

The 2020/21 audit of the Crofting Commission



AUDITOR GENERAL 

Prepared for the Public Audit Committee by the Auditor General for Scotland
Made under section 22 of the Public Finance and Accountability (Scotland) Act 2000
October 2021

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Introduction

1. I have received the audited annual report and accounts and the independent auditor's report for the Crofting Commission (the Commission) for 2020/21. I am submitting these financial statements and the auditor's report under section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report that I have prepared under section 22(3) of the Act.

2. The auditor issued an unqualified opinion on the Commission's financial statements for 2020/21. I have prepared this report to draw the Scottish Parliament's attention to significant weaknesses in the Commission's leadership and governance arrangements. I also highlight the need to reconsider sponsorship arrangements between the Commission and the Scottish Government and for improvements in the Commission's overall business planning.

Key messages

3. Issues concerning the Commission's governance were previously highlighted in 2016. At this time, the Scottish Government appointed consultants to carry out an external review of governance arrangements. The review found that strong personalities, differences of opinion and apparent incongruent individual objectives and priorities were having negative impacts on how the Commission's Board carried out its functions. An almost entirely new Board took office over in the first three months of 2017, including six new elected commissioners following elections in March 2017. Membership of the Board stayed constant over the next four years. However, the auditors' work this year identified that there has recently been a breakdown in trust between the Board and its senior management.

4. The poor relationship between the Board and senior management has manifested itself in:

- The Board expressing a lack of confidence in the Commission's Chief Executive.
- The lack of involvement of the Board and its Audit and Finance Committee in the setting of the Commission's budget.
- The excessive involvement of the Board and former Convener in operational decision-making, normally the responsibility of the Senior Management Team.

- Concerns about the leadership of the former Convener.

5. At the core of these issues is a failure to respect established boundaries between the respective roles of the Chief Executive, Convener and Board. This transgression, when combined with a breakdown of trust between the various parties, means that the leadership and governance of the Commission is currently falling below the standards expected of a public body in Scotland. These weaknesses were exposed by unexpected challenges in 2020/21, including the COVID-19 pandemic and additional funding with an expanded role for the Commission.

Background

6. Crofting is a system of landholding which is unique to Scotland and is an integral part of life in the Highlands and Islands. A croft is a relatively small agricultural land holding which is normally held in tenancy and which may or may not have buildings or a house associated with it. There are around 20,000 crofts across the crofting counties. Crofts range in size from less than half a hectare to more than 50 hectares but an average croft is nearer five hectares.

7. Crofting plays an important role in many aspects of life in the Highlands and Islands. A croft provides a base for crofters and their families to reside on, utilising the land for agriculture and other enterprises. Crofting has resulted in a strong culture of community and common purpose and is usually done in combination with other means of employment. As well as being a source of economic activity in remote and rural areas, the crofting system of diverse small-scale agriculture and low intensity grazing contributes significantly to the environment, landscape, ecology and biodiversity.

The Commission

8. The Commission was established in April 2012 as a non-departmental public body (NDPB), as part of the Crofting Reform (Scotland) Act 2010 taking over from the Crofters Commission. Its principal functions are the regulation of crofting, promoting the interests of crofting and keeping under review matters relating to crofting. The Crofters (Scotland) Act 1993 also places a duty on the Commission to investigate reports of breaches of duty by tenants and owner-occupier crofters.

9. The Commission consists of a Board of six elected commissioners and three commissioners appointed by the Scottish Ministers, led by a Convener. As such, it operates on a day-to-day basis independently from the Scottish Government, but for which Scottish Ministers are ultimately accountable to the Scottish Parliament. The Commission's Chief Executive, as Accountable Officer for the organisation, is also personally accountable to the Scottish Parliament for ensuring its resources are used economically, efficiently and effectively.

10. The Scottish Government's Agricultural and Rural Economy Directorate sponsors the Commission and provides grant-in-aid which is the Commission's sole source of funding. During 2020/21, the Commission employed an average of 50.9 whole time equivalent staff. Its expenditure during the year amounted to £3.1 million of which £2.4 million was incurred on staff costs (77 per cent).

