

SCF response to the Crofting Reform (Scotland) Bill consultation May 2009

Thank you for the opportunity to respond to the proposals put forward by the Scottish Government (SG) to amend crofting law. The consultation document is meticulous, is well written and clearly laid out, which is to be commended. We appreciate that the Crofting Futures Team also presented this document at a wide selection of venues in the crofting counties which gave crofters the opportunity to get clarification and to give opinions.

We are responding on behalf of our membership, currently in excess of 2000 individuals plus their families, who have been widely consulted and given the opportunity to contribute to the draft. We trust therefore that this will be given due weight.

Crofting legislation needs to be placed in the wider context of food production, land management, environment and social well-being in rural Scotland but it is our opinion that this bill fails to do this. We attempt to place crofting in this context before answering the consultation questions.

Summary

- The bill is not well placed in the wider picture of what is desired for and what is happening in rural Scotland. It claims to be the result of the Committee of Inquiry on Crofting (CoIoC) yet only addresses a handful of the recommendations of the committee.
- Much of the proposed bill is rejected by our members. A regulated system needs a fair balance between regulation and incentive, reward and responsibilities. This bill is seen to be very heavy on enforcement of regulation, introduction of new restrictive measures and imposition of charges, with very little in the way of incentive, indeed existing incentives seem under increasing threat.
- The bill seeks to address the decline of active crofting through enforcement of regulation, whilst ignoring the question of viability of crofting. Investment in crofting activity that is within the power of the government such as payment for public goods or increased support to croft housing is absent and conversely additional charges to crofters are proposed.
- There is nothing in the bill to encourage or support new entrants, vital to the sustainability of crofting and core to the CoIoC recommendations. In fact the whole ethos of the bill is seen as a deterrent to new entrants.
- The bill therefore needs a comprehensive overhaul to be acceptable to our members (and, we believe, the wider crofting population) and we suggest amendments where possible, though only redressing the balance between reward and responsibilities will make the bill fit for purpose. The SCF believes that a bill is necessary to achieve some of the desired outcomes suggested.
 - *Governance.* The Crofting Commission should have a majority of elected, area-based commissioners and should elect its own Convener;
 - *Crofting Register.* A map-based register is needed and the Scottish Government should meet the cost of this. It should be compiled using community mapping exercises and be kept by the Crofting Commission;

- *Support for Croft Housing.* Using the croft tenancy as standard security is unacceptable. Croft housing needs investment, best achieved through a re-introduced GBGLS;
- *Occupancy Requirement.* Using crofting to attempt to address the failure of rural housing policy is unacceptable and should not feature in this bill;
- *Crofting Regulation.* Treating tenants and owner-occupiers alike is fair. Tackling long-term absenteeism is welcomed but discretion is needed as not all absenteeism is bad. Subletting needs to be improved. The emphasis should be on dealing with neglect.
If regulation is desired it should be enforced, matched by realistic incentives.

SCF vision for crofting

Crofting legislation needs to be seen in context with the wider picture of food production and rural development in Scotland. It is a system, based on the retention of the indigenous population, of small-scale food production and land management, which is efficient, good for the environment and holds rural communities together. This type of land-based culture is advocated by many internationally¹ as the sustainable way to produce the world's food. The SCF believes that crofting essentially needs the following:

1. Protected heritable tenure;
2. Viability;
3. New entrants;
4. Protection of the arable in-bye;
5. Defined boundaries.

Our evaluation of the draft bill uses these as the benchmark against which the efficacy of the bill is measured.

1. **Protected Tenure.** The draft bill does not affect the protection of tenure afforded by existing crofting legislation but it does seek to limit heritability. The rationale of not assigning to absentees is acknowledged but needs to be dealt with in such a way as to not alter this fundamental right. We make suggestions in the answer to question 25.

2. **Viability.** We define this as 'the well-being of family, community and public assets without financial detriment to the individual'. If crofting is not viable crofters will not croft. This bill does not increase viability and seeks to address the current marginal situation with increased regulation. This will not work. If crofting is to be a regulated system for the benefit of the common good, which we assume is the desire of the Scottish Government, then regulation (which on the whole limits an individual's freedom) needs to be balanced by public investment that non-regulated producers and land managers do not get.

