

CROFTERS COMMISSION

BOARD/POLICY MEETING

5 AUGUST 2010

CROFTERS COMMISSION

**A BOARD/POLICY MEETING WILL BE HELD IN GREAT GLEN HOUSE,
LEACHKIN ROAD, INVERNESS ON
THURSDAY 5 AUGUST 2010 AT 0930 HRS**

A G E N D A

1 APOLOGIES

- 2 APPROVAL OF DRAFT BOARD MINUTES OF 5th MAY 2010
APPROVAL OF DRAFT CLOSED SESSION MINUTES OF 5th MAY 2010
APPROVAL OF DRAFT POLICY MINUTES OF 10th JUNE 2010
APPROVAL OF DRAFT CLOSED SESSION MINUTES OF 10th JUNE 2010**

3 MATTERS ARISING FROM PREVIOUS MEETING

4 POLICY

**4.1 MAIN IMPLICATIONS OF THE
CROFTING REFORM (SCOTLAND) ACT 2010** *(Paper attached)*

4.2 ACHNATEIRD TOWNSHIP ABSENTEEISM *(Paper attached)*

5 DATE OF NEXT MEETING: 9th SEPTEMBER 2010

6 AOB

BOARD/POLICY MEETING - 5 AUGUST 2010

PART 1 - APOLOGIES

BOARD/POLICY MEETING - 5 AUGUST 2010

**PART 2: APPROVAL OF DRAFT BOARD MINUTES OF 5th MAY 2010
APPROVAL OF CLOSED SESSION MINUTES OF 5th MAY 2010
APPROVAL OF DRAFT POLICY MINUTES OF 10th JUNE 2010
APPROVAL OF DRAFT CLOSED SESSION MINUTES OF 10th JUNE 2010**

BOARD/POLICY MEETING - 5 AUGUST 2010

PART 3 - MATTERS ARISING FROM PREVIOUS MEETING

BOARD/POLICY MEETING - 5 AUGUST 2010

PART 4: POLICY

MAIN IMPLICATIONS OF THE CROFTING REFORM (SCOTLAND) ACT 2010

INTRODUCTION

This Report aims to highlight what at this stage appear to be those provisions of the Act (strictly speaking the Bill as Passed pending Royal Assent) for the Commission. It is not a comprehensive review of the Act. In particular, it does not analyse the many changes which will no doubt need to be made to processes and to grounds for decisions once we have been able to undertake a detailed analysis of the changes effected to the 1993 Act as amended by the 2007 Act. In particular, Schedule 2 is not analysed here, though it does effect a number of changes (for example in terms of family assignments) which will undoubtedly affect processes, policies and resource allocation.

Furthermore, the Report concentrates on the direct implications for the Commission. It does not, for example, look at the various duties imposed on the Keeper of the Registers of Scotland; though it will be necessary for the Commission and the Keeper to work closely together to ensure our respective processes are designed to work effectively and efficiently.

At time of writing, the likely commencement date or dates are not known, but a considerable amount of planning and preparatory work will be required, beginning immediately. A Joint Programme Board is being set up by Rural Communities directorate with the Commission (Drew Ratter and Nick Reiter will sit on this), along with Project Groups (on New Commission/Elections, Crofting Register, Duties, and Subordinate Legislation) which will report to the Programme Board and all of which will have Crofters Commission representation. As these Groups conduct their work, no doubt a range of further implications will be identified.

This Report is therefore an initial "Heads Up" on the main issues arising from the new Act so far. It is presented in the form of a bullet point summary of the relevant provisions, followed by my comments on the possible issues arising for the Commission. As the "Bill as Passed" stands, the numbering of sections and subsections is utterly confusing, so I have not used them. However, the Report follows the order in which they appear, except that relevant Schedule 1 provisions are incorporated in the comments on the corresponding provision in Part 1.

