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Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

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- Publish response with name
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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Statement SCF on the 'Small Landholdings Modernisation Consultation'

The current reform of legislation relevant to small landholding tenancies should not reinvent the wheel and add layers of complexity by combining different tenancy models. Instead, this is an opportunity to give all small landholders across Scotland the same protection under crofting law and to provide access to existing channels of support.

Small landholdings are regulated under the Crofters Holdings (Scotland) Act 1886 and the Small Landholders (Scotland) Acts 1911 to 1931. The 1911 Act extended the protection given to crofters across Scotland, referring to all relevant small-scale managers of land as small landholders. This means that the rights of security of tenure, fair rent, and payment of compensation for improvements at the end of a tenancy apply to crofters and small landholders alike. Equality was not restricted until 1955 when crofting tenure was limited to the crofting areas in the Highlands and Islands. This means that rights introduced under a modernised crofting framework and subsequent reforms no longer apply to those working the land under small landholders' tenancies.

Now is the time to remedy this injustice and protect agricultural land for future generations. It is clear from the consultation document and its comparisons with crofting law that the issues and inequalities faced by small landholders are caused by a lack of modernisation and alignment with the current crofting framework. This framework has been designed specifically with protection of small-scale tenants and small-scale agriculture in mind. It does not only offer adequate rights and the protection of the Crofting Commission to remedy power-imbalances between tenant and landlord, but also support, training and advice from the Commission and from the Scottish Crofting Federation - the only non-governmental organisation dedicated to the future of crofting.

It is completely unclear why the Scottish Government insists on reform of the small landholders' system by introducing elements of agricultural tenancies, when a trialled and tested framework for protection of small-scale tenants already exists in Scotland in the form of crofting law. Crofting law is to be reformed within this Parliamentary session which brings opportunities to fix issues and make crofting law fit for a wide rollout. Particularly, the proposals for reform of the small landholders legislation provide no safeguards to protect agricultural land and small-scale food production, and to protect extensive farming systems in High Nature Value areas (e.g., on Arran). Indeed, Scottish Government's analysis of the last consultation identified diminishing numbers of small landholdings as a key concern following introduction of a right-to-buy outside of crofting law and the duties thereunder to cultivate and maintain, and not to misuse or neglect. Contrarily, we advocate for *increasing* numbers of small agricultural holdings within and outside the crofting counties, starting with the creation of new crofts on public land.

With a significant number of small landholdings in the designated crofting areas – the largest number, between 15-18 on Arran – bringing small landholdings within the crofting framework is not only a logical step. With systems and experienced organisations already in place to support (Crofting Commission, SCF), it would be the most efficient and best use of public funds. Scottish Government should focus its efforts and resources on bringing forward a new Crofting Bill. Recently, Andrew Thin, Chair of the Land Commission, said: “for a country the size of Scotland, it would be sensible to have a single set of rules governing small holding tenure as opposed to running two systems”.

This is a great opportunity to give small landholders adequate rights and protection under crofting law, whilst also protecting Scottish land for food and agriculture and maximising the great potential of small-scale systems of land use for climate and nature.

Small Landholdings Modernisation Consultation

1. Right to Buy

- A. Do you agree that providing small landholders with the right to buy the land under their homes and their gardens could give small landholders greater security and allow them to invest into their small landholding and business with confidence?

Strongly agree

Agree

Neither

Disagree

Strongly disagree

Small landholdings should be brought into the crofting framework. This would save resources on this legislative process - which are instead to be focused on a new Crofting Bill - but if interim measures are necessary then small landholdings legislation should at least align with crofting law. Provided that the house is built by them or their ancestors, an absolute right to buy the land under their homes and garden *could* give greater security to small landholders. Alignment with crofting law would, however, also achieve greater security through fairer compensation for the building as fixture on the land, e.g., allowing for the possibility for investments to be realised upon assignation, which would reduce the need for a right-to-buy. It should be possible to write into the tenancy that the land cannot be purchased (see also the views of the Chair of the Scottish Land Commission on this topic):

<https://www.thescottishfarmer.co.uk/news/23143959.crofting-cross-highland-line---andrew-thin-gives-view/>).

- B. Do you agree that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them?

