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**Environment, Climate Change and Land Reform
Committee
Comataidh Atharrachadh Clìomaid is Ath-leasachaidh
Fearann**

**Scottish Land Commission –
Reappointment of Commissioners**



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Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



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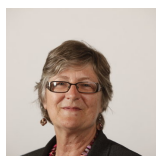
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Introduction

1. On 29 January 2021, the Cabinet Secretary for Environment, Climate Change and Land Reform wrote to the Committee asking it to agree to the reappointment of Professor David Adams and Ms Megan MacInnes as Commissioners to the Scottish Land Commission (SLC) for an additional three year term, to the 18 December 2023. This is the first reappointment request to the SLC.
2. The letter and a statement setting out the Scottish Government's approach to the reappointments is included in the Annexe to this report.
3. The letter also states that there has been an oversight in the appointments process. Reappointment letters were issued in September 2020 with the new terms effective from 19 December 2020. However, Parliamentary approval should have been sought prior to the Commissioners being reappointed.

Background

The Scottish Land Commission

4. [The Land Reform \(Scotland\) Act 2016](#) (the Act) provides for the establishment of a Scottish Land Commission (SLC). The purpose of the SLC is to:
 - review the impact and effectiveness of any law or policy in relation to land
 - recommend changes to law or policy;
 - gather evidence;
 - conduct research;
 - prepare reports; and
 - provide information and guidance.

Membership, appointments and reappointments

5. Part 2 of the Act states that the SLC should consist of five Land Commissioners and a Tenant Farming Commissioner (TFC). The functions of the Land Commissioners are provided in [Chapter 2 of Part 2 of the 2016 Act](#) while the functions of the Tenant Farming Commissioner are listed in [Chapter 3](#).
6. The Scottish Parliament's role in the appointments process is set out principally in sections 10(2) and 11(4) of the Act. Section 10(2) requires that Scottish Ministers may appoint a person as a member of the SLC only if the Scottish Parliament has approved the appointment. Section 10(6) of the Act states that Section 10(2) also applies in the case of reappointment.
7. Section 10(3) of the Act provides for the period of appointments to the SLC. The period of appointment is set at the outset and may be any period chosen by Ministers, not exceeding five years.
8. Appointments to the SLC are public appointments and therefore subject to the [Public Appointments and Public Bodies etc \(Scotland\) Act 2003](#) which means that appointments and reappointments to the SLC are regulated by the Commissioner for Ethical Standards in Public Life in Scotland. Informal discussion with the Commissioner's office has confirmed that the Commission has had no substantive involvement in, or direct oversight of, the reappointment process but confirmed that the Code has been complied with.

ECCLR Committee’s previous consideration of appointments to the Scottish Land Commission

9. In [November 2016](#) the Committee took evidence from the six Scottish Government nominees for appointment to the SLC and recommended in [its subsequent report](#) that the Parliament approve each of the appointments.

Process of reappointment

10. The process of reappointment that was followed is set out in the letter from the Cabinet Secretary to the Committee (Annexe to this report). In 2020 the Chair of the SLC undertook a review of the Commission's board skills matrix in the light of anticipated needs over the next three years and reviewed the board members' skills and competences against that matrix. Following this the Chair recommended a second term of three years for both Professor Adams and Ms MacInnes, which would cover the period of the Commission's Strategic Plan 2020-2023 and allow for succession planning.
11. Reappointment letters were issued in September 2020, inviting Professor Adams and Ms MacInnes to accept their reappointments, with their new terms effective from 19 December 2020.
12. Parliamentary approval should have been sought and granted prior to the Commissioners being reappointed. Section 10(2) of the Act requires that Scottish Ministers may appoint a person as a member of the Scottish Land Commission only if the Scottish Parliament has approved the appointment.

Conclusion

13. The Committee is concerned that the Scottish Government failed to seek and obtain Parliamentary approval before issuing reappointment letters to the Commissioners.
14. The Committee stresses the importance of Parliamentary approval in the process of appointment of the Commissioners and expresses concern that the Scottish Government overlooked that requirement. That is a significant oversight which, in the view of the Committee, is disrespectful to the Parliament.
15. The Committee also has concerns in relation to the status of the Commissioners, and of any decisions taken by the Commission, from the period when the initial term of appointment of the Commissioners ceased.