3. **New entrants.** It is accepted by all that new entrants are the future of crofting and that we need more people coming into crofting. Whilst the aims in the draft bill of making more crofts available could help this, available crofts will only be taken up long term if crofting is viable. We believe that the provision of incentives and payments making crofting viable is what will attract and keep new entrants.

4. **Protection of arable in-bye.** Good quality land is a scarce and valuable resource in much of the crofting areas and the failure of the Scottish Government to protect this resource is lamentable. The Crofters Commission is impotent whilst the local authority planning departments grant inappropriate planning consent on croft land and the Scottish Land Court

¹ Notably by the UK Food Group, comprising many organisations working in world food policy

(SLC) directs the Commission to allow serial and multiple de-croftings of in-bye. Building developments on in-bye and the associated speculation in croft land is seen by many to be symptomatic of a failing regulatory system. Making the Crofting Commission a statutory consultee in planning decisions affecting croft land is essential but the effectiveness of this will be compromised unless local authority planning departments and the SLC are directed by ministers to operate a presumption against building on arable quality in-bye.

5. **Defined boundaries.** It is accepted that defining croft boundaries will be a good thing. It is important that it is done in a sensitive way as this has the potential to cause conflict and bad feeling if done inappropriately. Using participatory community mapping exercises may bring a positive benefit to this. Expecting crofters to pay for failure of successive governments and the Crofters Commission to have a register based on defined boundaries is completely unacceptable.

The SCF believes that if these five conditions are met then crofting will prosper.

How crofting contributes to Scottish Government aims for Scotland

Sustainable Economic Growth. Tourism is one of Scotland's most important industries with considerable growth potential and food is a vital part of that. If Scotland is to be a high-quality tourist destination, visitors are entitled to expect to be served the best of local produce, and small producers in the Highlands and Islands have a vital role in meeting those expectations. Small scale, low-intensity food production tends to be associated with High Nature Value farming, and many of Scotland's most valued habitats and landscapes are maintained by crofting agriculture.

Resilient Communities. Food production and food security in Scotland must concentrate on quality, local provision, provenance and sound environmental practices. Maintaining food production, especially livestock, in upland, peripheral and island areas is of inestimable social, economic and environmental importance. Small scale agriculture, such as crofting, has been successful in maintaining populations in some of Scotland's most remote areas. In contrast, industrial scale agriculture driven by a commercial UK food policy, whether in the Straths of Sutherland or the arable prairies of the East of England, has cleared rural populations leaving a degraded environment and a countryside that is the preserve of the rich.

Current Scottish Government investment in crofting

To achieve the above objectives the Scottish Government must invest in crofting. However, the claim by the SG to be investing in crofting is not adequately reflected in practice:

Less Favoured Area Support Scheme (LFASS). Despite recommendations by the CoIoC and the Royal Society of Edinburgh² the SG did not take the opportunity to redistribute funding from "standard" to "very fragile areas" in recent scheme reviews;

Croft Buildings Grant and Loan Scheme (CBGLS). Despite this scheme being acknowledged by rural housing experts as the most effective way of supplying housing to rural areas³, after being allowed to deteriorate for many years the scheme was withdrawn in 2004. The gap between the replacement Croft House Grant and real building costs, and the lack of a flexible loan make the scheme unattractive to prospective first home builders. Crofters are also denied access to the higher grant percentage available under the Rural Home Ownership Scheme;

² Committee of Inquiry on the Future of Scotland's Hills and Islands, Royal Society of Edinburgh 2008

³ A Review of support for Crofter Housing, Shucksmith and Alexander 1994

Livestock Improvement Scheme (LIS). Despite it being a very popular scheme and crofters having a recognised, important role in supplying hardy, healthy store and breeding livestock to mainstream Scottish agriculture, this scheme was withdrawn in 2004. The replacement Croft Cattle Quality Improvement Scheme, after repeated attacks by the SG, was withdrawn in 2009 (to be then reinstated for a limited period whilst under review). The claim that it is expensive does not hold up against the revenue generated from surplus heifer, silage and barley sales from the stud the farms and lack of investment in the scheme does not reflect the capital generated from the sales of bull stud farmland. As major disease problems have demonstrated, the value of this scheme to national biosecurity is considerable;

