Highlands and Islands Enterprise (HIE) appreciates the opportunity to contribute to the evidence which the Committee is collecting and considering with respect to priorities for Crofting Law Reform.

HIE is the Scottish Government’s economic and community development agency for the Highlands and Islands where crofting is practiced. We support crofting community development, delivering that in concert with our efforts to enhance local economies and strengthen communities. HIE works with selected businesses, social and community enterprises to facilitate and realise inclusive growth. HIE’s Operating Plan is structured around the four priorities:

- Supporting businesses and social enterprises to shape and realise their growth aspirations
- Strengthening communities and fragile areas
- Developing key growth sectors, particularly distinctive regional opportunities
- Creating the conditions for a competitive and low carbon region

HIE is also active in the national crofting stakeholders forum and invests in growing the skills of crofters, currently through the SCF run Skills Boost Programme.

Crofting undoubtedly has the potential to make a significant contribution to population retention and growth, through the system’s facilitation of access to land for housing, crofting and diversified crofting, however realising this is often slowed or thwarted by the complexities and flaws in current crofting law and public planning policy.

For some time, HIE has advocated for a fresh start for Crofting Law, which in its current complex and significantly flawed form (as evidenced by the extent of the identified ‘Sump’ issues), is not serving crofters, crofting, crofting communities or broader National objectives. We first articulated and shared this vision with crofting stakeholders in March 2014.

We can imagine a single, well written, plain language, accessible to all, crofting regulation Act, that was designed to meet our 21st Century needs and aspirations for crofting.
Not a consolidation, a ‘clean sheet’ approach, outcome driven, deriving the simplest possible legislation and regulation that enables crofters, their landlords, the crofting system and crofting communities, all to flourish.

An Act designed to engender the individual and collective public benefits of population retention and growth, low intensity production, biodiversity, cultural richness, renewable energy generation, water catchment management and carbon emissions reduction and sequestration, that we desire from crofting.

An Act that made the ‘fresh’ crofting system compellingly attractive for crofters and their landlords, that encouraged and made the creation of new crofts straightforward and also encouraged collaborative development opportunities.

A new Act gives the opportunity to build on the founding principles noted below, but contemporised within a much simpler and accessible legal framework:

1. Describe and protect a **tenants rights** to
   a. occupy with security of tenure
   b. facilitate a personal dwelling
   c. cultivate crops (including trees)
   d. raise animals
   e. generate energy
   f. use the land for other sustainable diversified purposeful use
   g. pass the asset on appropriately

2. Restate associated tenant **responsibilities** in a 21st century context, to
   a. occupy the croft
   b. make purposeful use of that croft
   c. contribute to management of common/shared land
   d. collaborate with fellow crofters on joint projects

3. Describe and protect the landlords interests and responsibilities

4. Facilitate swift completion of a map based register of land in crofting tenure

5. Enable simultaneous repealing of all previous crofting legislation, as the single ‘fresh’ act comes into force, and avoid the need to spend effort dealing with most of the sump raised issues.

6. Reduce the regulatory burden on the state, landlords, crofters and collaborative crofting groups, allowing the Crofting Commission to deliver a ‘fully regulated’ crofting system instead of being trapped in a more reactive series of transactions.
7. Enhance broader society’s positive attitude to crofters and the crofting system, and its recognition of the public benefits that would come from a thriving revitalised crofting

8. Make a significant enabling contribution to achieving thriving resilient crofting communities

The point was well made, and conceded, at the last Cross Party Group on Crofting (2nd November 2016). Even if we invested our most diligent efforts into resolving the ‘Sump’ issues’, with changes to the law, we would still have a very complex system, with very few of those affected ever being able to fully understand all of the system, and in depth specialist knowledge being required in order to fully comply and realise the benefits. The system would also still require significant effort and resources to regulate.

Our foundations, Crofting Act, upon Act, upon Act, are overly complex and flawed, as evidenced by the great work of the Crofting Law group in the articulation of ‘The Sump’. Surely time to start again, and realise something much more functional, focused on what we want to achieve, more easily maintained and regulated, and attractive for current, and future participants.

We would be very happy to elaborate on our thinking if the Committee thought that would be useful.

Douglas Cowan
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Highlands and Islands Enterprise
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