

# CROFTING COMMISSION

## MINUTE OF THE COMMISSION MEETING HELD AT GREAT GLEN HOUSE ON 4 MAY 2016

Present:	Colin Kennedy	Convener
	IG Macdonald	Vice-Convener
	David Campbell	Commissioner
	Arnie Pirie	Commissioner
	Marina Dennis	Commissioner
	William Swann	Commissioner
	Murdo MacLennan	Commissioner
	Catriona Maclean	Chief Executive
	Donna Smith	Deputy Chief Executive
	Joseph Kerr	Head of Regulation
	John Toal	Head of Policy
	David Findlay	Commission Solicitor
	Jane Thomas	Head of C&CS/Minute-taker
	Posy MacRae	Communications Manager
	Donald Lamont	BBC Alba

### **1 APOLOGIES AND WELCOME**

Apologies were received from Michael Nugent, Scottish Government and Commissioner Kathleen Sinclair.

### **2 DECLARATION OF INTERESTS**

The Vice-Convener declared an interest in the Mangersta Common Grazings case.

Commissioner MacLennan declared an interest in the Mangersta Common Grazings case, the Upper Coll Common Grazings case and all parts of Item 14 on the agenda.

Before continuing with the business of the meeting, the Convener read out a Commission Statement on grazings committees, following interest in the Upper Coll and Mangersta Grazings cases. The meeting was then suspended for 15 minutes to allow the statement to be released to the public by the Communications Manager.

Accompanied by Mr Lamont, Commissioner MacLennan left the room to provide BBC Alba with an interview. The meeting reconvened at 9:50am without Commissioner MacLennan.

### 3 APPROVAL OF DRAFT BOARD MINUTE OF 9 MARCH 2016

The Minute of the Meetings of 9 March 2016 and 11 March 2016 were approved subject to the following amendments:

Page	Item	Paragraph	Amended/Additional text should read
6	b	10	Sentence to be deleted
7	b		Vice-Convener to be added to first sentence in Decision box and final paragraph of Decision box to be deleted.
12	3	1	First sentence amended to read, "The Commission agreed that the first four "musts" may have been met, subject to confirmation of the information provided on the audited accounts, which had still to be verified. Further discussion was held on item 5 around the dictionary definition ..."

### 4 MATTERS ARISING FROM PREVIOUS MEETING

The Action Points from the previous meetings on 9 and 11 March 2016 were reviewed:

- Page 8 Decision box (Convener Kennedy declared an interest and left the room at 9:55am). Commissioner Swann confirmed that he had drafted grounds and these would now go to Commissioners, excluding the Convener and Commissioner MacLennan, who have declared an interest.
- The Chief Executive confirmed that Finlay Beaton's secondment to RPID had ended but he would continue to work on a small number of outstanding cases for them for around a month.
- Head of Regulation explained that the rectification form has been received for the Kilvaree case so it can now be completed.

Commissioner MacLennan and Mrs MacRae, Communications Manager returned to the room at 10:00am.

### 5 ADVANCED PAPERS FOR APPROVAL

#### (a) Who can object to decrofting applications

Commissioners had considered the Paper by e-mail and approved it without amendment.

<b>Decision</b>	<b>Commission agreed to adopt Option C – only submissions from parties with a right to appeal against the Commission giving a decrofting direction may be considered as objections to decrofting proposals.</b>
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#### (b) Investigation into breach of grazing regulations 47(8)

Commissioners approved the Recommendation in the Paper, which provided a Workflow indicating how an inquiry/action would be dealt with under Section 47(8).

<b>Decision</b>	<b>Commission agreed to adopt an approach to dealing with reports of grazings clerks or members of grazing committees failing to properly carry out their duties, as set out in Paper 5(b).</b>
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### **(b)(i) Section 47(8) Augmentation**

Commissioners approved the Paper subject to replacing the words “fixed period of time”, with “appropriate period of time”, to allow greater flexibility.

