



**CROFTING COMMISSION  
COIMISEAN NA CROITEARACHD**

***COMMISSION MEETING***

***9 OCTOBER 2024***

**CROFTING COMMISSION MEETING  
ST KILDA, GREAT GLEN HOUSE  
9 OCTOBER 2024 AT 0900 hrs**

**AGENDA**

<b>1 APOLOGIES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>2 DECLARATIONS OF INTEREST</b>	<i>Oral</i>	<i>Standing Item</i>
<b>3 DRAFT MINUTES FROM 21 AUGUST 2024*</b>	<i>Minutes</i>	<i>For approval</i>
<b>4 REVIEW OF ACTION POINTS FROM PREVIOUS MEETING (of 21 August 2024)</b>	<i>Paper</i>	<i>For info</i>
<b>5 MATTERS ARISING FROM PREVIOUS MINUTES</b>	<i>Oral</i>	<i>Standing Item</i>
<b>6 REVIEW OF AREA (SIZE) OF HOUSE SITES TO BE DECROFTED/ TRUNCATION OF OBJECTIONS</b>	<i>Paper</i>	<i>For approval</i>
<b>7 DISPLAYING ADVERTS AND REGULATORY APPLICATIONS ON WEBSITE</b>	<i>Paper</i>	<i>For info</i>
<b>8 CROFTING COMMISSION FRAMEWORK AGREEMENT REVIEW</b>	<i>Paper</i>	<i>For approval</i>
<b>9 CHANGES TO THE SCHEME OF DELEGATION</b>	<i>Paper</i>	<i>For approval</i>
<b>10 DATE OF NEXT MEETING 27 November 2024 – St Kilda</b>		
<b>11 ANY URGENT BUSINESS</b>		
<b>12 EXCLUSION OF THE PRESS AND PUBLIC</b>		

*\*Not in public copy*

# APOLOGIES – ORAL

## **DECLARATIONS OF INTEREST – ORAL**

# CROFTING COMMISSION MEETING

## 9 October 2024

Report by the Chief Executive

### Review of Action Points from 21 August 2024

ITEM	ACTION	RESPONSIBLE OFFICER	DEADLINE	DATE COMPLETED	COMMENTS
1	Discussion on work of Grazings team – resource -v- demand	FB	October Board		Paper to be presented for discussion in closed session
2	Arrange separate Board informal discussion on support mechanism consultation	Chair/CEO	Before 8 October		DoCS emailed Malcolm on 28/08 and 13/09 requesting news of date for meeting
3	Proposals on vacant crofts approved but KPI needs to be created	Head of Regulatory Support	Immediate	26/08/2024	Head of Regulatory Support confirmed there is already a relevant KPI in the 2024/25 performance report for the owners of vacant crofts
4	Brief paper on displaying adverts and regulatory applications on the website	DoO	October Board		
5	Locate previous Board paper on Care Home costs and circulate to Commissioners with associated Board Minute	DoCS	ASAP	21/08/2024	
6	Circulate copy of blank annual notice form to Commissioners, so they can see wording of questions	HoD	ASAP	21/08/2024	
7	Provide Board with a refresher session on digital applications progress	DoO/HoD	November Board		
8	Communicate Board decision on CCARs	CEO/HoPDG	Before October Board	28/08/2024	Board chose Option 1
9	Staff to complete bill consultation response, with CEO to summarise Board/CC position and circulate wording to Board before submitting consultation response.	DoO/CEO	By beginning of September	02/09/2024	Response submitted
<b>Action Point from 26 June carried over</b>					
3	Officials to consider if further changes should be recommended for common grazings, and either come back with proposals at a future Board meeting or confirm no further changes are recommended.	Commission solicitor		28/08/2024	Action cleared – after consulting Board on 20/08/24 officials have decided no further changes are recommended.

**MATTERS ARISING FROM PREVIOUS MINUTES – ORAL**

# CROFTING COMMISSION MEETING

## 9 October 2024

Report by the Chief Executive

### REVIEW OF AREA (SIZE) OF HOUSE SITES TO BE DECROFTED/ TRUNCATION OF OBJECTIONS

#### SUMMARY

In the period up to the end of 2023, the Board of the Commission approved a truncation to the objections process and an increase in the area that would be acceptable in terms of house site decroftings. It was agreed that these would be reviewed in October 2024. To date, there have been no concerns raised by staff, crofters or crofters' agents re these changes, all of which appear to have been broadly welcomed and accepted without issue. The number of cases affected by these changes have been very small though and, as a result, it is recommended that further analysis of the impact be carried out again in 12 months' time

#### BACKGROUND

It was agreed that the Board decisions to change the area for decrofting to a house site to 0.4ha and introduce a truncated objections process should be reviewed at this time. In the period since these changes were introduced earlier this year, there have been no concerns raised by staff, crofters or crofters' agents re these changes, all of which appear to have been broadly welcomed and accepted without issue.