Scotland Rural Development Programme (SRDP). Despite a recent review⁴ of the programme, it still is perceived to offer little to crofters and is seen as inaccessible;

Crofting Counties Agricultural Grant Scheme (CCAGS). Despite being considered the bed-rock of investment in crofting this scheme has been constantly eroded with the removal of support to replacement infrastructure and 'Standard Costs'. The placement of the scheme within the SRDP makes it time-bound and is unlikely to continue beyond 2013;

Crofting Communities Development Scheme (CCDS). Despite this scheme being well subscribed and seen as very progressive, it was withdrawn in 2008.

Agri-environment schemes (ESA / RSS). Despite most of the High Nature Value Farming areas of the UK being found in the crofting counties, there are no longer any meaningful agri-environment schemes for crofting.

Highlands and Islands Croft Entrant Scheme (HICES) This very modest scheme was the only explicit support for new entrants to crofting. It was closed last year.

The current situation is that the three remaining development schemes unique to crofting, the Crofting Counties Agricultural Grants Scheme, the Croft House Grant Scheme and the Cattle Quality Improvement Scheme have been under repeated attack for a number of years and it is a constant struggle to maintain them. The Less Favoured Area Support Scheme has always been, and still is, mis-targeted to provide highest payments to more favoured areas outwith the crofting counties.

With all these in mind, the question has to be asked, what does the Scottish Government want for crofting? If the SG genuinely wants crofting to fulfil its potential in food production, land management and community strengthening, crofting needs investment, firm and proportionate regulation, stability and equity. Or is the intention to let crofting 'wither on the vine'?

Regulatory Considerations

The imbalance of this bill raises questions about the whole concept of a regulated system of land tenure. Crofting is regulated, we assume, for the common good. Individual freedoms are limited in order for regulations to control the use of croft land. The argument for this being 'fair' has always been that crofters are afforded privileges not enjoyed by non-crofters in the form of payments of grants from the public purse in return for the imposition of regulation for the common good. This argument is standing on increasingly unstable ground with the erosion of investment in crofting and examples of increasing real disadvantage to crofters becoming manifest⁵.

⁴ Peter Cook, 2009

⁵ such as Less Favoured Area support being directed to more advantaged areas and crofters being denied access to the higher level of housing support offered under the Rural Home Ownership Grant Scheme

At the other end of the scale, it is suggested that crofting isn't a fully regulated system anyway as crofters have the right to buy the landlord's rights (which has promoted the evasion of regulatory enforcement) and the right to assign tenancies outwith the family, thus creating a market in croft tenancies which undermines a regulated system.

How would this government model of regulated tenure, crofting, fare were the option of deregulation offered now? Whilst we strongly believe it is still felt by the majority that a regulated system is best for the health of crofting land and crofting communities, there would undoubtedly be some who would opt for deregulation were the option available. And with the current trend of decreasing investment in crofting it would not be unreasonable to conclude that this is the government's intention.

The SCF does advocate a regulated system but one that is effective and rewarded. We support keeping the right to buy the landlord's interest and the tightening up on the regulation of owner-occupiers. We **could** advocate the removal of the right to assign outwith the family as a way to apply a brake to 'open market' forces, but **only** if real incentives are offered as payment for the restriction. The status quo is not ideal and imposition of increased regulation with no matching incentives is unacceptable.

The logical conclusion is that the SG are not willing to provide the necessary incentives and are proposing charging heavily for a regulated system, thus forcing crofters to consider deregulation as the only viable means of survival. Is this Scottish Government willing to be the government that ended crofting as a regulated system?

Conclusion

The SCF has recognised the need for crofting reform and has been supportive of the Committee of Inquiry on Crofting which we felt to have been conducted well and to have produced an holistic and comprehensive Final Report. Whilst we do not agree with all the recommendations made by the CoIoC we believe it found a fair balance between enforcement of regulation and incentive to be regulated in the form of financial investment. We make the assumption that a regulated system of tenure is desired by the Scottish Government in order to ensure that the vast resource of croft land continues to be managed by crofters in a responsible and sustainable way. We believe that if more regulations are imposed to restrict the way crofters use this resource then increased incentives should also be offered. It is about finding the fair balance.

