

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.

<i>Decision</i>	<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

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