<b>Decision</b>	<b>Commission agreed that, under Section 47(8), if a committee is found to be failing to carry out their duties, they will be given an appropriate period of time to rectify the matter, such time to be determined on a case by case basis. Failing this, they will be removed from office. If removed from office, the first obligation of any new committee will be to implement the findings of the Commission investigation and make good anything resulting from that which led to the removal, should this not already have been done.</b>
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## **6 SHORT TERM WORKING GROUP UPDATES**

### **Lettings Group**

Commissioner Campbell provided an update on the review of the letting process undertaken by the group, which had considered the issue of landlords failing to let their own crofts. The group had worked positively to develop a robust and fair process, including the criteria by which applications will be measured. The criteria focus on applicants meeting their duties and favours new entrants, except where the tenancy is for a share only.

A Paper will now be prepared for the June Board meeting, following which it may be possible to consider the first lets in August.

The Convener wished to formally record his thanks to those on the group for their work.

### **Apportionment Group**

Staff dealt with outstanding issues following the last Board meeting and are now working through the implications of proposed changes and will request input from Commissioners as part of the review of the changes, prior to implementation.

## **7 REPORT FROM COMMISSIONERS-EVENTS PLANNED AND/OR ATTENDED**

Convener Kennedy attended several Board Teleconferences, the Crofting Law Conference, a meeting in Roy Bridge, a Rural Affairs Food & the Environment event, STWG parameters group by teleconference, Crofting Stakeholders forum, Complaints Quality Assurance Committee by teleconference and a Governance event in Edinburgh. In the coming weeks visits have been arranged to Upper Coll, Mangersta, Tiree and Kilvaree.

Vice Convener Macdonald attended Board Teleconferences, the Complaints Quality Assurance committee meeting, the STWG on Letting and plans to attend a Soil Association event in Skye on 10 June.

William Swann attended Teleconferences, a meeting of the HIE Board, chaired the Audit and Finance committee meeting and had a meeting with the grazings clerk in Sleat regarding Sleat Community Trust proposals on re-wilding. A meeting with landowners on new croft creation is planned.

Arnie Pirie attended a Board meeting by Teleconference and a ploughing match organised by the Orkney Agricultural Society.

Marina Dennis attended three Teleconferences and in mid-May will attend a meeting in Lewis.

David Campbell attended Teleconferences, the Crofting Law conference and a Roadshow on historic environmental architecture. He will be in Lewis with the Commission in mid-May and attend a Hearing in Tiree.

Murdo MacLennan attended Teleconference meetings, the Crofting Law conference, a meeting in Roy Bridge, as the appellant in Land Court Hearing re Scarp/Hushinish first registration challenge and plans to attend a Hearing in Tiree.

The Chief Executive confirmed that the JCC of Comhairle nan Eilean Siar has invited the Commission to a private meeting to consider the implications of present common grazings cases on village development. It was agreed that this would be followed up after the parliamentary elections, that at least two people would attend and that this was a positive opportunity to explain the position taken by the Commission in relation to Crofting Law and common grazing committees, rather than to engage in a discussion on specific cases.

<b>Decision</b>	<b>The Commission agreed to accept an invitation to meet privately with Comhairle nan Eilean Siar</b>
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## **8 AUDIT & FINANCE COMMITTEE REPORT**

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

Commissioner Swann introduced items brought to the Audit and Finance committee, drawing attention to positive reports from Audit Scotland. Internal Audit work-plans are in place and Scott-Moncrieff will be conducting a review of cybersecurity arrangements and the complaints handling process later in May.

### **(b) Draft Minutes from 13 April 2016**

The draft Minute was approved.

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

Commissioner Swann drew attention to the resources required in the Registration process and to the HMRC review of the VAT position.

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

Commissioner Swann provided context for the setting of targets, explaining that these can now be reviewed in the light of experience from the previous year's estimates.

### **(e) Audit Scotland Financial Reporting and Scrutiny**

This pack had been included with the Board papers, to make Commissioners aware, from a governance point of view. As a result of the guidance, there would be minor changes to the formatting of the Annual Accounts.

## 9 COMPLAINTS QUALITY ASSURANCE COMMITTEE UPDATE

### (a) Update from Chairperson

Vice-Convener Macdonald explained the meeting of the committee in April had been the first under the new Terms of Reference, approved by the Board in March, with the focus now on quality assurance and learning lessons from complaints. Commissioners were pleased to see this change of emphasis and hoped it would result in improved customer service.