The proposed bill no longer reflects the CoIoC recommendations from which it claims to have been developed. It appears that the Scottish Government have 'cherry picked' with the result that the balance between regulation and incentive as proposed by the committee has been lost.

The SCF believes that some legislative and regulatory changes are needed to enhance the crofting system of tenure, the status quo not being an acceptable option. Whether these changes need a crofting reform bill or can be implemented by other bills progressing through parliament, Scottish Statutory Instruments and ministerial direction are for the Scottish Government to determine, though we think that a revised crofting reform bill is needed. We strongly advocate increasing incentives outwith the scope of the bill such as a fair redistribution of support to fragile and very fragile Less Favoured Areas, croft-friendly measures within the SRDP and a significant increase in investment in croft housing – all recommended by the Committee of Inquiry on Crofting.

The Consultation questions

GOVERNANCE

Question 1: *Do you have any comments on:*

(a) the proposal to make the Crofting Commission more democratic and accountable through the establishment of Area Committees?

(b) the area to be covered by each Area Committee?

(c) the process for Area Committee elections?

Comments:

We agree that the Crofters Commission, or Crofting Commission (CC), should be more democratic and accountable but the suggested route to this via Area Committees is not favoured, particularly as it dismantles the Area Assessor network currently in place and that SCF fought hard to retain. The Area Assessor network is, or should be, representative of crofters and works as a 'grass-roots' advisory body to the CC. We want this network retained, empowered and supported - particularly with training, the setting up of local assessor groups and payment (or compensation for loss of earnings) at a realistic rate. The Area Assessor Network represents the distilled and accumulated expertise of many generations and is a valuable intellectual asset in its own right. SCF has been involved with the CC in improving the Assessor network and this work should continue.

It is most important that the relationship between the Assessors and the CC changes to reflect that the CC is directed by the advice of the Assessor network and the civil servant staff support and enable the Area Assessors, not direct them - this definition of roles needs to be enshrined in law. Assessors should be elected by crofters or nominated by grazings committees (who should themselves be elected), should form their own area groups and will be directly involved in the appointment of commissioners to the board of the CC. The role of the Assessor Network will be as it is currently - advisory not regulatory - feeding information up to help the CC to make informed decisions. The majority of commissioners should be elected and the commissioners should elect their own Chair. The elected Commissioners will represent areas and will be recognised as Area Commissioners (with two commissioners in the Western Isles). A minority of specialist commissioners may be appointed by the SG. We think that 10 - 12 commissioners would be necessary.

We suggest the following areas to be appropriate:

1. Shetland
2. Orkney and Caithness
3. East Highlands (E. Sutherland, E. Ross, E. Inverness, Moray)
4. Western Isles
5. West Highlands (W. Sutherland, W. Ross, Skye & Lochalsh)
6. South West Highlands (Lochaber, Argyll & Bute, Arran & Cumbrae, Small Isles)

Question 2: *Do you have any comments on the proposed changes to the constitution of the Crofting Commission?*

Comments:

Changes to the constitution of the CC seem fine, except that the chair of the board should be elected by the board members. We have commented on the CC in the previous question.

Question 3: *Do you have any comments on:*

(a) the proposed expansion of the powers and duties of the Crofting Commission?

(b) what the balance of costs to the individual applicant and the taxpayer for processing regulatory applications should be?

Comments:

The proposed expansion of the powers and duties of the CC seem fine, with the proviso that the balancing incentives are simultaneously introduced or pledged.

The proposal to charge crofters for regulation is only acceptable in cases where the crofter will financially benefit from the transaction – decrofting a house site for example. A blanket charging for regulation does not seem just. If the SG deem a regulatory system to be beneficial for the public good then the public must pay for this. To suggest that the SG will impose regulations upon one sector of society for the good of the whole and then to also suggest that this sector will pay for it is not defensible. The Scottish Government has removed a great many charges on the citizen that are unrelated to the ability to pay; for example dental and eye examinations, prescription charges, bridge tolls, excessive ferry fares and the proposed replacement of the Council Tax. Imposition of this new raft of charges (taxes) on crofters would be counter to the thrust of Scottish Government policy.