Strongly agree

Agree

Neither

Disagree

Strongly disagree

We would like to see evidence of how the right to buy the land under small landholders' homes and gardens - as opposed to security of tenure with fairer and more readily accessible compensation for improvements - benefits depopulation, e.g., looking at the introduction of similar rights in a crofting context. A key concern is affordable access to small landholdings and housing for new entrants.

Additionally, without an option to write into the tenancy that it will not be possible to purchase the land, landlords may be reluctant to create new tenancies.

Introduction of a burden to keep the house with the holding could reduce risks of houses being sold off as second/holiday homes, which practice only adds to housing issues in rural areas and could lead to neglect of agricultural land.

- C. Do you agree that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the

land containing the small landholding for sale or transfer to another company or trust?

Strongly agree

Agree

Neither

Disagree

Strongly disagree

Small landholdings should be brought into the crofting framework, under which crofters can request to purchase their croft land, with an opportunity to apply to the Scottish Land Court for an order authorising the purchase in case the landlord is not agreeable. Crucially, a right-to-buy of land should only be considered within the crofting framework as this provides safeguards to ensure good agricultural use of the land with responsibilities on the owner-occupier to cultivate and maintain and not misuse or neglect, or on the owner of a vacant croft to put in place letting plans. Without such statutory requirements that exist under the unique system of crofting law - and as recognised by Scottish Government's analysis of the last consultation - a right-to-buy could see small agricultural landholdings outside of the crofting counties disappear, which could lead to neglect of land or repurposing for development, with significant impacts on local food production and biodiversity and climate in these rural and potentially High Nature Value areas.

D. Do you agree that a clawback provision should be introduced to ensure fairness for the landlord if a small landholder who previously purchased the land under their home and garden or their small landholding and subsequently sells either of these within a specific timeframe?

Strongly agree

Agree

Neither

Disagree

Strongly disagree

E. How do you think this clawback should be calculated and what length of time should the clawback apply to?

We only support a right-to-buy the land within the crofting framework, for reasons set out under Question C. Crofting law includes a clawback provision. However, under crofting law the purchase price is fifteen times the annual rent, and not market value as is the suggestion on Scottish Government's proposals. In the latter case the rationale for a clawback provision is less clear.

F. Do you agree that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing both of them agreeing a valuer, one would be independently appointed? The small landholder will be legally required to meet the cost of the valuation.

Strongly agree

Agree

Neither

Disagree

- Strongly disagree

As long as the valuer is fully independent. An alternative system exists under crofting law which may involve the Land Court if parties fail to reach agreement.

- G. How should the valuation of the right to buy the land under the home and the garden site be calculated to provide fairness for both the small landholder and their landlord?

We assume that an independent valuer would have adequate methods for fair valuation of the home and garden site.

2. Diversification

- H. Do you agree that small landholders should be able to diversify their activities on their landholdings?

- Strongly agree
- X Agree
- Neither
- Disagree
- Strongly disagree

Small landholdings should be brought into the crofting framework. The responsibility to cultivate the small landholding already includes horticulture and husbandry, including bees, fruit, vegetables and the likes. But within the crofting context diversification beyond agriculture should be a purposeful use, which does not adversely affect the croft, the public interest, the interests of the landlord or (if different) the owner, or the use of adjacent land. Diversification requires written permission from the landlord or an application for 'another purposeful use' to the Crofting Commission. It follows from the previous consultation analysis that small landholders were looking at a range of non-agricultural diversification options, including craft businesses, self-catering, livery, farm shops and cafes. We agree that such diversification may aid the financial sustainability of businesses and create jobs in rural communities. However, the safeguards that are put in place under crofting law are important to avoid that non-agricultural projects, including tree-planting, do not undermine the food growing potential of land as well as the wider potential of small-scale and extensive systems for climate and nature.

- I. Should small landholders require their landlord's permission in advance of diversifying their activities?

- X Yes
- No
- Don't know.

If yes, should that permission have a set timescale that a landlord is required to meet?

28 days as under the crofting framework (see application form for 'another purposeful use' to the Crofting Commission:
<https://crofting.scotland.gov.uk/wizard?intent=&holdingID=0&stakeholderID=0&applicationTypeID=30>)

- J. Do you agree that if the landlord does not consent to the small landholder's diversification the small landholder should have to go to the land court?
- Strongly agree
 - Agree
 - Neither
 - Disagree
 - Strongly disagree

If you disagree what alternative do you propose?

