



## **SCF Evidence to the Rural Affairs and Environment Committee of the Scottish Parliament regarding the Crofting Reform Bill as introduced 09 December 2009**

Thank you for the opportunity to comment on the Crofting Reform Bill as introduced to the Scottish Parliament on 09 December 2009. This evidence is in addition to the response the SCF submitted to the draft Crofting Reform Bill consultation, much of which is still relevant. There are many issues that could be raised but for the sake of brevity we focus on our most pressing concerns.

### **OVERVIEW**

Central to our submission is the assertion that crofting is not farming and doesn't need to be "brought into 21<sup>st</sup> century mainstream farming"<sup>i</sup>. Crofting is a resilient rural culture that has kept thriving communities in some of the remotest parts of Scotland and which has survived a relentless stream of misguided attempts to demolish or 'reform' it. This resilience should be nurtured and this Bill used to enable crofting communities to continue to take care of their own affairs in a manner which has served them well for many generations and is consistent with modern community development.

This Bill, like the last, is teetering on the edge of collapse. We believe this is mainly because it was constructed in a 'top-down' manner with little meaningful participation. Government officials involved in this Bill's drafting did not follow the recommendations for rural development policy set out by the government's own directives<sup>ii</sup>; those of the Carnegie Trust's Commission for Rural Community Development<sup>iii</sup>; and those of the OECD<sup>iv</sup>, as regards community development in Scotland.

Whilst the SCF acknowledge that the work of this committee is to scrutinise the provisions particular to the present Bill, we feel that it is important to place this in the wider context of why there has been so much criticism. The continuing failure by government to allow crofters to participate meaningfully in the creation of legislation has led to a great deal of public money, once again, being spent on legislation that falls significantly short of being fit for purpose.

However, having said this, the SCF support the progress of the Bill in principle as we believe that there can be some good recouped if it is amended appropriately and supported by complementary ministerial direction. We urge the parliament to use this opportunity to stipulate amendments that will allow the Bill to truly enact the principles of de-centralisation and community ownership that it claims to promote.

The SCF want this Bill to:

1. Decentralise crofting decision making through the partnership of a majority elected Crofting Commission informed and advised by a locally elected Assessor Network;
2. Create a fit-for-purpose crofting register, through community led development, held and maintained by the Crofting Commission adequately resourced to do this;
3. Be supported by ministerial direction and guidance to Planning Authorities to protect cultivatable croft land and help to address speculation;
4. Be supported by appropriate investment, e.g. a crofting housing grant and loan scheme.

## **THE BILL**

### **Part 1 Reorganisation of the Crofters Commission**

The SCF accept that the Crofters Commission are re-named the Crofting Commission to reflect the change in its function and are content with the Scottish Government assurance that additional costs for the change in name will be minimal.

### **Part 2 The Crofting Register**

The SCF supports having an effective crofting register. Indeed we find it difficult to understand how successive governments believed they could measure the potential impact of legislative or policy change without a reliable database. However, the whole principle of the registration procedure is wrong – there is no participation and it looks designed to be antagonistic and divisive. ‘Trigger points’ and ‘ranking’ will mean every individual having to instigate a potential boundary dispute at possibly great cost (to both the individual, and to the public if Legal Aid is used) with boundaries being established on the principle of ‘deepest pocket wins’. Furthermore, the whole exercise could take generations to complete.

The SCF strongly recommends that the register be completed using participatory methods such as ‘community mapping’ and mediation – which is widely commended by the legal profession to help keep disputes out of the judiciary system. Assessors should be trained to assist in this. This aligns with the HIE Community Led Development model and with ‘asset growth’, an established approach to rural development. It is anticipated that this methodology could save on public expenditure in the long term and would establish a fit for purpose register under community ownership.

This methodology would also have the advantage of using the many maps that already exist under the process of the Crofting Right to Buy, and clearing up the confusion over crofts that do not appear on the present Crofters Commission register of crofts. We also think that the ‘20 year rule’ would help to avoid disputes and should be used.

There does not appear to be a strong argument for establishing and holding the register under Registers of Scotland. The Scottish Government have laid out a plan to map the common grazings using specialist staff funded by SG and located in the Crofting Commission. This principle should extend to the whole mapping exercise, aided by the Commission Assessor Network. By the nature of participatory methodology HIE and SCF would also be closely involved. The register should then reside within and be maintained by the Crofting Commission.

The SCF maintains that the cost of setting up and compilation of the register should be met by public investment under the SG duty to map Scotland. Future amendments to the register could be charged for at a rate in line with other public register amendments.

A clause is needed in the Bill to allow a grace period for register amendment under compassionate grounds to help people such as bereaved when they are most vulnerable.

### **Part 3 Duties of Crofters and Owner-Occupier Crofters**

#### **Absenteeism**

To condemn absenteeism whilst simultaneously removing the housing scheme that made it possible to live on the croft is an absurdity. Any absentee initiative should dovetail with a crofting new entrants scheme, which should incorporate a croft housing grant and loan scheme. Means-testing housing support could be considered in order to extend and target limited resources.

There is a keen interest in taking up croft tenancies but for some reason the Crofters Commission has ceased to hold a record of interested parties. This needs to be re-established and used in conjunction with an absentee initiative and croft new entrants scheme to link suitable (capable)

potential tenants with realistic croft activity plans to vacant crofts. A probationary period may be appropriate for croft entrants, with support from the commission and HIE.

