



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

COMMISSION MEETING

4 MAY 2016

**CROFTING COMMISSION MEETING
NOSS & RUM, GREAT GLEN HOUSE
4 MAY 2016 AT 0930hrs**

AGENDA

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|-----------|---|----------------|----------------------|
| 1 | APOLOGIES | <i>Oral</i> | <i>Standing Item</i> |
| 2 | DECLARATION OF INTERESTS | <i>Oral</i> | <i>Standing Item</i> |
| 3 | APPROVAL OF DRAFT BOARD MINUTES OF 9 MARCH 2016 AND MINUTES OF TELECONFERENCE ON 11 MARCH 2016 (Page 1-12) | <i>Minutes</i> | <i>For approval</i> |
| 4 | MATTERS ARISING FROM PREVIOUS MINUTES | <i>Oral</i> | <i>Standing Item</i> |
| 5 | ADVANCED PAPERS FOR APPROVAL | | |
| | <i>(a) Who can object to decrofting applications (Page 13-19)</i> | <i>Paper</i> | <i>For approval</i> |
| | <i>(b) Investigation into breach of grazing regulations 47(8) (Page 21-23)</i> | <i>Paper</i> | <i>For approval</i> |
| | <i>(b)(i) Section 47(8) – Augmentation (Page 25-26)</i> | <i>Paper</i> | <i>For approval</i> |
| 6 | SHORT TERM WORKING GROUP UPDATES | <i>Oral</i> | <i>Standing Item</i> |
| 7 | REPORT FROM COMMISSIONERS – EVENTS PLANNED AND/OR ATTENDED | <i>Oral</i> | <i>Standing Item</i> |
| 8 | AUDIT & FINANCE COMMITTEE REPORT | | |
| | <i>(a) Update from Commissioner William Swann</i> | <i>Oral</i> | <i>Update</i> |
| | <i>(b) Draft Minutes from 13 April 2016 (Page 27-33)</i> | <i>Minutes</i> | <i>For approval</i> |
| | <i>(c) Risk Register (Page 35-39)</i> | <i>Paper</i> | <i>Standing Item</i> |
| | <i>(d) Key Performance Indicators (Page 41-64)</i> | <i>Paper</i> | <i>Standing Item</i> |
| | <i>(e) Audit Scotland – Financial Reporting and Scrutiny (Page 65-72)</i> | <i>Paper</i> | <i>For info</i> |
| 9 | COMPLAINTS QUALITY ASSURANCE COMMITTEE | | |
| | <i>(a) Update from Chairperson</i> | <i>Oral</i> | <i>Update</i> |
| | <i>(b) Draft Minutes from 13 April 2016 (Page 73-76)</i> | <i>Minutes</i> | <i>For approval</i> |
| | <i>(c) Q4 – Complaints Statistics (Page 77)</i> | <i>Paper</i> | <i>For info</i> |
| | <i>(d) Ex Gratia Payments (Page 79-81)</i> | <i>Paper</i> | <i>For decision</i> |
| 10 | PUBLIC INTEREST | <i>Oral</i> | <i>For decision</i> |
| 11 | BOARD MEETINGS – PROGRAMME FOR FUTURE MEETINGS (Page 83-84) | <i>Paper</i> | <i>For decision</i> |
| 12 | DATE OF NEXT MEETING
22 June 2016 – Great Glen House | | |
| 13 | ANY URGENT BUSINESS | | |
| 14 | EXCLUSION OF THE PRESS AND PUBLIC | | |

CROFTING COMMISSION MEETING

4 May 2016

Report by the Chief Executive

SUMMARY

The Commission seeks to have a systematic approach to dealing with reports of grazing clerks or members of grazing committees failing to properly carry out their duties. A Paper was considered at the February Policy in Development Meeting. It was requested that a workflow outlining the process be provided to assist understanding of what takes place during it. This was provided at the March Policy in Development Meeting.

