



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

4 FEBRUARY 2021

**CROFTING COMMISSION MEETING (TEAMS)
4 FEBRUARY 2020 AT 0900 hrs**

AGENDA

- | | | | |
|-----------|--|----------------|-----------------------|
| 1 | APOLOGIES | <i>Oral</i> | <i>Standing Item</i> |
| 2 | DECLARATION OF INTERESTS | <i>Oral</i> | <i>Standing Item</i> |
| 3 | BOARD MINUTES FROM 3 DECEMBER 2020 <i>(already published)</i> | <i>Minutes</i> | <i>For info</i> |
| 4 | MATTERS ARISING FROM PREVIOUS MINUTES | <i>Oral</i> | <i>Standing Item</i> |
| 5 | AUDIT & FINANCE COMMITTEE REPORT | | |
| | <i>(a) Update from Malcolm Mathieson</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) Draft Minutes from 4 November 2020</i> | <i>Minutes</i> | <i>For info</i> |
| | <i>(c) Q3 Key Performance Indicator Results</i> | <i>Paper</i> | <i>Standing Item</i> |
| | <i>(d) Annual Improvement Report</i> | <i>Paper</i> | <i>For discussion</i> |
| 6 | 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS | <i>Oral</i> | <i>Standing Item</i> |
| 7 | REPORTS FROM HEADS OF TEAMS | | |
| | <i>(a) IS Team</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) RALU & Reg Support</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(c) Operations & Workforce</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(d) Grazings & Policy</i> | <i>Oral</i> | <i>For info</i> |
| 8 | REPORTS FROM SHORT TERM WORKING GROUPS | | |
| | <i>(a) Application Forms Redesign Group</i> | <i>Oral</i> | <i>For info</i> |
| | <i>(b) Women and Boards</i> | <i>Oral</i> | <i>For info</i> |
| 9 | RALUT PRIORITIES | <i>Paper</i> | <i>For discussion</i> |
| 10 | NEXT STEPS ON GRAZINGS | <i>Paper</i> | <i>For discussion</i> |
| 11 | DATE OF NEXT MEETING
18 March 2021 – Teams | | |
| 12 | ANY URGENT BUSINESS | | |
| 13 | EXCLUSION OF THE PRESS AND PUBLIC | | |

APOLOGIES – ORAL

DECLARATION OF INTERESTS – ORAL

CROFTING COMMISSION

MINUTE OF THE COMMISSION MEETING HELD VIA MICROSOFT TEAMS ON 3 DECEMBER 2020

Present:	Rod Mackenzie	Convener
	Mairi Mackenzie	Vice Convener
	Andy Holt	Commissioner
	Malcolm Mathieson	Commissioner
	Iain Maciver	Commissioner
	David Campbell	Commissioner
	Billy Neilson	Commissioner
	Cyril Annal	Commissioner
	James Scott	Commissioner
	Bill Barron	Chief Executive
	Aaron Ramsay	Head of Digital & Improvement
	David Findlay	Commission solicitor
	John Toal	Head of Policy
	Joseph Kerr	Head of Regulatory Support
	Heather Mack	Head of Operations & Workforce and minute taker
	Neil Macdonald	Head of Finance
	Gordon Jackson	Sponsor Division
	Michael Nugent	Sponsor Division
	Aileen Rore	Sponsor Division

Members of the public and assessors

1 APOLOGIES AND WELCOME

The Convener welcomed everyone to the meeting, with a greeting in Gaelic, followed in English. Apologies were received from Mary Ross, Head of Operations and Workforce (maternity cover) and Jane Thomas, Head of Compliance.

2 DECLARATION OF INTERESTS

The Convener asked if anyone wished to declare an interest. No interests were declared in the public part of the meeting.

3 BOARD MINUTES FROM 20 October 2020

The Minute of the Meeting of 20 October 2020 had been approved by email and published on the website. It was brought to the meeting for information only. There were no questions.

4 MATTERS ARISING FROM PREVIOUS MINUTES

There were no Matters Arising from the previous meeting. Commissioner Scott noted the issue of recruitment to the new posts and it was decided this would be discussed later.

5. AFC UPDATE

Commissioner Mathieson presented the minutes that covered the last AFC meeting. He outlined the full agenda of this meeting and stressed the importance of the discussion of the Finance aspect of the meeting. The Commission is forecast to stay within budget this year and he noted a drop in overhead cost, primarily due to Covid-19 restrictions which is offsetting an overspend within staff salary costs. Discussion of the extra £325k funding to the Commission this year was key at this meeting and the frustrations regarding the slow movement of the new posts to recruitment were discussed. Commissioner Mathieson highlighted that failure to get an inflationary increase in budget next financial year will mean that the organisation will not have enough to cover staff costs. To address this, AFC had asked the Chief Executive to write to Scottish Government outlining this issue; a draft was now being considered.

The AFC also spent time on several policies and discussions covered the diversity plan, business continuity plan, medium term financial plan, risk register and key performance indicators.

Several Commissioners reflected the concerns raised at the AFC meeting regarding the slow progress of the new posts to the advertisement stage. The Chief Executive acknowledged the disappointments and agreed that progress could have been faster to get to the current stage. He noted that three of the posts were now being advertised and the final one would soon follow. Also that there had already been a positive response to the adverts.

Commissioners also noted that they were concerned how long it may take to get new staff in post following recruitment, and noted issues including getting set up for home working and giving notice in an existing job. Commissioner Mackenzie asked that the final advert is followed up with HR to publish as soon as possible to which the Chief Executive agreed. The Convener suggested a follow up meeting with the Chief Executive and Commissioners in two weeks' time to give an update on the posts, which was agreed to.

The Convener asked if the unspent part of the additional funding could be rolled into the next financial year, to which the Chief Executive and Gordon Jackson responded that this would probably be possible if the figure was around £50k.

Commissioner Neilson asked a question about the confidence of the AFC in the risk register and what was of most concern. Commissioner Mathieson responded that the risks highlighted in red were the ones which they focused on the most and that the committee was content with this for now; but stressed the importance of updates at AFC meetings and between meetings if anything was pressing. He stated this was now easier because the Finance Manager is now officially part of the Senior Management Team.

6 'ROUND THE TABLE' UPDATES FROM COMMISSIONERS

Commissioner Neilson began the update and noted that he had been having the usual daily contact from crofters. He had been involved with two short term working groups (STWG) and passed on his thanks to staff who had been involved for their professionalism.

Commissioner Maciver also noted that questions from crofters continue to arrive, particularly worries about applications in light of the disruptions due to Covid. He notes and hopes that going forward these concerns should reduce.

Vice Convener Mackenzie noted that her croft has been busy with putting the tups out, among other things. She also noted that her involvement in the STWG has been enjoyable and noted the commitment of staff involved in these. She raised a concern about the lack of Commission staff to call crofters or receive phone calls from crofters. These concerns were shared by other Commissioners, and Commissioner Campbell called for this matter to be prioritised. The Chief Executive responded that the issue is being addressed, with alternative technical solutions now being compared; the most likely solution is to use Microsoft Teams to carry out this function.

Commissioner Holt noted that the tups are in at his croft. He referred to a course he had recently taken on talking to the media and expressed his hope to be able to put this into practice soon. He should like to be free to speak to the press confidently. The Chief Executive agreed that there could be a renewed focus on communications with the media. The Convener expressed agreement and that he would like the Commission to be more proactive with the media going forward.

Commissioner Campbell discussed a trip to the Caithness mart recently and that he was pleased to see they had adapted well to the circumstances of Covid restrictions. He reflected whether there is further scope for the Commission to bring more of its dealings with crofters back to the previous normality.

The Convener also picked up on the discussion surrounding marts within crofting areas and commented that sales within the autumn were big contributors to the economies of these areas. He also mentioned his recent involvement in STWGs and thanked all others involved for their valuable input.

Commissioner Scott noted that his own business was now back to 'business as usual' following Covid disruptions.

Commissioner Annal had no update for the meeting.

Commissioner Maciver also picked up on the discussion surrounding marts and commended the efforts of buyers, consigners and the voluntary efforts of crofters and farmers.

7 STRATEGIC RISK REGISTER

The Chief Executive presented the strategic risk register to the meeting and noted that whilst crofting regulation (item 3) remains a high level risk, it is in fact in a better situation than it has been previously. He also noted the relatively large number of planned actions within the register. Commissioner Mathieson and the Chief Executive had a discussion regarding the value of and situation regarding the production of regular statistics of Commission applications. The Chief Executive will follow this up with the Head of Operations and Workforce on her return from leave.

8 SHORT TERM WORKING GROUP ON RESIDENCY AND LAND USE

The Commission solicitor presented this paper that has come from the STWG on Residency and Land Use. He commended the contributions from the group members and the positive diversity that was represented in terms of roles and gender. The resulting recommendations should be enabled by the expansion of the RALU team and the new officers being recruited to the Western Isles. He noted that whilst the B2 officers in the Western Isles were yet to have their responsibilities defined, he hoped that these outward facing posts will have close communication with the RALU team and feed into these priorities, for example by identifying land use; grazings that aren't being used; or townships with absenteeism.

The Commission solicitor described an idea of using more information from SGRPID, particularly their mapping tool, that may have potential to inform the Commission about land use patterns and signs of neglect. He then went through all twelve of the recommendations as laid out in the paper and put it to Commissioners for discussion. Commissioner Mackenzie commended the comprehensive report and noted that it could transform crofting although progress would be small steps.

Commissioner Neilson noted that point 11 of the recommendations regarding apportionments was pertinent. He mentioned a case in which a purchase and subsequent decrofting happened five times on the same croft, which illustrates his concern that decrofting is eroding crofting land. Commissioner Mathieson commented that some statistics would strengthen the report and help define the current situation, which was noted.

Several Commissioners commented on the issues surrounding landlords of vacant crofts. The Commission solicitor noted that there are several categories of people in crofts that do not fall into the current definitions, such as landlord of a vacant croft, and that a paper can be expected on this in the first half of 2021. Commissioner Campbell said that for vacant crofts in multiple ownership, the policy is currently not to pursue issues. He suggested that this was because these situations often result from default rather than choice and are typically very small areas. He suggested that their characteristic small size and creation by a flaw in legislation are good reasons not to pursue them and that resources could be better spent elsewhere. He also mentioned the importance of being fair and balanced to all crofters with respect to duties. Head of Policy referenced the policy plan and commented that it does have scope to investigate these croft types when appropriate to do so. The Commission solicitor echoed this and emphasised the importance of fairness in this respect. He also noted that the Law Society of Scotland on crofting legislation had considered a potential solution whereby some landlords of vacant crofts could apply for owner occupier status. Head of Regulatory Support contributed to the discussion stating that the figure for vacant crofts is over 900.

Commissioner Maciver gave a suggestion to give opportunities to crofters to state why they are breaching residency duties on their census form, with a view to save Commission resources investigating this. He covered issues regarding the impacts neglected crofts have on neighbours and suggested neglected crofts shouldn't be eligible for CAGS. He also mentioned the issue surrounding deemed crofts and questions regarding duties and grazings committee rights in this respect. The Commission solicitor responded that the Commission is seeking counsel Opinion on the issues surrounding deemed crofts.

Commissioner Holt was frustrated that the Commission hasn't yet taken action on vacant crofts with an absentee owner. He considered that the fear of reputational damage should not hold the Commission back as there is a greater danger in doing nothing. The Commission solicitor picked up on this and said that the policy needs to include this specific category of croft. The discussion then went into the strong feelings that neglected crofts evoke from crofters and this was echoed by many of the Commissioners.

Commissioner Scott noted that we should focus on practicalities including timescales going forward and what outcomes are being aimed for. Commissioner Maciver noted that resolving duties can impact both at an individual and community level and stated that the Commission should focus its efforts where the impacts are more prevalent at a community level.

The discussion concluded with agreement of the paper's recommendations and a view that further discussions were needed regarding priorities for their implementation. The Commission solicitor agreed to use the comments from the discussion to focus the recommendations into a proposed order of priority, in addition to including statistics, targets, opinion from counsel.

