

**Cabinet Secretary for Environment, Climate Change
and Land Reform**

Roseanna Cunningham MSP

T: 0300 244 4000

E: scottish.ministers@gov.scot

Graeme Dey MSP

Convener

Environment, Climate Change and Land Reform

Committee

Scottish Parliament

Edinburgh

EH99 1SP

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Dear Graeme,

Appointments to the Scottish Land Commission

Thank you for your letter of 28 September, in which you asked about the approach we have been taking to the important task of making appointments to the first Scottish Land Commission (SLC).

I am sorry that I have not been able to reply sooner but we have now completed the Ministerial process and I am pleased to be able to tell you the names of those we have selected, subject to Parliamentary approval, to be Land Commissioners. They are

Andrew Thin

Professor David Adams

Megan MacInnes

Lorne MacLeod

Dr Sally Reynolds.

As provided for in section 10(7) of the Land Reform (Scotland) Act 2016, we have selected Andrew Thin to chair the Commission.

Ministers have also selected Dr Bob McIntosh as the Tenant Farming Commissioner.

I wish to assure the Committee that, although this appointment round is not regulated by the Commissioner for Ethical Standards for Public Life in Scotland, our appointment process has followed the principles of the Commissioner's Code of Practice for Ministerial Appointments to Public Bodies in Scotland. We intend that future appointments to the SLC will be regulated.

At the start of the process, and in line with the provisions of the Code, I approved the following selection panel:

- Chair - Bridget Campbell (Scottish Government, Director of Environment & Forestry)
- Dr Alison Elliot (Centre for Theology and Public Issues, University of Edinburgh, former Moderator of the General Assembly of the Church of Scotland and Chair of the Land Reform Review Group)
- The Hon Lord McGhie (Retired Chairman of the Scottish Land Court and President of the Lands Tribunal for Scotland).

Professor Mark Shucksmith (Director of Newcastle Institute of Social Renewal) was a member of the panel to shortlist the applications but other commitments meant that he was unable to take part in the interviews. The panel was confident that it could continue to support the appointment round with two independent members.


Our approach to this appointment round has also been compliant with the specific requirements in the Land Reform (Scotland) Act 2016 ('the Act') and, under the terms of Section 11(4), I attach a statement demonstrating how our approach has fulfilled the legislative requirements.

As the Committee will be aware, following the Code of Practice ensures that an appointment process is fair, open and merit based, and affords equality of opportunity to a wide and diverse range of applicants. The Code also stipulates a fit and proper person test, to ensure that issues of conduct and conflict of interest are rigorously explored. Assessment is based on criteria identified at the outset by the appointing Minister and only applicants who most closely meet the requirements of the role, as set out in the published criteria, and who pass the fit and proper person test, are presented to the appointing Minister as suitable for appointment. Further details of the approach we have followed are set out in the attached statement.

As you note in your letter, the Act provides that the Scottish Parliament has a role in approving the appointment 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, ensuring that no new selection criteria in addition to those publicised (and against which the candidates have already been assessed) are introduced as this would be against the principles of the Code of Practice and could potentially deter well qualified persons from applying for such roles in the future.

I am confident that the Parliamentary stage in the process will be a positive part of this appointments round and, at its conclusion, I am very much looking forward to working with the first members of the Scottish Land Commission as they play their part in our wider endeavour on land reform.

Yours,

A handwritten signature in black ink, appearing to read "Roseanna". The first letter "R" is large and stylized, with a loop. The rest of the name is written in a cursive, flowing script.

Roseanna Cunningham

Appointments to the Scottish Land Commission

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 sections (1) to (3) of the Act.
2. The Scottish Ministers consider that the various steps taken through the appointments process, in particular the recommendations made by the selection panel and the final consideration by the Cabinet Secretary for the Environment, Climate Change and Land Reform, demonstrate compliance with the relevant duties.
3. As well as complying with the terms of the Act, the appointments process, while not regulated by the Commissioner for Ethical Standards for Public Life in Scotland, 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.
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 (1) to (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 throughout the appointments 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 will have staff to support it in fulfilling its functions, and it will also have the ability to procure additional services should that be desirable.

