

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT SKEABOST HOUSE HOTEL, SKYE ON 4 NOVEMBER 2015, 08:45 hrs

Present:	Colin Kennedy	Convener
	IG Macdonald	Vice-Convener (from 08:55 hrs)
	David Campbell	Commissioner
	Marina Dennis	Commissioner
	Kathleen Sinclair	Commissioner
	Murdo MacLennan	Commissioner
	William Swann	Commissioner
	Catriona Maclean	Chief Executive
	David Findlay	Commission Solicitor
	John Toal	Head of Policy
	Joseph Kerr	Head of Regulation
	Donna Smith	Head of Information Systems
	Lucy Carmichael	Scottish Government, Edinburgh
	Posy MacRae	Communications Manager
	Morag Menzies	PA to Convener, Minute-taker
	Ewen McPherson	SGRPID, Portree (from 09:30 hrs)
	Lucy Sumsion	NFUS (from 09:30 hrs)
	John W Gillies	Member of the public (from 09:30 hrs)
	Calum MacLean	BBC, Alba (from 09:30 hrs)
	Andrew Banks	Member of the public (from 09:30 hrs)
	Janette Sutherland	Member of the public (from 09:30 hrs)
	Alister Beaton	Member of the public (from 09:30 hrs)
	Jake Sayles	NFUS (from 09:30 hrs)

### 1 APOLOGIES AND WELCOME

Apologies were received as follows:

Arnie Pirie, Commissioner

Jane Thomas, Head of Corporate & Customer Services

The Convener welcomed everyone to the meeting and said it was a great pleasure to be holding the Board Meeting in Skye.

### 2 DECLARATION OF INTERESTS

Commissioner MacLennan declared an interest in item 17a, Hushinish Common Grazings -v- Scarp Grazings Committee.

Commissioner Dennis declared an interest in item 17d, Bohuntin Common Grazings & Sheep Stock Club.

### 3 APPROVAL OF DRAFT BOARD MINUTE OF 16 SEPTEMBER 2015

The Minute of the Meeting of 16 September 2015 was approved.

#### 4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meeting on 16 September 2015 were reviewed:

- Page 3, Item 6, the Chief Executive advised that the Grazing Census will be issued next year, and as each Common Grazings Regulations are updated, each Common Grazings will be invited to complete the Grazing Census, which will also be available on the Commission's website.
- Page 7, Item 11, the Chief Executive advised that, following a request for Commissioners to recommend two Assessors each who could possibly be considered for the specialist Assessor role, three Commissioners responded. A final date of 13 November 2015 has been set for any other Commissioners to recommend Assessors for this role, and following this date, the names will be e-mailed to Commissioners for their approval, before asking the approved Assessors if they are interested in participating in the pilot to develop the specialist role.
- Page 11, Item 14, the Commission Solicitor advised that in the appeal case 186 Strathmelness, the Land Court ordered a sist following the instruction from the last Board Meeting, and the case is sisted until 30 November 2015 pending receipt of a registration application. If no registration application is received by this date, the Commission Solicitor will ask the Commission if they wish the sist to continue.
- Page 12, Item 14c, the Vice-Convener and Commissioner MacLennan declared an interest and left the room at 09:40 hrs.

The Chief Executive advised that, following the last Board Meeting when the Mangersta Common Grazings was discussed, it has come to light that the Committee involved with the current issue has gone out of office, and a new Committee was appointed in March 2015.

The Commission agreed to write to the new Committee to find out if all monies due have been distributed. The Committee will be given one month to respond, and if no response is received, or the monies have not been distributed, an Investigating Officer will be appointed to look into the matter. The letter to be sent to the Grazings Committee will be e-mailed to Commissioners for approval before being issued.

The Commission agreed to this proposal.

<b>Decision</b>	<b>The Commission agreed that a letter is to be issued to the new Mangersta Common Grazings Committee, after being approved by Commissioners, asking them to advise the Commission within a month, whether all monies due have been distributed. If no reply is received, or the monies have not been distributed, an Investigating Officer will be appointed to look into the matter.</b>
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The Vice-Convener and Commissioner MacLennan returned to the room at 09:45 hrs.