The Convener speculated on whether resources are sufficient for the work and if Scottish Government might consider increasing resources for this. He recommended the Commission share with the media that these discussions are underway regarding this area of work, which was endorsed by several other Commissioners. There were further comments from Commissioners and members of the public regarding the importance of putting out press releases and good news stories.

Decision	<i>The Commission agreed to the implementation of the recommendations from the Short Term Working Group on Duties. The Commission requested a future paper with options to establish the relative priorities of the recommendations.</i>
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9 REPORTS FROM HEADS OF TEAMS

(a) IS Team

Head of Digital and Improvement gave a brief update of the IS situation in the organisation, which had not significantly changed since the last Board meeting. Upcoming changes include a move to the cloud and a new CIS release. Following a query on the release dates for CIS, Head of Digital and Improvement explained that the nature of coding is such that sometimes changes take more or less time than expected, but that this is being closely monitored. He also covered the move to the cloud in more detail which has three aspects including the GIS migration, CIS migration and migration of individual users.

(b) RALU and Regulatory Support

Head of Regulatory Support detailed the work going on within the regulatory support team. He highlighted the increase in cases that was being seen at Tier 2 level as well as possible reasons for this. He went on to outline the work currently being undertaken in the Regulatory and Land Use Team (RALU). This includes over 140 breach of duties cases, in addition to unresolved successions and a number of cases where the tenancy of a croft is being let either by a landlord or by the Commission. He also noted in cases of failure of intestate succession the legislation states the Commission "shall give notice" proposing to terminate the tenancy and declare the croft vacant and that RALU team have started this work involving over 30 cases presently. Following a question, he then gave more detail explaining that if the executor of an estate fails to resolve the succession the Commission follows certain steps. These include giving notice to the executor and others (including public notification) that the Commission propose to terminate the tenancy. The Commission solicitor commented that the Law Society of Scotland consider that if no agreement is reached within 24 months, the executor loses the ability to transfer the tenancy.

Commissioner Maciver commented that these are stressful times for families that have suffered a bereavement and Commission staff confirmed that these cases are dealt with very sensitively. He also suggested that the new posts in the Western Isles may enable staff to meet the executor face to face which would be of value. Head of Regulatory Support considered that this could also benefit the Commission as putting them onto the right track early on could save the Commission resources further down the line.

(c) Operations and Workforce

The Chief Executive gave an update on operations and workforce. He commented that the majority of IS issues regarding home working had now been resolved thanks to efforts from the IS team and also the ability for some staff to work from the office. He also discussed the case progression statistics. Earlier in the year, these had shown more applications coming in than going out, but for November showed more cases had been cleared than received. He also noted that the Commission were recruiting several temporary staff at A3 level to help out in customer services, IS and grazings.

There was also discussion of staff wellbeing. The Chief Executive noted that whilst pressures were affecting staff across the organisation, there were positives including no long term sick leave at present. There were also comments that morale seemed to be holding up well.

(d) Grazings and Policy

Head of Policy noted that 475 grazings committees were currently in office and explained the process that had been followed most of this year to maintain committees in office. He also noted the considerable enquiries that came to the team for wide ranging reasons including those which the Commission has no means to resolve. Other work includes new grazings regulations, shareholder investigations and a survey to grazings clerks. The survey has provided valuable feedback and enabled clerks to indicate their need for training on holding online committee meetings. Some training sessions will take place over the coming weeks through the Farm Advisory Service and something more permanent for future use is also being considered.

The Grazings team also met online with Gwyn Jones to learn about the pilot work being undertaken for potential future agri-environment support for common grazings in the Western Isles. This work examines how a locally developed results-based support might offer more potential than existing and previous prescriptive agri-environment schemes. A few Commissioners also attended and this had led to discussion on the declining grazing activity in the Western Isles and how a meaningful support structure is necessary to stop and reverse this. Head of Policy also referenced proposals being made from representatives of common land in Cumbria which advocate such locally-led agri-environment schemes as potentially best for common land. It is felt that this may provide useful parallels and further Board discussion on this topic would be valuable in view of the commitment in the Commission Policy Plan to ensure that crofting is fully considered within future support structures.

Commissioner Campbell voiced concerns that shareholders were not being consulted regarding the committees that were continuing in office following the end of their usual term. Head of Policy referenced the policy discussion previously held with Commissioners in March which formed the basis for the process being followed. There are inbuilt safeguards if any issues are raised, but indications are that it has worked well to date and enabled committees to remain operational throughout this period.

Commissioner Maciver questioned how long the temporary situation may last with regard to how committees are brought to office and Head of Policy said we will have to monitor the Covid situation and was aware that two grazings held outdoor meetings during the summer.

Following the team updates, concerns were raised that there should be enough time to for the Board to discuss strategic decisions as well as receive reports from officials. The Convener and Chief Executive will consider this issue further.

10 REPORTS FROM SHORT TERM WORKING GROUPS

(a) Application Forms Redesign Group

Head of Regulatory Support outlined the work of this sub-group, explaining their focus on form content with input from IS as necessary. He detailed the way that the group were breaking the forms down into modules and making changes such as dropdown lists to replace free text answers. The initial focus would be on regulatory applications rather than notifications. Issues to be resolved include displaying the privacy notice; forms that require different people to complete different sections; forms completed by someone other than the applicant; attaching documents; electronic signatures and their verification; and the link between applications forms and guidance.

(b) Women and Board membership

Vice Convener Mackenzie presented this issue and the work of the group. One of the things they are doing is establishing a stakeholder list to ensure all the relevant people are invited to Board meetings and noted that she was pleased to receive an invite to the meeting from Women in Agriculture as a result. There are also plans for a blog post and to encourage women assessors to stand for elections.

(c) Remote working and home working

The Chief Executive outlined the discussions from this group and commended the wide-ranging involvement. The group established the need for written protocols regarding management decisions on home working. There were differing views on remote working and the possibility of staff living in all parts of the crofting counties, and this would be discussed at the next meeting. However, agreement was clear that all Commission staff should have their primary work location within the crofting counties.

11 REPORT ON PROGRESS AGAINST STRATEGIC OUTCOMES

The Chief Executive commented that this item was a new addition to the agenda following an audit recommendation and presented the paper, highlighting some of the key progress made since 2017. The Convener commented that this it would be useful consider this at a separate strategy meeting.

12 BUSINESS PLAN FOR 2020/21

The Chief Executive presented this paper and invited the Commissioners to suggest any specific commitments they may wish to focus on during the last year of the elected Commissioners' term. He suggested they consider the priorities of the new B2 development posts; RALU; Grazings; IS; regulation; climate and biodiversity; the workforce plan; and elections. There were calls for a strategy day to discuss these issues and develop the plan.

Decision	<i>A strategy day will be organised for the Board to review progress to date against strategic outcomes and to discuss and agree Business Plan priorities for 2021/22.</i>
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13 CHANGE TO PROCEDURE – CASEWORK PAPERS ETC.

Head of Regulatory Support presented this paper and explained that it follows on from comments by the SLC in appeals to which regard how the Commission deal with objections, and the Commission’s experience of difficulties encountered in this area. The recommendations seek to improve how the Commission handle cases and prevent them from becoming unmanageable. He explained the importance of finding a balance between enabling all relevant parties to have their say on a case and drawing those conversations to an end. He emphasised the importance of the casework process going through distinct stages; verification; dealing with objections; gathering further evidence; case consideration and decision.

Responding to a question from Commissioner Scott, Head of Regulatory Support explained that RPID are aware of the proposed changes and that the Commission would be providing them with training. He also agreed to provide a timeline of the proposed process, which was requested by Commissioner Holt. Head of Regulatory Support also noted that parties are able to comment on the content of RPID report but not to raise new objections at the further evidence gathering stage of the process.

The Commission solicitor outlined the potential for differing views of the legislation regarding accepting late objections. He outlined that the view of the SLC would be useful to clarify, which can be done by making a reference under section 53 of the 1993 Act. He considers this worthwhile as it has practical impacts on the processing of applications.

Decision	<i>The Commission agreed to adopt the procedure changes outlined in the paper.</i> <i>The Commission agreed to approach the Court for guidance on the topic of late objections.</i>
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14 DATE OF NEXT MEETING

The next meeting will be take place via Teams on 4 February 2021.

15 ANY URGENT BUSINESS

No other business was raised.

16 EXCLUSION OF THE PRESS AND PUBLIC

Please note that the first item on the agenda was moved to the end, which is reflected below.

(b) CEO Update

The Chief Executive gave an update on several issues including support for crofting; the prospect of the Commission starting a land matching service; the new Western Isles posts; and wellbeing.

He outlined the current position regarding the SG-led consideration of a new system of support for agriculture, land and the environment, which is expected in 2024. He explained that discussions are very high level at present, though there should be some pilot studies. He said it was important the Commission found a way to feed into these discussions in due course, and this was agreed.

He opened discussions on the idea of a land matching service for crofting, similar to that being run by Ian Davidson for farming. This service matches farmers with partners, thereby enabling new entrants into farming. The Scottish Government is keen for the Commission to consider doing something similar. Several Commissioners commented that it was a good idea but raised several uncertainties regarding the practicalities. Commissioner Campbell raised the issue that land matching in farming is based on a contractual agreement, which could not be replicated in crofting. Other Commissioners stated that it would need to be run within the crofting framework and suggestions that transfer of a croft would need to be via sublet, assignation or alongside division.

Other concerns were that the data input side could be resource intensive and that a project to take this on had the potential to use up resources with little return. Commissioners were concerned whether the resources for a new scheme would be expected to come from other areas of Commission work and/or be a call on the new 'outward-facing' posts. Gordon Jackson clarified that there may be scope for additional funding. He also reassured Commissioners that this was an exciting opportunity for the Commission and it could fit in with existing work. He considered it would be reasonable to put a process in place to start this work from March 2021.

The discussion concluded with agreement from Commissioners that they are keen to see this project realised and that the idea of bringing in partner organisations such as SCF or NFUS is worth consideration. Commissioners noted that these organisations already have lists of people looking to get into crofting and informal schemes. The Chief Executive agreed to put together a short paper on how the Commission could develop a land matching service for crofting.

The Chief Executive then continued his update to explain why the new B2 Western Isles recruitment has recently changed from one post to two. He outlined the discussions with the Board that agreed to one B2 post and that he later realised how controversial this decision was at a meeting with stakeholders. The discussions with other stakeholders led the Chief Executive to a decision to open up the recruitment so there was a possibility of recruiting one or two B2 staff. Disappointment was noted regarding how the Board was told of this change. The Convener noted that whilst the board provides strategic direction, they understood that there were limitations to their involvement on an operational level.

The Chief Executive also briefly commented on wellbeing and that check-ins with staff were being prioritised and that management had made the decision not to offer paid overtime so staff don't push themselves too much. He also mentioned that he had increased the amount of annual leave staff were allowed to carry over to next year, from 10 to 15 days to ensure they can use this up but also to encourage staff to use leave regularly.

(c) Appeals to SLC

The Commission solicitor presented details of recent appeals to the SLC and stated that the last few months had been busy in this respect. He highlighted the appeal regarding the subletting and short term lease applications at Achtoty, which had been refused by the full Board. He noted that the appeal argues that the applicant's human rights had been breached and that it would be interesting to see the outcome as this argument has come up before. He also explained that domestic legislation, including crofting, should be consistent with human rights legislation.

He also highlighted 6 Crowlista which was an interesting case in which a former owner-occupier crofter turned landlord now sought to change the terms and conditions set by the Commission. In response the Commission has set out to SLC why the Commission let the croft out in the normal way in the first place.

Gruinards Common Grazings appeal was also discussed, without the Commission solicitor or Commissioner Campbell who both had conflicts of interest. The Head of Regulatory Support explained that going forward he will be in touch with NatureScot regarding the deer management issues.

