



SCF response to Crofting Commission Draft Plan consultation

Thank you for inviting the SCF to read and comment on the draft of the first Crofting Commission Plan (The Plan). This was publicised to our members inviting input to an SCF response. We received many comments (which in itself was very encouraging) and this paper attempts to collate them into topic areas which may not be in the same order as in The Plan but hopefully has a logic that will enable understanding and possible use.

General comments

Overall the responders liked The Plan and their responses were largely positive. The very fact that the Crofting Commission has a plan is a welcome move away from the crofters commission. Many commented on how the Crofting Commission are prepared to address very real, big current issues such as freeing up unused crofts, getting more people into crofting, contributing to food sovereignty and the retention of vibrant communities in the crofting counties. It comes across as a very ambitious plan and whilst achieving some aims will be hampered by resource constraints still it is broadly felt that having ambition is a good thing.

It is widely and emphatically felt that there must be an annual review of the plan which involves other organisations / individuals (a crofting advisory group?).

Whilst it is welcomed that the Crofting Commission has worthy ideals and ambition, a clear statement of the commission's objectives is needed. It was also voiced that there could be more specific targets – some benchmark data against which there could be specific, measurable targets. There are some useful statistics that get a bit lost in the text and there are some claims that need to be supported with statistics.

It would be useful were the Crofting Commission to gather crofting data as part of their function, for example figures on how much land is in crofting tenure (benchmark as early in crofting history as possible) and report on status every year (amount of land that has been lost from and been taken into crofting tenure: population figures: how many new entrants; demographics etc. For example, there is interest from those who wish to get in to crofting; the SCF has recently stated to compile a register of interest and the Crofting Commission is directing enquiries to the SCF. As the register becomes more widely known we anticipate its growth and the data will be available for inclusion in future editions of The Plan. Other organisations / departments will also hold data that would be useful for The Plan.

The need for support to crofting cannot be overstated. Crofting is the only form of land tenure in Scotland that has specific regulations. The SCF has always maintained that regulation is a good thing in that it protects croft land by placing certain restrictions on crofters. However, being regulated must be rewarded by appropriate support. Crofting survival is fragile and its viability always close to the edge. It is essential that the Crofting Commission use any power they have to help secure appropriate support to crofting. There needs to be specific reference to this in The Plan.

Indirectly related to The Plan, or to the new culture developing within the Crofting Commission, there were several comments about how the experience of contact with Crofting Commission staff is improving – staff members are being very helpful and seem to have a more positive attitude.

Specific comments

The Crofting Commission structure

It would be helpful to outline the structure of the commission and related government bodies in The Plan. The relationship between the Crofting Commission Board, the staff, staff of other related departments (e.g. SGRPID, Rural Business Development and Land Tenure branch) and Ministers would be helpful in seeing where the Crofting Commission Plan fits. What responsibilities and powers does each have?

There is no mention of how the Assessor network will be governed, supported and used to inform Crofting Commission policy. It is a very valuable resource and essential to the democracy and efficacy of the Crofting Commission

Working with other partners

There is a need to be more specific about working with other partners. For example the Crofting Commission could set up a crofting advisory group consisting of representatives of other organisations and individuals. Also there needs to be Crofting Commission representation at stakeholder groups e.g. the CAP and SRDP groups (other agencies attend, the Crofting Commission should too. Often the only representation for crofting is SCF and there is huge potential for the Crofting Commission to contribute).

Legislation directs that crofts must be mapped. In our view (and that of crofting lawyers who put in contributions to the Scottish Parliament Committee for Rural Affairs scrutiny of the Crofting Reform Bill) the most effective way to map crofts is by using community-led participatory methods (community mapping). It is further enhanced by including wider community assets. The Crofting Commission is part of the steering group for the SCF Crofting Communities Mapping Assets Project and is offering valued help. This should appear in The Plan and mention made of the intention to promote this method within the Scottish Government as it is a far reaching and massive project.

Common grazings

There are many questions about common grazings left unanswered. Will common grazings be subject to statutory conditions? Will share holders be expected to use their shares or give them up? Will grazings be expected to be kept in good order otherwise the shares will be gathered and re-distributed? Neglect of common grazings is becoming a very serious problem. This has been exacerbated by the single farm payment and increasingly by wind-farm developments – both of which encourage livestock grazing decline as income does not depend on it.