However, the number of cases which fall into each category, especially the ones that would have benefit from the truncation of objections, are not statistically significant. For example, the truncation of objectives process started in March this year, and so far only four cases have gone through the objection process start to finish where valid comments were received. The table below helps summarise this.

Measure	Success criteria	Findings
Truncation of objections	The serving comments workflow has shortened, resulting in quick end to end times	Only four cases have met this criteria since introduction in mid-March 2024. Although data suggests this is a shorter time, we do not consider the number to be statistically significant.
Change to 0.4ha for decrofting	Less cases go to T2 and as a result, end to end decision times are shorter.	29 cases fall into this category that have a decision date after the introduction, however the times are heavily skewed by older / complex cases which have been in progress for a long time. Only a statistically insignificant number of cases (again, four) have completely gone through the process start to finish within 2024, requesting greater than 0.2 ha. Initially such cases were also still referred to T2 for a sense check, which further skews the data.

We are not aware of any legal challenges resulting from either process change and in particular staff anecdotally agree that the truncation of objections is a very positive step forward.

It is therefore recommended that any data driven analysis of the impact be carried out again in 12 months' time where more significant information sets will likely exist.

<b>Impact:</b>	<b>Comments</b>
Financial	None
Legal/Political	These changes assist the Commission improve the efficiency of decision making hence help meet its objectives as a regulator
HR/staff resources	Work on the review will be undertaken in-house in due course

**RECOMMENDATION**

**The Board is invited to approve that a more detailed review will be presented in 12 months' time**

Date 18 September 2024

Author Gary Campbell, CEO



# CROFTING COMMISSION MEETING

9 October 2024

Report by the Director of Operations

## Crofting Commission – digital strategy for adverts, notifications and communications with crofters

### SUMMARY

This paper communicates the proposed strategy for digital communications with crofters for implementation through 2024/25.

### BACKGROUND

At the August 2024 Board meeting a discussion was had around the use of the Commission's website to display adverts for Regulatory applications, and the Board asked for a paper to be brought in October detailing how this may be achievable. This ask overlaps with some wider digital aspirations from Commission officials that had not yet been communicated to the Board in detail as they are in early development, however these are now detailed in this paper to answer the Board request.

### CONSIDERATIONS AROUND ADVERTISING ON THE COMMISSION WEBSITE

The Commission cannot currently use its website exclusively for displaying adverts for Regulatory applications due to the advertising requirements of the Act, however proposed Bill changes would potentially allow for this in the future. Although this would bring financial savings for the Commission (£31k profiled for Commission advertising costs in 2024/25, 0.69% of its total budget) and crofters, other risk factors may need considered before moving to a digital advertising system, including:

1. A requirement for crofters to check the Commission website regularly would be a cultural shift for many crofters
2. The Commission may become legally liable where adverts are not placed / displayed incorrectly due to error
3. Accessibility laws would place considerable requirements on any content displayed
4. Digital costs may increase due to development, ongoing storage and increases in daily traffic
5. Adverts would need to be indexed and searchable to be a useful resource, potentially requiring significant develop work and system changes so as to avoid a high dependence on human resource

The first two points above are potentially the most impactful. The purpose of advertising a regulatory application is to allow people with a potential interest to be aware of applications which potentially affect them and facilitate the objection process as a form of protection to crofters. A shift which puts the onus on crofters to proactively look at the Commission website on a regular basis may be counterproductive to the reason for advertising to begin with. This is especially true when considering the demographic of crofters.

If the Commission hosts copies of adverts that are available to the wider public, where this process fails due to error or technical issues there may be legal implications via challenge in the Land Court.

In its current state of digital readiness, it is not recommended by officials that adverts be displayed on the Commission website at this point in time. However, this is suggested as part of a longer term external digital strategy.

If the Board determine that placing adverts on the Commission website is a priority to be progressed rapidly, this is possible, but the Commission would need to ringfence funding for system changes (cost TBC) and establish a project group to oversee the implementation. It may be appropriate for specific legal guidance to be sought on the risks the Commission may be subject to. Internal resources would also need to be directed away from current activity and may change the timeline of digital services offered in the future, as noted in the section below.

Proposal 1

The Board evaluates the risk vs benefit position of developing a digital system for adverts on the Commission website and decide if they view this as an immediate priority for the Commission or if the current approach, detailed in the following section, should continue.