Small landholdings should be brought into the crofting framework, which allows a crofter to put an application for 'another purposeful use' to the Crofting Commission. The Crofting Commission as an umbrella organisation is much more accessible than court, and the small landholding (croft) would also have the support of the Scottish Crofting Federation in navigating the procedures for an application for diversification for another purposeful use.

a.

3. Assignment and Succession

- K. Do you agree that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies?
- Strongly agree
 - Agree
 - Neither
 - Disagree
 - Strongly disagree

Small landholdings should be brought into the crofting framework. If the Scottish Government insists on using its scarce resources to reform of small landholdings legislation rather than convert small landholdings to crofts and focus efforts on introducing a new Crofting Bill, then at the very least this reform should align with the rules on assignation and succession under crofting law as set out on page 12 of the consultation document. Until 1955 small landholdings and crofts were regulated under the same legal regime, and it is completely unclear from the documents why Scottish Government insists on complicating matters by bringing elements from agricultural tenancies into the small landholdings tenancies. Rather than focusing on the similarities with crofting and the potential of modern crofting law, which was specifically designed - and will be reviewed - with small agricultural tenants in mind.

- L. Do you agree that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it? If so what should those objection grounds be?
- Strongly agree
 - Agree
 - Neither
 - Disagree
 - Strongly disagree

Same as above Q. K. Small landholdings should be brought into the crofting framework. Under crofting law all transfers of a croft require the consent of the Crofting Commission.

4. Access to an umbrella body

M. Do you agree that small landholders and their landlords should have access to a public body (in a similar way that tenant farmers and their landlords have for agricultural tenancies)?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Small landholdings should be brought into the crofting framework. The umbrella body responsible for small landholdings should be the Crofting Commission, which holds significant expertise relevant to the interests of small-scale agricultural tenants. It is recalled that Andrew Thin, Chair of the Land Commission, recently stated that: "it would be sensible to have a single set of rules governing small holding tenure as opposed to running two systems". Bringing the 54 small landholdings under the Crofting Commission is a key step in this regard.

N. If a small landholder and their landlord have a disagreement should the body be able to mediate?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

The Crofting Commission has a wide range of functions relevant to maintaining good relations between landlord and tenant. The Crofting Commission would also be able to make decisions (e.g., diversification outlined above) where agreement between landlord and tenant cannot be reached.

6. Additional considerations

O. Is there anything else you think should be changed in the current small landholding legislation to modernise small landholdings, so they can play their part helping to tackle the climate and biodiversity crises and for Scotland to reach Net Zero by 2045?

Small Landholdings should be brought under the crofting framework.

The current reform of legislation relevant to small landholding tenancies should not reinvent the wheel and add layers of complexity by combining different tenancy models. Instead, this is an opportunity to give all small landholders across Scotland the same protection under crofting law and to provide access to existing channels of support.

Small landholdings are regulated under the Crofters Holdings (Scotland) Act 1886 and the Small Landholders (Scotland) Acts 1911 to 1931. The 1911 Act extended the protection given to crofters across Scotland, referring to all relevant small-scale managers of land as small landholders. This means that the rights of security of tenure, fair rent, and payment of compensation for improvements at the end of a tenancy apply to crofters and small landholders alike. Equality was not restricted until 1955 when crofting tenure was limited to the crofting areas in the Highlands and Islands. This means that rights introduced under a modernised crofting framework and subsequent reforms no longer apply to those working the land under small landholders' tenancies.

Now is the time to remedy this injustice and protect agricultural land for future generations. It is clear from the consultation document and its comparisons with crofting law that the issues and inequalities faced by small landholders are caused by a lack of modernisation and alignment with the current crofting framework. This framework has been designed specifically with protection of small-scale tenants and small-scale agriculture in mind. It does not only offer adequate rights and the protection of the Crofting Commission to remedy power-imbalances between tenant and landlord, but also support, training and advice from the Commission and from the Scottish Crofting Federation - the only non-governmental organisation dedicated to the future of crofting.