BACKGROUND

Section 47(8) of the Crofters (Scotland) Act 1993, as amended, allows for the Commission to make inquiry as to whether a grazing clerk or members of a grazing committee are properly fulfilling their duties.

CURRENT POSITION

The Act outlines what the Commission may do where it has reason to make inquiry into the alleged failures of a clerk or other members of a grazing committee. The attached workflow provides a structure that enables the Commission to undertake a systematic investigation and undertake appropriate action in line with what the Act permits.

Amendments have been made as requested by Commissioners. These specifically include (a) the inclusion of the views of the grazing committee in any analysis of a complaint, and (b) inserting the words "*that allows an appropriate period of time*" where it states that a grazing committee will be written to, and an action plan and timetable will be provided.

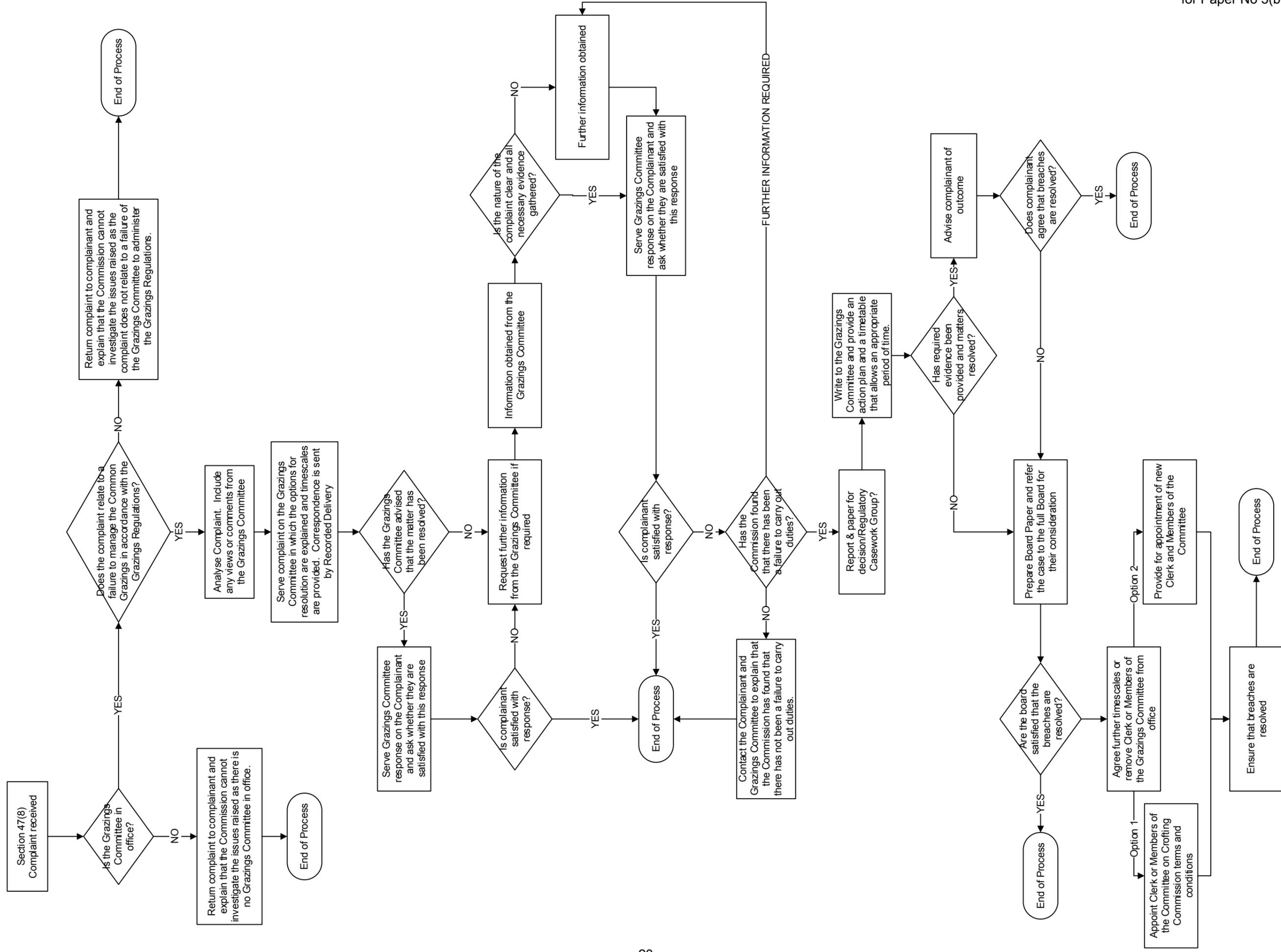
RECOMMENDATION

It is recommended that the Commission approves the attached workflow (Annex A) as the basis for undertaking any inquiry and/or action on receipt of reports under section 47(8) of the Act.

Date 30 March 2016

Author John Toal, Head of Policy

SECTION 47(8) COMPLAINT WORKFLOW



CROFTING COMMISSION MEETING

4 May 2016

Report by the Chief Executive

SUMMARY

The purpose of this Paper is to augment the Paper circulated by e-mail relating to the process for dealing with section 47(8) investigations. It craves to formalise the current process for dealing with committees who have been found to be in breach of their duties following a section 47(8) investigation.

BACKGROUND

In relation to section 47 (8) investigations the law states:-

"If the Commission are satisfied, after making such inquiry, if any, as they may deem necessary, that any or all of the members of a grazing committee (however appointed under this section) are not properly carrying out the duties imposed on them (or that the grazing clerk is not properly carrying out the duties imposed on him) under this Act, the Commission may remove from office any or all such members or such clerk and may appoint or provide for the appointment of other persons (whether crofters or not) in their or his role."

CURRENT POSITION

More crofters are asking the Commission to carry out investigations under section 47(8) of the Act where they are of the view that the committee or clerk are failing to properly carry out their duties. At the last Policy and Procedure Meeting the Commission mapped out the current process for carrying out a section 47(8) investigation and details of that process was circulated to Commissioners for consideration in the Paper item number 5(b).