The Commission solicitor then referred to the two resumption applications Rhivichie and Duiskey. He also touched on the scheme for development proposed at Melness as well as a challenge at Howmore and Big Sand.

(d) Tier 3 Casework Update

This paper was acknowledged and no comments were made.

(a) National Development Plan

Michael Nugent presented the National Development plan and gave thanks to the Chief Executive and Commission solicitor for their input into the draft. He gave an outline of the plan that had previously been circulated to the Board and explained that work was ongoing with some sections that were not yet incorporated, these included finance, wildlife and agri-tourism. He explained that he had discussed the plan with NFUS and SCF and had feedback which included suggestions to reduce the overall length and detail of the plan. He commented that the plan needed to have sufficient detail and context to be accessible to all readers.

Several Commissioners made comments on the plan and concerns were raised that it was too long and that it appeared more like a story than a plan.

There was considerable discussion regarding the figures of new entrants that featured in the plan, which originated from the Commission database. There were concerns that the figures seemed too high and could give the false impression that there are abundant opportunities for new entrants into crofting. The Chief Executive explained that the figure is consistent with an average turnover of crofts every 25 years, and this gave Commissioners more confidence in the statistics. There were concerns also about how new entrants were defined in this context and whether new entrants that inherit a croft are what is typically thought of as new entrants. Several Commissioners commented that new entrant crofters that have a background in crofting are still new entrants and that they should be highly valued.

The issue of deemed crofts was raised as there was concern that they may distort figures. Following which there was consideration of whether it would be worth identifying the proportion of new entrants that were into deemed crofts. Michael Nugent concluded to say that they will continue to discuss the plan with stakeholders and that he welcomed further comments.

The Convener thanked everyone for their input and called the meeting to a close at 16:15.

MATTERS ARISING FROM PREVIOUS MINUTES – ORAL

AFC UPDATE FROM MALCOLM MATHIESON - ORAL

CROFTING COMMISSION PERFORMANCE REPORT

QUARTER 3 – JANUARY 2021

SUMMARY

Our Outcome		1. CROFTS ARE OCCUPIED AND MANAGED		RAG Status	Page
Key Milestones	1/1	May 2020 – Review all 2019 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		RED	5
	1/2	August 2020 - Write to 2019 census respondents who have advised us for the first time they are in breach of one or more of their duties, setting out their options for resolving their breach of duty at their own hand		RED	5
	1/3	Sept 2020 - Write to a selection of crofters who have never responded to the census and whose address indicates a breach of residency setting out their options for resolving their breach of duty at their own hand		AMBER	5
	1/4	Sept 2020 - Develop options for Commissioners and Assessors to be pro-actively involved in ensuring crofts are occupied and managed, potentially focusing on the resident non-user of their croft.		GREEN	6
	1/5	Ongoing - Follow-up action on the 2018 census returners advising of first time breaches, re-iterating options for resolving their breach of duty and escalating to the serving of notices as appropriate		GREEN	6
	1/6	Ongoing - Follow-up action on all 2017 and 2018 returners who were in breach on more than one occasion, to progress cases through the section 26C to 26H enforcement provisions if they have failed to resolve the situation at their own hand.		GREEN	6
Performance Measures	1.1	Reduce number of vacant crofts		GREEN	7
	1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected		RED	8
	1.3	Number of RALU breaches resolved by a crofter in breach of their residency duty by taking up residence on their croft		RED	8
	1.4	Number of RALU breaches resolved by assignation of the croft, or sale of an owner-occupied croft		RED	9
	1.5	Number of RALU breaches resolved by sublet, or by short-term lease of an owner-occupied croft		RED	9
	1.6	Number of RALU breaches concluded by tenancy terminations, approval of letting proposals etc		GREEN	10

Our Outcome		2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE		RAG Status	Page
Key Milestones	2/1	Ongoing - Contact all Grazings Committees whose terms are about to end, encouraging them to arrange election of a new Grazings Committee		GREEN	11
	2/2	Ongoing - Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification		GREEN	11
	2/3	Ongoing – Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.		RED	11
	2/4	Ongoing – Encourage grazings committees to adopt the revised template for grazings regulations.		RED	11
Performance Measures	2.1	Increase in number of common grazings with a Committee in office		AMBER	12
	2.2	Increase in number of grazings committees who have adopted the new template regulations		GREEN	12
	2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings		RED	13
	2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.		RED	13
	2.5	Develop and assist with training and other events for grazings committees and the management of common grazings		GREEN	14

Our Outcome		3. CROFTING IS REGULATED IN A FAIR, EFFICIENT AND EFFECTIVE WAY		RAG Status	Page
Key Milestones	3/1	May 2020 – Next build of the Crofting Information System released and upskilling delivered		RED	15
	3/2	June 2020 – Extend to other regulatory functions (currently decrofting and division) the triaging process for identifying potentially contentious cases at an earlier stage of the process to manage customer expectations in relation to the time taken to process their case and potential outcome.		GREEN	15
	3/3	June 2020 – Review website to minimise the number of incorrect forms received		RED	15
	3/4	June 2020 – Confirm and roll out system to measure customer satisfaction on Regulatory Applications		GREEN	16
	3/5	July 2020 – Establish a consistent MI suite for all areas of the Commission for the annual report, leading with Regulatory.		GREEN	16
	3/6	Sept 2020 - Undertake review of “Division by Tenant” process (section 9)		GREEN	16
	3/7	Sept 2020 – Confirm with Sponsor funding availability for progressing online applications, and agree what direction this work will take between the options presented with planning in place.		ACHIEVED	16
	3/8	Dec 2020 – Undertake review of “Letting of vacant crofts” process (section 23(3))		GREEN	16
	3/9	Dec 2020 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented		AMBER	17
Performance Measures	3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)		AMBER	18
	3.2	Decrease in number of regulatory cases outstanding after 12 months		GREEN	19
	3.3	Customer satisfaction rates		GREEN	19
	3.4	Decrease in number of general enquiries		GREEN	20
	3.5	Reduce number of applications rejected because of use of an incorrect form		AMBER	20

Our Outcome		4. THE FUTURE OF ACTIVE CROFTING IS SUPPORTED BY WELL-INFORMED ENGAGEMENT WITH STAKEHOLDERS		RAG Status	Page
Key Milestones	4/1	May 2020 – Advise Scottish Government of our views concerning their forthcoming National Development Plan for Crofting.		GREEN	21
	4/2	June 2020 – Joint Board level meeting with Land Commission Board members		RED	21
	4/3	August 2020 – Have a formal Commission presence at 6 agricultural shows across the Highlands and Islands.		RED	21
	4/4	Sept 2020 - Publish a Commission paper on the Future of Crofting		RED	21
	4/5	Nov 2020 – Commission paper on how crofting can maximise its contribution to protecting biodiversity and mitigating climate change.		ACHIEVED	21
Performance Measures		<i>There are no Key Performance Measures for this Outcome</i>			

Our Outcome				5. OUR WORKFORCE HAS THE RIGHT SKILLS AND MOTIVATION TO PERFORM WELL, OUR GOVERNANCE PROCESSES ARE BEST PRACTICE			
				RAG Status			Page
Key Milestones	5/1	April 2020 – Complete implementation of 2019 Staff Survey action plan.			ACHIEVED	22	
	5/2	May 2020 – Implement automated retention schedule procedures within revised CIS.			RED	22	
	5/3	June 2020 – Expand succession planning for key posts as set out in the Workforce Plan.			AMBER	22	
	5/4	Oct 2020 – Produce an internal plan for staff deployment and development, as set out in the Workforce Plan.			AMBER	22	
	5/5	Mar 2021 - Conduct 2021 Staff Survey			GREEN	22	
Performance Measures	5.1	Increase in staff engagement rating			ACHIEVED	23	
	5.2	Corporate carbon emissions			GREEN	23	

DETAILED PROGRESS REPORTS

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

Our Outcome 1. CROFTS ARE OCCUPIED AND MANAGED By ensuring crofters are compliant with their Duties and by working with crofting communities and stakeholders, we can increase the number of crofts that are occupied and well managed.				
Milestone	Covid Effect	RAG Status	Responsible Manager	Details
1/1 May 2020 – Review all 2019 Census returns in order to extract all cases where the respondent has identified they are in breach of one or more of their statutory duties.		RED	Joseph Kerr	The RALUT Manager completed a DPIA to enable the census forms to be obtained from GGH and stored with him. The RALUT have been working with reduced resources through the continuing secondment of a member of RALUT to provide resilience to the pro-active regulatory casework team, long term sickness absence within the team, and a reduction in productivity due to home working. They now have a member of staff returned from absence and have a new member of staff appointed to the work of the team who is undergoing training. They will not however have the resilience to progress this milestone until the new year when we would already be in a new census year cycle. The team will therefore focus on progressing existing cases and in dealing with new cases arising from written information of suspected breaches of duty provided section 26A of the 1993 Act.
1/2 August 2020 - Write to 2019 census respondents who have advised us for the first time they are in breach of one or more of their duties, setting out their options for resolving their breach of duty at their own hand.		RED	Joseph Kerr	(see comments at 1/1)
1/3 Sept 2020 - Write to a selection of crofters who have never responded to the census and whose address indicates a breach of residency setting out their options for resolving their breach of duty at their own hand		AMBER	Joseph Kerr	This task will be undertaken later in the reporting year when team resources allow.

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
<p>1/4 Sept 2020 - Develop options for Commissioners and Assessors to be pro-actively involved in ensuring crofts are occupied and managed, potentially focusing on the resident non-user of their croft.</p>		GREEN	Joseph Kerr	<p>This was considered within the wider context of the Short Term Working Group on Duties (who met on 4 occasions in the second half of 2020) and formed part of the recommendations which were agreed by the Board in December 2020. A further paper is going to the February 2021 Board meeting to prioritise the recommendations which were agreed.</p>
<p>1/5 Ongoing - Follow-up action on the 2018 census returners advising of first time breaches, re-iterating options for resolving their breach of duty and escalating to the serving of notices as appropriate</p>	<p>The RALUT have been significantly impacted by covid-19 due to loss of output by staff being on Special Leave or on reduced productivity due to limitations imposed by the HWE</p>	GREEN	Joseph Kerr	<p>Ongoing. However, following a change of policy by the Board the team will no longer be re-iterating options. If the breach has not been resolved the case will progress to the issue of a section 26C(1) suspected breach of duty notice, or a determination will be made that there is a good reason not to do so.</p> <p>44 crofters have been written to on that basis, and suspected breach of duties notices will be issued in the new year.</p>
<p>1/6 Ongoing - Follow-up action on all 2017 and 2018 returners who were in breach on more than one occasion, to progress cases through the section 26C to 26H enforcement provisions if they have failed to resolve the situation at their own hand.</p>	<p>The RALUT have been significantly impacted by covid-19 due to loss of output by staff being on Special Leave or on reduced productivity due to limitations imposed by the HWE</p>	GREEN	Joseph Kerr	<p>Ongoing</p>

PERFORMANCE MEASURES -

Number	Aim	Baseline	Target/Indicator	Measure
1.1	Reduce number of vacant crofts	144 in March 2019	Reduce by 5%	Figure will be taken from the Register of Crofts. 'Vacant' will be defined tightly, as those not only legally vacant but also having no <i>de facto</i> owner occupier.

PROGRESS:

The team have been involved in virtual meetings with Commissioners in relation to engaging with identified estates to have vacant crofts let. Following those meetings the team are currently engaging with these estates with a view to progressing a number of cases to the letting application/proposal process stage. In terms of taking on the letting of the croft at the Commission's own hands under sections 23(5B) and (5C) the team progressed the letting of a vacant croft in Lewis, where the tenancy had been previously terminated under the section 11 unresolved succession provisions. A tenant was selected, and terms and conditions established following agreement with the landlord. Arrangements have been made for a follow-up virtual meeting in the new year with a crofting estate in the Fort William area with a view to resolving issues relating to vacant crofts and unresolved succession.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	GREEN	GREEN	

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.2	Initiate correspondence with more crofters where a breach of RALU duties is suspected	77	Initiate RALU correspondence with 100 new cases	Records of administrative action. Those contacted will include all those whose 2019 census indicated a possible breach for the first time, a selection of census non-respondents, and other cases generated by e.g. notifications or regulatory casework

PROGRESS

For the reason provided in page 6 the Commission will not be progressing the 2019 census cases at this time. They are however initiating correspondence with crofters who have been identified as being suspected of being in breach of duty following written information received under section 26A of the 1993 Act. The team received information on 3 such cases in the first half of the year which they are currently progressing. In 1 case the Commission issued a section 26C(1) notice of suspected breach of duty, but following representations received determined that the duty was being complied with.

