RURAL ECONOMY AND CONNECTIVITY COMMITTEE

REVIEW OF PRIORITIES FOR CROFTING LAW REFORM

SUBMISSION FROM SCOTTISH LAND & ESTATES

Scottish Land & Estates is a member organisation representing Scottish landowners. We support a sustainable and simplified crofting system which is well organised and administered. We welcome the opportunity to respond to the committee’s call for written evidence.

Crofting is a high priority issue for our members in crofting counties. We have about 50 members with a crofting interest with the vast majority being landlords of crofts. We recently surveyed these members and will refer to the results throughout the following evidence.

Scottish Land & Estates is an active member of Crofting Stakeholder Group and was also part of the Crofting Law Sump. We welcome a continued emphasis on the importance of collaborative working in order to tackle the common problems.

Both the Final Report of the Committee of Enquiry on Crofting and the Crofting Law Sump Report provide an excellent contribution in identifying the issues in the crofting regime. In our evidence we do not seek to replicate the points already made by these reports. We believe now that the Scottish Government has committed to look at crofting there is the opportunity to take a step back, use these reports and any new evidence as a knowledge base, and carefully consider an outcome-driven way forward.

Why crofting?

We agree with views given during oral evidence sessions that, despite being a valuable piece of research, the failure of the Committee of Inquiry on Crofting Report was that it looked at crofting in a bubble. We believe it is important to think strategically of the wider policy which should drive the legislation. We are pleased the Scottish Government and the committee have asked ‘why crofting’ and identified the need to decide what the policy objectives are.

The poor nature of much of the land under crofting tenure, the small size of crofts with the associated difficulties in achieving economies of scales and distance from markets which increases costs all have a fundamental influence on the viability of crofting as an agricultural asset. This often results in a downward spiral where there is a lack of investment in the land and there is a need to focus employment efforts on other enterprises external to the croft. The role and purpose of crofting has therefore developed and evolved since 1886. Arguably at this point in time there is a greater than ever need to pose a basic question of “why crofting?”

We consider this question needs to be tackled under the three pillars of sustainability – economic, social and environmental. We alone, by no means, can answer ‘why crofting’ but hope the following comments assist further work. We will continue to develop ideas through the stakeholder’s group. In these comments we recognise the nature of crofting varies greatly.
Role of landlord and landlord support for crofters

We believe that landlords can play a supportive and constructive role in crofting communities and can help to deliver successful crofting communities. Our survey question regarding the role of crofting landlords generated a high number of comments about the environment, communication and community.

Some members also commented on the practical support they gave crofters, such as efforts to control vermin and maintain fences. One went further to say they assisted less experienced crofters with business plans and advice to ensure they were equipped to make a success of the croft.

Some members expressed a view that the positive role they were keen to play was restricted leaving their role currently as a ‘non entity’ or no more than administrative. The current system is not attractive to the majority of landlords.

Members drew a distinction between genuine crofters who make purposeful use of their croft and collaborate, and others. There is real support for those viewed as “genuine” crofters.

Land Registration

The registration of common grazings project which was previously being funded should be reinstated albeit perhaps with a different structure or varied incentives which reduce the burden on public funds yet facilitate the completion of the register. Completion of the register will have an impact on understanding land in crofting tenure and help all involved to make informed decisions. There is arguably a role for drawing on the considerable expertise of private consultants working in the crofting counties already on mapping. Having a publicly available, completed (and therefore reliable) Common Grazings Register opens the possibility of including other data within it.

Crofting Commission

Members report mixed experiences in dealing with the commission.

There appears to be an uncomfortable position of elected members also being regulators. Scottish Land & Estates believes transparency of policy and protocol is essential as this will result in accountability, consistency and predictability ultimately leading to confidence in the system.

The crofting acts put crofters in a very strong position with security of tenure, fair rents which are very low, the right to pass tenancies on, the right to buy at a cost well below anything which could be described as approaching market cost when compared with other parts of Scotland, and access to funding over and above what other land occupiers can access. But with this comes responsibilities to not misuse or neglect the croft, and to cultivate and maintain it. We believe greater promotion of best practice in meeting these responsibilities is required and where there are continual failures the Commission should not be concerned about using their enforcement powers.