## 5 ADVANCED PAPER FOR APPROVAL

### (a) Section 58A(4)(d) objections

The Commission Solicitor presented the Paper, which refers to a technical point regarding objections received by the Commission, in connection with applications for approval or consent.

In respect of most applications for approval or consent, with the exception of section 58A(6A) applications and section 50B applications, certain parties are entitled to submit an objection to the Commission as regards the application, within 28 days after public notification. An objection can be submitted by the landlord, a member of the crofting community or by “**any other person the Commission consider has a relevant interest in the application**”. In considering the application the Commission must have regard to the factors set out in section 58A(7), which includes the interests of the public at large and the sustainable development of the crofting community. Any decision of the Commission, which fails to consider these factors, is susceptible to appeal.

The Commission approved the Paper.

<b>Decision</b>	<p><b>The Commission approved the Paper and agreed parameters as to what constitutes ‘relevant interest’ as follows:</b></p> <ul style="list-style-type: none"><li>• <b>a measurable financial/proprietary interest in the outcome of the application to which the objection relates;</b></li><li>• <b>close geographical proximity of the objector’s croft to the croft of the crofter making the application;</b></li><li>• <b>a long-standing ‘interest’ with the croft which falls short of a croft tenancy, such as an informal sublet or occupation of the croft and/or croft house over a period of time – though it is difficult to see how such an ‘interest’ could realistically affect the outcome of any particular application (see ECHR below);</b></li><li>• <b>whether the ‘objector’ has demonstrated that the objection/ submission relates to any of the section 58A(7) factors, namely:-</b><ul style="list-style-type: none"><li>○ <b>the interests of the crofting community in the locality;</b></li><li>○ <b>the sustainable development of the crofting community;</b></li><li>○ <b>the interests of the public at large;</b></li><li>○ <b>any other matter the Commission considers relevant;</b></li></ul></li><li>• <b>whether there are any ECHR considerations (specifically, Article 1 Protocol 1).</b></li></ul> <p><b>The Commission agreed that where such an ‘objector’ falls within such parameters, an individual Commissioner will decide whether or not to accept the submitted ‘objection’. Where the ‘objector’ falls outwith the parameters, the competency of the ‘objection’ will be a matter for the whole Board to determine. The Commission will have to consider whether there is a relevant interest in all cases. In all cases, the fact that any such objection is regarded as valid by the Commission, is separate from the question as to its merits and how much, if any, weight should be given to it. It may be sufficient for it simply to be demonstrated that the Commission has considered the objection as part of its decision-making process. Any objection will have to be dealt with according to the principles set out in Stewart -v- Crofters Commission (Application RN SLC/40/11 – Order of 10 April, 2013).</b></p>
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## 6 SHORT TERM WORKING GROUP UPDATES

**Delegated Decision Making STWG** – The Convener advised that this group met recently to decide the framework and parameters for Tiers 1, 2 and 3 of the Delegated Decision Making process. Considerable progress has been made and the first decision under Tier 1 has already been taken in a Croft House Site and Garden Ground application for croft 1 Cruard in Sleat, Isle of Skye.

The Commission asked that a summary of decisions taken under Delegated Decision Making be sent to each Commissioner monthly, showing their own areas. The Chief Executive advised that this will be done.

<b>Decision</b>	<b>The Commission agreed that a summary of decisions taken under Delegated Decision Making should be sent monthly to each Commissioner, showing their own areas.</b>
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## 7 REPORT FROM COMMISSIONERS – EVENTS PLANNED AND/OR ATTENDED

**Convener** – Attended the Convention of the Highlands & Islands in Elgin, the Cross Party Group Meeting in Edinburgh, two Vision for Crofting Meetings, will be attending a meeting in Stornoway in November to discuss an ongoing case, and will attend the Official Opening of the new College in Inverness in November.

