AGENDA

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

Section 47(8)
Complaint received

Is the Grazings Committee in office?

YES
End of Process

NO
Return complaint to complainant and explain that the Commission cannot investigate the issues raised as there is no Grazings Committee in office.

Return complaint to complainant and explain that the Commission cannot investigate the issues raised as the complaint does not relate to a failure of the Grazings Committee to administer the Grazings Regulations.

Does the complaint relate to a failure to manage the Common Grazings in accordance with the Grazings Regulations?

YES
End of Process

NO
Analyse Complaint. Include any views or comments from the Grazings Committee

Serve complaint on the Grazings Committee in which the options for resolution are explained and timescales are provided. Correspondence is sent by Recorded Delivery.

Is the Grazings Committee in office?

YES
Serve Grazings Committee response on the Complainant and ask whether they are satisfied with this response.

NO
Request further information from the Grazings Committee if required.

Information obtained from the Grazings Committee

Is the nature of the complaint clear and all necessary evidence gathered?

YES
Serve Grazings Committee response on the Complainant and ask whether they are satisfied with this response.

NO
Further information obtained

Further information obtained

Report & paper for decision/Regulatory Casework Group?

YES
Write to the Grazings Committee and provide an action plan and a timetable that allows an appropriate period of time.

NO
Advise complainant of outcome

Are the board satisfied that the breaches are resolved?

YES
End of Process

NO
Prepare Board Paper and refer the case to the full Board for their consideration.

Does complainant agree that breaches are resolved?

YES
End of Process

NO
Agree further timescales or remove Clerk or Members of the Grazings Committee from office.

Provide for appointment of new Clerk and Members of the Committee.

Ensure that breaches are resolved.

End of Process

Has the Grazings Committee advised that the matter has been resolved?

YES
End of Process

NO
Contact the Complainant and Grazings Committee to explain that the Commission has found that there has not been a failure to carry out duties.

Has the Commission found that there has been a failure to carry out duties?

YES
Report & paper for decision/Regulatory Casework Group?

FURTHER INFORMATION REQUIRED

NO
Has required evidence been provided and matters resolved?

YES
Advise complainant of outcome

NO
Prepare Board Paper and refer the case to the full Board for their consideration.

Does complainant agree that breaches are resolved?

YES
End of Process

NO
Agree further timescales or remove Clerk or Members of the Grazings Committee from office.

Provide for appointment of new Clerk and Members of the Committee.

Ensure that breaches are resolved.

End of Process

Is the complaint related to a failure to manage the Common Grazings in accordance with the Grazings Regulations?

YES
End of Process

NO
Analyse Complaint. Include any views or comments from the Grazings Committee.
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