I would recommend that the Commission:

- notes and comments the contents of this Report;
- raises any other issues they have identified; and
- agrees that the CR(S) Act 2010 become a standing item on Board Agendas

PART 1 (AND SCHEDULE 1): THE NEW COMMISSION

FULL NDPB STATUS OF CROFTING COMMISSION

Acquire/dispose of land, enter into contracts etc

Civil Service staff

Able also to appoint own staff subject to some Ministerial controls

Minister appoints Chief Executive

May charge for functions as prescribed by Minister

The existing Commission does not own any assets (all the equipment etc is Scottish Government owned). The new Commission might be well advised to seek to remain within the Government or some other joint public body procurement system to ensure it can access beneficial rates.

The possible “two tier” staffing remains an issue for the Unions. If it happened, it would probably require separate Human Resources and payroll inputs, and could also involve pay and conditions negotiations by the Commission (as happens with other NDPBs). Government officials have recently agreed that the Unions would be consulted if the use of the provision was being contemplated.

Charging for some of its functions/services will be a matter jointly for the Minister (who can prescribe which functions can be charged for) and the Commission (who would need to set the charges). The Minister gave oral assurances that any such charges would not be excessive, suggesting they might represent about 10% of the average unit costs of processing the relevant application type. If charges were introduced, the Commission would need to set up new procedures and make staff available to check and process fees.

ELECTED MEMBERS

ELECTED:

- *No more than six elected*
- *Regulations to be issued*
- *Undertaking to consult publicly on these*
- *Basis of electoral role to be clarified*
- *Undertakings re spouses*
- *Anyone over age of 16 eligible to be elected*

Although draft Regulations were made to Parliament, there remains a lot of uncertainty about what the electoral system will look like. Undertakings given included looking at the extent of the franchise (will it include spouses for example); the use of the Alternative Vote system; and of course the boundaries of the electoral areas. The elections will be conducted by postal votes.

It is not yet entirely clear who will be responsible for conducting the elections, receiving and checking nominations etc. It is likely that the Government will look to CC register for the initial electoral roll; but the recent distribution of ‘Crofting Matters’ illustrates that there are many gaps and inaccuracies in our records of crofters. Data cleansing is in hand, but careful thought will need to be given about how to ensure that all those who will be eligible to vote will be registered, and those who are not excluded. If spouses or other members of household are also franchised, the exercise potentially becomes much more complex.

APPOINTED MEMBERS

At least 2 appointed

Knowledge of crofting

At least one has Gaelic if none of elected do

At least one represents landlords if none of elected do

Appoint more if not enough elected members

Member to Chair (Convener)

Minister must select Convener from members

Minister may delegate selection to the Commission

but can revoke

We must assume that the appointed Commissioners will be recruited in the normal way (using Nolan principles). One potential “Catch 22” is that the Minister will not know whether or not there is a Gaelic Speaker or landlord representative among the elected Commissioners until they are elected; but realistically must appoint – or at least have a list of potential appointees – before the elections, since once the elections have taken place the new Commissioners effectively become the Commission immediately and will need to start taking regulatory decisions.

Originally the Minister was going directly to appoint the Convener, so concessions were made.

GOVERNANCE

Quorum of 5 (with majority of elected Commissioners)

Delegate to any member/committee/staff

Must have an Audit Committee

May have other Committees

Accounts to be submitted by Ministers to Auditor General

There are extensive powers to delegate available, and with wise use this could help further to streamline processes. The Commission will certainly need to consider how to structure itself. It is unlikely to make sense to have six area teams. I would suggest that there will also need to be some checks and balances in terms of decision taking, given that for the first time the majority of Commissioners will have a definite “local constituency”.

Although the new Commission’s budget is unlikely to be significantly different in either content or amount, financial management arrangements will need to change. It may be that the new body will not need to make use of the Scottish Executive Accounts System (SEAS). The Audit Committee will need to have a different remit and make-up from the current Governance & Efficiency Committee.

The current Commission’s Management Agreement and Financial Memorandum is significantly out of date, but it is now likely that a new one will be drawn up for the Crofting Commission rather than up-dating our existing one.