The Plan needs more on support to grazings committees and reassurance regarding the 5 year reporting duty. How many regulated and supported grazings committees by when?

Mapping the grazings: how many and by when?

New Entrants / Young Crofters

There needs to be stronger and more specific policy on helping young new entrants, e.g. will there be a new Croft New Entrants Scheme? Is this within the scope of the Crofting Commission now; if not how do the Crofting Commission intend to help new entrants? How will the CC encourage older crofters to give up their crofts?

There needs to be follow up to new entrants / assignees on whether they are fulfilling the statutory conditions, with some sort of provision to support them if they are failing to realise their stated intentions.

New crofts

There is no mention of the creation of new crofts (including woodland crofts) within the crofting counties (including the new areas) and outwith the crofting counties. There needs to be a quantifiable intention.

There is no mention of the Commission's intention for the new crofting areas

Can good regulation promote the increase in land under crofting regulation (para 59)?

Occupancy

How many absentees will be dealt with and by when? How many crofts do the Crofting Commission aim to have coming back into use and by when? There needs to be more specific outcomes – what is the situation now and what does the CC intend by when.

The occupancy condition for new entrants / assignees needs to be specific and there needs to be follow-up to ensure that it is being complied with.

Crofting grants may no longer be under the remit of the Crofting Commission but there needs to be provision for cross-referencing residency status of applicants (para 64) and working with other departments to ensure that absentees are not able to access grants from crofting schemes (which should only be open to crofters) or the SRDP (if this affects the future welfare of the croft or crofting community).

Decrofting

Can the CC put conditions on use of land to be decrofted? Once decrofted, the land is surely outwith the jurisdiction of the CC (para 77).

Register of Crofts and Crofting Register

The following three paragraphs [67, 68 & 69 from the Draft Plan] do not deal effectively with the major changes in recording what land is subject to crofting controls. The Crofting Commission has been given the central role in identifying croft land and common grazings and should participate fully in the resolution of all matters involving the extent and boundaries of these lands.

The duty and responsibility for compiling and maintaining the Register of Crofts is the main protection afforded to land subject to crofting controls exercised by the Commission.

The Crofting Register will in future provide a map-based register of all land subject to such controls.

"67. The Law: Crofters have a duty to provide the Crofting Commission with information on request on the extent, the rent and the tenure of the holding, the ownership or occupation thereof and such other information as the Commission may reasonably require, so that the updated details can be entered on the Register of Crofts held by the Commission. Failure to submit such information may be a criminal offence."

It is unfortunate that this appears to place the principal duty heavily on crofters. This is not correct.

It should be stated that it is the duty of the Commission to compile and maintain the Register known as the Register of Crofts (s.41(1)) and also that the Commission must provide to any person so requesting a copy or extract of any entry in the Register of Crofts, which should contain the statutory information. (s.41(3))

The Plan should set out the Commission's policy on how they propose to exercise these functions.

The Register of Crofts is a continuation of the register of crofts first mentioned in the 1955 Act (s.41(4)) and the Plan should deal with the transition from the existing register to the provision of a complete and up-to-date Register of Crofts.

What information is to be contained in the Register of Crofts (and what the Commission should be able to provide) includes (s.41(2)) :

- the name, location, rent and extent of every croft;
- the name, age and date of birth of the tenant and the landlord of each croft;
- the landlord's address and, where the tenant's address is different from the address of the croft, the tenant's address;
- where the landlord's estate is managed on his behalf by another person, a statement that it is so managed and the name and address of that other person;
- where the tenant of a croft holds a right in a common grazing, the location and boundaries of the grazing; and the owner of the grazing and his address.

This is a major exercise and the Plan should contain the policy on how this is to be accomplished.

"68. Policy: The Crofting Commission is committed to updating and modernising the Register of Crofts and making it more accessible, so that it becomes an authoritative record of croft holdings. The Register of Crofts must contain an accurate and up-to-date record of a particular holding before the Commission will consider applications. In cases where the record is not accurate or up to date, the Commission will require the register to be updated and will seek available information and, if necessary, further evidence from the applicant and others as necessary."

This is not a policy. This is a re-statement of the legal duties and responsibilities placed on the Commission by "the Law" but it makes no pretention to explain the policy of the Commission as to how they will carry out its duties and responsibilities, as required by the Plan.