The selection criteria used

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. The selection criteria for the Tenant Farming Commissioner are set out in paragraph 39 of this report. For the Land Commissioners, Ministers agreed the following selection criteria:

- Leadership
- Communicating and influencing
- Approaching work strategically and setting a strategic direction for a programme of work
- Working collaboratively and constructively
- Challenging the views of others in a constructive and supportive way
- Analysing information and making decisions

11. These selection criteria were set out in the advertisements for the Land Commissioners, and applicants were asked to give examples of each in the application forms that were submitted. In addition to these, the advertisements listed the expertise and experience set out in section 11(1) and the application forms invited applicants to state any relevant examples of the expertise and experience listed in section 11(1).

Appointment Plan and Advertising

12. The Code requires that the selection panel agree an appointment plan containing the publicity, application and assessment methods to be used. The agreed methods are those the panel considers most likely to attract a diverse range of able applicants, taking account of relevant information held by or available to the Scottish Government. The appointment plan also contains a timetable specifying key dates within the round.

13. The Code says that publicity or advertisements about posts, details about posts, the assessment criteria to be applied, and the application forms (or equivalent) should be clearly and plainly drafted using simple, easy to understand, language. The objective should be to encourage applications from people from all

backgrounds and to help the optimum number of people to apply for positions and for people to find it a comparatively easy exercise to submit applications.

14. The application forms and information packs were compiled to reflect the selection criteria and the posts were advertised in accordance with the agreed appointment plan.

15. The posts were advertised on the Scottish Government Public Appointments website www.appointed-for-scotland.org on Tuesday 2 August. A “sign posting service” (where individuals who have expressed an interest in public appointments and are considered to be potentially suitable for the advertised post have the post drawn to the attention) was also used.

16. To augment this approach, the Scottish Government used its networks to circulate the advertisement to as wide an audience as possible, including professional membership organisations, NGOs and public and private sector companies that cover a wide number of subject areas but with a focus on:

- Urban / planning / regeneration
- Legal and arbitration
- Academic
- Agriculture
- Land ownership
- Finance
- Environment
- Diversity on boards

17. Advertisements were also placed in three sector-specific publications to cover: third sector, law and agriculture (i.e. Third Force News, Scottish Legal News and the Scottish Farmer).

Shortlisting for interviews

18. The selection panel considered all of the applications received and assessed them against the above criteria. In line with the Code, panel members received guidance on how they might score the evidence of each criteria provided by the applicants. Panel members used the markings to draw up a shortlist and assess applicants’ suitability for appointment at interview. Decisions were based on an objective assessment of the applicant’s suitability for the advertised posts.

19. Throughout the sift, the panel took account of the particular requirements in section 11(1) of the Act. In selecting the candidates for interview, the panel assessed the application forms against the list of expertise and experience in section 11(1) and were satisfied that the candidates selected for interview covered the requirements.

20. All applicants were notified in writing as to whether they had been successful in being shortlisted for interview.

The interviews

21. Interviews were held on 12, 13, 14 and 25 October. The approach taken, of inviting the candidates to deliver a presentation and answer a series of questions, complied with the Code's requirements that the assessment methods used to assess applicants will ensure that the most able people on merit are identified and recommended for appointment. The Code provides that the selection panel will assess the merits of applicants against the skills, knowledge and experience needed using the methods they have agreed. The Code requires that no new requirements should be introduced during the appointment round.

22. Before interview, the candidates were advised in writing that the process would include a five minute presentation on the following question:

What are the challenges facing the Scottish Land Commission in its first years of operation and how will you as a Commissioner help to overcome them?

23. The interviews conducted by the selection panel were used to identify the applicants who demonstrated the skills, knowledge and experience required to be effective in the role and those who did not.

24. Section 10(7) of the Act provides that Ministers must select one of the Land Commissioners to chair the Commission. Accordingly, all applicants were asked if they wished to be considered for the post of Chair of the Scottish Land Commission. Applicants for the post of Chair were specifically asked to provide evidence or experience in governance. Applicants for the post of chair were also expected to demonstrate significant qualities of leadership; communication and influencing; of approaching work strategically and of setting a strategic direction for a programme of work and leading an organisation.