ASSESSORS

Before appointing Panel, must publish methods to be used for appointment, and functions of Assessors.

Must provide info to crofting communities on appointment and functions that Assessors exercise.

The Act appears to give much the same overall role to Assessors, but also considerable scope for defining the details of their role. Although there is, on the face of it, no requirement to consult on the methods of appointment or the functions, in practice it is likely that the Commission will wish to seek views.

PLAN

Policy on how propose to exercise functions

Submit within 6 months of election

Consult

- ◆ *LAs*
- ◆ *HIE*
- ◆ *others we consider appropriate*

May vary it

- ◆ *need to reconsult*

Status

- ◆ *CC must have regard*
- ◆ *SLC may have regard*

The Plan will be a cornerstone document for the Commission in how it prioritises its work, conducts its processes and, most critically, reaches its decisions. A key early decision will be how far to consult on it (given that the Commission will not want to re-open all the recent debates over and above what the Plan needs to deliver). Although the Commission has 6 months to submit the Plan, it will need to be taking decisions well before then. There is a strong case, therefore, for a Draft Plan to be prepared in advance of the elections for the new Commissioners to consider and amend and then use as their Interim Policy for decisions, pending adoption of the actual agreed Plan. It is also worth bearing in mind that elected Commissioners may have presented their own 'Manifestos' during the election, and may well press for these to be included in the Plan.

We argued for a provision that the SLC **MUST** (rather than **MAY**) have regard to the Plan – this was not taken up. Nevertheless, it is likely that the Plan will be taken into account in determining appeals.

POPULATION RETENTION

Must have regard to it in decision making

The Commission will need to consider carefully all the changes, some of them quite subtle, which the 2010 Act will effect on the 1993 Act. However, this provision is worth highlighting, since it reflects the current Commission's view that population retention is a major positive outcome we wish to pursue. The Commission will need to look at ways of objectively assessing this and indeed of subsequently monitoring it. The Plan will no doubt need to address this aspect.

ANNUAL REPORT

To include assessment of issues

Required to consult LAs & HIE

This is a potentially major change to the Annual Report. Firstly, providing objective (and preferably quantified) information on the issues and state of crofting will require new work and effort. Some information will be gleaned from the annual notices to crofters (see later below), other might be obtained from other bodies, probably as part of the consultations. The Commission will no doubt wish to seek the views of the Minister/Sponsor Division on what is expected.

PART 2: CROFTING REGISTER

ESTABLISHING THE REGISTER

Establishing it will be subject to Statutory Instrument by Affirmative resolution
Undertaking to wait 2 years? before compulsory triggers begin
Subsidised Scheme to encourage group applications/community mapping
Opposition parties committed to repeal this part if elected?

TRIGGERS FOR FIRST REGISTRATION

Schedule 1A lists these
Offence if not done in several categories

The Government has given an undertaking that some (or all?) of the triggers will not be enacted immediately, to give time for voluntary registration to take place; and has made funds available to subsidise group applications and 'community mapping' initiatives. It is not clear whether the Commission will be expected to promote this approach, or how far other bodies such as HIE and Local Authorities will be involved.

Schedule 1A shows how potentially complex the requirements are on individual crofters or owners. The Commission is often likely to be the first port of call for advice on this, and there will need to be clear agreement with the Keeper of RoS about how and by whom this advice is given.

APPLICATIONS FOR REGISTRATION

Submitted with fees to CC
CC must check info as soon as reasonably practicable
CC may seek further info before forwarding to Keeper
CC may refuse to forward (grounds in Act)
If refuse, counts as a decision of the CC under s. 52A of 1993 Act
so Appeal to SLC kicks in

The Crofting Register Project Group needs to elucidate and agree the full implications of these provisions, including the extent and scope of the Commission's 'checking' role; how fees will be handled; and to what extent the Commission will seek further information. The outcome of the Group's work will determine just how extensive are the resource implications for the Commission.

