RURAL ECONOMY AND CONNECTIVITY COMMITTEE

REVIEW OF PRIORITIES FOR CROFTING LAW REFORM

SUBMISSION FROM THE NATIONAL TRUST FOR SCOTLAND

The National Trust for Scotland was confirmed by Parliament in statute in 1935 to help safeguard places of natural beauty and historic interest for the nation. Crofting has been a feature of the work of the Trust since 1944, when Kintail came into Trust ownership, and we value crofting as a form of property tenure that can sustain the cultural and natural heritage of some of Scotland’s most special places. The Trust’s specific role in relation to crofting is recognised in legislation, including the Crofting Reform (Scotland) Act 1976 and the Crofters (Scotland) Act 1993, and we would wish to see this continue.

We note that there are some excellent pieces of research which will aid the RECC, notably the Final Report of the Committee of Inquiry on Crofting and Crofting Law (“The Shucksmith Report”), the Final Report of the Crofting Law Sump (“The Sump Report”). Internally we have also held dialogue with crofters from within and outwith our landholding – for example through the “Future of Crofting Agriculture” conference in Plockton in 2011 and the “Defining the Crofting Cultural Landscape” conference in Kyle of Lochalsh in 2015.

The 2010 Act s52 offers the opportunity for crofting legislation to be consolidated. The exercise of doing this will allow for many of the conflicts to be identified and addressed.

Following the consolidation we would hope for a considered and thorough review of the legislation. Time must be taken to properly scrutinise each section of legislation to ensure that areas of unintended policy impact are addressed.

Purpose or Policy Objective

- The RECC is well aware of the historic backdrop to crofting legislation with the policy of creating secure tenure for resident crofters, the right to a fair rent, improvements and succession. However, we need to revisit the policy objective for crofting in the 21st century, given the changes in government, economy and society.
- Over the years, rights have been introduced to own individual units, whole townships and to de-croft land under crofting tenure. At the same time, a modern planning system has emerged to manage property development, and there has been a shift to encourage a greater diversity of ownership.
- Crofting can be a sustainable land-use, employing non-intensive techniques that compliment nature, soil and climate - but this is not a given. Crofting has also often helped maintain the continuity of human settlement in remote areas of Scotland, along with the social and cultural heritage of these communities.
- However, crofting can also sometimes be seen to the outsider to be continuing in isolation from rural development rather than as a part of a vibrant and resilient rural economy.
- In short, what public benefits do we seek to derive from crofting and how should these be delivered via legislation or – where more appropriate – public strategy.
Issues with Current Legislation

- As is well documented the legislation has unintentionally become confused and in some areas conflicting as a result of years of layering Act upon Act.
- The impact of this is legislation which is not flexible and fit for its purpose, with some areas of over-prescription (such as the Crofting Commission duties in the 2010 Act) and others which inadequately prescribe the purpose and expectations placed on today’s Grazing Committees.
- Ownership of crofts has been introduced and we now have those who own their own croft as well as communities that own townships. The law has not moved with this. A definition of a “croft” as a unit linked to the map and register and the “crofter” as the active person residing in that unit should perhaps be clarified.

Housing

- The purchase of croft house sites continues to be problematic – some are sold to highest bidder for general housing use, including holiday homes, and the development of housing on these sites may not be aligned with the local development plan’s policies for type and location of housing, and which binds other residents.
- We would recommend looking at models for tying houses back to crofts. The current model of de-crofting in order to raise the mortgage is ultimately bad for the health of crofting. It would be good if non-croft land for housing could be inextricably tied to the croft via the tenant's lease. The house would then be assigned to any new crofting tenant. We would welcome the opportunity to discuss further how this model might work.
- The current notification service for planning does not include landowner notification if the neighbouring land is “vacant” and the neighbouring crofting tenant may also be missed from this process. There in an unintentional disconnect between planning and place/community as a result which should be addressed in the forthcoming Planning White Paper.
- Absenteeism and activity – absenteeism and the need to be economically active away from the croft for periods of time are not one and the same. There are, conversely, many crofters who are inactive but resident and their behaviour can be more damaging to croft management than those who are working elsewhere during the week.
- Additionally, there are empty and/or neglected crofts which could be subject to change of use to sites for affordable housing development and/or allotments where the need is apparent and change of use appropriate

Funding

- There are several issues at play here – we will not dwell on the obvious issues regarding access to secured lending, necessitating decrofting, raised by others but would hope this is addressed.
- The Common Agricultural Policy is likely to be replaced following the UK exiting the European Union. The previous CAP subsidy regimes have not, in our view, sufficiently recognised the social and environmental benefits of crofting and other high nature-value farming, and we would hope that this becomes an objective for the Scottish Government in BREXIT negotiations.
Registration of Crofts

- We support the production of a comprehensive land register for Scotland and have been working with the National Registers of Scotland to map our landholding.
- The policy of adding crofts and common grazings to a crofting register must be consistent and comparable with this project.
- Township level support for croft and grazings registration must be facilitated.

National Development Body for Crofting

- A single body should be responsible for the regulation and development of crofting, including the development and implementation of a national development plan. However, their objectives must be transparent and not in direct conflict with the wider development of the crofting counties.
- Public benefit must be recognised and delivered by the body – for example maintaining the natural and cultural heritage features that active crofting supports.
- Support for landowners to assist in the development of crofting should be made available including the creation of new townships where appropriate in local planning.
- Celebration and value of the natural beauty and special landscapes enjoyed in many crofting areas should be recognised within this plan.

The National Trust for Scotland and crofting law

The National Trust for Scotland Order Confirmation Act 1935 allows for land owned by the Trust to be declared inalienable, in order to protect its conservation value in the public interest. This places limits on the rights of the Trust to sell the designated land or property and on other parties seeking to purchase it. A declaration of inalienability may be made as a condition of a gift of the land or by the Trust’s governing body in recognition of the national importance of the property.

Inalienability is not an absolute bar to purchase under crofting or other legislation, but it allows for the public benefit of conservation ownership to be tested against alternative ownership, before a decision is made. The main protections under current legislation are procedural in nature and ultimately allow for any final decision on the purchase of inalienable land under crofting legislation to be referred to Parliament, should there be a conflict in purpose.

In relation to crofting, the Crofting Reform (Scotland) Act 1976 and the Crofters (Scotland) Act 1993 also require that reference be made to the special purposes of the Trust, when considering purchase of land owned by the Trust. In practice, this has been no material impediment to the exercise by crofters of the right to buy. However, it has allowed the terms of transfer to take due regard to the significance for the nation of the Trust’s inalienable land.

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The National Trust for Scotland
24 November 2016