

I am grateful to Sir Crispin Agnew of Lochnaw, chief of the Clan Agnew and Rothesay Herald to the Lord Lyon King of Arms, QC and acknowledged expert on crofting law.

And for why? Well, old Crispers has roused me from my slumber induced by the latest Crofting Reform Bill. As I confessed a few weeks ago, there have been so many Crofting Reform Bills that a degree of fatigue had set in.

But Sir Crispin's evidence to the Rural Affairs and Environment Committee of the Scottish Parliament has sounded the necessary wake-up call. Maybe it is indeed time for one last stand in defence of crofting tenure and the perpetual, insidious efforts of the past 40 years to legislate it out of existence.

Not, of course, that that has ever been the stated purpose. On the contrary, every piece of crofting legislation is proclaimed as the means of preserving the system, bringing it into the 20th/21st century and all that guff. But in reality, since the late 1960s, the whole thrust of the debate has been to erode the system of tenure and "normalise" it into one that is based on individual ownership.

Why does this matter so fundamentally? It matters because inherent within that change is the loss of the precise strengths which crofting tenure has delivered for those parts of the Highlands and Islands in which it applied - protection against a money-based market, retention of local population with all that flows from that in terms of culture and identity. In other words, the retention of an identifiable crofting community.

As we all know, that system of tenure has already been hugely undermined from two directions - first, the introduction of owner-occupancy as an option, commencing with the 1976 Act, and second, the culpable failure of the Crofters Commission to use its regulatory powers in order to protect the system of tenure against the encroachments of the money-based market.

Nonetheless, there is still enough of merit left in the system for people who care for the crofting communities to want to defend it. That is why there was eventually such an outcry against the previous Crofting Reform Bill, circa 2007, which had to be largely abandoned because the free market in tenancies, which it sought to legitimise, was rejected by the crofting community and its representatives.

Now they are back for another go and, a couple of weeks ago, the same pernicious civil servants who have been driving this agenda for years dropped a little bombshell into proceedings. They informed the committee that they are considering equalising grants for owner-occupiers and tenants, as well putting the obligations of owner-occupiers on the same footing as those of tenants.

This hugely significant intimation went largely unnoticed. But thankfully, one MSP - Peter Peacock - was sharp enough to pick up on its implications and he questioned Sir Crispin Agnew about them last week. Now, I do not know if Sir Crispin has been advising the Bill's drafters either formally or informally but it would certainly fit in with what he had to say.

**Mr Peacock:** What would be the purpose of one's remaining a tenant if everything, including access to grants, were to be equalised?

**Sir Crispin Agnew:** There would be no good reason to remain a tenant.

**Mr Peacock:** So could removing such barriers and making grants equally accessible have the unintended consequence of spelling the end of a tenanted system of crofting, or am I overstating the point?

**Sir Crispin Agnew:** What is the point of preserving a tenanted system? The Irish Land Acts set out to get everyone into owner-occupation. It seems anomalous that when people buy their croft they have to decroft their croft house to be able to get money from the bank. That is why I, among others, suggested standard securities over the crofting tenancy, but that measure does not seem to have been taken forward.

On that latter point at least, Sir Crispin is right. Crofters saw the dangers of having their security of tenure placed at the mercy of the banks and succeeded in having that proposal dropped at an earlier stage of consultation. But otherwise, the significance of what Sir Crispin had to say could scarcely be greater for what this Bill might achieve and hence for the very existence of crofting tenure.

Peter Peacock got only one word wrong in his questioning. It was when he over-generously suggested that the "unintended" consequence of putting owner-occupiers on the same footing as tenants would be "the end of a tenanted system of crofting". Make no mistake, Peter, this is simply a different means to the same old end - the wholly "intended" consequence of eroding crofting tenure to the point at which it disappears.

Sir Crispin would clearly not lose any sleep over that outcome. "What is the point of preserving a tenanted system?", he asks. It is disappointing that he does not know the answer to the question after all these years of self-immersion in crofting law. But the absolute certainty is that all other aspects of crofting law are incompatible with a system that is based on ownership rather than tenure.

In 1976, the drafters of legislation tried to circumvent this reality by creating a legal fiction - that owner-occupiers would really become mini-landlords with themselves as tenants. And if the croft was not worked, they would (as landlords) be required to bring forward re-letting proposals so that someone else could occupy it. The current Bill intends to abolish even that modest deterrent.

As Simon Fraser told the committee last week: "At the moment, the main disincentive to purchase is that the purchaser becomes ineligible for the Crofting Counties Agricultural Grant Scheme and housing assistance. In my part of the world, though, very few people buy because there is no particular need to do so."

If, however, the "main disincentive" is removed and, at the same time, the regulatory regime remains as lax as it currently is, then the net result is bound to be an acceleration of tenancy sales at fancy prices with the new "tenants" - devoid of any cultural or economic loyalty to a system of tenancy - turning themselves into owner-occupiers, to which there will be no disincentive.

Before it is decided go down that path, maybe someone should ask the question: "What is so wonderful about Ireland?" Though it came later, the rate of exodus from rural Ireland to the towns and cities has been enormous. I doubt if there are many parts of Donegal or the West of Ireland where Sir Crispin's owner-occupancy model has had the same success as crofting tenure in retaining population.

Admittedly, it did create one generation of the most avaricious property speculation on the face of the earth with the banks showering money on anyone with a few acres on which they could build Texas mansions and Spanish haciendas. And now look where that has got them. Great model, Sir Crispin.