11. As an NDPB, the relationship between the Board, the Senior Management Team and the Scottish Government sponsor division has a key role in contributing to the effectiveness of the Commission's governance arrangements. Various documents exist to provide guidance on what good governance looks like and the respective roles of those involved in it. These include the Commission's [Framework Document](#), governing the relationship between it and the Scottish Government; Scottish Government guidance such as [On Board: A Guide for Members of Statutory Boards](#), the [Scottish Public Finance Manual](#) and [Model Code of Conduct for Members of Devolved Public Bodies](#); and the Audit Scotland report [The role of boards](#).¹ Together, these set out that:

- The Board, under the leadership of the Convener, is responsible for taking forward the strategic aims and objectives for the body, as agreed by the Scottish Ministers. The Board is also responsible for ensuring that effective arrangements are in place to provide assurance on the Commission's risk management, governance and internal control.
- The Chief Executive and Senior Management Team is responsible for providing operational leadership to the Commission. This includes ensuring that the Board's aims and objectives are met; and that the Commission's functions are delivered, and targets met, through effective executive action. The Chief Executive's general responsibilities also include the performance, management and staffing of the Commission.
- The Scottish Government sponsor division is expected to provide a link between the Commission and the Scottish Ministers. The sponsor division is responsible for ensuring the Commission is adequately briefed about the Scottish Government's policies and priorities, and for monitoring its performance through receipt of board and other papers. While guidance says that sponsor teams do not normally attend Board meetings, this is subject to agreement between the Scottish Government and the public body.² In the Crofting Commission's case, the sponsor division attends most Board meetings at the invitation of the Commission. In accordance with the guidance, it only does so as an observer and speaks only at the request of the Convener.

¹ [Crofting Commission framework document](#) Framework Documents set out formally the relationship between arms-length public bodies and the Scottish Ministers and Scottish Government officials. Framework Documents are very similar for all public bodies but can vary in detail according to the functions, powers and finances of the public body.

² [On Board: A Guide for Members of Statutory Boards, Scottish Government, March 2017](#)

Weaknesses in leadership and governance

12. The Commission does not have an overriding 'Code of Corporate Governance' or equivalent. Instead, its enacting legislation, Framework Document, other Scottish Government guidance and Terms of Reference for the Audit and Finance Committee set out, in general terms, the Commission's governance arrangements.

13. As part of the 2020/21 audit, the auditor identified deficiencies in the leadership and governance of the Commission, indicating a breakdown in trust between the Board and senior management. The deficiencies included:

- The Board's lack of confidence in the Commission's Chief Executive
 - In November 2020, the then Convener sent a letter to the former Scottish Cabinet Secretary for Rural Economy and Tourism on behalf of the Board communicating that it had no confidence in the abilities of the Chief Executive to discharge his duties.³ Specific concerns raised included a lack of leadership; indecisiveness; procrastination; a lack of communication; and poor personnel management. The Board did not inform the Chief Executive or Senior Management Team about the letter. The letter was passed to the sponsor division, who then privately and confidentially informed the Chief Executive of its existence in general terms but did not tell the Board that it had done so. The Cabinet Secretary met members of the Board and the Chief Executive in July and September 2021 respectively to discuss the concerns raised, although a formal response to the letter has yet to be received.
- The lack of involvement of the Board and wider stakeholders in the setting of the Commission's budget.
 - The Commission's 2020/21 draft budget was presented to the Audit and Finance Committee in January 2021. The draft budget had been developed without prior Board or Audit and Finance Committee involvement. There was also minimal involvement of the Senior Management Team beyond the Chief Executive and Head of Finance. The auditor has recommended that the Commission needs to re-evaluate the level of involvement of key stakeholders to ensure that the Board's priorities are appropriately considered in the development as well as the subsequent approval of its budget.
- Excessive involvement of the Board and former Convener in operational decision-making.
 - As noted above, boards are expected to provide strategic direction to public bodies while management is responsible for the operational delivery of aims and objectives. The auditor reported examples where some members of the Board, including the

³ Under the Crofting Reform (Scotland) Act 2010 Scottish Ministers are responsible for appointing the chief executive of the Commission, after consultation with the Convener.

Convener, excessively involved themselves in matters that would typically be the responsibility of the Senior Management Team. Examples included large amounts of Board time spent discussing individual grades that new staff positions should be at within the organisation, including for junior positions.

During the early stages of the Covid-19 pandemic when Commission staff were unavailable, the former Convener and some Board members periodically performed office duties. Their involvement in operational duties of this type helped maintain services to crofters and could be justified.