**FUTURE EXTERNAL DIGITAL STRATEGY**

The Commission CEO and officials propose to extend the Commission’s external digital offering in the following ways:

<b>Improvement</b>	<b>Detail</b>
Email notifications of new applications / adverts	Allow users to specify areas they are interested in and be notified of any applications submitted in those areas, similar to the service offered for planning applications. This would help to lessen the risks of moving to digital adverts in the future and accustom crofters to using the Commission website more widely.
New bespoke mapping tool	The Commission’s Head of Digital is currently working on a prototype of a new online tool designed to form part of the digital applications journey, which will allow crofters to create Commission and RoS acceptable maps directly in the system for certain application types.  This is planned for go live approximately April 2025.
The re-introduction of the Commission newsletter	A digitally published newsletter at regular intervals to communicate key information to crofters directly. Any crofter would be able to subscribe to receive this via their account.
Adverts digitally displayed on the Commissions website	Copies of all adverts placed by the Commission, and potentially crofters, placed on the Commission’s website for easy access by crofters. N.B. these would not be linked to accounts and would be publicly visible to all.

The core of the proposed changes centre around extending the online digital accounts currently used for the submission of digital applications. It is hoped that this will come with the benefits of promoting the digital service more widely, while at the same time allowing a personalised experience for crofters utilising the service.

Each of the actions above is considered to be its own project and comes with its own risks and considerations. The core systems will be developed alongside a technology refresh of the Commission’s website, which also targets risks associated to the current technology, and will be presented to the Board as they are ready for go live.

**SUMMARY**

The Board asked for officials to consider how adverts could be placed digitally on the Commission’s website, however this is a complex technical challenge that also has potential legal risks attached. Commission officials have captured this in a wider plan for increasing digital offerings through 2024/25 and the Board are asked to consider if they wish to prioritise the hosting of adverts.

<b>Impact:</b>	<b>Comments</b>
Financial	If the Board wishes digital adverts to be prioritised there would be a moderate cost in terms of staff time and contractor expenses to introduce this.
Legal/Political	Minimal while paper adverts are still required, however the Commission may be challenged if someone uses only the Commission website and that has an error.
HR/staff resources	If the Board wishes digital adverts to be prioritised there would be a moderate cost in terms of staff time and contractor expenses to introduce this.

**RECOMMENDATION**

**The Board is invited to decide if they wish the placement of adverts on the Commission website to be implemented as a priority. The Board is also invited to review the proposed digital strategy and direct officials on the progress and priority of this.**

Date            9 September 2024

Author            Aaron Ramsay, Director of Operations

# CROFTING COMMISSION MEETING

## 9 October 2024

Report by the Chief Executive

### Framework Agreement Review

#### SUMMARY

The framework agreement between the Crofting Commission and the Scottish Government is due for a formal review in November 2024. The agreement has been in place for a number of years with no substantive changes and would benefit from a more comprehensive review. It is recommended that the Board approve that the AFC undertake this fuller review, which will use the Scottish Government's template NDPB Framework Agreement as a basis for the work.

#### BACKGROUND

The relationship between the Crofting Commission and the Scottish Government is set out in legislation. In terms of the implementation of this relationship, a framework agreement is in place to guide both organisations on operational matters between the two bodies.

The current framework agreement between the Crofting Commission and the Scottish Government is due for a formal three-year review in November 2024. The agreement has been in place for a number of years now with no substantive changes and it is felt that it would benefit from a more comprehensive review.

It is recommended that the Board approve that the AFC undertake this more thorough review, which will use the Scottish Government's template NDPB Framework Agreement as a basis for the work.

Impact:	Comments
Financial	None
Legal/Political	Production of a document that will frame the formal relationship between the Crofting Commission and the Scottish Government for the foreseeable future.
HR/staff resources	Work on the review will be undertaken in-house.

#### RECOMMENDATION

The Board is invited to approve AFC undertaking a comprehensive review using the Scottish Government's template NDPB Framework Agreement as a basis for the work.

Date 18 September 2024

Author Gary Campbell, CEO

# CROFTING COMMISSION MEETING

9 October 2024

Report by the Chief Executive

## Scheme of Delegation

### SUMMARY

The purpose of this paper is to obtain the Board's approval to introduce changes to:

- (i) The Commission's Scheme of Delegation
- (ii) The Delegation Parameters relating to the decision on 'Whether a statutory duty is being complied with' - (Section 26C(5) of the Crofters (Scotland) Act 1993 ('the 1993 Act')).

### 1. BACKGROUND

At the meeting held in May 2024, the following recommendations were accepted by the Board:

- To remove references in the Scheme of Delegation to cases being decided as being either 'Invalid' (other than under section 58A(2)) or 'Incomplete' and to replace those terms with decisions to 'Refuse.'
- To delegate certain decisions to 'Refuse' to Tier One.

### 2. FURTHER DEVELOPMENTS

The Scheme of Delegation has been revised to reflect the changes agreed by the Board.