The Committee seeks reassurance from the Scottish Government that this situation will not arise in the future, that it will review its processes for appointment and reappointment and for engaging with the Parliament when Parliamentary approval is required.

The Committee will also be writing to the Chair of the SLC to highlight its concerns and seek similar assurances.

Notwithstanding the Committee's concerns as highlighted above, the Committee recommends that the Scottish Parliament approve the reappointment of Professor David Adams and Ms Megan MacInnes as Commissioners to the Scottish Land Commission for an additional three year term.

Annexe

Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener – 29 January 2021

Reappointments to the Scottish Land Commission

I am writing to seek Parliamentary approval for the reappointments of two Land Commissioners, Professor David Adams and Ms Megan MacInnes, to the Scottish Land Commission. Professor Adams and Ms MacInnes completed their first terms of four years as Commissioners on 18 December 2020.

In January 2020, in anticipation of the completion of the Professor Adams' and Ms MacInnes' terms, the Chair of the Commission, Andrew Thin, undertook a review of the Commission's board skills matrix in the light of anticipated needs over the next three years, and a review of the board member's skills and competences against this matrix in the light of demonstrable performance between December 2016 (date of appointment) and January 2020.

Following this the Chair recommended a second term of three years for both Professor Adams and Ms MacInnes, which would cover the period of the Commission's Strategic Plan 2020-2023 and allow for succession planning.

After consideration of the evidence presented, Ministers chose to reappoint Professor Adams and Ms MacInnes as Land Commissioners for a further period of three years, to the 18 December 2023. Reappointment letters were then issued in September 2020, inviting Professor Adams and Ms MacInnes to accept their reappointments, with their new terms effective from 19 December 2020.

Parliamentary approval should have been sought prior to the Commissioners being reappointed. Section 10(2) of the Land Reform (Scotland) Act 2016 ("the Act") requires that Scottish Ministers may appoint a person as a member of the Scottish Land Commission only if the Scottish Parliament has approved the appointment.

Section 10(6) of the Act states that Section 10(2) also applies in the case of reappointment.

We apologise for this oversight on our part. We are now seeking Parliamentary approval to the reappointment of Professor Adams and Ms MacInnes as Land Commissioners.

Under the terms of Section 11(4) of the Act, I attach a statement demonstrating how our approach has fulfilled the legislative requirements. The reappointments are compliant with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland.

As the ECCLR Committee noted during the initial appointment round for the Commissioners in 2016, the Act provides that the Scottish Parliament has a role in approving the appointment and reappointment of those persons whom the Scottish Ministers have assessed as being most suitable to be members of the Scottish Land Commission. Though not unprecedented, such a role in the public appointments process is unusual and I am sure that you will agree it is important that it be exercised in a careful and proportionate way.

I am confident that the Parliamentary stage in the process will be a positive part of this reappointment round and I am looking forward to see the work of the members of the Scottish Land Commission as they play their part in our wider endeavour on land reform.

Roseanna Cunningham

Ministerial Reappointment – Section 11 (4) Statement– January 2021

Scottish Government’s approach to the reappointment process

1. This report has been prepared in accordance with section 11(4) of the Land Reform (Scotland) Act 2016 (‘the Act’). It is a statement of how the Scottish Ministers have complied with their statutory duties under subsections 11(1) to 11(3) of the Act.
2. The Scottish Ministers consider that the steps taken through the reappointments process demonstrate compliance with the relevant duties.
3. As well as complying with the terms of the Act, the reappointments process has followed the principles of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (‘the Code’).
4. Section 10(2) of the Act states that the Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment. Section 10(6) of the Act states that Section 10(2) also applies to reappointments.
5. Section 11(4) states that when the Scottish Ministers refer an appointment to the Scottish Parliament for approval under section 10(2), they must lay before the Scottish Parliament a statement as to how they have complied with the duties in subsections 11(1) to 11(3).
6. This report is set out in three parts, one part for each duty contained with section 11.