**Vice-Convener** – Attended an event to mark the retirement of David MacVicar and Tom Palmer from SGRPID in Portree, and the Vice-Convener wished to welcome Ewen MacPherson to the Board Meeting today as he has replaced David MacVicar. The Vice-Convener attended the Crofting Roadshow in Lairg, visited the island of Scarp with thanks to Commissioner MacLennan, attended the Complaints & Investigations Committee Meeting, met with Petra Lackova of the James Hutton Institute to discuss common grazings, attended the Audit & Finance Committee Meeting, was part of a team involved in the letting of a croft in Portnalong, chaired the Assessors Meeting and Roadshow in Portree on 3 November, will attend a meeting in Stornoway in November with the Convener to discuss an ongoing case, and will meet the Minister on 9 November with other Commissioners.

**Commissioner Swann** – Was supposed to be visiting Orkney with HIE but that trip was cancelled. The Director of Development from HIE is leaving and Commissioner Swann will ask for an early meeting with her replacement, to discuss crofting development.

**Commissioner Sinclair** – Attended the Crofting Roadshow in Shetland on 7 October, attended the Audit & Finance Committee Meeting, and attended a meeting to discuss the letting of a croft.

**Commissioner Campbell** – Attended the Crofting Roadshow in Lairg, attended the Devolved Decision Making STWG Meeting, attended the Audit & Finance Committee Meeting, attended the letting of a croft meeting in Portnalong, and attended the Regulatory Staff Away Day in Rogart last week.

**Commissioner MacLennan** – Attended the lamb sales in Stornoway, attended several meetings with crofters in the SGRPID office in Stornoway, attended the Crofting Roadshow in Stornoway, and attended the Crofting Roadshow in Portree. Was supposed to be holding a surgery in Barra but the ferries were cancelled so that meeting will be re-scheduled.

**Commissioner Dennis** – Attended the Crofting Roadshow in Thurso, attended a meeting with the Cairngorm National Park Authority, where the Land Use Manager gave a presentation on the future of Scottish agriculture, attended a meeting in Perth on behalf of the Commission about Scotland's Moorland Forum, and the Forum are looking for someone to represent crofting interests as part of the group that will be reviewing the Muirburn Code. If anyone is interested they should get in touch with Commissioner Dennis or the Chief Executive. Attended the Devolved Decision Making STWG and will be attending the meeting with the Minister on 9 November.

## **8 GRAZINGS PROJECT**

The Head of IS gave an update on the progress of the Grazings Registration Project.

The project is funded by the Scottish Government and is funded until the end of March 2016.

To date, the Commission has engaged with 485 common grazings committees, and of those, 195 common grazings have been registered. There is a backlog and staff will concentrate on registering the 290 outstanding common grazings that they are already engaged with meantime.

## **9 AUDIT & FINANCE COMMITTEE REPORT**

### **(a) Update from Commissioner Swann**

Commissioner Swann gave an update following the AFC Meeting that was held on 20 October 2015.

On page 1, Item 4 of the AFC minutes, the external Audit fees were confirmed for the next year and the program was updated for the external Audit report coming to the Commission.

The Scheme of Financial Delegation will need to be reviewed in due course and the Committee is expecting a new framework document from Scottish Government for Financial Reporting, but will continue with the current Financial instructions until the new document is received.

The Committee's current Terms of Reference were considered to be satisfactory.

The Committee looked at the Financial Shared Services Agreement with SNH and charges were thought to still be best value. The Committee were content with the Service Level Agreement, subject to one or two alterations.

The Anti-Fraud Policy will be discussed under Exclusion of the Press and Public.

A review of the Whistle Blowing Policy was considered fit for purpose and the Risk Register was reviewed.

The Committee will have a regular Finance Presentation, in line with other Key Performance Indicators.

Key Performance Indicators were reviewed and the only one of any significance was the one regarding Information Systems.