Note that any refusal to forward to the Keeper counts as an appealable decision by the Commission. So the same care in determining grounds for refusal will be needed as for a regulatory decision.

CERTIFICATE OF REGISTRATION

On receipt of a certificate of registration, CC must notify a defined range of people (inc. all adjacent occupiers or owners, whether or not croft land).

Period for appeal against proposed registration by Keeper is now 9 months from date last person has been notified.

The requirement to notify could involve some considerable work – especially since this could include non-crofting neighbours of whom the Commission would not have any record or knowledge. The Commission will need to find cost-effective ways of doing this, whilst being able to demonstrate that all reasonable efforts have been made.

The full import of the 9 month (up from initial proposal of 6 months) appeal period against registration will need to be analysed. Conceivable it could delay either the taking or the effect of a Commission regulatory decision (for example on decrofting).

OTHER PROVISIONS FOR REGISTRATION

Common Grazings

Runrig

New Crofts

The Act makes separate provisions for these types of registration which could involve work for the Commission. In particular, it is not yet clear what the Commission's precise roles in the registration of Common Grazings will be.

PART 3: DUTIES OF CROFTERS

OTHER PURPOSEFUL USE

*Commission consent required if landlord does not consent
CC needs to consult and decide within 28 days of receipt of application*

It is not clear how often this sort of case might arise. When it does, the Commission will be under a very tight time constraint, given it must consult and decide within 28 days. The Plan will need to address the principle considerations for such decisions.

OWNER OCCUPIERS

*Same duties as crofters
Likely to be eligible for same grants*

Potentially the biggest impact of this will be to promote a surge in Right to Buy purchases, which in turn might eventually lead to an increase in decrofting applications.

CONSENT TO BE ABSENT

*CC must decide within 28 days
Can make subject to conditions
Must notify applicant and landlord of reasons for decision*

The guiding policy on granting consent will need to be shown in Plan. The 28 days timeframe could be challenging, especially if there is a surge of applications (which might be precipitated by, for example, a high profile case of action against an absentee).

ANNUAL NOTICES TO ALL CROFTERS

*Every crofter must be issued with annual notice requiring certain info about how he/she is meeting residency and proper use duties + any other info CC require.
Offence not to supply information requested.*

The Commission will need an up-to-date record of all crofters. We are looking to see if this duty could be discharged by incorporating it into other existing returns (eg Agricultural), but the initial view is that the duty is specific and may have to be undertaken by the Commission separately.

It is likely that a simple pro-forma would be used, but the Commission will need to consider what information over and above the minimum required it would wish to seek.

A crofter's failure to comply is an offence, but it is not clear how far the Commission should chase up returns, or indeed refer a failure to comply for possible prosecution. Nor is it clear how far or in what way the Commission should or could verify the information received.

The Commission will also need to consider what it wishes to do with the information.

BREACHES OF DUTIES

CC has duty to investigate and enforce duties of crofters:

- *if notified by Grazings Committee of breaches as part of 5-yearly report*
- *if we receive information in writing from Assessor, Grazings Committee, Grazings Constable or member of crofting community*

Experience with the 2007 Act provision for neglect and misuse suggests that specific complaints/notifications from the sources above are few and far between. However, this provision covers ALL duties, including the residential one, so it is not possible to gauge yet how extensive this will be. The new Commission will no doubt continue with its own prioritised action on occupancy, based on its records of absenteeism.

Note also that action on misuse and neglect is no longer in terms of referring to the SLC as in the 2007 Act: the Commission itself will be responsible for taking action.