Section 11(1)

7. Section 11(1) of the Act provides that in appointing members to the Commission, the Scottish Ministers must –

(a) have regard among other things to the desirability of the Commission (taken as a whole) having expertise or experience in –

(i) land reform, (ii) law, (iii) finance, (iv) economic issues, (v) planning and development, (vi) land management, (vii) community empowerment, (viii) environmental issues, (ix) human rights (x) equal opportunities, (xi) the reduction of inequalities of outcome which result from socio-economic disadvantage, and

(b) encourage equal opportunities and in particular the observance of the equal opportunity requirements.

8. The Scottish Ministers have taken account of these requirements during the reappointments process to seek to ensure that the Commissioners who are appointed have, in so far as possible, the desired range of expertise or experience. The duty is to have regard to among other things the desirability of the Commission (taken as whole) having expertise or experience in the areas that are listed. The Commission has staff to support it in fulfilling its functions, and also has the ability to procure additional services should that be desirable.

9. The Code provides that when considering any appointment the Scottish Ministers will identify the skills, knowledge and experience needed by a Board (in this case the Scottish Land Commission) for it to perform its statutory functions and to do so economically, efficiently and effectively.

10. Throughout the initial appointment process in 2016 of the two Commissioners coming to the end of their terms, Scottish Ministers took account of the requirements in section 11(1).

11. Prior to making a recommendation as to whether each of the two Commissioners coming to the end of their terms should be reappointed or if a new appointment should be made, two key steps were undertaken:

- A review of the Scottish Land Commission’s Board skills matrix in the light of the Commission’s anticipated needs over the next three years (i.e. the period of the 2020 to 2023 Strategic Plan, which at the time was in its draft stage).
- A review of the Board member’s skills and competences against this matrix in the light of demonstrable performance between December 2016 (date of appointment) and the time the review was carried out (January 2020).

12. Following these reviews, the Chair of the Commission recommended each of the two Commissioners coming to the end of their terms be reappointed for further terms of three years. The Chair set out how each of the two Commissioners’ skills, knowledge and expertise met the needs of the Board, including those required to meet any upcoming challenges and priorities for the Board, and their considerations on balancing the continuity provided by the member serving a further term with the opportunity to increase diversity around the Board table.

13. After consideration of the Chair’s recommendations and supporting evidence, and with regards to requirements of section 11(1), officials agreed to support both of the Chair’s recommendations for reappointment.

14. Officials prepared a summary of the skills, knowledge and expertise and how they would meet the needs of the Board for the appointing Cabinet Secretary, based on the Chair’s supporting evidence.

15. The conclusion of the process involved the appointing Cabinet Secretary considering the Commissioners who, subject to approval by the Scottish Parliament, should be reappointed to the Commission.

16. The Act provides at 11(1)(b) that in appointing members to the Commission Scottish Ministers must encourage equal opportunities and in particular the

observance of the equal opportunities as defined in section L2 of Part 2 of schedule 5 of the Scotland Act 1998. The section panel and the Cabinet Secretary took account of this requirement throughout the appointments process in 2016, and it was considered during the reappointments process.

Section 11(2)

17. Section 11(2) provides that: ‘In appointing the Land Commissioners, the Scottish Ministers must take every reasonable step to ensure that at least one of the Commissioners is a speaker of the Gaelic language’.

18. The current Commissioners, both the Land Commissioners and the Tenant Farming Commissioner, were all appointed when the Commission was first established in 2016. Throughout the appointment process, Scottish Ministers took account of the particular requirements in section 11(2) of the Act.

19. One Gaelic speaker was among those selected by Scottish Ministers to be appointed as a Land Commissioner.

20. The Land Commissioner appointed in 2016 who is a Gaelic speaker is not one of the Commissioners being reappointed, and their current term as Commissioner will not conclude until 18 December 2021.

21. As at least one of the Commissioners is a speaker of the Gaelic language, Scottish Ministers have taken account of the particular requirements in section 11(2) of the Act.

Section 11(3)

22. Section 11(3) of the Act provides that: ‘In appointing the Tenant Farming Commissioner, the Scottish Ministers must ensure that the person appointed has expertise or experience in agriculture’.

23. The current Tenant Farming Commissioner was appointed in December 2016 and their appointment term does not conclude until the 18 December 2021. Scottish Ministers took account of the particular requirements in section 11(3) at all stages leading to their selection and appointment.

24. The two Commissioners being reappointed are both Land Commissioners, and so are unaffected by the requirements of section 11(3).