The Committee looked at the auditing requirements for the new Devolved Decision Making process and a new policy for consistency of decision making will have to be implemented, to make sure the process is working correctly.

Commissioner Swann thought it would be a good idea to advise the SPSO about the Commission's change in decision making processes, and the Chief Executive agreed to speak to them informally.

The Financial Report from the Finance Manager was satisfactory, and in line with Grant-in-Aid for this point in the Financial year.

The Vice-Convenor advised that he had attended the AFC Meeting as an observer, and was very impressed with the professionalism of the Committee Meeting.

#### **(b) Draft Minutes from AFC Meeting held on 20 October 2015**

The draft minutes were approved.

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

The Chief Executive presented the Risk Register and advised that the Senior Management Team reviews the Risk Register on a regular basis. The most important risk is the new Croft Information System, and the other risks that are red or amber are all linked to the implementation of the new computer system.

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

Commissioner Swann advised that the KPIs are proving to be a useful tool and not too onerous on staff time.

The Chief Executive advised that as well as concern about the new CIS computer system, there is also concern about the Census returns, which require 9000 changes to data before the next Census form can be issued. So far, staff have processed 7000 of those changes and the Chief Executive commends the staff for their hard work. The launch of the new CIS system has been delayed, to enable all the data changes to be updated, and the next Census form will be issued at the end of December 2015.

Commissioners advised that they had received feedback from crofters that the Census form was very easy to complete, which is reassuring.

Commissioner Swann advised that Audit Scotland are pleased with the way the Commission's governance responsibilities are coming together, and he feels that the Commission is in the strongest position it has ever been in, in terms of how it reports and records information and how the Policies are being implemented.

The Convenor wished to formally thank the Chief Executive, her staff and everyone involved in getting to this important position.

## **10 CIS UPDATE**

The Head of IS handed out a timeline document and gave an update on how the new computer system, Computer Information System (CIS) is progressing. It had been hoped to launch the new system at the beginning of November 2015 but that date has slipped back due to various issues.

Staff are working hard on building the IT system and the processes. User testing will take place throughout November and training materials will be developed from November until January. Once the system is ready to go live, all the data from the CADs system will be migrated to the new CIS system. If for any reason that does not go according to plan, the CADS system will still be available to use as a backup. Unfortunately, CADS is currently on old hardware, which would be difficult to source if it failed. To mitigate for this, data will be migrated at the end of November.

The Commission asked that a Paper be brought to the next Board Meeting, to reassure the Commission that data is adequately backed up and will not be lost, if the CADS system were to fail. This information will then be passed to the AFC at their next meeting in January. The Commission would also like an update at the next Board Meeting of the likely go-live date of the CIS system.

<b>Decision</b>	<b>The Commission asked that a Paper be brought to the next Board Meeting, to reassure the Commission that data is adequately backed up and will not be lost, if the CADS system were to fail.</b> <b>The Commission would also like an update at the next Board Meeting of the likely go-live date of the CIS system.</b>
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The Commission wished to record their appreciation of all the work that is going into the development and implementation of the new computer system. They realise that staff must be under a lot of pressure but hopefully the benefits will soon be seen by all.

## **11 CENSUS 2015 UPDATE**

The Head of IS advised that the Census form has been updated and simplified, and will be issued at the end of December 2015.

All the 9000 changes that were reported in the return of the 2014 Census must be updated by staff by 4 December 2015, if they are to be included in the 2015 Census. If there are some changes that staff do not manage to update by then, a letter will be issued to those affected, advising them of the situation and the reason.

It is hoped that the volume of calls coming in after the issue of the 2015 Census will be reduced, as the form has been simplified. A sheet with Frequently Asked Questions will be issued with the new Census form.

## **12 COMPLAINTS COMMITTEE UPDATE**

### **(a) Update from Chairperson**

The Vice-Convenor gave an update following the Complaints & Investigations Committee Meeting on 14 October 2015. He advised that, although the Convenor attended the C&ICM and policy states that if the Convenor attends a meeting he must chair that meeting, the Convenor delegated the chairing of the C&ICM to the Vice-Convenor.

