



The Scottish Parliament
Pàrlamaid na h-Alba

Published 19 December 2023
SP Paper 499
21st Report, 2023 (Session 6)

Net Zero, Energy and Transport Committee

Report on appointments to the Scottish Land Commission



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Committee Membership	1
Introduction	2
Consideration of current nominees to the Commission by the Net Zero, Energy and Transport Committee	3
Extension of tenure of current Chair	4
Committee decision	5

Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero and Just Transition, with the exception of matters relating to just transition; on matters relating to land reform, natural resources and peatland, Scottish Land Commission; Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands; and on matters relating to energy within the responsibility of the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy.



netzero.committee@parliament.scot

Committee Membership



Convener
Edward Mountain
Scottish Conservative
and Unionist Party



Deputy Convener
Ben Macpherson
Scottish National Party



Bob Doris
Scottish National Party



Jackie Dunbar
Scottish National Party



Monica Lennon
Scottish Labour



Douglas Lumsden
Scottish Conservative
and Unionist Party



Mark Ruskell
Scottish Green Party

Committee Membership

1. Since the Committee's first consideration of the current Scottish Land Commission appointments process on 13 June, there have been these membership changes—
 - Fiona Hyslop left the Committee on 14 June 2023;
 - Liam Kerr left the Committee on 29 June 2023;
 - Ash Regan left the Committee on 30 October 2023;
 - Douglas Lumsden joined the Committee on 5 September 2023;
 - Ben Macpherson joined the Committee on 5 September 2023;
 - Bob Doris joined the Committee on 9 November 2023.

Introduction

2. The Scottish Land Commission was established under the [Land Reform \(Scotland\) Act 2016](#) (the 2016 Act). Functions of Land Commissioners are, on any matter relating to land in Scotland:
 - to review the impact and effectiveness of any law or policy,
 - to recommend changes to any law or policy,
 - to gather evidence,
 - to carry out research,
 - to prepare reports,
 - to provide information and guidance.
3. The Land Commission must also consider and advise on any such matter as the Scottish Ministers may refer to them.
4. There are currently 5 Land Commissioners, including a Chair, Andrew Thin. There is also a Tenant Farming Commissioner, as provided for under the 2016 Act. All members of the Commission - Chair, Land Commissioners and Tenant Farming Commissioner - are appointed by the Scottish Government for a term of up to 5 years. [Section 11](#) of the 2016 Act lists matters the Scottish Government must have regard to when appointing members of the Commission.
5. Whilst appointments to the Commission are made by the Scottish Government, [Section 10\(2\)](#) of the 2016 Act provides that it may make such an appointment "only if the Scottish Parliament has approved the appointment". In practice, since the 2016 Act came into force, any proposals for appointments have been referred to the Parliamentary Committee with main responsibility for scrutinising land reform, so as to give it an opportunity to consider the proposal and, if it wishes, to express a view on it, prior to any motion to approve the appointment (or appointments) being taken in the Chamber.
6. In this 2021-26 session, the relevant Committee is the Net Zero, Energy and Transport Committee.

Consideration of current nominees to the Commission by the Net Zero, Energy and Transport Committee

7. The Committee's first consideration of the current round of appointments to the Scottish Land Commission was at its meeting on 13 June 2023, following notification at official-to-official level that the Scottish Government would shortly be seeking to replace Commission members whose terms of office were coming to an end. Scottish Government officials had requested an early view of how the Committee might wish to approach the appointments process. The Committee agreed it would welcome sight of the proposed selection process and person specification to inform a later decision on any further involvement in the appointments process.
8. On 11 August 2023, the Cabinet Secretary for Rural Affairs, Land Reform and Islands [wrote to the Convener](#) of the Net Zero, Energy and Transport Committee to give first formal notification of an upcoming appointments process for a new Chair of the Scottish Land Commission and up to three new Land Commissioners.
9. The Convener [wrote back to the Cabinet Secretary](#) on 12 September, saying the Committee had had a further discussion of its preferred process for handling the process, and setting out its intended approach.
10. The Cabinet Secretary's [most recent letter](#) on the appointments process was received on 29 November. This sets out the Scottish Government's three nominations to fill the upcoming Commission vacancies:
 - Michael Russell (Chair)
 - Craig MacKenzie (Land Commissioner)
 - Deborah Roberts (Land Commissioner)
11. The 29 November letter contains the following annexes:
 - ANNEX A: Scottish Government's approach to the appointment process
 - ANNEX B: Person Specification – Chair
 - ANNEX C: Person Specification – Land Commissioners
 - ANNEX D: Candidate career history and panel recommendation

The Scottish Government considers that the information set out in Annexe A meets its obligation, under Section 11(4) of the 2016 Act, to lay in the Scottish Parliament a statement as to how it has complied with the duties set out earlier in that Section to have regard to particular matters in making appointments to the Commission.¹ The Committee notes that the papers shared by the Scottish Government outline the involvement of the Ethical Standards Commissioner in the appointments process.

12. The Committee was disappointed to note that news of Mr Russell's proposed appointment as Chair was being reported in the media on 1 December. This was despite the Committee having been assured of the confidentiality of the process whilst its own consideration was ongoing.

Extension of tenure of current Chair

13. There was a parallel exchange of correspondence between the Cabinet Secretary and the Convener during September 2023 that is relevant to the Committee's overall consideration of this round of nominations:
- [On 4 September](#), the Cabinet Secretary wrote to notify the Committee that she had decided to extend Mr Thin's tenure as Chair by three months to allow for a longer handover period;
 - [On 12 September](#), the Convener wrote to the Cabinet Secretary, expressing disappointment that news of this extension had not been communicated more timeously. The letter also requested clarification as to the legal and procedural basis for the extension, and why the Parliament had not been consulted on the extension;
 - [On 25 September](#), the Cabinet Secretary wrote back to the Convener, clarifying the legal basis on which the extension to the current Chair's tenure had been made.
14. The extension means that the Chair vacancy arises on 18 March 2024, whereas the two Land Commissioner vacancies arise on 18 December 2023.

i The statement was notified in the Scottish Parliament's Business Bulletin on 30 November 2023.

Committee decision

15. At its meeting on 12 December 2023, the Committee considered in private the three nominees proposed by the Scottish Government and the accompanying documentation the Scottish Government had provided in support of their nomination, as set out above. There was a discussion during which various views were expressed.
 16. After it became clear that the Committee could not reach unanimity on the issue of the proposed appointments, the Convener formally put the question that the Committee agree to the three nominations. Four Members voted Yes to the question,ⁱⁱ three voted No,ⁱⁱⁱ and there were no abstentions.
 17. The four Members who voted Yes did so because they were content, from the information provided, that the process followed appeared to be satisfactory, as did the proposed appointments. In doing so, they noted that the Committee had indicated, in earlier correspondence about the process with the Scottish Government (before nominees had been put forward), that it did not propose to hear from any candidates put forward before making a recommendation to the Parliament.
 18. The three Members who voted No did so on the basis that, while they were content to recommend to Parliament that the two nominees for Land Commissioner be approved by the Parliament, they considered that the Committee should not make any recommendation in relation to the nominee for Chair without first seeking to take evidence from him.
19. The Committee accordingly recommends to the Parliament that Michael Russell be approved as next Chair of the Scottish Land Commission and that Craig MacKenzie and Deborah Roberts be approved as Land Commissioners.

ii Bob Doris, Jackie Dunbar, Ben Macpherson, Mark Ruskell

iii Monica Lennon, Douglas Lumsden, Edward Mountain

