Written submission from the Scottish Crofting Federation

Thank you for inviting the Scottish Crofting Federation (SCF) to contribute to your deliberations on land reform in Scotland. SCF is the only member-led organisation dedicated to promoting crofting and is the largest association of small-scale food producers in the UK. Our mission is to safeguard and promote the rights, livelihoods and culture of crofters and their communities.

SCF is in favour of the bill and the intention for wider land reform in Scotland. The bill falls short of some of the Land Reform Review Group’s recommendations and, perhaps more critically, some of the apparent intention of the policy memorandum. It is hoped we will see any further amendments bringing the practicality of the bill only closer to the policy intention of the Memorandum and the LRRG Final Report.

In all the statements we make (and enthusiastic support we give to the bill) we emphasise that this is subject always to existing crofting law and potential amendments to such, as collated within the crofting law "sump".

PART 1 – LAND RIGHTS AND RESPONSIBILITIES STATEMENT

We agree that there needs to be a clear and comprehensive Land Rights and Responsibilities Statement (LRRS).

Such a Statement would represent a high level statement of principles governing land rights and responsibilities and incorporating international norms as set out, for example in the 2012 United Nations Food and Agricultural Organisation’s Voluntary Guidelines on the Responsible Governance of Tenure.

The LRRS, both at initiation and review, should be put to public consultation and the Scottish Parliament should be given the opportunity of debating and endorsing or adopting the statement. The LRRS would serve as the benchmark against which actions would be reported.

The LRRS should include reference to increased public benefit from Scotland’s land resource, more transparency of land ownership and use, and the specific desire to increase the diversity and number of people managing and occupying Scotland’s land through small units such as crofts, woodland crofts, small-holdings and allotments.

PART 2 – THE SCOTTISH LAND COMMISSION

SCF support the formation of a Scottish Land Commission, but would want to see its primary function being that of Scottish land reform, not simply land – business as usual. The Land Commission must be given the explicit statutory responsibility to formulate and draft a strategic plan focussing on reform, taking account of international best practice.

“The Commission will consist of a total of six members, comprising five Land Commissioners and a Tenant Farming Commissioner”. We agree that tenant farmers need specific representation. In addition, as crofting law is unique and separate from land law, if not more so than tenant-farming law, there needs to be a Crofting Commissioner also. It could be argued that crofting has its own commission, true, but we seek cross-pollination and want someone with crofting expertise, preferably the Crofting Commission lawyer, or an independent crofting consultant, on the Land Commission.

PART 3 – INFORMATION ABOUT CONTROL OF LAND ETC.

In the December 2014 Consultation, the Scottish Government proposed that it should be incompetent in law for anyone wishing to own land in Scotland via a corporate entity (most typically a company) to do so via any such entity that was not registered in an EU member state. 79% of respondents agreed with this proposal. This proposal does not appear in the Bill and it is not clear why. The LRRG considered the matter carefully and recommended a prohibition. The Scottish Government proposed a prohibition last December. But now the proposal appears to have been abandoned. It is vital that RACCE probes this matter fully.
Crofters must disclose who owns or rents croft land, must live on or near the land and must put the land to purposeful use. The contrast is stark: Crofter X on 10ha is obliged to fulfil all these requirements, whilst Landlord Y is permitted to hide ownership, reside abroad and not put the thousands of hectares owned to purposeful use. Land reform in Scotland should be working towards it being mandatory that landlords and non-croft land-owners should also disclose ownership, live on or near their land and make good use the land. This is at the heart of 'common good'.

There needs to be provision for an obligation for a land-owner (or their representative) to respond in a prescribed time and fashion to requests for information from bodies such as the Keeper of the Registers, Scottish Government, local authority and tenants. Lack of response, even when the landlord is known, can block development.

PART 4 – ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

This proposal is welcome in principal, particularly in relation to land that receives the benefit of support through public payment, such as through the Common Agricultural Policy. There needs to be more explicit guidance and obligations that can provide a clear incentive for landowners to ensure that community consultation is meaningful and productive.

The Policy Memorandum says “Scottish Ministers are also exploring the ways in which a failure to engage with communities on land-based decisions might be taken into account in future decisions on the award of discretionary grants in relation to land”. There seems to be no reference to this in the bill.

In some circumstances in-coming tenant crofters have to state their intended use of the land. This is a worthwhile mechanism to encourage active land-management planning and accountability and could usefully be extended to all who intend to take tenure of land of whatever size.

PART 5 – RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

SCF welcomes these provisions in the bill, in principal. The detail of ensuring that it will work needs close scrutiny by those with far more expertise in such matters, such as HIE and CLS. We don't need to detail the difficulties the crofting community has experienced in Paic, Lewis, in trying to take control of their land, confident that the lessons learned will be reflected in this legislation.

It is noted that these provisions only apply to existing (if newly formed) community bodies. However, there are vast tracts of rural land that no longer have a resident community, it having been cleared centuries ago. It seems that a very important part of the policy intention is being missed from the bill. SCF therefore suggests consideration be given for Scottish Ministers (or their delegate) to be able to exercise these powers (i.e. force a sale of land) on behalf of the public in order to restore the land to community benefit. The creation of small units to maximise community numbers and use would be highly recommended. We would, naturally, suggest that these units come under crofting legislation as this has evolved, and is evolving, as a framework of rights and responsibilities envied by many outwith Scotland.

Provision for a third party to take ownership on behalf of the community is interesting and, given appropriate safeguards, could be useful.

PART 6 – ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS

SCF supports this provision.

PARTS 7-10.

No comment

ADDITIONAL COMMENT

SCF have pressed the Scottish Government to set out the policies that will be put in place to meet the rapid extension of the crofting system. This is based on a fundamental belief, not only within SCF, that in the Scottish context crofting is the model best placed to deliver the emerging policy goals for
agriculture and rural development that international governance bodies, such as the United Nations, are now forming to meet the rigorous challenges that are facing land use in the 21st century. However, despite there being legislative capability to expand crofting, the Scottish Government has chosen not to, to any meaningful degree.

The current political climate creates an opportunity like never before for public bodies to create new crofts for the many people who aspire to live and work from Scotland’s land asset and to take care of their part of it. We must seize this opportunity. The Scottish Government should embrace a target of creating 10,000 new crofts by 2020. Half of these crofts should be woodland crofts. The vast majority of these crofts will provide a new, cost-effective means of caring for large areas of public land, but we see no reason why the private sector cannot play its part in realising this vision too. The Scottish Government should consider land reform legislation to help enable this.

Crofting communities are widely held to be among the most socially resilient and enterprising rural parts of the UK and Ireland. Recent work carried out by the Carnegie Trust and DTZ Pieda have found that the crofting areas contain both a strong sense of community and are engaged in some of the most inspiring rural development projects in the whole of the UK and Ireland.

It is important to note that they have achieved this despite generations of being perceived as a national ‘problem’ which various government agencies have been tasked to ‘fix’. Being supported by Government – rather than being ‘fixed’ by them – such communities are thus already well placed to lead the emerging multifunctional land use paradigm in Scotland. This is core to Scottish land reform.

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1 International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), 2009 ‘Agriculture at a crossroads’ which is a massive study on the future of agriculture initiated by the World Bank in partnership with the United Nations, the World Health Organisation and representatives of governments, civil society, private sector and scientific institutions from around the world.