Charges are unacceptable if this is to make up for the inefficiencies of the administration. The figures quoted in the consultation document for the costs incurred by the CC would indicate that there is something very inefficient about how the CC operates. For what one would assume is fairly basic administrative work to be costed at £500 per day is astounding. And then, for example, taking 1.6 days to change a tenant's particulars on the register for an assignation surely demonstrates an inefficient system in the extreme. This points to the need for a full economic audit on how the CC conducts its business rather than trying to compensate for the inefficiencies of the CC by forcing crofters to contribute to costs.

Question 4: *Do you have any comments on the draft Regulatory and Equality Impact Assessment on the Governance proposals?*

Comments:

Risk assessment. Regulatory decision making should remain with the CC board in order to avoid the risk of neighbourhood disputes by regulatory decisions being taken at, what is perceived to be, too local a level.

Options. The option to reform the CC by clarifying its responsibilities and reconstituting it to make it more democratic and accountable is welcomed.

Impact on stakeholders. Focusing CC staff on regulation is welcomed but whether it will increase efficiency is yet to be seen – the CoIoC were told by the CC that they spend almost all of their staff resources on regulation administration anyway. There is no argument to

validate charging crofters in order for the CC to recover costs to make up for its own inefficiency. We believe, as stated above, that the case for an external audit of the costs of specific performance by the Commission is long overdue.

We feel that the financial resource allocated to HIE for crofting development is very small, particularly in view of the jobs sustained in rural communities, and when compared to support for its tourism and industrial strategies.

Costs. The costs of the Commission board and Assessor Network should remain similar to current costs, given the efficiency savings that the SCF is convinced can be realised.

Small Firms Impact Test. Most crofts are small firms.

Enforcement and Sanctions. The imposition of any new charge is a new sanction.

CROFTING REGISTER

Question 5: *Do you have any comments on the identified regulatory trigger points that would require a first registration to be made in the Crofting Register?*

Comments:

The process of registration should be done in a more community participatory way. If it is done as a community mapping exercise, led by the CC and trained facilitators / mediators it could be an empowering process. 'Trigger' points, coupled with fees, turn it into another enforcement exercise that will encourage resentment and entrenched positions. A commission led community mapping exercise could also get the process done in a matter of years rather than generations.

3.2.2.3 raises an interesting point. If new landowners are expected to register crofts on their land it logically follows that all landowners should bear the responsibility of registering crofts on their land i.e. all tenanted crofts should be entered on the register by the landowner, not the tenant. If there is a cost for this it may be expected that landowners will not support this proposal. The SCF believes that the proposal is just not viable. It will have the effect of adding yet another barrier to community buyouts of croft land - SCF are supportive to community buyouts where the majority of the community and the majority of crofters are in favour.

Question 6: *Do you have any views on the process for making an entry onto the Crofting Register?*

Comments:

If the CC reject an application, what happens next? This has been left open on the process flow diagram. It needs to follow a route to resolution.

The process described is logical (apart from that mentioned above) but it does not reflect how difficult this may be or how potentially expensive it could be. For example, many crofts do not have marked out boundaries but people know roughly where they are and manage to live in a state of harmony. Forcing the delineation of boundaries will create disputes where none exists and which will need to be resolved. The process as described does not go into enough detail on dispute resolution, especially if avoiding the costs of court settlement is aimed for. We suggest that more detail is needed on a community participative mapping process for establishing boundaries and a mediation route to resolve conflict out of court.

We suggest that any dispute by a landowner on a croft boundary will be the landowner's responsibility to prove the disputed boundary – the presumption being that land is croft land unless the landowner proves it to be otherwise. This is necessary to avoid deliberate obstruction.

We advocate the use of the '20 year rule' – i.e. if a marked boundary has not been disputed for 20 years it can not be disputed now.

Question 7: *Do you:*

(a) agree with the type of information to be held on crofts in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

The information to be held on a crofting register only needs to be sufficient to administer crofting and should be kept by the Crofters Commission.