The Head of Policy declared an interest in Bohuntin Sheep Stock Club, and the Vice-Convenor declared an interest in Mangersta Common Grazings.

The Vice-Convenor advised that the Convenor and himself are visiting Upper Coll in Lewis next week, to try to resolve issues there.

The Commission asked why Terms of Reference was to be revisited at the next meeting, and the Chief Executive advised that the original thought had been that the Complaints Committee should just look at complaints received by the Commission and look at lessons learnt, to improve the service we provide to our customers. But the Committee has also been dealing with complex and legacy cases, and it was felt that the remit of the Committee needed to be looked at and clarified.

Any decisions made about the remit of the Committee will come to the full Board for approval.

The Vice-Convener advised that all complaints statistics are displayed on the Commission's website for everyone to see.

The Convener reminded the Board that once a final decision is made by the Board, that is the decision.

**(b) Draft Minutes from Complaints & Investigations Committee Meeting of 14 October 2015**

The draft Minutes from the Complaints & Investigations Committee Meeting held on 14 October 2015 were approved.

**13 POLICY PLAN**

The Commission Solicitor presented the Paper, and advised that the variations to the Policy Plan have been out for consultation to the Scottish Government, Highland Council, Argyll & Bute Council, Shetland and Orkney Councils, and HIE. Regarding the decrofting element and Land Court cases, two versions were drafted, A and B, and Commissioners have advised that they prefer Version A.

Any changes to the Policy Plan have been highlighted in red

The Head of Policy advised that the responses have been circulated to Commissioners and the intention is to send the revised Policy Plan to the Minister at the end of this week.

The Plan is now much more closely linked to legislation.

The Commission expressed disappointment that Shetland & Orkney Council did not respond to the consultation.

The Head of Policy wished to highlight paragraph 120 on page 23 regarding 'Working with Scottish Ministers' Estates'. He had also produced an alternative sheet entitled 'Geographic Initiatives (geo-pilots)' and after discussion the Commission agreed they wanted the alternative sheet entitled 'Geographic Initiatives (geo-pilots)' included in the Plan.

The Commission also want to remove paragraph 44 on page 10 from the Policy Plan, and remove the red text from paragraph 89 on page 18.

The Commission approved the variations to the Policy Plan, with the above changes incorporated.

<b>Decision</b>	<b>The Commission approved the variations to the Policy Plan with the following changes:</b>  <b>At paragraph 120 on page 23 regarding ‘Working with Scottish Ministers’ Estates’, use the alternative sheet entitled ‘Geographic Initiatives (geo-pilots)’ instead.</b>  <b>Remove paragraph 44 on page 10 from the Policy Plan, and remove the red text from paragraph 89 on page 18.</b>
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#### **14 MINISTERIAL VISIT**

The Chief Executive advised that the Minister for the Environment, Climate Change and Land Reform will be meeting with Commissioners in Inverness on 9 November 2015.

The Minister will visit the Bull Stud at Knocknagael Farm in Inverness first, along with two young crofters, Vivienne Montgomery and Donald MacKinnon, before the Commissioners meeting in Great Glen House. There will be four short presentations from staff on the Crofting Roadshows, Delegated Decision Making, the new computer system (CIS), and the re-let of a croft at Portnalong.

Commissioners have highlighted a number of issues that they would like raised with the Minister e.g. the new Hogg scheme, the Housing issue, Governance, and the Convener will prioritise which issues can be raised, given the time available.

#### **15 DATE OF NEXT MEETING**

9 December 2015 – Great Glen House

#### **16 ANY URGENT BUSINESS**

The Chief Executive advised that she had an item to raise, but it would be dealt with under Exclusion of Press and Public.

The Convener thanked everyone for attending the meeting today, especially the members of the public and Lucy Carmichael from Scottish Government.

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

The meeting ended at 11:55 hrs.