Scottish Ministers ' consideration

25. Following the conclusion of the interviews, the selection panel identified the applicants who had demonstrated the skills, knowledge and experience required. The selection panel agreed an applicant summary for each applicant for the appointing Cabinet Secretary. The summary set out the panel's assessment of how each applicant did or did not demonstrate the skills, knowledge and experience required to be effective in the role. The applicant summary was based on the information provided by each applicant during the appointment round and was intended to be sufficiently detailed to:

- Identify to the appointing Cabinet Secretary the most able applicants and
- Provide evidence that the panel's assessments were valid.

26. The report to the Cabinet Secretary contained particular reference to the expertise and experience listed in section 11(1).

27. The conclusion of the process involved the appointing Cabinet Secretary considering the candidates who are most able and who, subject to approval by the Scottish Parliament, should be appointed to the Commission.

28. 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 schedule 5 of the Scotland Act 1998. The selection panel and the Cabinet Secretary took account of this requirement throughout the appointments process.

Section 11(2)

29. 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'.

30. The aspects of the appointments process where particular consideration was given to fulfilling the requirement in section 11(2) are set out below.

The selection criteria used

31. Detail in relation to the selection criteria used is set out above. The selection panel recommended to Scottish Ministers that the ability to speak the Gaelic language should not constitute a selection criterion in itself. However, the application form had a specific question that asked applicants to declare if they are a speaker of the Gaelic language.

Appointment Plan and Advertising

32. Detail in relation to the steps undertaken in terms of the appointment plan and advertising is set out above. In addition, the advertisements were translated into Gaelic, released online, signposted from the English language advertisements and publicised via the Scottish Government's Gaelic Twitter page.

Shortlisting for interviews

33. Detail in relation to shortlisting for interviews is set out above. Throughout the shortlisting, the panel took account of the particular requirements in section 11(2) of the Act.

The interviews and Scottish Ministers' consideration

34. Detail in relation to the interviews and Scottish Ministers' consideration is set out above. The panel invited all interviewees to say whether they could speak Gaelic in the application form. All interviewees were invited to give a view as to why they considered the ability to speak Gaelic to be of significance to the Commission.

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

Section 11(3)

36. 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’.

37. The appointments process for all members of the Land Commission is outlined above. The aspects in the appointments process where particular consideration was given to fulfilling the requirement in section 11(3) are set out below.

Composition of Selection Panel

38. In approving the selection panel for the appointments process Ministers recognised that it would be important for one of the independent panel members to have experience and knowledge of the tenant farming sector. Therefore, the Hon. Lord McGhie was invited to be a member of the panel. Lord McGhie is a retired Chairman of the Scottish Land Court and President of the Lands Tribunal for Scotland and has a wealth of experience in dealing with disputes in respect of agricultural holdings legislation.

Approval of the Selection Criteria

39. Detail in relation to the selection criteria used for the Land Commissioner posts is set out above. To ensure that applicants for the post of Tenant Farming Commissioner had the necessary experience or expertise of agriculture in addition to the qualities required to be a Land Commissioner, the selection criteria for the Tenant Farming Commissioner were as follows:

- Experience or expertise in agriculture
- Communicating and influencing
- Analysing information and making decisions
- Working collaboratively and constructively with others
- Challenging the views of others in a constructive and supportive way
- Strategic approach to working

40. The application form for the position of Tenant Farming Commissioner asked applicants to provide evidence of all of these.

Appointment Plan and Advertising

41. Detail in relation to process undertaken on the appointment plan and advertising is set out above. In particular, the advertisements were placed in three sector-specific publications to cover: third sector, law and agriculture (i.e. Third Force News, Scottish Legal News and the Scottish Farmer).

Shortlisting, interview and Scottish Ministers; consideration

42. Detail in relation to shortlisting, interview and Scottish Ministers' consideration is set out above. The selection panel took account of the particular requirements in section 11(3) at all stages.