- The leadership of the, now former, Convener.
 - The auditor identified a number of concerns regarding the Convener's leadership of the Commission. These included not carrying out performance appraisals on other Board members; not recognising the distinction of their role from that of management, making repeated requests to regularly attend Senior Management Team meetings; failing to appropriately chair meetings of the Board by allowing it to move into areas which were beyond its remit; and arranging a private decision-making meeting of the Board which was not minuted, contrary to the Commission's Standing Orders. While the Convener retained the confidence of his Board colleagues, and crofting stakeholders recognise his positive contribution, the Convener resigned from his position as a commissioner in June 2021.

Relationship with the sponsor division

14. The Scottish Government's guidance notes that 'mutual investment in a constructive relationship between the Chair and sponsor directorate is important to supporting the effective performance and delivery of the public body'.⁴ The auditor identified a number of instances where the sponsorship division appeared to view its relationship of consequence as being with the Senior Management Team rather than the Convener. For example:

- Throughout 2020/21, the auditor found evidence of the Chief Executive asking the sponsor division for advice on the application of the Commission's governance arrangements, primarily when he and the Board disagreed on their respective roles and responsibilities. For example, the Chief Executive sought advice and support from the sponsor division over proposed changes to the structure of the Senior Management Team when he anticipated Board opposition to the proposals (see paragraph 16 below). In normal circumstances, this would be for an issue for the Chief Executive, in consultation with the Board, to manage.

⁴ [On Board: A Guide for Members of Statutory Boards, Scottish Government, October 2017](#)

- Proposals for an expanded role in grazings for the Commission to be included in the National Development Plan for Crofting were initially communicated by informal discussions between the sponsor division, Commission management and the Convener. While the Convener attended the earlier discussions, this was not maintained and it was expected that the Chief Executive should update Board members as necessary. The final outcome from these discussions was not agreed by the Commission prior to the Scottish Government taking a decision and announcing that the Commission would implement it. The auditor considers that the proper course of action would have been for the Board to have been shown the final version of the Plan and to agree the actions contained in it, rather than the Plan being published and the Board being asked to agree the actions retrospectively.

15. Given the breakdown in trust between the Board and senior management it is understandable that the Scottish Government sponsor division has had a more active role in supporting the Commission's management than might otherwise be expected. The appointment of a new Commission Convener provides an opportunity for the Scottish Government to look again at how it exercises its sponsorship function, including the balance of its relationship with the Convener and Senior Management Team.

Weaknesses in business planning

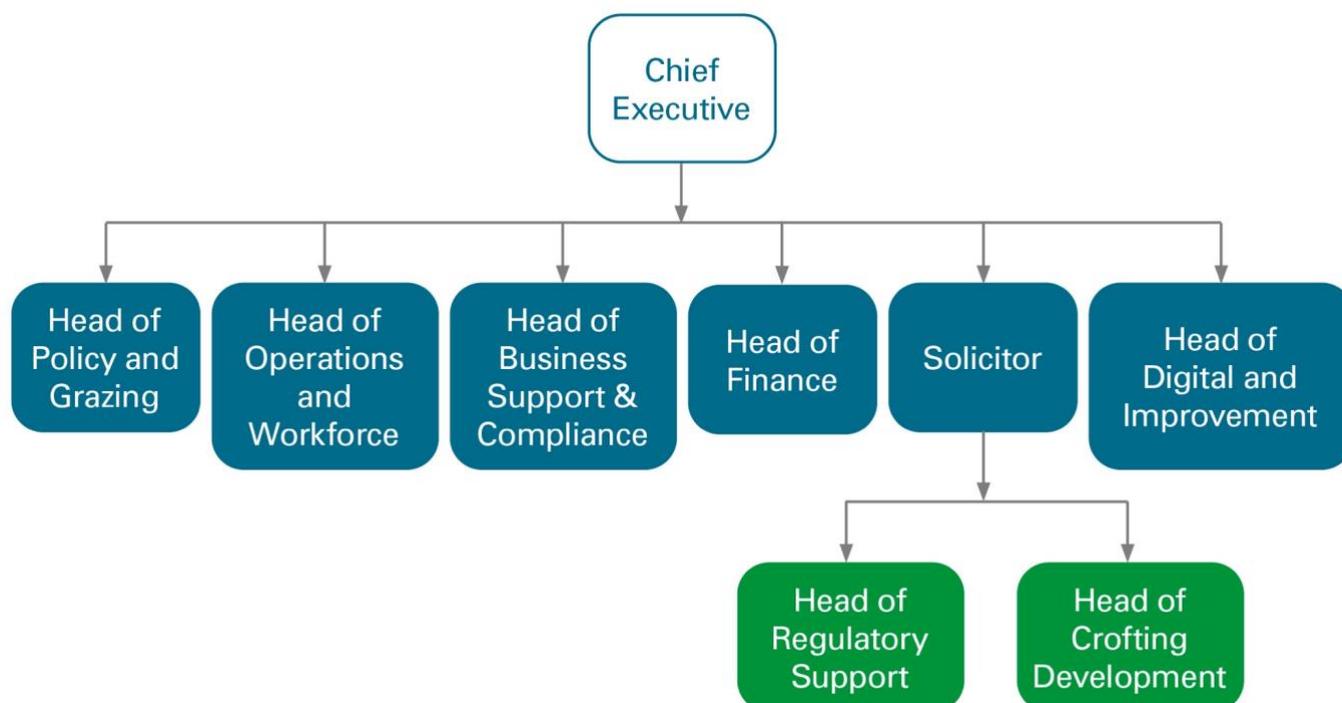
16. The auditor concluded that the Commission achieved financial balance in 2020/21 and that it can achieve financial balance in 2021/22. While this is to be welcomed, the auditor was unable to conclude that the Commission is in a financially sustainable position over the medium-to-longer term. This was due to weaknesses in its overall business planning. In addition to the need to improve its budget setting processes noted above, the Commission should:

- Improve its medium-term financial planning – The auditor found that the Commission's Medium Term Financial Plan (MTFP) for 2023/24 focuses heavily on previous years and the year underway, with limited attention given to a forward financial outlook. There is limited scenario planning of, for example, changes to staffing numbers. Overall, there is a need to develop a stronger link between the MTFP and the Commission's Corporate Plan and Workforce Plan, and the Board's priorities.
- Develop its workforce planning and staffing structure – The Commission updated its Workforce Plan during 2021 but the auditor concluded it did not sufficiently address known skills and capacity gaps through consideration of the Commission's future workforce needs and how to achieve these. In addition, senior staff and board members are aware that the nine-person Senior Management Team ([Exhibit 1, page 8](#)) is disproportionate for the size of the Commission and requires change. The auditor recommended that the Commission should engage in an independent review of its workforce needs and to reconsider the structure of the Senior Management Team.

Exhibit 1

Crofting Commission Senior Management Team as at March 2021

The Commission's senior management team consisted of nine positions.



Notes:

1. The Solicitor is responsible for line managing the Head of Crofting Development and the Head of Regulatory Support. The Chief Executive line manages all other members of the Senior Management Team, including the Solicitor.
2. The posts of Head of Policy and Grazings and Head of Crofting Development were merged in August 2021.

Source: Crofting Commission

Conclusions

17. The Crofting Commission plays an important role in supporting crofting and life in the Highlands and Islands. While there was some decline in the Commission's performance against its key performance measures in 2020/21, these were largely in areas which were affected significantly by the Covid-19 pandemic, rather than due to the issues identified in the auditors' report (Appendix 1, page 10).

18. There is a need for significant improvements in the leadership and governance of the Commission if it is to provide effective strategic leadership and oversight of the key services it provides to crofting communities. There is a pressing need to rebuild trust between the Chief Executive and the Board and to ensure that the boundaries between both roles are understood and respected. The role of the Scottish Government sponsor division will be key in supporting the Commission to develop relationships based on openness, respect and mutual support.

19. The Commission has now drawn up an Implementation Plan in response to the auditor's recommendations. It will be vitally important that the Senior Management Team takes ownership of the Implementation Plan and works with the sponsor division to ensure it is delivered. The Board and Audit and Finance Committee must provide appropriate support and challenge to ensure the necessary improvements set out in the Implementation Plan are achieved. I expect the auditor to continue to review the Commission's governance and leadership as part of their audit responsibilities. I will continue to monitor the Commission's performance, including how it takes forward its Implementation Plan, with a view to further public reporting in the future.