Question 8: *Do you:*

(a) agree with the type of information to be held on common grazings in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

As above.

Question 9: *Do you consider the balance of costs between the applicant and the tax payer in respect of registration to be correct and/or what level of registration fee do you think would be appropriate?*

Comments:

No we do not think that the level of fee is appropriate. Given that the CC had the statutory responsibility to create and maintain a register of crofts and has failed to do so and given that registering all land in Scotland is in the public interest, we think that the SG should pay for the initial mapping and registering of croft land including common grazings. Subsequent amendments to the register that would result in financial benefit to the amender could incur an appropriate fee.

Provision must be made for mitigation of costs of disputed boundaries, otherwise the party with the deepest pockets will inevitably win.

Question 10: *Do you have any comments on the proposal to allow persons with an interest to challenge the details of a croft or common grazing being registered on the Crofting Register?*

Comments:

If a 'new' boundary is suggested it should be open to challenge by adjacent land holders or those with an interest. Where a croft boundary has been marked out and not contested for

over 20 years we agree with the CoIoC recommendation that the 20 year rule should apply as this will go a long way to simplifying the mapping of crofts. The SG rejection of this rule is not adequately explained or supported by rationale in this consultation document.

Question 11: *Do you have any comments on the draft Regulatory and Equality Impact Assessment of the proposals for the development of a new and definitive Crofting Register?*

Comments:

Risks, options, benefits. Our comments above apply. We agree in principle that crofts should be mapped and details of extent and interests kept on a register, though this register should be compiled and kept by the Crofting Commission.

Impact on stakeholders. Impact due to dispute must be mitigated by designing a community mapping process implemented by the Crofting Commission supported by qualified facilitators and mediation service.

Costs. The cost of creating the register and first registration should be borne by the SG but the impact of a reasonable charge for amendments is acceptable.

SUPPORT FOR CROFT HOUSING

Questions 12 – 16 on using a croft tenancy as Standard Security

Comments:

There is no support for this proposal and as there seems no room for modification this section should be removed from the bill.

Investment in croft housing was most effectively done through the Croft Building Grant and Loan Scheme (CBGLS) which was widely recognised as the most cost effective way of increasing housing in the crofting counties. The erosion and final closure of this scheme is seen as regressive and in opposition to the SG claim to support increased provision of rural housing.

As the document says, the recommendation by the CoIoC to increase the grant for croft housing does not need primary legislative amendment so falls outwith this consultation. We do however support the recommendation. This section deals with the provision of a commercial loan, the SG rejecting the suggestion that the CBGLS is re-instated (and with it the provision of a SG administered loan) though our members universally advocate this.

The rejection of the SG proposal is due to crofters feeling that to put their entire croft up as security for a loan on a house building project is too great a risk – non-crofters only put the value of the house plot and house up as security for a loan to build so why would this not also be the case for crofters? As owner-occupiers have the ability to put the whole croft up as security (this being one of the reasons cited for the introduction of the Right To Buy under the 1976 Crofting Act) it would be interesting to find out how many have taken this opportunity. Probably few if any. .

It is also widely seen as inappropriate for a commercial lender to be in the position of being able to take over the tenancy of a croft as a prelude to taking the croft out of crofting tenure. This contradicts crofting ethos in that it legislates **for** speculation.

If the reinstatement of CBGLS is rejected by the SG we think that looking at the credit union model may be more appropriate as a means of raising capital for any croft enterprise. This would need priming with, for example, repayment interest generated by CBGLS.

If the intention of this proposal is to stop de-crofting of land it fails to address this effectively. De-crofting of house sites need not be the problem if local authority planning departments were to be more sympathetic to crofting needs and had a presumption to protect arable in-by-land. We reiterate that it is essential that these departments be given ministerial direction to protect in-by-land with a presumption to build on lower quality land. It is also essential that the relationship between LA planners, the Crofting commission and the Scottish Land Court and their strategy is clearly defined. It is ludicrous that the commission who are charged with the interest of crofters are unable to protect in-by-land croft land because the LA grant planning consent and the SLC overthrow a CC refusal to decroft as it deems building a reasonable purpose to decroft.