Q1	Q2	Q3	Q4
GREEN	AMBER	RED	

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure
1.3	Number of RALU breaches resolved by a crofter in breach of their residency duty taking up residence on their croft	32	Maintain or increase the number in 2019-20	Records of administrative action

PROGRESS

There has been 1 case resolved by the crofter taking up residence. The Team have however processed 10 applications for consent to be absent of which 8 were approved, 1 was refused and 1 has been escalated to a tier 2 casework group for decision in the New Year. In addition, the Team processed and approved 2 applications for extensions of consent for absence.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	AMBER	RED	

Responsible Manager: Joseph Kerr

Number	Aim	Baseline	Target/Indicator	Measure								
1.4	Number of RALU breaches resolved by assignation of the croft, or sale of an owner-occupied croft	28	Maintain or increase the number in 2019-20	Records of administrative action								
<p><u>PROGRESS:</u></p> <p>4 crofters resolved their breach by assigning in the first half of the year.</p> <p>Covid Effect</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>GREEN</td> <td>RED</td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Joseph Kerr</p>					Q1	Q2	Q3	Q4	AMBER	GREEN	RED	
Q1	Q2	Q3	Q4									
AMBER	GREEN	RED										

Number	Aim	Baseline	Target/Indicator	Measure								
1.5	Number of RALU breaches resolved by sublet, or by short-term lease of an owner-occupied croft	88	Maintain or increase the number in 2019-20	Records of administrative action								
<p><u>PROGRESS</u></p> <p>14 crofters resolved their breach of by subletting in the first three quarters of the year. The Commission changed their policy on subletting during the first half of the year in that they will not normally approve sublets or short term lets for a term of more than 5 years. As a result, we can anticipate a greater number of modifications and refusals of applications for terms longer than 5 years moving forward. There was 1 case during the first three quarters of the year which was resolved through letting.</p> <p>Covid Effect</p> <table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>AMBER</td> <td>AMBER</td> <td>RED</td> <td></td> </tr> </tbody> </table> <p>Responsible Manager: Joseph Kerr</p>					Q1	Q2	Q3	Q4	AMBER	AMBER	RED	
Q1	Q2	Q3	Q4									
AMBER	AMBER	RED										

Number	Aim	Baseline	Target/Indicator	Measure
1.6	Number of RALU breaches concluded by tenancy terminations, approval of letting proposals etc	6	Maintain or increase the number in 2019-20	Records of administrative action

PROGRESS

During this period, the Commission issued **5** Section 26C(1) notices of suspected breach of duty – **4** were as a result of census returns and **1** following a section 26A reported breach of duty.

There were also **3** Section 26C(5) determinations that duties were not being complied with, all generated by census returns.

There was **1** section 26C(5) determination that a duty was being complied with which was generated by a report under section 26A.

The Commission issued **3** tenancy termination Orders under section 26H in the first three quarters of the year. There was a further decision to terminate a tenancy made at Tier 3 in December 2020 which will result in a further termination Order being issued in January 2021. 2 of these terminations were as a result of census returns and 2 were as a result of reports by grazing committees under section 26A.

In the first three quarters of the year the Team have also served notice on landlords of **3 vacant crofts** requiring letting proposals, **2** have been approved and the let effected, in the third case the proposals have been accepted and we are currently awaiting registration of the letting by the landlord.

Covid Effect

Q1	Q2	Q3	Q4
AMBER	GREEN	GREEN	

Responsible Manager: Joseph Kerr

Our Outcome 2. COMMON GRAZINGS ARE REGULATED AND SHARED MANAGEMENT PRACTICES CONTINUE

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

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
<p>2/1 Ongoing - Contact all Grazings Committees whose terms are about to end, encouraging them to arrange election of a new Grazings Committee</p>		<p>GREEN</p>	<p>John Toal</p>	<p>Grazings Committees are still being contacted and advised that if willing to serve another term that the Commission is prepared to appoint the same members in terms of section 47(3) of Crofters(Scotland) Act 1993. There are currently 472 committees in office.</p>
<p>2/2 Ongoing - Highlight to Grazings Committees and Shareholders the availability of the guidance, published February 2019, for effective management of common grazings. Respond to any questions for clarification.</p>		<p>GREEN</p>	<p>John Toal</p>	<p>The guidance continues to be the main reference point and will be used for smaller items of guidance and training initiatives over the coming year</p>
<p>2/3 Ongoing – Maintain contact with shareholders of common grazings that have not returned a committee to office and establish contact with shareholders who have not had a committee for a longer period of time.</p>		<p>RED</p>	<p>John Toal</p>	<p>The primary purpose of this is to enable shareholders to meet and appoint a grazings committee. It is not possible to do this at present.</p>
<p>2/4 Ongoing -Encourage grazings committees to adopt the revised template for grazings regulations.</p>		<p>RED</p>	<p>John Toal</p>	<p>Grazings Committee have been unable to meet during this quarter.</p>

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure								
2.1	Increase in number of common grazings with a Committee in office	485 Grazings Committees in office on 31 March 2020	The number of Grazings Committees in office	Administrative records								
PROGRESS												
<p>Measures put in place to enable the appointment of existing committees going out of office has allowed some committees to return and continue the management of common grazings. Currently there are 472 grazings committees in office. To date not all committees are taking up the option of the Commission appointing the same members for another term.</p> <p>Covid Effect</p> <p>It is difficult for shareholders in a common grazings that does not have an existing committee to appoint a committee due to Covid-19 restrictions. Section 47(1) of the Crofters (Scotland) Act 1993 requires the appointment of a committee by shareholders to be made at a public meeting.</p>												
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Q1	Q2	Q3	Q4									
AMBER	AMBER	AMBER										
Responsible Manager: John Toal												

Number	Aim	Baseline	Target/Indicator	Measure								
2.2	Increase in number of grazings committees who have adopted the new template regulations	6 in 2019-20	Commission approvals of new regulations submitted by committees based on the template.	Number of new grazings regulations approved which are based on the new template.								
PROGRESS												
<p>Covid Effect</p> <p>It has not been possible for possible for grazings committees to meet during this period. Consequently, there have been no new requests in this period. However, there are 10 already submitted at various stages of progress, although some will still require further consultation with grazings committees.</p>												
<table border="1"> <thead> <tr> <th>Q1</th> <th>Q2</th> <th>Q3</th> <th>Q4</th> </tr> </thead> <tbody> <tr> <td>GREEN</td> <td>GREEN</td> <td>GREEN</td> <td></td> </tr> </tbody> </table>					Q1	Q2	Q3	Q4	GREEN	GREEN	GREEN	
Q1	Q2	Q3	Q4									
GREEN	GREEN	GREEN										
Responsible Manager: John Toal												

Number	Aim	Baseline	Target/Indicator	Measure
2.3	Meetings or other substantial engagement with Grazings Committees and shareholders (as required) to support them with the regulation and management of common grazings	33 in 2019-20	The numbers of townships where grazings issues have been assisted, progressed, or resolved, following Commission engagement.	Records of administrative action. (Note that this covers different types of Commission intervention: getting Committees into office; resolving medium size queries; and helping to address deeper divisions.)

PROGRESS

8 cases have been recorded.

Covid Effect

While there has been little opportunity for grazings committees to meet during this period, this does not necessarily entail that disputes will not arise in relation to committees and their management of common grazings.

Q1	Q2	Q3	Q4
GREEN	GREEN	RED	

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure
2.4	Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	14 in 2019-20	Number of townships researched	Records of administrative action

PROGRESS

Three common grazings have had their shareholding situation updated during this period

Covid Effect

Less likely to be requested by committees but still possible for there to be circumstances in which they will be requested.

Q1	Q2	Q3	Q4
GREEN	GREEN	RED	

Responsible Manager: John Toal

Number	Aim	Baseline	Target/Indicator	Measure
2.5	Develop and assist with training and other events for grazings committees and the management of common grazings	9 in 2019-20	Number of events	Records of administrative action

PROGRESS

An on-line survey was sent to 365 grazings clerks in November 2020 to determine the level of interest in providing training to assist with arranging virtual meetings. This elicited 114 responses. This provided the basis for 2 on-line training sessions, supported by Farm Advisory Services funding, for 34 individuals in December.

Covid Effect

There is less likelihood of continuing the interactive training events for grazings committees that were initiated last year. However, recent discussions have taken place with SAC who have been encouraged to use FAS funding for common grazings development. Consideration is being given to different on-line and digital training and events that should be beneficial to common grazings and those responsible for their management.

Q1	Q2	Q3	Q4
AMBER	AMBER	GREEN	

Responsible Manager: John Toal

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

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

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

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
3/1 May 2020 – Next build of the Crofting Information System released and upskilling delivered	IS Team have needed to spend much time addressing connectivity issues for Home Working	RED	Aaron Ramsay	We have taken steps to reduce the calls on the system architect’s time, to allow him to complete the work required to prepare the new CIS system for testing. However, the original schedule has obviously been missed and the next revision of CIS is due to reach a testing phase in January 2021, with a full final build hoped for February 2021.
3/2 June 2020 – Extend to other regulatory functions (currently decrofting and division) the triaging process for identifying potentially contentious cases at an earlier stage of the process to manage customer expectations in relation to the time taken to process their case and potential outcome.		GREEN	Joseph	Subletting (section 27) and short term letting (section 29A) were identified as the two regulatory functions most suited for inclusion in the triage process. A number of tasks were completed including a review of the delegated parameters, updating the check lists and the creation of a triage letters and leaflets in relation to both functions. Anticipate that this will go live in January 2021.
3/3 June 2020 – Review website to minimise the number of incorrect forms received		RED	Mary Ross	Application and Notification Forms are reviewed and updated on an annual basis. The original target date has not been met but plans are in place to review all forms in the current Financial Year, as part of the introduction of interactive pdfs.