Appendix

Crofting Commission performance against its key performance measures 2020/21

Outcome 1: Crofts are occupied and managed

Performance Measure	Target	Result
Reduce number of vacant crofts	Reduce by five per cent	Not measured due to resource pressures
Initiate correspondence with more crofters where a breach of Residency and Land Use (RALU) duties is suspected	Initiate correspondence with 100 new cases	Not achieved Team's focus was on progressing existing cases and in dealing with new cases arising from written information of suspected breaches of duty due to resource constraints
Number of RALU breaches resolved by a crofter in breach of their residency duty taking up residence on their croft	Maintain or increase the baseline number (32) in 2019/20.	Not achieved Two cases were resolved by the crofter taking up residence. The team also processed 20 applications for consent to be absent, of which 16 were approved and four were refused. Two applications for extensions of consent for absence were also approved.
Number of RALU breaches resolved by assignation of the croft, or sale of an owner-occupied croft	Maintain or increase the baseline number (28) in 2019/20	Not achieved 11 crofters resolved their breach by assigning their tenancies with the consent of the Commission. One additional case was resolved by the tenant purchasing and letting the tenancy with the Commission's consent.
Number of RALU breaches resolved by sublet, or by short-term lease of an owner-occupied croft	Maintain or increase the baseline number (88) in 2019/20	Not achieved 15 crofters resolved their breach of duty by subletting in the first three quarters of the year. As a result of the Commission changing its policy on subletting such that it will not normally approve sublets or short term lets for a term of more than five years, a greater number of modifications and refusals of applications for terms longer than five years can be expected in the future.
Number of RALU breaches concluded by tenancy terminations, approval of letting proposals etc	Maintain or increase the baseline number (6) in 2019/20.	Achieved The Commission issued 13 notices of suspected breach of duty during the year.

Outcome 2: Common grazings are regulated and shared management practices continue

Performance Measure	Target	Result
Increase in number of common grazings with a Committee in office.	An increase in the number of Grazings Committees in office. Baseline: 495 Grazings Committees in office on 31 March 2020	Achieved 500 grazings committees were in office at the end of 2020/21.
Increase in number of grazings committees who have adopted the new template regulations.	Increase the baseline number (6) in 2019/20	Not achieved Covid-19 meant that grazing committees could not meet with the result there were no new requests during the period
Meetings or other substantial engagement with Grazings Committees and shareholders to support them with the regulation and management of common grazings.	Maintain or increase the numbers of townships where grazings issues have been progressed, or resolved, following Commission engagement. Baseline (33) in 2019/20.	Not achieved Covid-19 restrictions meant that only 12 substantive engagements were recorded during the period.
Establish correct shareholdings on common grazings by researching and updating records of shareholder situations.	Number of townships researched. Baseline (14) in 2019/20.	Achieved 15 shareholding positions were researched and updated.
Develop and assist with training and other events for grazings committees and the management of common grazings.	Baseline (9) in 2019/20	Achieved 114 out of 365 grazings clerks responded to an on-line survey in November 2020 to determine the level of interest in providing training to assist with arranging virtual meetings. A number of virtual training sessions on holding meetings on-line as well as training in mediation and conflict management were held during the second half of 2020/21.

Outcome 3: Crofting is regulated in a fair, efficient and effective way

Performance Measure	Target	Result
Decrease in number of regulatory cases outstanding after 12 months	Reduce number of cases still live after 12 months. Baseline (167 open).	Achieved 159 cases are now still live.
Customer satisfaction rates	To be developed once customer satisfaction system is in place.	Achieved Customer Service Forms are now being issued to applicants for all decision types. A small number of completed forms have been received all of which were positive.
Decrease in number of general enquiries	Reduce number. Baseline (2,394) in 2019/20.	Achieved A substantial reduction in general enquiries to around 1,500 was achieved as a result of uploading e apportionment orders to the online Register of Crofts.

Outcome 4: The future of active crofting is supported by well-informed engagement with stakeholders

Performance Measure	Target	Result
There is no Performance Measure for this Outcome		

Outcome 5: Workforce has the right skills and motivation to perform well, our governance processes are best practice

Performance Measure	Target	Result
Increase in staff engagement rating	Increase from 51% in 2019/20 to 55%	Achieved Staff survey issued in August 2020 shows that the average positive scores for a set of fixed questions increased to 57%. The survey was reissued in Spring 2021 and reflected a staff engagement rating of 65%.
Corporate carbon emissions	Maintain or reduce	Achieved The Commission continued its trend in reducing carbon emissions from 18.45 tCO ₂ e in 2017/18 to 15.20 tCO ₂ e in 2019/20 (2020/21 results not yet available). A slight increase in emissions due to flights in 2019/20 was offset against lower car mileage, rail, ferry & taxi travel emissions.

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