The assertion by a presenting government official at a public meeting that the SG have no intention to limit de-crofted house sites providing they are used for permanent occupancy (see the next section) demonstrates that this is clearly not the policy intention. It therefore follows that the intention must simply be to enable crofters to borrow money commercially rather than the SG providing a loan or the housing grant being increased. It has the whiff of the prospect of discontinuing the croft house grant. It is essential that a unique croft house grant and loan scheme is retained and expanded and not incorporated into general rural housing support.

OCCUPANCY REQUIREMENT

Questions 17 - 22

Comments:

There is no support for this proposal and as there seems no room for modification this section should be removed from the bill. The SCF would remind ministers of the contempt with which the previous administration's proposals in this regard were treated by the Environment Committee of the Scottish Parliament. We do not believe these proposals are any better.

If the intention of this proposal is to address the need for more affordable housing for local residents by depressing the market of housing for holiday homes, it is not logical, appropriate or just to apply this only to houses on de-crofted land. Crofters should not pay for the failure of Scottish rural housing policy. If an occupancy requirement were to be used at all it would only be equitable to use it for all new-builds.

Many areas do not have a problem with holiday homes so an occupancy requirement on new builds would only be appropriate in 'pressured areas'.

Given that it is proposed that local authorities administer and police this proposal as the housing that would have the occupancy requirement is on non-croft land, it is not logical that this even appears in a bill designed to amend crofting law. If it were to be used in pressured areas for all new-builds this would be entirely a local authority matter and be outwith the scope of this bill.

CROFTING REGULATION

Question 23: *Do you have any comments on the proposed definition of an owner-occupier?*

Comments:

We agree that owner-occupiers and tenants should be treated the same. The proposed definition of owner-occupier is acceptable.

Question 24: *Do you have any comments on the proposals that are designed to help achieve greater equality in the treatment of tenant and owner-occupier crofters and help to free up crofts for new entrants to crofting?*

Comments:

In principle this appears to be the right way to go, but we have some concern regarding sub-letting. It is an important part of crofting for a crofter to be able to offer a sub-let when temporarily unable to work the croft or part of it, and to be able to take a sub-let. The creation of a sub-class of crofter who has no rights must be avoided – e.g. currently if a croft changes hands a sub-let can be terminated by the new tenant immediately which is not good for the sub-tenant and does not encourage investment in the croft. There needs to be more protection for sub-lets in the bill and this would be supported by the SCF.

Question 25: *Do you have any comments on the proposals in the draft Bill that are designed to enable the Commission to take more effective action against absenteeism?*

Comments:

Provisions that are designed to enable the Commission to take more effective action against absenteeism are broadly welcomed but with some reservations. Whilst it is important to address long-term absenteeism and absentees holding multiple crofts, we think that the emphasis must be placed more on addressing neglect as this is the problem. Absenteeism is not a proxy for neglect.

We welcome flexibility in an approach to absenteeism as many crofters are forced to be absent for valid reasons and the possibility of asking for 'leave of absence' makes sense. The Commission (via advice from assessors) must have discretion over absenteeism.

Sub-letting can help address absenteeism/neglect and can also allow a new/young crofter to gain experience of crofting without it being initially too onerous.

Amending family assignation provisions is sensitive ground. Family assignation is a fundamental right of crofters (true, it is earned through compliance with statutory conditions, one of which is to be resident on or near the croft) and whilst the reasoning to prevent avoidance of absentee action is appreciated there needs to be consideration of other methods of achieving this without altering the fundamental right. We suggest that one chance at assignation to an absent family member could be allowed with the absentee initiative taking care of it the same as for any absentee situation. If they remain absent they would be followed up under the CC absentee initiative which would give provision to sub-let for a reasonable time and if they fail to satisfy the long term conditions they would have the option to assign to a resident family member or the croft is declared vacant and re-let by the CC. If the tenant agrees to not assign to an absent family member or they have no family to assign to they (with the CC) would assign to a suitable tenant outwith family.