<p>3/4 June 2020 – Confirm and roll out system to measure customer satisfaction on Regulatory Applications</p>	<p>Suspension of the customer satisfaction forms at end of March 2020 due to centralised issuing of mail.</p>	<p>GREEN</p>	<p>Mary Ross</p>	<p>Customer Service Forms issued for a four month period up to March 2020. A small sample of completed forms were received and all of the forms received were positive. The forms are now being issued with all decision letters.</p>
<p>3/5 July 2020 – Establish a consistent MI suite for all areas of the Commission for the annual report, leading with Regulatory.</p>		<p>GREEN</p>	<p>Aaron Ramsay/Mary Ross</p>	<p>Case Progression Report is being produced and issued on a monthly basis. Report is available to show the cases that have been received more than 12 months ago but have not yet been discharged. Work has commenced on an exercise to investigate and prioritise these cases.</p>
<p>3/6 Sept 2020 - Undertake review of “Division by Tenant” process (section 9)</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>This is currently being undertaken in conjunction with the work of the sub-group of the short term working group looking at the conversion of the Commission regulatory application forms to a pdf format. The sub-group meets on a weekly basis and we are currently reviewing both the “Division By Tenant” and “Division by “Owner-Occupier” application forms.</p>
<p>3/7 Sept 2020 – Confirm with Sponsor funding availability for progressing online applications, and agree what direction this work will take between the options presented with planning in place.</p>		<p>ACHIEVED</p>	<p>Aaron Ramsay</p>	<p>This will be delivered as one of the one-off projects funded with the additional resources provided by the SG in the current year. The option of a full online website was evaluated and decided that it carried too much risk and cost potential, however the option of modernising the PDFs to make them more digital would give a substantial proportion of the benefits. This work is now underway with an aspiration to revise all the non-notification application types by End of March 2021.</p>

<p>3/8 Dec 2020 – Undertake review of “Letting of vacant crofts” process (section 23(3))</p>		<p>GREEN</p>	<p>Joseph Kerr</p>	<p>This will be undertaken in conjunction with the work of the sub-group of the short term working group looking at the conversion of the Commission regulatory application forms to a pdf format. The sub-group meets on a weekly basis.</p>
<p>3/9 Dec 2020 – Agree, with Registers of Scotland, improvements to our combined processes, and how they can be implemented</p>	<p>A pause to this work due to Registers of Scotland staff initially not being able to work remotely.</p>	<p>AMBER</p>	<p>Mary Ross</p>	<p>Improvements have been discussed with Registers of Scotland (ROS). A group has been established and has met and discussed the improvements that are required, including the issue of online payments. ROS are summarising the changes discussed so that they can be reviewed by both parties.</p>

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
3.1	Decrease in median turnaround times (registered crofts, Tier 1 approvals)	Figures for 2019/20: Assignment 8 weeks Decrofting CHS 8 Decrofting Part 13.3 Letting by Landlord 9.4 Owner Occupier Letting 11.4	Reduce median turnaround times for the main regulatory functions	Time taken from application to notification of decision, <i>for cases where no registration is required</i>

PROGRESS

Covid Effect

There has been a slight slip in the turnaround times for this quarter's report. Pressure of work remains high, in the last 3 months the volume of applications being received has returned in line with previous years.

Q1	Q2	Q3	Q4
AMBER	GREEN	AMBER	

	Approx Number of cases per year	Median weeks (2019-20)	Median weeks (2020-21 to date)
Assignment	c125	8	8
Decrofting Croft House Site	c50	8	7.4
Decrofting Part Croft	c100	13.3	16.7
Letting by Landlord	13	9.4	8.9
Letting by Owner Occupier	c10	11.4	-11.9

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.2	Decrease in number of regulatory cases outstanding after 12 months	Not available	Reduce number of cases still live after 12 months	Number of live regulatory cases (of all types, including those involving registration) on 31 March, which are more than 12 months since first received by the Commission

PROGRESS

Covid Effect

A report has been produced allowing the Regulatory Team to identify and investigate the cases which have not been discharged within 12 months. The Regulatory Team are working through the cases. These cases are complex by nature and are progressing to Tier 2 and Tier 3 as required.

Q1	Q2	Q3	Q4
GREEN	GREEN	GREEN	

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.3	Customer satisfaction rates	Not available	% of respondents reporting satisfaction to the CC enquiries	The customer satisfaction system was launched towards the end of 2019-20 but no baseline can be calculated from the limited data available so far

PROGRESS

Covid_Effect

Customer Service Forms are now being issued to applicants for all decision types. A small number of completed forms have been received and all of the forms received were positive.

Q1	Q2	Q3	Q4
AMBER	GREEN	GREEN	

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.4	Decrease in number of general enquiries	2,394 in 2019-20	Reduce number	Number of general enquiries received

PROGRESS

Covid Effect

There was a slight decrease from the number of enquiries received during 2019/20 compared to 2018/19. A further reduction is expected following the uploading of the apportionment orders to the online Register of Crofts.

Q1	Q2	Q3	Q4
GREEN	GREEN	GREEN	

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
3.5	Reduce number of applications rejected because of use of an incorrect form	48 forms were rejected in 2018/19 due to selecting an incorrect type	Reduction in incorrect form types submitted	Customers are better guided to choose correct application form type, reducing rejected applications and saving resource

PROGRESS

Covid Effect

This will be significantly reduced by the introduction of the PDF applications forms as the form type available will be defined by the status of the applicant.

Q1	Q2	Q3	Q4
AMBER	AMBER	AMBER	

Responsible Manager: Mary Ross

Our Outcome

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

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

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
4/1 May 2020 – Advise Scottish Government of our views concerning their forthcoming National Development Plan for Crofting.	SG’s timescale for this publication has been put back by a few months	GREEN	Bill Barron	We have continued to engage with SG over the contents of the National Development Plan.
4/2 June 2020 – Joint Board level meeting with Land Commission Board members	pressure on how many matters can be included on Board agendas	RED	David Finlay	This has been postponed – no new date set yet.
4/3 August 2020 – Have a formal Commission presence at 6 agricultural shows across the Highlands and Islands.	All shows have been cancelled	RED	Bill Barron	It will not be possible to achieve this Milestone in 2020/21.
4/4 Sept 2020 - Publish a Commission paper on the Future of Crofting	March Mtg postponed and papers’ schedule disrupted	RED	Bill Barron / David Findlay/ John Toal	It is not feasible to deliver this in the current year. Instead, Commission staff have contributed to (a) the Law Society’s review of aspects of crofting law; (b) the Scottish Government’s National Development Plan; and (c) the Commission’s implementation of its expanded role of promoting the interests of crofting.
4/5 Nov 2020 – Commission paper on how crofting can maximise its contribution to protecting biodiversity and mitigating climate change.		ACHIEVED	David Finlay	Paper and presentation at October 2020 Board meeting.

There are no Performance Measures for Outcome 4

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

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

Milestone	Covid Effect	RAG Status	Responsible Manager	Details
5/1 April 2020 – Complete implementation of 2019 Staff Survey action plan.		ACHIEVED	Bill Barron	All actions have been fully or partially completed, and any outstanding points are to be built into a new Plan based on the 2020 survey. CEO reported to all staff about progress against the Plan on 13 October 2020.
5/2 May 2020 – Implement automated retention schedule procedures within revised CIS.		RED	Jane Thomas	This requirement has not been met because there has been no implementation of the next version of CIS. The delay is related to the extra work required of the Systems Architect due to the COVID-19 crisis.
5/3 June 2020 – Expand succession planning for key posts as set out in the Workforce Plan.		AMBER	Bill Barron	Not fully actioned, but staffing decisions take account of the long term effect on succession and resilience. During the year, steps have been taken to reduce dependency on the DevOps Engineer and recruitment of a 3 rd Gaelic speaker is under way. We have continued to use TRS opportunities to broaden staff's knowledge; and to look for opportunities to involve new members of the Customer Services team with the work of other teams.
5/4 Oct 2020 – Produce an internal plan for staff deployment and development, as set out in the Workforce Plan.		AMBER	Mary Ross	Discussions took place in December to take this forward.
5/5 Mar 2021 - Conduct 2021 Staff Survey		GREEN	Bill Barron	The intention remains to conduct the 2021 survey in March 2021. In the meantime the 2020 survey was delayed from the spring and has been run in August 2020.

PERFORMANCE MEASURES

Number	Aim	Baseline	Target/Indicator	Measure
5.1	Increase in staff engagement rating	51% in Spring 2019	Increase to 55%	Average scores for a set of fixed questions in the annual staff survey

PROGRESS

Covid Effect

Issue of staff survey delayed due to Covid-19. Survey was issued in August 2020 and the results have been analysed. The 2020 survey shows that the average scores for a set of fixed questions in the survey increased to 57%

Q1	Q2	Q3	Q4
AMBER	AMBER	ACHIEVED	

Responsible Manager: Mary Ross

Number	Aim	Baseline	Target/Indicator	Measure
5.2	Corporate carbon emissions	15.2tCO2e in 2019/20	Maintain or reduce	Emissions from business travel by staff and commissioners

PROGRESS

Covid effect

The Commission has calculated and submitted its Public Sector Report on Compliance with Climate Change Duties 2020 to the Scottish Government ahead of the 30 November deadline. It reflects overall carbon emissions of 15.2tCO2e (15.5tCO2e 2018/19). This represents a minor improvement on 2018/19. Overall flight travel reduced while car mileage has increased.

When the figure for 2020/21 is eventually known, it will have fallen sharply because of Covid-19 restrictions on travel. As we only report on the figure one year in arrears, i.e. we would show the figure for 2019/20 in our annual report on 2020/21 this will take a while to filter through, but reference will be included within the narrative regards expectations.

Q1	Q2	Q3	Q4
GREEN	GREEN	GREEN	

Responsible Manager: Bill Barron

Crofting Commission Improvement Report for 2020

IS improvements delivered	
Enabling working at home	The IS team within the Commission responded to the Covid-19 pandemic and built a sustainable solution that allows all Commission staff to work productively from remote locations, for all digital functions. This process has been refined with new and improved hardware purchases in the form of more powerful servers and a better firewall, and laid the ground work for the work to migrate to a cloud environment.
New census contract	A review of the census process was undertaken, which historically had required a large amount of the physical scanning and verification to be carried out within the Commission, to look at best value options. The result of this found that outsourcing the entire census project to an external contractor would eliminate an estimated 200 hours of man hours for Commission staff (est. cost of £4.2k), and create an overall net saving of £8.5k. This also allowed more in depth reporting that was not previously possible within the Commission to streamline duties work, creating further efficiencies in 2021/22.
2019-20 Improvement project	The Commission ran an improvement project with colleagues from ARE, and although this was in the previous reporting year the work and realisation of the findings took place in 2020. Covid 19 rendered some of the improvements void, however the Commission identified 17 different small improvement projects that formed as outputs from the main work, resulting in small accumulative benefits across the Commission.

IS improvements under development	
Coding next release of CIS	This was delayed during the spring and summer when IS resources were needed elsewhere but is back on track for release into testing early in 2021. The next release is a significant milestone that will create numerous future efficiencies for additional updates, and save time across all areas of the Commission.
Moving GIS and CIS to the Cloud	The Commission has explored ways to improve its resilience to future Business Continuity scenarios that prevent access to its base office, and promote the ability to work in remote locations. This work has led to all GIS mapping services and the core CIS being moved to cloud based solutions. This will allow remote working from any location and will allow core functionality of the Commission to have significantly more resilience in the future. It will also allow a seamless transition for any roles not based in the Commission's primary office.
Automated application forms	A short term working group comprising Regulatory, Regulatory Support staff and a Commissioner was set up to review the content of the Commission's regulatory application forms with the task of reviewing and revising the forms in preparation for the move to an automated application system. To date 9 regulatory application forms have been reviewed and a total of 70 modules have been created/identified which will form the basis of the online formats, which will take the form of a fully digital, web-based application.
Website review	The Commission is undertaking a full review of its customer facing website to bring it in line with all current accessibility regulations, as well as update the format and appearance on the back of a feedback survey to make navigation and use easier for end users. This work will also introduce a separate landing page for all related bodies and services where crofters can information on all the options open to them such as grants and funding.

Business Management and Business Continuity	
Incoming and outgoing mail	Since the start of the pandemic, different solutions have been used to handle incoming and outgoing mail. Initially, volunteer staff attended the Convener's personal office to fulfil these functions. The task reverted to the Corporate & Customer Services team when GGH become available again in the Autumn; at the same time, options were identified for a contracted out service, and this will be activated in January 2021 given the new lockdown.
Lessons learned log from the initial phase of home working	As part of continuity planning following the first lockdown, SMT quickly established daily then thrice weekly crisis meetings, including the Operations Manager in meetings. As a way to gather and learn from the experience, a Lessons Learnt Log was created as an annex to the BCP. This has been populated, an Action Plan added and reports provided to the AFC.
Short Term Working Group on home working and remote working	A Short Term Working Group of Commissioners, management, staff, Trade Union and HR representatives has considered the options for a future workforce more dispersed among the crofting counties and making more use of working from home. Their recommendations will now be considered by management and the Board.
Refresh of Business Continuity Plan	The Commission has established links to the core Scottish Government business continuity group and begun drafting a new Business Impact Analysis (BIA) that is due to complete by January 2021, with a view to this being used to update existing BCP's by March 2021. Once complete the Commission aims to run a series of tabletop tests with assistance from other bodies within the BCP network.