It is completely unclear why the Scottish Government insists on reform of the small landholders' system by introducing elements of agricultural tenancies, when a trialled and tested framework for protection of small-scale tenants already exists in Scotland in the form of crofting law. Crofting law is to be reformed within this Parliamentary session which brings opportunities to fix issues and make crofting law fit for a wide rollout. Particularly, the proposals for reform of the small landholders legislation provide no safeguards to protect agricultural land and small-scale food production, and to protect extensive farming systems in High Nature Value areas (e.g., on Arran). Indeed, Scottish Government's analysis of the last consultation identified diminishing numbers of small landholdings as a key concern following introduction of a right-to-buy outside of crofting law and the duties thereunder to cultivate and maintain, and not to misuse or neglect. Contrarily, we advocate for *increasing* numbers of small agricultural holdings within and outside the crofting counties, starting with the creation of new crofts on public land.

With a significant number of small landholdings in the designated crofting areas – the largest number, between 15-18 on Arran – bringing small landholdings within the crofting framework is not only a logical step. With systems and experienced organisations already in place to support (Crofting Commission, SCF), it would be the most efficient and best use of public funds. Scottish Government should focus its efforts and resources on bringing forward a new Crofting Bill. Recently, Andrew Thin, Chair of the Land Commission, said: “for a country the size of Scotland, it would be

sensible to have a single set of rules governing small holding tenure as opposed to running two systems”.

This is a great opportunity to give small landholders adequate rights and protection under crofting law, whilst also protecting Scottish land for food and agriculture and maximising the great potential of small-scale systems of land use for climate and nature.

Assessing the impact

P. Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation paper?

- Yes
- No
- Don't know

Public costs have been and will be created by this legislative process for reform of small landholdings tenancies in Scotland. Significant funds have been used for several studies and rounds of consultations when the solution is so simple. This is the opportunity to remedy the injustice of leaving small landholdings stuck in history by bringing them into a modern crofting framework. This can focus the attention of lawmakers in what is already a very busy parliamentary session for agriculture and land use, on a Crofting Bill, a new Agriculture Bill and a new Land Reform Bill.

Q. Are you aware of any examples of potential impacts, either positive or negative, that you consider that any of the proposals in this consultation paper may have on the environment?

- Yes
- No
- Don't know

The proposals could have a significant negative impact on the environment in the relevant areas. As outlined under Question C, introduction of a right-to-buy without the statutory requirements to cultivate and maintain could lead to neglect and misuse of good land, and could be detrimental for climate and nature notably in High Nature Value areas that rely on extensive agricultural practices.

R. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the proposals in this consultation paper?

- Yes
- No
- Don't know

If the proposals lead to separation of houses from the holding, this may make access to small landholdings more difficult for new entrants including young people, with significant shortages of housing in rural areas. Additionally, where land is purchased and made available on open markets (with competing claims for use) this will limit access to land for a new generation of small landholders.

S. Could any improvements be made from a young person's perspective?

- Yes
- No
- Don't know

Small landholdings should be brought within the crofting framework. This would protect the land (for its food, environmental and social/community value) for future generations, and would increase the availability of small landholdings for the many young people that are eager to be a small landholder or crofter.

T. Are you aware of any impacts, positive or negative, of the proposals in this consultation paper on data protection or privacy?

- Yes
- No
- Don't know

If yes, please give reasons:

U. Are you aware of any examples of how the proposals in this consultation paper may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

- Yes
- No
- Don't know

There is a significant opportunity for more diversity in rural areas. The proposals in this consultation could lead to a great decline of small landholder tenancies outside of the crofting areas - as recognised by Scottish Government's own analysis - thus restricting the potential for diversity in the small-scale agricultural sector.

V. Are you aware of any examples of how the proposals in this consultation paper might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage?

- Yes
- No
- Don't know

The proposals in this consultation could lead to a great decline of small agricultural tenancies outside of the crofting areas, and could further restrict access to land for small-scale and local food production in rural and remote areas.

W. Please note these could be households with low incomes or few resources; families struggling to make ends meet; people who experienced poverty while growing up; or areas with few resources or opportunities compared with others.

- Yes
- No
- Don't know

This is not a question.

X. Are you aware of any examples of how the proposals in this consultation paper might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

- Yes
- No
- Don't know

The fact that a large number of small landholdings are situated on Arran which is a designated crofting area, is of particular concern. The proposals could lead to a steep decline of small landholding tenancies, and thus restrict access to land, opportunities for young people and land use in areas of High Nature Value. Before any rushed decisions are made, a specific study should be undertaken on Arran to understand why small landholdings have not been converted to crofts, and to assess the impacts (positive and negative) conversion would have on tenant's rights compared to the proposals that are put forward in this consultation.