GRAZINGS COMMITTEES REPORTS

Grazings Committee duty to report every 5 years

- ◆ *First report due asap one year after commencement*
- ◆ *Every 5 years*
- ◆ *Condition of grazings, condition of every croft of shareholders, any other matters CC require*

A late amendment (at Stage 3) which was not debated. This puts a completely new duty and indeed role on Grazings Committees, effectively to assess and report on the 'performance' of each shareholder's croft as well as the state of the common grazings. The potential for friction here is clear; but perhaps the most likely outcome in many cases is that the Report will not readily be forthcoming. It is not clear how far the Commission could or would pursue non-returns. No specific penalty is included in the Act, but presumably the existing sanctions in the 1993 Act could apply to Grazings Committees who are not performing their duties correctly.

There could, of course, be conflicting information between the Grazings Committee Report and the annual returns required from each individual crofter. Investigating discrepancies could be time consuming.

PART 4: FURTHER AMENDMENTS TO 1993 ACT

NUMBER OF TECHICAL CHANGES TO 1993/2007 ACTS
<i>Changes to s. 58 A</i> <i>Extension of clawback from 5 to 10 years</i> <i>Closure of 'Whitbread loophole'</i> <i>Commission no need to consider decrofting application when acting to re-let croft</i> <i>Removal of Stated Case procedure for Appeals</i>
<p>The changes to s.58A will need to be analysed closely by the Project Group.</p> <p>The provision which effectively gives primacy to the Commission's action on re-lets could help to avoid obstructive or delaying tactics, although it is unlikely to be relevant to most casework.</p> <p>The removal of the Stated Case procedure for Appeals is very welcome.</p>

PART 5: MISCELLANEOUS

GOVERNMENT REPORT
<i>Government duty to report to Parliament every 4 years on state of crofting</i>
<p>Most of this Part of the Act will be analysed by the relevant Project Group. The provision for a 4-yearly Report by the Government to Parliament is worth noting, if only because it is very likely the Commission will need to provide a lot of the groundwork for its information.</p>

**REPORT TO BOARD MEETING OF CROFTERS COMMISSION
5 AUGUST 2010**

ACHNATEIRD TOWNSHIP ABSENTEEISM

Report by: Croft Occupancy Team

Purpose

This Report results from the issue of absenteeism within the township of Easter and Wester Achnateird being raised by a Commissioner at the Commission Board Meeting in May. Whilst adopting a general approach to dealing with all absentee cases of more than 10 years, allowance can be made for specific communities where the Commission considers that intervention is justified. This is contingent upon the availability of resources.

Considerations

The Township Report indicates that there are seventeen crofts within the Achnateird Township. Of these, twelve are tenanted while six have been purchased. At least five of the tenanted crofts have absentee tenants and two of the crofts have absent owners. Three crofts are currently registered with a deceased crofter. Of those crofts held by absentees, all but one is over the 10 year threshold (see Appendix A).

The township's situation has attracted attention because certain details were highlighted within the Committee of Inquiry into Crofting Report. The details on occupancy quoted do not differ markedly from those held by the Commission. Also highlighted were the lack of crofting activity and the high percentage of holiday homes. More recently, the Scottish Crofting Federation also provided a note of this township situation to the Committee for Rural Affairs and Environment.

Options

The options are whether the Commission should divert some resource to concentrate specifically on this township or whether the absentees here should be part of the overall Occupancy process.

The fact that all but one of the absentees will have action initiated over the course of the following 10 months does not suggest that there is a compelling need to give immediate and specific attention to this township in particular. Following receipt of the initial advisory letter and subsequent communication, one of the absentees has already made an application to assign that croft to the individual residing in the former croft house. It transpires that this person is the one who is recorded as being below the 10 year absentee threshold.

There is a need for the situation concerning the deceased owner of three crofts to be followed up through the appropriate regulatory process. Accordingly there is potential to make a substantial difference to croft occupancy within this township through the general direction of the Occupancy Initiative and the pursuit of other regulatory functions.

Resource Implications

Addressing the Achnateird absenteeism within the general process of the Occupancy Initiative will not require any additional resources. Some additional resource might be required if the situation is to be more fully investigated to ascertain whether all the crofters registered as resident are in fact resident. However, such investigation would be a deviation from the approach being currently pursued for all other cases.