Regulatory and Registration Operations	
Training of regulatory staff	Regulatory A4 and B1 training officers appointed. Training material being developed and training has commenced with a member of staff who is new to the regulatory team. The member of staff and the training officer have reported that it is going well.
Monthly statistics	Monthly statistics are being prepared and issued to Commissioners, SMT and Sponsor Branch. Also, cases received and discharged over a 3 year period have been produced and issued to assist with monitoring trends. Cases outstanding longer than 12 months are being reviewed and taken forward to conclusion.

Residency and Land Use	
New approaches	<p>The Board agreed recommendations in a Board paper in June 2020 including restricting the use of long term sublets and short term lets. Delegation parameters for sublets and short term lets were revised so that all applications for a term of more than 5 years and all subsequent applications for any term have to be escalated to Tier 2 for consideration.</p> <p>In autumn 2020, a Short-Term Working Group made 14 recommendations for improvements and enhancements to the RALU work, which were agreed by the Board in December. These will be implemented from April 2021 when new resources come into the RALU team.</p>

Legal and Regulatory Support	
Improved processes for handling of RPID reports and of multiple objections	<p>A paper was agreed at the December 2020 Board to improve the way the Commission deal with the objection stage of the regulatory casework process, the gathering of further evidence stage, and the serving of the case paper prior to the case consideration stages of the process. The majority of these changes will be introduced in 2021, but in 2020 we actioned the following:</p> <ul style="list-style-type: none"> • all cases with objections require to be referred to the Regulatory Support Team prior to requesting an SGRPID report; • SGRPID report officers will no longer be contacting objectors and the report will no longer make any reference to objections, or provide individuals with an opportunity to make new objections outwith the statutory 28 day objection period.
More frequent Tier 3 meetings	<p>Following the introduction of home working, the Commissioners provided feedback to officials that in the circumstances they would prefer to have more frequent Tier 3 casework meetings, but with a lower number of cases to consider at each meeting. This was introduced and the average meeting lasts for around 2 hours where an average of 3 to 4 cases are considered. Previously there would be between 6 and 8 cases considered. The change has received positive feedback from Commissioners.</p>

Grazings and Crofting Development	
Retaining Grazings Committees in office	<p>Owing to the effects of Covid-19, the Commission offers outgoing grazings committees the opportunity for appointment for another term in office. Given the health restrictions, it has not been possible to hold meetings in public that would allow for such appointments in the normal way. By adopting this process, permitted by legislation, business continuity for many common grazings has been assisted.</p> <p>A survey to gauge interest on holding virtual meetings was also carried out. This has resulted in a number of on-line training events being provided.</p>

Finance	
Finance function continuity during home working	<p>Finance moved entirely to cloud prior to lockdown, including Finance Shared Service SLA. Performance has actually been more efficient. All deadlines met, including external audit for 2019/20. Evidence includes external audit assessing 8 RAG quality indicators regards the execution of the audit as 'Green'. Finance Team no longer require permanent floor space within GGH which will provide additional savings.</p>
Electronic Audit Package	<p>Introduction of a complete electronic audit package providing future resilience and efficiency savings (approx. £12k a year).</p>
Move to electronic payments	<p>The Head of Finance has explored the possibility of taking payments digitally to replace cheque payments. Although this requires work with RoS to amend secondary legislation, finance have piloted taking BACs payments for a range of agents and solicitors. Plans in place to expand on this once secondary legislation amended.</p>

Workforce and Staffing issues	
Health and Safety	The Commission's Health & Safety Officer and Committee have expanded their activities in respect of (a) safe use of Great Glen House when permitted by NatureScot and (b) maintaining links with staff working at home, to counter any mental health issues.
Workforce Plan and Medium Term Financial Plan	A Workforce Plan and MTFP were signed off by AFC in January 2020. Actions from the Workforce Plan have been progressed throughout the year, specifically on training, deployment and improving resilience.

Commissioners	
Remote meetings as standard	The use of Microsoft Teams for meetings has permitted more frequent meetings of Commissioners, to maintain an overview of key pieces of work and discuss strategic opportunities, in addition to Board and AFC meetings. Online Public Board meetings have also made it easier for guests to attend and we have seen an increased number attending.

Date: 18 January 2021

Author: Crofting Commission Senior Management Team

'ROUND THE TABLE' – ORAL UPDATE

REPORTS FROM HEADS OF TEAMS - ORAL

- (a) *IS Team***
- (b) *RALU & Reg Support***
- (c) *Operations & Workforce***
- (d) *Grazings & Policy***

REPORTS FROM SHORT TERM WORKING GROUPS - ORAL

- (a) *Application Forms Redesign Group***
- (b) *Women and Board membership***

CROFTING COMMISSION MEETING

4 February 2021

Report by the Chief Executive

Prioritising the accepted recommendations of the Short Term Working Group on Duties

SUMMARY

For the Board to prioritise the recommendations of the Short Term Working Group on Duties which were accepted at the December 2020 Board Meeting.

BACKGROUND

It has been a consistent call of the Crofting Commission's Board that action to promote croft residency and active land use should be high on the Commission's list of priorities. The Board has responded to the Commission's enhanced budget allocation by indicating that some of this new allocation should be used to promote residency and active land use and build upon the existing work of the Commission's residency and land use team. A working group comprising several Commissioners, assessors and officials was set up in July 2020 to examine how the Crofting Commission could take forward its work in this area. The Group was chaired jointly by Billy Neilson (Commissioner) and David Findlay (Commission solicitor) and met on for occasions between July and November 2020.

CURRENT POSITION

The Duties Group prepared a set of 12 recommendations which were tabled for consideration by the Board at its meeting on 3 December 2020. The recommendations were discussed and accepted at the meeting. Please see at **Annex A** the recommendations which were agreed by the Board.

It was agreed that a further meeting would be held at the earliest opportunity to prioritise the agreed recommendations.

Recommendations of the Short Term Working Group on Duties

Subject (This is not in order of priority– it is simply an ease of reference link to the recommendation numbers in Annex A)		Update	Potential Status
1	Non-census returners	Meetings have already been held between RALUT/IS Team and Pearl Scan to discuss reports that can be prepared from the 2020 census to provide a data set for the RALU Team to work with from April/May 2021	Short Term
2.1	Owner-occupier crofters	Work can commence following receipt of report from Pearl Scan 2020 census showing owner-occupier crofters in breach of duties	Short Term
2.2	Vacant Crofts	For a paper to be presented to the Board to inform the development of a strategy requiring owners and landlords of vacant crofts, or parts of crofts, to let the croft where the owner or landlord has little physical connection with, and makes little use of, the croft.	Medium Term
3	Streamlining of process to progress more quickly to the enforcement provisions at section 26C of the 1993 Act.	Changes introduced in October/November 2020 following a policy paper agreed in June 2020.	Implemented
4	Escalate cases arising from regulatory casework	Process is already in place to escalate cases from Tier 2 and Tier 3 casework. This is entirely a matter of obtaining additional resources for the team.	Short Term
5 & 7	Land Use Duties	Potentially could focus here on resident non-cultivators. Focus on “cultivate” and “maintain” rather than “neglect”.	Medium Term
6	Land Use Duties	Using SGRPID aerial data to identify issues with regard to cultivation and neglect.	Longer Term
8	Explain the benefits of residence and active land use	Plan to liaise with new outward focusing B2 postholders in the Western Isles as part of the community engagement process.	Medium Term
9	Explore Sharing Crofting Census Returns with Area Assessors	This will require further discussion with Compliance Hub and Pearl Scan to determine whether and how this information can be provided.	Medium Term
10	Anonymity for reporters of suspected breach of duty	To obtain legal advice, advice from Compliance Hub and for the Board to take a position on whether reports of suspected breach of duty can be dealt with anonymously.	Medium Term
11	Unused Apportionments	This will require a Board Paper to consider whether more apportionments should be “termed” and/or made subject to a “review at regular interviews”	Longer Term
12	Legal advice regarding crofting duties and grazing rights	Legal advice has been sought from Counsel	In progress

Impact:	Comments
Financial	<p>There will be costs involved in taking on additional resources to expand the work of the RALU Team. There may also be additional costs involved in identifying, investigating, and enforcing compliance in relation to breaches of duty in relation to failure to cultivate and maintain and neglect, and also in analysing any aerial data supplied from RPID. It is important to be aware that a medium to long term financial commitment is required for this due to the length of time it takes to process duties cases and to achieve outcomes/change behaviours.</p>
Legal/Political	<p>Implementing the proposals will mean the Commission expanding the work of the Team in terms of:</p> <ul style="list-style-type: none"> • Increased use of the section 26A to 26J enforcement provisions relating to breaches of duties by owner-occupier crofters • Increased use of the section 26A to 26H enforcement provisions relating to breaches by tenants. <p>There is an increased risk of obtaining more appeals to the Scottish Land Court in respect of disputed breaches of duty. There are also some uncertainties regarding the legislation.</p> <p>A longer-term investment in duties work will, over time, result in enhanced residency on crofts and more active use of crofts, both of which will strengthen crofting. It will also result in new entrants to crofting, though some of the work will involve assignments, sublets and individuals taking steps to resolve breaches of duty.</p>
HR/staff resources	<p>In recognition of the expansion of the work of the RALU Team, we will shortly be recruiting an additional B1 to be based in the Western Isles.</p>

RECOMMENDATION

For the Board to prioritise the recommendations of the Short Term Working Group on Duties set out in the paper at Annex A which were agreed at the Board Meeting held on 3 December 2020

Date 8 January 2021

Author Joseph Kerr, Head of Regulatory Support

Recommendations of the Short Term Working Group on Duties

1. The residency and land use team will target non-returners of the annual notice, once they have received information from the Commission's IS team, with greatest priority being given to those who have repeatedly failed to return a notice and whose contact addresses would clearly indicate that they were in breach of the duty to be ordinarily resident.
2. The team will place equal focus on owner-occupier crofters as croft tenants, as the scheme of the 1993 Act is that both tenants and owner-occupier crofters are subject to crofting duties. Unfortunately, owners and "landlords" of vacant crofts are not subject to crofting duties. It is recommended that the board considers its policies on the letting of vacant crofts, which is far from straightforward where the owner physically (if not legally) occupies the croft and works it. In particular, it is recommended that the Commission develops a strategy requiring owners and landlords of vacant crofts, or parts of crofts, to let the croft where the owner or landlord has little physical connection with, and makes little use of, the croft.
3. Although the timescales for carrying out duties work are largely determined by statute, and the period given in undertakings to take up residence or carry out works must be reasonable, it is considered that action in respect of suspected non-residence could be streamlined to progress more quickly to the stage of issuing a written notice of suspected breach of duty, whilst action in respect of suspected non-cultivation & maintenance, and misuse & neglect would require further investigations before the Commission could proceed with a notice of suspected breach of duty.
4. Officer resources will be dedicated to dealing with all referrals from casework (decrofting and division applications principally) so that where information relating to a possible breach of duty emerges during the course of an application, it will be investigated by the residency and land use team.
5. The residency and land use team will balance work on residency (absenteeism) and land use, recognising that whilst action on residency easier to target, any additional resource in the residency and land use team should target land use as well as non-residency.
6. The action on land use will focus mainly on failure to keep a croft in a fit state for cultivation, because legislation sets out that in determining this, regard is to be had to whether appropriate measures, including drainage, are routinely undertaken, "where requisite and practicable, to control or eradicate vermin, bracken, whins, broom, rushes and harmful weeds". This would require the Commission to establish:
 - a. that there is an issue with a croft being overrun with, for example, bracken or rushes, or being waterlogged as a result of drainage
 - b. that it is requisite and practical to carry out measures to clear weeds etc.

The Commission will use aerial photography to be made available by RPID to assess where particular areas of land within townships would appear to be overrun with weeds, bracken, and rushes. It will use the Crofting Register and any other available mapping resources to determine whether any such land relates to a croft and who the crofter/owner-occupier crofter (or owner/landlord of the croft if vacant).