The role of local assessors has been highly praised and we suggest much better use could be made to harness the vast array of locally based expertise. They provide a
good geographical spread and are a local, trusted first point of contact. The Commission website describes assessors as ‘a highly valued link with crofting communities’ and our understanding is this is an accurate description of these positions. But more use could be made of them.

Having a central body (in the present system the Crofting Commission) setting general policy is commendable. It avoids uncertainty. But local decision making where possible and execution and delivery of service (e.g. regulatory decisions) could be made locally and also local variations permitted, where appropriate.

Crofting Development

The role of development has been somewhat lost since the 2010 Act and it is important the overarching development and support role is more clearly allocated.

There are a number of streams of support in place presently. We welcome the new Farm Advisory Service and the Scottish Crofting Federation programme of training which provide locally delivered, specialist advice and skills development. The Scottish Government has a number of other initiatives such as Croft House Grant scheme and the Croft Agricultural Grant scheme. Also, Highland and Islands Enterprise’s role in supporting economic growth and strengthening communities plays an important part and should not be lost sight of in relation to crofting communities.

Although this range of measures may not directly replicate previous support it does go a significant way in assisting crofters and is above and beyond what other landholders can access. There appears to be a lack of awareness of the available support and we believe this is where there is gap in the system. It is important that new entrants are also aware of, and able to source, support as well as though already ‘in the system’. There is undoubtedly room for the role to be allocated somewhere be that the Crofting Commission again, the Farm Advisory Service or another body. Key to this role though is expertise in crofting being readily and cost effectively available. This would tend to favour the Crofting Commission being the lead body, perhaps utilising a central service to equip Assessors (who should be paid for delivery.)

The support package which will replace the current Common Agricultural Policy regime after 2020 offers an opportunity to look again at how rural funding can be prioritised.

Common Grazings

As far as we are aware, there is no clear statutory definition of what a common grazing right is and, as with crofts, the use of common grazings has developed from primarily grazing to now including other uses such as forestry, renewables, tourism and other uses. The law is in place to enable this and there are good examples of this occurring. Uses other than agricultural ones on the common grazing are best affected when the Landlord and common graziers collaborate, oftentimes to the greater good of the wider non crofting community. Efforts to encourage such collaboration are to be welcomed.

Underuse of common grazings is a concern for our members. Landlords have a duty to report underuse and vacancy to the Crofting Commission but it is problematic for
landlords to know of the truthful level of use and question what is to gain by reporting underuse as a tenant could exercise their Right to Buy and apportionment.

In considering changes to common grazings, we urge the Scottish Government to fully consult the land owners as well as crofters. Scottish Land & Estates calls for the continued protection of landlords’ rights to resume under certain circumstances as set out in current legislation.

Our members surveyed who were croft landlords did not claim any subsidy on the common grazings. We believe the sector would benefit from clear guidance on who can benefit from subsidies on common grazings and how these should be handled. In this and other respects we welcome the work being done currently by the Crofting Commission in their workshops on Common Grazings.

Scottish Land & Estates would welcome clarification on the interaction between provisions in the Land Reform Acts, Community Empowerment Act and Crofting law.

Rents and Right to Buy

Scottish Land & Estates acknowledges the long held position of crofter’s right to buy. However, we suggest it should be considered if the right should be restricted if the applicant crofter is undergoing investigation by the regulator.

We suggest the mechanism of arriving at the purchase price as a multiplier of fifteen times the annual rent should be reviewed. Our members report rents to be so low that they are hardly worth collecting. Although ability for rent review is in the statutory regime, it is very rarely exercised. This results in a disconnect with market rate rents and land price.

Absenteeism

Scottish Land & Estates believes that although population retention is crucial in traditional crofting counties it is more important that the croft be worked than the residence requirement be met. Although the Commission has details of vacant crofts there is a lack of detail of under used crofts and appears to be little action to tackle either. Resourcing this should be a priority issue.

