

To the Editor of the West Highland Free Press

Dear Sir,

I agree with Brian Wilson (WHFP 19th February) that Sir Crispin Agnew does indeed have some bizarre views on crofting. In a recent case before the Scottish Land Court, he asserted that a landlord could, without compensation, deprive crofters of their common grazing rights so long as they retained sufficient land for their soumings. With form like that it comes as no surprise when Sir Crispin questions tenancy, and by implication advocates the dismantling of the entire system of crofting tenure in favour of a de-regulated free-hold model of land tenure such as occurred in Ireland.

It is important for clarity, I believe, to differentiate between owner-occupancy in the Scottish crofting context and de-regulated free-hold, as in Ireland. The 1976 crofting legislation that gave croft tenants the right to buy the land-lord's rights over their croft has been claimed to have been a move towards de-regulated free-hold land tenure, but if so it failed. It may have just been a mechanism to give crofters a way of removing obstructive landlords, or it may have been a means of security for borrowing on a croft. Whatever the motivation, we have ended up with two sorts of crofter – one who is a tenant of a separate landlord and one who is the tenant **and** the landlord. Confusing maybe. The important thing to remember though is that the land is still under crofting tenure, subject to crofting regulations and crofting law. This is fundamentally different from the Irish model.

What the current Crofting Reform Bill appears to be seeking to do is place the same requirement on owner-occupiers as on tenants to reside upon (or within ten miles of) the croft, and to make use of the land. Surely this is to be welcomed. However, why it should be necessary to put it in this Bill when it is already a requirement of existing crofting law is open to serious question. When the regulatory agency fails to uphold existing law, will it be any more assiduous once its powers and duties are restated?

It could be argued that if owner-occupiers are regulated properly they should be eligible for the same support as tenants (owner-occupiers, contrary to popular belief, are presently eligible for CCAGS and the CHGS, though there are limitations). The point is that under the Scottish crofting regulated tenure both owner-occupiers and tenants should be regulated properly.

What has brought croft owner-occupancy into such disrepute is that it is generally assumed that purchasing a croft removes it from the discipline of regulation, and that, of course, is what usually happens by default. A so-called owner-occupier of a croft, and herein lies the 'legal fiction' that Brian refers to, that does not in fact 'occupy' the croft, is no more than the landlord of a vacant croft and therefore not a crofter. As when any crofting landlord is found to be holding on to vacant crofts, it is for the regulatory authority to demand re-letting. What has occurred in the past is a failure of the regulator, not of the regulated system of tenure.

Incidentally, and to illustrate the kind of situation that can arise, the Crofters Commission is at present considering an application from a landlord to decroft three house sites on a croft that has been held vacant for eight years. Will the Crofters Commission do their job and address this kind of abuse?

Yours faithfully,

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