaming of Commission meetings. It was pointed out that HIE broadcast a live forum debate each week and that advances in digital technology offer an opportunity to reach more people, for instance via podcasts.

The Deputy CEO suggested that completing a cost/benefit analysis could provide useful information and the Convener favoured a more structured and targeted approach, which would assist in planning and budgeting.

It was agreed to bring the item back for further discussion at the next Board meeting in May.

## **9 DATE OF NEXT MEETING**

The next meeting will be held on 9 May 2019 in Great Glen House.

## **10 AOB**

There was no urgent business and the Convener thanked everyone for attending and closed the meeting at 12:20pm.