From a local perspective we understand knowledge of demand is high but there is no national picture of this. If there is to be a strategic approach this knowledge is essential rather than simply creating a croft where someone wants one while leaving others abandoned.

Owner occupier crofters

Owner occupier crofters appear to be at the crux of the complicated nature of layered legislation and regulation. There is currently a peculiar situation where someone who buys croft land becomes the landlord of a vacant croft rather than an owner occupier of a croft. Another peculiarity is where a croft is owned by more than one person. There is currently difficulty for people in these situations to make regulatory applications such as to apply for subdivision. We believe this should be revised. This could be achieved by a reclassification of all those interested in a croft (with the exception of a crofting landlord) as owner occupier, tenant or landlord of a vacant croft or landlord of part of a vacant croft as simply “crofter.” However, this
may well lead to further confusion. Instead we would support the idea of simply moving owner occupiers from the croft legal system altogether. This would not alter a historic social status and it would allow the focus of crofting law and the regulator to be simplified and focused on tenants. It would release the owner of the conditions associated with croft land, allow them to access private finance and would bring fairness and parity with other owners of similar land.

Corresponding changes would also be required, for example a system of repayment of any crofting grant would need to be established, similar to the present regime when a decrofting direction is granted. Also it is suggested it would create a more stable and predictable system if any share held in a common grazing by that owner occupier would then be automatically converted to deemed crofts (as happens at present) but it be firmly on the basis that such shares could only be held in tenancy thereafter i.e. the right to apportion any part of the common grazing would not be available after exercising the right to buy. This would pertain to new occasions of the exercising of the right to buy as it would to any crofts previously acquired, for to do otherwise is simply to create further complications and imbalances inherently in the system.

Rural Development

Much of what we believe the key aims of crofting are about is rural population retention/growth and rural economic development and we question if Government funding is better directed at rural areas in general, and perhaps more importantly, if the focus should be on tackling the root of the rural policy issues rather than patch up the consequences with crofting law and additional public funding.

For example, access to affordable rural housing is problematic. Land under crofting tenure is being used as a solution to this. As was discussed at the oral evidence sessions, many access crofting to access a rural house affordably. Taking a more direct approach and tackling the underlying issues of rural housing would benefit a much wider number of people, communities and, in turn, the whole rural economy. Having enabling rural planning policies, tax incentives for affordable housing, and development of initiatives such as the Rural and Island Housing Funds and partnership initiatives such as those promoted by Highland Small Communities Housing Trust could make a huge difference. This, paired with significantly improved digital connectivity could attract population, development and entrepreneurship.

Finance and Funding

We appreciate crofting tenants and owner occupiers struggle to secure bank finance despite the high level of security of tenure. Private finance is available over decrofted ground but under the current system a formal application has to be made for decrofting. As an alternative to the proposal of owner occupiers removing from crofting tenure, we would support a scheme where a house site or area of pre-determined size is automatically decrofted upon the exercise of Right to Buy. This would reduce bureaucracy of a separate application.

We strongly support the pilot self-build loan scheme which is currently available in the Highland region and would like to see this rolled out across a much wider area aimed at the most rural locations. This underlines that tackling wider rural policy issues is essential.
As we approach any of our rural policy topics we are aware of the limited budget available to the Scottish Government and understand the need to seek to deliver outcomes in an innovative and cost effective manner. We support that value for money should be a consideration of any funding arrangement, however, this can be problematic for crofting as the primarily social outcomes are difficult to quantify.

Conclusions

We believe there needs to be a clear direction on what the policy behind modern crofting law is – what is it trying to achieve? The legislation should follow this. Scottish Land & Estates has significant experience of rural policy development and many of the issues identified for crofters are indistinguishable to those of other rural dwellers. The manifesto commitment to review crofting legislation and the end of Common Agricultural Policy as we know it, offer a significant opportunity to consider the most appropriate way to tackle these issues.

We would like to note that Scottish Land & Estates would be happy to facilitate a visit from members of the committee to meet our crofting landlords if this would assist in their deliberations and we would be pleased to offer such further comment as may be helpful.

Scottish Land & Estates
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