16km is too small a distance for the limit of living within a practical distance of a croft. Many people live further than this from their place of work. It would therefore be fair to extend the limit to a distance that is practical to still tend the croft, say 50 Km (under an hour's car journey).

Dealing with absenteeism should not just be the responsibility of the Crofting Commission. Under the Community Led Development model crofting communities should be able to take action regarding absenteeism, supported by the Crofting Commission, the community being in the position to know whether absenteeism is damaging or not. Prof. Hunter's suggestion that absentees pay an enhanced registration fee to retain their croft is worthy of consideration, especially if the revenue goes into the local community development fund. However, on balance we believe that freeing up crofts for new entrants is more pressing for restoring vitality to crofting communities.

### **Neglect**

We reiterate the assertion that dealing with neglect is more pertinent to the health of crofting than dealing with absenteeism. Crofters may have to be absent from their croft for very good reason but it is fair to expect them to put in place a land management plan. This may well be by giving a sub-let to another crofter who will work the croft in their absence. However, we feel that a sub-let should only be used as a land management tool (not as 'purposeful use') and not used to create an 'under-class' of crofter with few rights.

The definition of neglect needs to be clarified. Working 'every inch of the croft' is unreasonable, but so is the provision of 'nature conservation' as an excuse for neglect. Nature conservation croft plans should be under a resourced environmental land management scheme.

The Bill needs provision for 'force majeure' or incapacity.

### **Part 4 Further Amendments of the 1993 Act**

Extending the period in which a crofter is obliged to give up 50% value of disposal of croft land from 5 to 10 years is acceptable (from croft purchase - not from decrofting, as the Bill states) as an effective deterrent to short-term speculation on croft land. The sale by nominee (Whitbread vs MacDonald) loophole could be closed as individual gain through such means is despicable to the majority of crofters.

However, there seems to be no justification for the development share to go to the landlord who is likely to have made no contribution to the maintenance and working of the land. Rewarding the landlord in such circumstances is, like an interposed lease, against the spirit of land reform. The SCF would rather see the landlord's present 50% 'clawback' become a 'township development contribution' which goes into a local crofting development fund for community projects. This is undoubtedly more congruent with the ethos of land reform and with HIE's plans for crofting community-led development. Whilst we acknowledge that it needs creativity to work in all localities we believe the idea to have merit and be worthy of further consideration.

The SCF welcomes the provision for the Crofting Commission to not give direction to de-croft notwithstanding the existence of planning consent, should it deem that appropriate. This may help in curbing some blatant speculation on croft land. However, we believe that the effective way to protect croft land is for ministers to direct Planning Authorities to have a presumption against building on the better quality croft 'in-bye'. Furthermore, this should not discriminate against crofters; all land capable of growing food should be conserved.

### **Part 5 General and Miscellaneous**

No comment

## **Schedule 1**

The formation of a majority elected Crofting Commission attempts to carry out the recommendation of the CoIoC to bring more self governance to community level. We approve, though the chair should be elected by the Commissioners (as with the Cairngorms National Park board chair). However, this will not suffice. Having failed to win approval of crofting communities with the suggestion of Area Committees the SG has consistently ignored the fact that the decentralisation model already exists in the Assessors Network which represents democracy working at the very roots of the community. This existed (and was effective) for decades until being run-down by the last Commission regime and then revived by the present Commission under pressure by the crofting communities and the SCF.

The design of a 'modernised' model for the Assessor Network and Assessor Panel was started and needs to be completed. Core to this is that the power balance must change with the Assessor Panel working in an informing and advisory role to the Crofting Commission. The support staff will only service the network, under direction of the Commission. All assessors should be trained in participatory development and mediation – there being an essential role for mediators. Assessors will be elected by, and be accountable to, their crofting community.

The CC annual plan should be subject to debate in Parliament not just approved by the SG and there doesn't appear to be provision for a timely procedure of amending the annual plan with inclusion of newly elected commissioners and a parliamentary debate.

## **Schedule 2 Minor and Consequential Modifications**

No comment

## **Financial Memorandum**

The Scottish Government seem to be unaware of the potential cost implications to crofters in establishing their croft boundaries. There is provision made for legal aid to help crofters establish their boundaries in the Scottish land Court. We contend that investing in participatory mapping and mediation will reduce the need for court action and so has the potential to save on public expenditure. Training mediators also has potential community benefits beyond crofting disputes.

The costs claimed to be incurred by the Crofters Commission for administration procedures is excessive. Presumably this is either because costs not directly associated with the procedure have been included or because the procedure is grossly inefficient. To contemplate allowing the Crofting Commission to charge crofters for administration based on these costs is unacceptable.

## **Policy Memorandum**

Absenteeism is a symptom not a cause – if the policy is based on dealing with absenteeism as a cause of crofting decline it is failing to get to the cause.

## **ADDITIONAL**

A great deal of work is needed on rationalising the use of common grazings. This is too big a subject to go into in this document but it needs noting.

- i Future of Crofting Team member, public meetings, 2009
- ii A 2008 Scottish Government report 'Monitoring and Evaluating the Effects of Land Reform' concludes that research on land issues in communities should be "strongly participatory".
- iii A Charter for Rural Communities, June 2007
- iv In 2008 the OECD Rural Policy Review criticised Scotland for being centrally driven and top down in approach, to the detriment of local leadership and innovation.