Many people are keeping crofts in active use but from outwith 10 miles. We think that the 10 mile rule needs to be modernised to reflect vehicular access. We therefore suggest that the statutory distance should be increased to 30 miles / 50 km.

Question 26: *Do you have any comments on the proposals in the draft Bill to enable the Commission to take more effective action where a croft is not being put to productive use?*

Comments:

We agree that the CC needs to be able to take more effective action where a croft is not being put to productive use and welcome the change to legislation that gives that power to the CC rather than the landlord. Furthermore we are supportive of the CC assessor monitoring the five year plan given by new entrants (and long-term neglecters) and being able to offer advice and support to achieve the plan (which may include sub-letting or re-letting).

Assignment of share in common grazings. Section 8(7) of the 1993 Act allows a crofter to assign their share in the common grazings separate from the croft. While there is the argument that this allows effective use of a grazings share which is inadequately used this should only be seen as a short term measure. It should not be possible to permanently remove the grazings share where in many cases this is the principle asset of the croft.

Regarding bankruptcy (1993 Act Schedule 2 : the Statutory Conditions. 10 The crofter shall not do any act whereby he becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985). This statutory condition is now out of step with the current attitude to bankruptcy within the population at large, is discriminatory and should be deleted. So long as the rent is being paid and the croft worked then the landlord does not require this condition to protect his interest. If the rent is not paid or the croft is not being cultivated then the landlord's interest is protected by statutory conditions 1 and 3 of Schedule 2.

The power for the CC to divide an unused croft thus creating a bare-land croft whilst allowing the crofter to remain in their home is acceptable as long as the crofter has the right to assign the tenancy to a family member.

The definition of 'purposeful use' seems fair. Tightening up on the definition of conservation management is welcomed. We are not sure it goes far enough to close the loophole which allowed neglect to be called conservation; it may need to say planned and managed under supervision of a recognised environmental scheme or a qualified conservation manager of the CC.

Question 27: *Do you have any comments on the draft Regulatory and Equality Impact Assessment for the proposed changes to crofting regulation?*

Comments:

None.

Question 28 Additional Comments

The question needs to be asked why has, again, this bill been received with so much hostility by crofters. On the surface the process taken to arrive at this point seems to have been developmentally correct – there was a full inquiry into crofting, into which crofters had ample opportunity to contribute; a comprehensive analysis and set of recommendations was produced; the SG responded to this and drafted a bill. However, if one looks a little closer it can be seen that flaws in the process – misunderstandings, misinterpretations, lack of participation - have led to an almost total rejection of the draft bill by the very people who gave evidence to the inquiry, the crofters. The key to good development practice is participation⁶ and this is what has been lacking at various stages of this process.

⁶ as advocated by the OECD, Rural Policy Review 2008

For example, the CoIoC produced their report in final form without trying out the draft on the crofters. After releasing the Final report the CoIoC were disbanded before they had the chance to ask crofters what they thought of it. Furthermore, it is our understanding that the former members of the CoIoC were not consulted by the Scottish Government in the drafting of the bill which appears strange given the depth of current knowledge of crofting the committee possesses. The SCF has on many occasions offered to 'try out' proposals for legislative reform on its members prior to them becoming a draft bill, but these offers were not taken up.

It is not surprising that many crofters conclude that SG officials think they know best, have an arrogance of a 'top-down' colonial government. SCF believes it is more likely to simply be inexperience in development practice⁷. This is not the participatory development advocated by the OECD and by the CoIoC. It is why, regrettably, the SCF has to conclude that the second attempt at a crofting Reform Bill has failed the critical test of listening to those who have the right diagnosis of what is wrong. Development, not remote regulation is the key to the future of crofting and this needs investment. That was true in 1886 and is just as true today.

SCF is the only member-led organisation dedicated to promoting crofting and is the largest association of small-scale food producers in the UK. Its mission is to safeguard and promote the rights, livelihoods and culture of crofters and their communities. Working through its membership structure it can respond authoritatively to agencies and government officials at local, national and international levels on the many issues affecting crofting and crofting communities.

⁷ “Centralisation and the lack of adequate bottom-up participation to rural policy hamper the design of measures adapted to the different parts of rural Scotland” – OECD Rural Policy Review 2008