In the first instance, the Commission will liaise with RPID to obtain the use of the photographic data through a data sharing agreement.

7. Where a croft is in a state that it cannot be used for cultivation, it is a very visible sign both within the crofting community and to external observers that it is in a state of neglect. By contrast, it is difficult evidentially to prove neglect. Occasional grazing by sheep to keep weeds down would probably pass as "cultivation". It is considered that the work of the Commission should focus on the more visible signs of neglect, due to failure to cultivate, rather than whether the requirements of GAEC are being complied with (which are difficult to prove evidentially).
8. One of the new posts in the Western Isles will engage with grazings committees, crofting communities, assessors, and crofting estates, including community owned crofting estates. One of the main aims of such engagement will be to work with others to explain the benefits of active land use and croft residency, and what can be done to support this. The new post will also refer specific cases of apparent non-residency, failure to cultivate & maintain and neglect & misuse of land to the residency and land use team for further investigation.
9. The Commission will explore with our Compliance Hub the possibility of sharing annual returns for a particular area with area assessors, who might then be able to advise of particular cases within his or her knowledge.
10. The Commission will also explore whether anyone providing information under Section 26A of a suspected breach of duty, should be provided with anonymity. [This point was made by several assessors who were part of the working group.]
11. The working group identified unused apportionments as an issue that merits further investigation. The group recommends that the board revisits its policies on granting apportionments and, in particular, considers whether more apportionments should be termed for a particular period (depending on the reasons why the apportionment is sought) and whether apportionments should be subject to reviews at fixed intervals. It is recognised that reviews of apportionments would require an increased staff resource.
12. Counsel's advice regarding crofting duties and grazing rights is awaited. Future action by the team in respect of grazings shares that are not being used will await Counsel's opinion.

CROFTING COMMISSION MEETING

4 February 2021

Report by the Chief Executive

Common Grazings: The Forgotten Land

SUMMARY

This paper provides a background and context to the declining use of crofting common grazings. It provides evidence from previous research and some of the conclusions drawn from such work, as well reported indicators of how issues relating to common grazings and support for them are apparently overlooked with current support systems.

It considers the Commission's own responsibility in this regard, both in terms of legislation and policy. Accordingly, it is recommended that the fundamentals for management of common grazings are supported in localities and that there is meaningful advocacy for common grazings, as well as proper recognition of their crucial importance to the crofting system of land tenure.

Additionally, it is noted that a range of public goods have been identified and associated with common grazings, and further potential remains. This makes it all the more imperative that the right structures and support are now put in place.

INTRODUCTION

The primary purpose is to invite considered discussion of crofting common grazings and their role within crofting and its future. For this reason, the paper looks specifically at what appears to be the situation after the first two decades of the 21st century.

While recognising that the Commission has shown commitment to common grazings in recent years, the results could be viewed as only recovering and stabilising what may be perceived as a relatively low threshold. How that position can be significantly improved upon and, if that is a priority for the Commission, how that can be delivered remains to be determined.

What follows is what are considered to be the fundamental essentials for common grazings and to some degree these are already embedded within crofting legislation and Commission policy. A look back in time indicates that common grazings may always have been problematic yet, simultaneously, in many ways, the vital organs of crofting. How well common grazings are assisted to and capable of functioning may be of increasing importance in the future direction of crofting.

It is considered that the basis for this is encompassed in the recommendations provided. However, these do not provide detailed specifics at this stage. It is pragmatic to ensure that these are the agreed priorities, and whether there may be others, before investing in that stage.

BACKGROUND AND CONTEXT

Crofting common grazings comprise at least two-thirds of the land under crofting tenure but do not receive any comparable consideration. This may be surprising when considering it was the presence of common grazings that ensured crofting status in parishes within the Crofting Counties after the 1886 Crofting Act. Some even consider that it is common grazings that define and justify crofting's uniqueness:

“We should remember that crofts were originally designated according to the presence or absence of common grazings. Common working of land and animals, and institutions to set and manage common rules of management, were what made and makes crofting different. If crofting were to become yet another form of individual entrepreneurial agriculture, then the defence of its legal, institutional and policy framework would become impossible.”¹

The individual that has carried out the most detailed research and examination of crofting's common grazings, Gwyn Jones of EFNCP, has stated that this one million plus acres of land should “be treated as a national asset.”² His comprehensive report of 2011 “Trends in Common Grazings”³ identified some of the strengths of common grazings as being:

- Significant element in cultural landscape
- Important element of cultural and social fabric of Fragile Areas
- Important part of Scotland's High Nature Value farming (estimated 15–20%)
- Over-represented in terms of national, and especially international, conservation designations (SSSIs 20% more likely on common grazings, SACs 60% more likely, SPAs 91% more likely)
- Disproportionately important for carbon storage, especially deep peat, (30% of the peat over 2m deep is under common grazings)
- Food produced at low energy cost and on land with limited vulnerability to climate change
- In some cases, retention of important genetic stocks
- In some cases, significant role in the production of high health breeding stock
- Good and long-standing legal framework in place for most grazings

Prior to G Jones' work, Katrina Brown of the then MacAulay Land Use Research Institute examined common grazings in a number of academic works in the context of communal systems and in comparison with other European commons. Both researchers carried out relatively extensive surveys with grazings clerks and committees.

K Brown's first study published in 2004⁴ incorporated the results of interviews with grazings clerks and a return of 376 questionnaires sent to 767 grazings, a fairly robust sample. This allowed for the general conclusion that the use of grazings had become less significant within crofting agriculture, with greater concentration on in-bye land. More specifically, it concluded that only 50% of shareholders were using common grazings and that the average number of current users was only 78% of the number of shareholders using the resource 10 years previously. 21% of grazings had only one or two shareholders using them and 7% were effectively abandoned, concluding that 28% were in “a state of critical decline”. It was further recognised that others were in a fragile state and more would enter into critical decline within the next 5 – 10 years. The key reasons for decline were ranked and described accordingly:

1. Rising age of shareholders
2. Decreasing returns from agriculture
3. Less time/flexibility due to off-croft work

¹ John M Bryden “Crofting in European Context” 1987? Source not available for cross-reference

² [Scotland's common grazing 'a national asset' - BBC News](#)

³ [Conference brochure \(efncp.org\)](#)

⁴ [Brown_Slee_2004.pdf \(hutton.ac.uk\)](#)

4. Increased concentration of effort on in-by
5. Increased individualism
6. Decrease in the number of active shareholders
7. Greater imbalance in the size of croft enterprises
8. More use of contractors

Importantly, Brown did indicate that a minority (8%) “bucked the general trend and demonstrated many signs of dynamism, such as high rates of use and users, high rates of co-operation and the successful initiation and completion of commons-related schemes and projects.” On that basis, she did not conclude that common grazings’ decline was inevitable. The context of this work was an examination of how “common property regimes” were being encouraged by policy in Scotland and noted that the declining state of one of the obvious existing examples of common property – crofting common grazings – was being ignored. It was recognised that the results were based around traditional use and that there was a growing trend towards a diversity of uses and values for common grazings.

The questionnaire survey for G Jones’ work covered 213 grazings and primarily focussed on use for livestock grazing and participation in support schemes. This indicated that 32% of shareholders used their grazings for keeping livestock. He noted that this contrasted with Brown’s previous figure of 50% and the Shucksmith Report survey of 587 crofters that indicated active 46% actively used their grazings share.

Whatever the exact percentage may have been, there had obviously been a declining trend in the use of common grazings and this was acknowledged by the Crofters Commission at its last Assessors Conference in 2011, entitled “The Crisis in Common Grazings”.¹ Held over two days with 129 participants, this conference, while including a range of speakers on various subjects, majored on common grazings, with all discussion sessions dedicated to this theme. A comprehensive report incorporating slides of all presentations and the bullet-points of all discussion sessions is available. The Commission itself reported that there are around 1000 crofting common grazings and that of these 877 had regulations and 508 currently had a committee in office to manage the grazings.

A conference dedicated to common grazings came at the tail end of the Crofters Commission’s 56 years and it could be reasonably argued they had become forgotten land, certainly for much of the decade leading up to that conference. It also came on the back of a number of major investigations and reports highlighting the dramatic fall in livestock numbers in the Highlands and Islands in the immediately preceding years. (Ironically, while the Crofters Commission noted the difficulties experienced by declining use of common grazings at the end of its era in 2012, a century earlier the first Crofters Commission in its final report of 1912 commented that common grazings had caused it most difficulty, and the major problem then was likely to have been their overuse.)

The particular emphasis on crofting regulation that followed with the advent of the Crofting Commission did not particularly lend itself to the needs – or, indeed, the actions identified at the 2011 Assessors Conference – of common grazings. A detached and impartial process may be appropriate for regulatory applications but not necessarily for matters that respond better to intervention or mediation and worked through solutions. Consequently, the subsequent crisis in the common grazings in 2016 lead subsequently to even less common grazings being served by grazings committees. However, there are other factors besides this that have led to a disinclination within crofting to provide the basic structure for the management of this shared resource.

¹ [crofting.scotland.gov.uk - Assessors Conference Report 2011.pdf - All Documents \(sharepoint.com\)](http://crofting.scotland.gov.uk - Assessors Conference Report 2011.pdf - All Documents (sharepoint.com))

CURRENT POSITION

Common land is not unique to crofting and features elsewhere in the British Isles, as commons in England and Wales and commonages in Ireland. One person with knowledge of the varying systems has commented:

*The Scottish system of common grazings self-governance, underpinned by a statutory framework, and a supporting state agency, is for all its faults the best in these islands. It should be something to treasure, nurture and develop.*¹

The system referenced, began with the *Crofters Common Grazings Regulations Act 1891* – 130 years ago. This provided the basis for appointing grazings committees and setting regulations for the control and management of crofting common grazings. A further Act in 1908 indicates that there may have been some apathy on the part of landlords and graziers, and powers were extended to the Crofters Commission to appoint a grazings committee and to make regulations irrespective of whether requested to do so by the crofters or landlord. The *Small Landholders (Scotland) Act 1911* extended these powers to the Land Court which replaced the Crofters Commission but provided further options. The failure to provide a grazings committee allowed for the appointment or election of persons to form a committee or one person to act as a Constable.

It is not apparent if these provisions were used much by the Land Court but, with the changes of some wording, they remain part of current crofting legislation. As such, these remain proactive powers available to the Crofting Commission. It is possible that these might be more imaginatively, purposefully, yet properly employed.

The Commission currently reports that there are 1074 common grazings but included within this figure are about 95 areas defined as either runrig land or common outrun. Runrig land is consistently identified as being separate from common grazings in current and previous crofting acts and the status of the common outrun category is not clear. There are 837 common grazings that can be defined as regulated in that they have confirmed grazings regulations. However, as can be indicated by varying figures and the confusion indicated by those who have carried out independent research on common grazings there is a need for the Commission to provide an accurate and consistent record of what constitutes crofting common grazings and their number.

Probably for the first 15 years of existence after 1955, the Crofters Commission put in considerable effort to ensuring there were grazings committees in office and that there were updated, or new regulations systematically provided. Records indicate that the number of committees never went much beyond 750. By contrast that number gradually declined and subsequently accelerated to around the 508 mark provided in 2011. It remained around this figure but fell significantly nearer to 400 between 2017 – 2019. Concerted effort restored that to within touching distance of 500 the following year.

The number of committees remains a key measurement of the efficacy of the Commission in ensuring there is a management structure in place for common grazings. It is legitimate to consider that with rights in common grazings comes responsibilities, and that that includes taking responsibility for the management of common grazings. It might have been considered appropriate for the Crofters Commission earlier in the 21st century to take the view that it should not be “paternalistic” and that it should merely keep a record of changes. However, ultimately it realised that there was a “crisis in the common grazings”. It can be argued that there is also a responsibility for the body entrusted with safeguarding the future of crofting and that the provisions available within legislation for over 100 years are just as relevant today.