The principal changes are:

- 2.1 To remove all references to 'Invalid' (other than under section 58(A)(2)) or 'Incomplete' decisions
- 2.2 To extend the definition of Tier One to include both Regulatory Caseworkers (A4) as well as Casework Officers (B1).

This reflects the fact that many of the cases previously defined as being 'Invalid' or 'Incomplete' are dealt with by Regulatory Caseworkers. These cases will now be defined as decisions to 'Refuse' (other than invalid decisions under section 58(A)(2)) and this change will allow such cases to continue to be decided by Regulatory Caseworkers.

## **2.3 To allow the following decisions or administrative steps to be made at Tier One:**

### **2.3.1 Regulatory Applications:**

- a) To decide applications are invalid where it has been identified at the initial assessment stage of the process that the applicant does not have the right to apply.
- b) To take an administrative step requiring the applicant to provide the Commission with such further information relating to the application as they consider appropriate.
- c) To refuse applications where the information required at (b) has not been provided within a reasonable timescale<sup>1</sup>.
- d) To refuse applications where a croft registration application has not been submitted within the statutory timescale.
- e) To approve applications which comply with the parameters agreed by the Board in relation to the relevant regulatory function subject to the usual statutory factors.

### **2.3.2 Registration Applications**

- a) To make an administrative step to require the applicant to provide the Commission with such further information relating to the application as they consider appropriate.
- b) To take a decision appealable to the Scottish Land Court to refuse to forward applications to the Registers of Scotland (RoS) where the (i) information required at a) has not been provided within a reasonable timescale.
- c) To refuse to forward applications to the RoS where the fee payable in respect of the application has not been tendered within a reasonable timescale.
- d) To take the administrative steps of forwarding applications to RoS where the checks have been carried out against the information relating to the croft in the Commission's Register of Crofts.

## **2.4 To change the definition of Tier Three from a "A casework group of three Commissioners" to simply refer to "A casework group comprising all Board members". This is to reflect the fact that we have moved to a system of escalating Tier Three cases to a meeting of all Commissioners scheduled to tie-in with, but be held separately from, Board Meetings.**

The draft of the revised Scheme of Delegation can be accessed at the following link:

<https://www.crofting.scotland.gov.uk/userfiles/file/appendices/241009/Revised-Scheme-of-delegation-October-2024-draft-version-30.pdf>

## **3 Reviewing the Delegation Parameters relating to the decision on 'Whether a statutory duty is being complied with' – (Section 26C(5) of 1993 Act).**

Please see below the current parameter relating to the above decision:

**Current Parameter: Have we received representations following the issue of the notice of the suspected breach of duty in terms of section 26C(1) of the 1993 Act?**

- If no, the case can be decided at Tier One.
- If yes, the case should be escalated to Tier Two.

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<sup>1</sup> Currently the Commission allows 28 days for responses to be sent for information, which is the proposed timescale at the point of implementation of these changes.

**Revised Parameter:**

- If no, the case can be decided at Tier One.
- If yes, and the representations by the crofter/owner-occupier crofter indicate that they acknowledge the suspected breach, the case can be decided at Tier One,
- If yes, and the representations by the crofter/owner-occupier crofter indicate that they are challenging the notification of suspected breach, the case should be escalated to Tier Two.

**Reasoning:** The majority of representations received in response to a suspected breach of duty notice acknowledge that the crofter/owner-occupier is in breach of one or more and will also indicate what they intend to do to resolve the breach e.g. take up residence, apply for Commission consent to assign the tenancy, sublet the tenancy etc. This information can be taken into consideration when establishing the terms of the undertaking at the next stage of the duties enforcement process. This change will allow the majority of decisions on whether a crofter/owner-occupier crofter is in breach of duty to be made at Tier One using a number of precedent cases to refer to in formulating grounds, while allowing Tier Two to focus on those cases where the breach is being challenged.

<b>Impact:</b>	<b>Comments</b>
Financial	None
Legal/Political	The proposed changes will ensure that the terminology used in describing the types of decisions made by the Commission is consistent with the terms used in the legislation.
HR/staff resources	No additional resources will be required. However, these changes will allow more decisions to be taken at Tier One.

**RECOMMENDATION:**

**For the Board to consider and approve the recommendations set out in this paper for (i) Changes to the Scheme of Delegation and (ii) Changes to the delegation parameters relating to decisions on ‘Whether a statutory duty is being complied with’ – (Section 26C(5) of the Crofters (Scotland) Act 1993).**

Date: 12 September 2024

Author: Joseph Kerr, Head of Regulatory Support

**DATE OF NEXT MEETING**

**27 November 2024 - St Kilda**



**ANY URGENT BUSINESS**

## **EXCLUSION OF PRESS & PUBLIC**