To date, the process for dealing with committees found to be in breach has not been formalised. Now that a number of test cases have been processed, and the Commission has been informed by the process, it is an appropriate time to formalise it. This will allow Commissioners, staff, grazing committees/clerks and the public to clearly understand what will happen should a committee/clerk be found to be in breach of their duties.

The Commission encourages self-regulation and would hope that shareholders and committees can resolve matters at their own hands. However, it is accepted that this is not always possible. Should, following investigation, the Commission be satisfied that the committee or clerk are in breach of their duties, it will detail the aspects which require to be addressed to correct the situation. The Commission would then give the committee/clerk a period of time, to be determined on a case by case basis, to resolve matters, failing which they will automatically be removed from office. It is further recommended that, should a situation arise where the committee/clerk have been removed, then the first obligation of any new

committee would be to implement the findings of the Commission and make good anything resulting from the occurrence that led to the removal, should this have not already been done.

This process is outlined in the latter stages of the workflow in paper 5(b), but the box on the Board decision requires to be slightly altered to accommodate the above recommendation. It would then read: *Agree final timescale for rectification, if not delivered, remove clerk or members of grazing committee from office.* Following this, there are two options provided for when a committee is removed from office. The Commission can either appoint replacements or can provide for the appointment of replacements. The original Policy in Development Paper indicated that the latter option was open to interpretation and effectively provides the Commission with options as to how it provides for the appointment of other members to a committee. This would allow for the crofters sharing in a common grazing to appoint a committee, however as is made clear in the final box, the requirement of any new appointments will be to rectify any unresolved breaches of duty.

RECOMMENDATION

That in terms of section 47(8), if a committee is found to be failing to carry out their duties, the Commission agrees that they will be given a fixed period of time in which to rectify the matter; such time will be determined on a case by case basis. Failing which they will automatically be removed from office. Also, should they be 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 have already been done.

Date 14 April 2016

Author John Toal, Head of Policy