¹ [crofter110.pdf \(crofting.org\)](#) Page 8, Gwyn Jones, “Reflections on Common Grazings”.

Therefore, while the Commission can correspond with and engage with shareholders of common grazings on a continual basis, ultimately it is dependent upon there being a willingness on the shareholders' part to take on the responsibility to form a committee. While not detracting from or claiming such effort should not be part of the process, the Commission ultimately, does have the option to appoint grazings committees or grazings constables. It can be argued that if the Commission is to fulfil its own obligations to sustain the $\frac{2}{3}$ of crofting land described as "national asset", it has to consider moving beyond such measures. There is increasing recognition of the value that such land holds in terms of the environment, biodiversity and climate change mitigation, and there is also a range of other divergent interests which may intensify the imperative for crofting in general to be more responsive.

Admittedly, the title "constable" has other connotations and probably, just like "assessor", had a role that better reflected such a title originally. However, the term remains, and it does not entail that the Commission employs it in a policing sense or in the manner it may have been misused in the not-too-distant past. The role envisaged is more one of enabling and capacity building within crofting communities. It would be built around developing the skills to administer the management of common grazings and to engage with and encourage participation by the relevant shareholders. As such, these could be short-term appointments, but they might result in individuals being retained by the relevant townships as the grazings clerk.

It is accepted that training and engagement can be done without necessarily appointing someone in an official capacity, the appointment of which may in turn be resented in the community. However, the objective is to provide support that can be utilised effectively and for the Commission to be assured that at least the structure for the management and maintenance of common grazings is in place.

At this point, there is no recommendation as to how exactly this should be done. It is simply being suggested that there is an obvious need to look at alternatives and that there are also options available within legislation that the Commission could consider using. At the previously mentioned Assessors Conference, there were suggestions that there could be a role for assessors in such a context. There were more assessors then but nothing concrete materialised. Such options would not exclude current assessors but would not necessarily be limited to such either. What is probably more important is that there is greater awareness of responsibilities within communities and that there is a more localised support structure provided within such communities. Such would appear to be an important part of crofting development and in an area that has apparently been overlooked for some time.

RELEVANT LAW AND POLICY

Crofters (Scotland) Act 1993

Section 47(3)

If the Crofters who share in a common grazing fail at any time to appoint a grazings committee, the Commission may, after making such inquiry, if any, as they deem necessary, appoint a grazings committee, or may appoint a person to be grazings constable, and a committee or constable so appointed shall have the like powers and duties as a grazings committee appointed under subsection (1) above.

Section 47(7)

The term of office of a grazings constable appointed by the Commission under subsection (3) above shall be such as may be specified in the instrument by which he is appointed, and he shall receive such annual remuneration as the Commission may determine; and such remuneration shall be defrayed by an assessment levied in such manner as the Commission may deem reasonable on the crofters who share in the common grazing.

Crofting Commission Policy Plan 2017

The Commission is committed to ensuring that this focal element of the crofting system operates for the benefit of the crofters sharing the resource. To this extent, the Commission will provide support and advice to assist grazings committees with their responsibilities to ensure the effective management of common grazings. Common grazings are consistently viewed as a communal asset for crofting and the Commission has no desire to stifle opportunities for crofters. In fact, the opposite is the case; however, the Commission itself can only provide and regulate in terms permitted by the Act. **Paragraph 28**

Through effective regulation of common grazing and support for common grazing committees, the Commission will help to:

- *Improve the management of common grazings and build capacity at township level*
- *Increase, where appropriate, stocking levels, crofting activity on common grazing and related activity on crofts*
- *Strengthen crofting townships and connections between crofters, and encourage best practice on common grazings*
- *Where appropriate, improve biodiversity by effective management of the natural resources on common grazing land*
- *Increase the opportunities for forestry and other purposes on common grazings, with associated carbon reductions and associated economic benefits to crofters and crofting communities*
- *Encourage management of common assets* **Paragraph 48**

SUPPORT FOR COMMON GRAZINGS

There is an estimated 550,000ha of common grazings and common grazings are understood to make up about 24% of the rough grazing land used to support IACS claims in Scotland. Also, common grazings form part of the forage area of 20.55% of these IACS claims. Their recognition, or possibly the opposite, within support programmes has been the subject of strong criticism.

“In an age where millions of public money are spent on all things community, the starvation rations given to supporting common grazings governance is regrettable. Policy makers and policy lobbyists seem blind to the need – or at least completely unimaginative when it comes to funding mechanisms, despite their failures impacting 20% of all IACS claimants, living in the most socio-economically vulnerable areas.”¹

A similar view was indicated by Vicki Swales, RSPB's Head of Land Use Policy, at the 2011 Assessors Conference:

- Current support for common grazings is weak and ineffective
- CAP reform offers an opportunity to improve support for common grazings and sustain HNV farming and crofting systems
- But not unless we make the case for it²

¹ [crofter110.pdf \(crofting.org\)](#) Page 8, Gwyn Jones, “Reflections on Common Grazings”. December 2016

² From slide of presentation at Crofters Commission's Assessors Conference, November 2011. Ref previous footnote.

The latter bullet point was to a large extent addressed in an independent and comprehensive report of how common grazings fared in the delivery of the 2007–2014 SRDP programme in terms of agri-environment support.¹ It highlighted the short comings and made recommendations for the next 7-year programme from 2014 onwards. In doing so, it both stated the case for common grazings and pinpointed the apparent failings in this regard:

“Common grazings not only deliver high levels of public goods (defined as goods and services where the market mechanism is ineffective at setting a price), but these public goods are to a large extent the by-products of agricultural regimes that are themselves economically weak and, on common grazings specifically, socially challenging. The case to support the delivery of these services and to increase the sustainability of the systems which deliver them is therefore strong.”

“In the specific case of common grazings... it shows that uptake levels are low in all areas and zero over large tracts of the Highlands and Islands, uptake is markedly lower than for individual holdings even in the same parishes.”

The resulting analysis by this author six years on in his report *“Support for Crofting”* for the Crofting Commission indicated that under the Agri-Environment and Climate Change Scheme the crofting scenario had not improved. *“By far the main negative aspect is the inability of the measure to provide general support for environmentally-friendly crofting.”* The report noted the comparative uptake between crofting payments and Scotland as a whole (7.4% vs. 24.8%) and that: *“Common grazings fare worse in most areas, despite being almost entirely High Nature Value semi-natural pastures...”*

In concluding the overall examination of common grazings and the lack of “specifically targeted support”, the report states:

“The irony is that, as (Jones 2011) tried to demonstrate, the common grazings should be a major resource for the community, if public money does indeed follow public goods – not only are they the vast majority of crofting land, but they produce extremely high and supposedly-valued levels of positive externalities – biodiversity, landscape, carbon storage and sequestration and so on. As such they are of course also a major focus in the Government’s crofting policy, but one which as yet has not delivered as much as it could.”²

These are comments from an individual who has carried out serious research on common grazings – no one else appears to have done so or sought funding to do so. However, others have commented on the common grazings and the apparent lack of recognition of their value within current support structures. In its lead article in the February 2015 edition of *The Crofter*, the headline referred to “the plight of common grazings”.

This was followed by scathing comment such as: *“Under this regime extensive rough grazing, which will include most of crofters’ common grazings, will get paid £8 per hectare, less than one twentieth of what will go to permanent grassland, and a quarter for the higher-rate rough grazing.”³*

These views/findings are indicators that there are apparent issues with important support mechanisms when it comes to common grazings. Consequently, this cannot be realistically detached from any consideration of what can be done to improve activity on and participation in the management of common grazings. The Commission has previously recorded and recognised the necessity of such with regard to the report on *Support for Crofting*, stating:

¹ “Supporting Common Grazings through Agri-Environment – ex post Evaluation, G Jones, [Microsoft Word - SRDP CG report KMR tracked changes 26'10'12 \(efncp.org\)](#)

² G Jones “Support for Crofting” 2018, pp 38 – 41.

³ [crofter105.pdf \(crofting.org\)](#)

There is awareness that previous schemes have not been viewed as particularly crofter-friendly; being too complex, difficult to access and not tailored to a crofting scale. More qualitative evidence of this would be beneficial and help to construct more appropriate support for the future.

The Commission considers this work to be a vital part of its legislative function to promote the interest of crofting. It also has relevance to its general duty to keep under general review all matters relating to crofts and crofting conditions and to advise Scottish Ministers in that context. While primarily a regulatory body, the Commission recognises that the overall crofting system cannot simply operate by enforcement of regulations.¹

To have more areas of common grazing land managed in a meaningful and relevant manner, how support is designed, structured and delivered is of crucial importance. This is not something that a public body with a responsibility for ensuring the future of crofting² can readily detach itself from.

RELEVANT LAW AND POLICY

Crofters (Scotland) Act 1993

Section 1(2) (a) (iii)

*The Commission have –
the general functions of –
promoting the interests of crofting.*

Section 2(1) (a)&(c)

*In the exercise of their general functions of reorganising and regulating crofting, it shall be the duty of the Commission –
to keep under general review all matters relating to crofts and crofting conditions, including without prejudice to the foregoing generality, land settlement;*

to advise Scottish Ministers on any matters relating to croft and crofting conditions which the Scottish Ministers may refer to them, or on which they may think fit to submit advice to the Scottish Ministers.

Crofting Commission Policy Plan 2017

*Particular attention will be given to on-going preparations for the UK's withdrawal from the European Union and the resultant consideration of future distribution of agricultural and environmental support. It is important that crofting's unique and diverse system is recognised within the forthcoming changes to delivery of support and its capacity to support rural populations and the economy. The Commission is committed to ensuring that the case for crofting will be heard and recognised in this process. **(Paragraph 59)***

¹ [crofter114.pdf \(crofting.org\)](#) Page 4.

² [Governance Framework - Framework Document 2018 - 2021 Final and signed 29 March 2018.pdf - All Documents \(sharepoint.com\)](#)

CONCLUSION

Two main aspect of common grazings are considered within this paper: the provision of the basic structure for the management of common grazings and the provision of support that encourages the appropriate use and management of these grazings. There are other aspects that can arguably be considered in relation to common grazings but these are the most fundamental. The failure to invest adequately in supporting two-thirds of crofting land that provide many acknowledged public goods and the potential for more will most likely result in further decline. While this is not solely the responsibility of the Crofting Commission it should endeavour to ensure that what has been described as “a national asset” is properly recognised and supported. It cannot allow common grazings to be crofting’s forgotten land.

Impact:	Comments
Financial	The financial implications depend upon what the extent and priority the Commission wish to give this. However, it is noted that the Crofting Commission has been provided with additional funding for developing crofting. The evidence indicates that investment in how meaningful use and management of common grazings can be best achieved merits serious consideration. Some – but not particularly significant - finance may be necessary to engage with and build capacity within crofting communities to provide for the management of common grazings.
Legal/Political	Relevant Law and Policy has been identified and set-out within the paper.
HR/staff resources	

RECOMMENDATIONS

- 1) **It is recommended that the Commission develops an accurate record of crofting common grazings, ensuring that these are properly recognised as features of crofting land tenure.**
- 2) **It is recommended that the Commission considers its own responsibilities to ensure that common grazings are provided with the basic structure for their management; namely a grazings committee or grazings constable and grazings regulations. The Commission should consider how it can engage with, invest in skills and build capacity within crofting areas to support and retain these fundamental structures for common grazings’ management.**
- 3) **It is recommended that the Commission ensures that crofting common grazings are promoted as a vital and integral feature of the crofting system and of crofting land use. As such, the Commission should advise of the specific needs of common grazings and how these can be most effectively developed within the context of future support regimes. In addition, the full range of public goods derived from effective common grazings management should be identified and advocated as part of the Commission function to promote the interests of crofting.**

Date 16 January 2021

Author John Toal, Head of Policy

DATE OF NEXT MEETING – 18 MARCH 2021 (TEAMS)

ANY URGENT BUSINESS – ORAL

EXCLUSION OF PRESS & PUBLIC