SCF has expressed concern that the costs of the registration process in the Crofting Register will fall solely on the tenant crofter or owner-occupier crofter. We do not think that this can be the policy of the Commission in respect of the Register of Crofts.

Consider these problems:

- The Crofter who does not know who his landlord is, because the landlord fails to make himself known.

The crofter cannot be responsible for searching for his landlord, for providing the personal details of the landlord including the landlord's address and the landlord's manager or agent, if any.

- The Crofter cannot obtain agreement from his landlord as to the extent or the boundaries of his croft because his landlord does not respond.

In such cases the crofter seeking to identify the boundaries of his croft will be unable to complete an application form or to comply with a requirement by the Commission to provide them with such information.

Guidance is required in the Plan as to what the Commission's policy will be in such situations.

"69. From 2013, most applications to the Crofting Commission will require the applicant to register any changes to the holding on the Crofting Register, administered by the Registers of Scotland. Failure to do so will render the change null and void."

SCF has expressed concern that the costs of the registration process in the Crofting Register will fall solely on the tenant crofter or owner-occupier crofter. The policy of the Commission in respect of the Crofting Register will dictate where many of the costs of that registration process will fall.

In addition to the problems stated above, consider:

- The Crofter seeking to identify the boundaries of his croft for the purpose of first registration will be expected to know or provide information that has at no time been furnished to him, e.g.
 - (a) The name and address of the Landlord(s) or "owners" of the croft. (RoS, Form A Part 1)
 - (b) The name and address of the Crofters/Non Crofters whose land shares a common boundary with his croft. (RoS, Form A Part 2)

In such cases the crofter seeking to identify the boundaries of his croft will be unable to complete the application form or to comply with a requirement by the Commission to provide them with such information. The Commission may then refuse to forward an application for registration to the Keeper.

SCF takes the view that no other land registration would require such identification of boundaries as to penalise the proper occupier of that land and that such a requirement by the Commission must be dealt with reasonably.

Guidance is required in the Plan as to how such situations will be dealt with by the Commission.

Viability

Regulation is important to the well-being of crofting but is not the only aspect that needs attention. Crofting is suffering due to it becoming unviable¹. If crofting can provide an income and a place in the community, people will croft. Many croft enterprises are subsidised by off-croft income sources, but this is unsustainable.

Para 37 outlines how important agricultural / rural development support is to crofting. Crofting (like farming) is heavily dependent on CAP and SRDP support due to low market prices. Crofting provides many non-market public goods which by their nature do not earn anything for the crofter though the public benefits from them. Many croft enterprises could not exist without public financial support – payment for public goods. It is essential that the Crofting Commission engages with the process leading to the new phase of CAP and SRDP and in the on-going monitoring and amendment of them, and this plan must say that.

¹ SCF define this as 'the well-being of family, community and public assets without financial detriment to the individual'.

Key Words (Definitions):

The following words need to be defined in part 3:

Apportionment
Crofter
Runrig (land held runrig)
Speculation
Viability (of crofts)

Some aspects particularly liked:

Respondents mentioned certain things they particularly liked which included:

being able to not direct a decrofting even if planning permission has been granted (as they are two distinct processes that should not be interdependent) (para 42);

maintaining access (para 81);

intent to support the work of other organisations who work with crofters and their communities (paras 14 & 57);

recognition that crofting is an excellent model for delivering food sovereignty (paras 22 & 41);

recognition that crofting contributes to the development of employment opportunities in the crofting areas (para 24);

recognition that self-build housing is important to crofting communities and needs support (para 32);

recognition that woodland is a valuable resource in crofting (para 41) but could be more on development of woodland crofts.

Comments on terminology used

There were some responses regarding specific terminology that may be helpful to consider:

Tenants and owner-occupier crofters. They are all crofters so either use 'crofter(s)' or 'tenant crofter(s)' and 'owner-occupier crofter(s)' as appropriate.

Common lands (para 99). Use common grazings.

Runrig (in Shared Management definition) This should be referred to as 'land held runrig'.

Crofting brand. Whilst the intention behind this is right and good, the term is not very attractive – it may be more appropriate to use a longhand version something like 'the positive (cultural, environmental and social) images that crofting portrays'.

Shared management. This is another unattractive phrase that was used by the Crofters Commission. Those that expressed dislike of the term preferred to just talk of 'working together'.

Minor format comments

Part 2 needs to be more consistent with part 1

The Decrofting section should address the 'four routes to decroft' in the order given.