### (b) Draft Minutes from 13 April 2016

The Action Points from the draft Minute were highlighted and Mrs Thomas explained why the quarterly statistics for Q3 2015/16 had been amended.

The Commission considered an Action Point relating to the need for agreed parameters for the contents of RPID reports compiled during the casework process. Commissioner MacLennan wished to record that he had no concerns over the content of reports from the Stornoway office. It was agreed that the Head of Regulation would bring forward a Paper on this to the next Board meeting.

It was also agreed that, following the North Erradale case, it would be helpful to provide Area Offices with guidance on conflict of interest.

The draft Minute was approved.

### (c) Q4-Complaints statistics

The Vice-Convener explained the majority of complaints received at the frontline stage were on the census and of the six complaints at Stage 2, two were from the same person and another two were on the same issue. He was pleased to report that there have been no Stage 2 complaints so far in Q1 of the new reporting year.

### (d) Ex-Gratia payments

A Paper on adopting a protocol on ex-gratia payments, made under provisions available to the Chief Executive as Accountable Officer, had been considered and approved by the committee and now came before the Board, with a recommendation to approve.

The Vice-Convener explained that the issue had come to the committee because claims for compensation had formed part of the complaint in several recent cases. The Chief Executive confirmed that any consideration of a claim for an ex-gratia payment as part of the complaints process would need to clearly demonstrate an additional cost had been incurred by the complainant due to an error by the Commission.

The Paper was approved and the Complaints Handling Procedure would be updated.

<b>Decision</b>	<b>Protocol on ex-gratia payments approved.</b>
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## 10 PUBLIC INTEREST

The Chief Executive explained this was a topic that would benefit from greater clarity in terms of what acting in the public interest looks like for the Commission. The Act specifically mentions 'public interest' so it has particular relevance to the customer-facing work of the Commission.

After discussion, the Commission agreed the following outcomes, which would be reflected in a statement to be placed on the Commission's website:

Acting in the Public Interest for the Crofting Commission means;

- Having a well-regulated crofting system
- Identifying problems with the legislation and working to solve them
- Ensuring our processes are appropriate, transparent and fair
- Ensuring that applicants have used the appropriate processes to demonstrate that they have considered the public interest - e.g. planning
- Being willing to highlight and address areas of bad practice
- Having clear policies and guidance which are widely publicised
- Being open and consulting and involving stakeholders in policy decisions
- Acting with integrity and ensuring decisions are, and are seen to be, taken in a way that is above reproach
- Maintaining client confidentiality.

The Commission further agreed that acting in the public interest is not:

- Allowing the general public to participate in a regulatory application process
- Allowing the general public to unduly influence the Commission to the point where it affects the delivery of our functions
- Taking decisions for personal gain or benefit.

The Convener wished to record his thanks to the Chief Executive for her work on this issue.

<b>Decision</b>	<b>Commission agreed the above outcomes represent the interpretation of Public Interest for the organisation and that a statement to that effect should be placed on the website.</b>
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## 11 BOARD MEETINGS – PROGRAMME FOR FUTURE MEETINGS

Donna Smith explained that, with the development phase of the Commission's work largely completed, this was a good time to consider a programme of Board meetings for 2016 and the future.

After discussion, Commissioners agreed to keep to the present schedule of meetings for 2016 but with scope for the December meeting to be used as a training or strategic meeting, rather than a normal business meeting.

For 2017, it was agreed to hold the last formal business meeting of the present Board in February and that an informal meeting should be held in late March, after the crofting elections, between the outgoing and incoming Commissioners. No Board meeting would take place in April but the Board would be invited to an Induction Day in Great Glen House. It was agreed that there would need to be a transition period after March, to allow the new Board to become familiar with their role and the work of the Commission.

<b>Decision</b>	<b>Commissioners approved a programme for Board meetings in 2017, with the caveat that this is subject to change by the new Board.</b>
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## **12 DATE OF NEXT MEETING**

22 June 2016 – Great Glen House

## **13 AOB**

Commissioners expressed concern at continued delays in farm payments and agreed the Chief Executive would write to the Minister after the parliamentary elections.

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

The Convener thanked Commissioners for their contributions and closed the meeting at 12:55pm.