Recommendation

As there is potential to make a substantial difference to croft occupancy within this township by progressing the current Occupancy Programme, there appears to be no compelling requirement to concentrate resources more specifically on Achnateird.

APPENDICES

Lettered A, B, C etc. If past papers are used as Appendices they should be re-labelled to avoid being confused with Agenda papers.

LIST OF CROFTS BY TOWNSHIP**Achnateird, Wester & Easter, Glenshiel**

Holding Id	C File	Croft Name	Tenant	Postal Address	Sub Tenant	Owner	Status	Ag Code	Total Area (ha)	Date first became absentee
1137	171	339 Wester Achnateird				Mrs Joan Macrae (deceased)	Owner-Occupier	763/0044	1.133	
2337	1475	547 Easter Achnateird	Mrs F M Morrison	3 Glebe Road Inverinate Kyle			Tenant	763/0010	2.02	
3451	2713	340 Wester Achnateird				Mr F Macrae	Owner Occupier - Tenant of Grazing Share	763/0047	1.54	
7105	6944	345 Wester Achnateird	Mr D M Campbell	Old School Letterfean By Kyle Ross-Shire			Tenant	763/0043	0.49	
7842	7753	465 Wester Achnateird	Miss Christine Matheson	Airdview Dornie Kyle Ross-Shire			Tenant	763/0050		
7943	7862	337 Wester Achnateird	Mr G A Martin	X			Tenant	763/0041	0.6	
7944	7863	552 & 553 Easter Achnateird	Mr M Macrae	Kintail 26 Lower Breakish Isle of Skye			Absentee Tenant	763/0023	4.05	14/02/1987
10893	10953	342 Wester Achnateird				Mr & Mrs George Philip	Absentee Owner	763/0051	1.1	17/07/1995
10893	10953	342 Wester Achnateird				Mrs L J Philip	Absentee Owner	763/0051	1.1	17/07/1985
10942	11004	463 Wester Achnateird				Mrs L Philip	Absentee Owner	763/0025	0.303	17/07/1995
11034	11103	344 Wester Achnateird				Mrs Joan Macrae (deceased)	Owner-Occupier	763/0044	1.16	
11035	11104	347 Wester Achnateird	Miss Christine Matheson	Airdview Dornie Kyle Ross-Shire			Tenant	763/0050	1.26	
14002	14251	343 Wester Achnateird	Mr I J Ross	4 Culloden Road Westhill Inverness			Absentee Tenant	763/0046	0.6	30/09/1994
16363	16689	554 Easter Achnateird	Mrs A Kirk	9 Grampian View Aviemore			Absentee Tenant	763/0022	1.97	16/02/1970

APPENDIX A

Holding Id	C File	Croft Name	Tenant	Postal Address	Sub Tenant	Owner	Status	Ag Code	Total Area (ha)	Date first became absentee
16434	16764	462 Wester Achnateird				Mrs Joan Macrae (deceased)	Owner-Occupier	763/0053	0.4	
18047	18422	349 Wester Achnateird	Mr T Macmillan	15 Coillesdene Crescent Edinburgh			Absentee Tenant	763/0045	0.459	31/12/1976
18405	18791	341 Wester Achnateird	Mr E Campbell	The Old School Letterfean By Kyle Glenshiel			Tenant	763/0048	0.529	
18895	19296	346 Wester Achnateird	Mrs E Martin	6 Ord Wood Muir Of Ord Ross-Shire			Absentee Tenant	763/0042	1.26	13/12/2003
19065	19469	464 Wester Achnateird	Mr R D MacIennan	Pinecroft Camuslongart Ardelve Ross-Shire			Tenant	763/0012		
Count:	18									

BOARD/POLICY MEETING - 5 AUGUST 2010

5 DATE OF NEXT MEETING

Date of next Meeting is 9th September 2010

BOARD/POLICY MEETING - 5 AUGUST 2010

6 AOB