

Cross-Party Group on Crofting

Online meeting 18th March 2025

Minutes

Present

MSPs

Edward Mountain (convener)
Ariane Burgess
Beatrice Wishart
Tim Eagle

Invited guests

Michael Nugent (Scottish Government)
John McMorran (Crofter)
David Mudie (Highland Council)

Non-MSP Group Members

Donna Smith (Secretariat)
Bill Barron
Aileen Rore
Alan Balfour
Arthur Macdonald
Bill Dundas
Brian Inkster
Claire Hardy
Thiem Clark
David Cameron
David Muir
Donald MacSween
Duncan MacDonald
Iain Kennedy
Iona Hyde
Jamie McIntyre
John Norman
Kirsty Stewart
Nathan Laird

Liz Barron-Majerik
Mairi Mackenzie
Maria de la Torre
Jim Mcpherson
Murray McCheyne
Sandy Murray
Shona MacDonald
Soheila Sourbaji
Susi Stuehlinger
Andy Holt
Michael Foxley
John Armour
Jackie McCreery
Janette Sutherland

Apologies

Alasdair Allan (MSP)
Gary Campbell
Sandra Holmes
Jonathan Hedges

Agenda item 1

Welcome and apologies

The convener welcomed everyone to the meeting. Apologies were given for Alasdair Allan, Gary Campbell. Jonathan Hedges, Sandra Holmes

Agenda item 2

Agreement of the minutes of the last meeting

Minutes of the previous meeting were discussed. No matters arising from those minutes were raised.

Agenda item 3

John McMorran and David Mudie (Highland Council) discussing battery energy storage system installation on Croft land

The convener declared an interest as they had written regarding the scheme at Brora.

John McMorran

Main points included:

- John McMorran introduced himself as having worked his Croft at Clyne, Brora since 1992, where he runs a small herd of native cattle and 40 hives of bees, producing local honey.
- The Clyne Crofting community and wider community have serious concerns regarding a speculative application by Spanish firm, OPD Energy, to site a battery energy storage system on croft land at 180 Clyne in Brora.
- The crofts in Clyne are quite small (three to five hectares) with crofters' houses fairly close to each other, meaning the impact on the township would be considerable.

- A young man had signed an option agreement with the company but had no plans to remain on the croft if the application was successful, having gained access to another croft in Rogart some 10 miles away.
- The area is a peaceful zone that ticks all the boxes for being part of the Green Network Connections Initiative, which is why there's a groundswell of objection from the wider community and local crofters.
- From a crofting perspective, the development serves nobody's interest other than the person who signed the option agreement.
- The township would lose the entire croft to the development and with it the chance to accommodate another crofter and their family.
- The development would radically change the character of Clyne township and negatively impact neighbouring crofts, making them undesirable places to live.
- OPD Energy had a pre-planning consultation with the Planning Department (not disclosed to the public) and subsequently lodged their proposal for "land 65 meters north of 181 Clyne with no mention that this was regulated croft land.
- In-by croft land should be an automatic constraint for industrial applications, meriting closer scrutiny that would make companies look at alternatives.
- Policy 47 in the Highland-Wide LDP is about safeguarding in-by and apportioned land and should be properly integrated into planning consideration with a presumption against large-scale applications.
- Sutherland has ample space and crofters have access to common grazing which could host this type of proposal away from residential areas, making it less divisive and more justifiable in socio-economic terms.
- While people understand the need for strengthening grid infrastructure, there's concern that the rush for 2030 compliance may allow bad decisions to proceed, with companies like OPD Energy potentially capitalising and selling on.
- This is not diversification in the normal crofting sense but siting an industrial installation with noise, visual impact, and health and safety concerns.
- Planning and crofting regulation should work together to divert early speculation on in-by croft land toward more suitable sites.

David Mudie (Highland Council)

Main points included:

- Highland Council is currently developing their new Highland Development Plan with consultations closing on May 2nd, which could address issues like this.
- Once adopted, the plan will replace the Highland-wide Local Development Plan and be more up to date than the national planning framework.
- Currently the national planning framework, which strongly supports renewable energy and meeting net zero goals, guides planning decisions, though the Highland-wide local development plan still has some weight.
- There's a separated system where UK government has policy control over energy, not Scottish government, though Scottish Government and local planning can influence through development plans.
- There is no spatial strategy for where developments should be sited, though previous attempts to designate preferred areas for wind energy have decreased over time as policy evolved.
- Work is ongoing by the network energy system operator to strategically plan the network, which will inform future siting decisions.
- Currently there's a rush to secure available capacity, with government targets of 27 gigawatts for ESS capacity by 2030, but already 130 gigawatts of applications are coming forward.
- The fact that proposed developments are on croft land will be given weight within policy consideration, though this may be more limited under the national planning framework than under the Highland-Wide Local Development Plan.
- For planning applications on croft land, Highland Council consults with the Crofting Commission for advice, especially when applications might lead to decrofting.
- While pre-application discussions occur, they don't necessarily mean approval, as developers often proceed with applications even after being advised they're not suitable.

Discussion

Question (David Muir): If a proposed battery storage site is on common grazing land and seen as strategic development, can the Scottish Government access the land by resuming it on behalf of the developer?

Response (Andrew Thin): The landlord would typically be the applicant for resumption. The Scottish Government is the landlord in some situations. If the government wanted to pursue this approach, they would likely need to compulsorily acquire the landlord's interests first and then lodge a resumption.

Question (John McMorran): How much weight will be given to croft land status in planning decisions given the pressure for renewable energy development? If planning approval is granted, how would a subsequent decrofting application be considered if there's substantial opposition from the crofting community?

Response (Andrew Thin): As a regulator, he couldn't comment on hypothetical cases. The Crofting Commission follows legislation and their policy plan (approved in 2022, due for revision in 2027). While the plan could be revisited sooner, it's an expensive and time-consuming process requiring extensive consultation.

Question (Convener): Has there been an instance where green energy development proceeded despite crofters resisting at the decrofting stage?

Response (Andrew Thin): Having only been in the role for six weeks, he couldn't answer that question.

Question (Convener to David Mudie): Why isn't Highland Council extracting significant planning gain from energy developments like Shetland Council did with oil developments in the 1970s and 80s, especially as infrastructure west and north of Inverness needs improvement?

Response (David Mudie): The key difference was that Shetland controlled the land, giving them leverage with developers. For Highland Council, community benefit is established as a voluntary payment that cannot legally be required through the planning system. The Council has a social values charter requiring developers to sign up, aiming for community benefit payments of £5,000 per megawatt for affected communities plus additional central fund contributions of £7,000-£8,000 per megawatt. Alternative models like co-ownership of wind farms are also being explored. Challenges include high grid connection charges in Highland compared to other UK regions.

Comment (Donald Bruce): The government should consider making community benefit payments a legal obligation rather than voluntary. For existing developments like Edinbane wind farm, only about 15% of what was originally promised has been delivered.

Question (Convener): Is there an "unseemly rush" on battery storage sites across the islands?

Response (David Mudie): Energy technologies are experiencing a "gold rush" as developers chase available funding. A more strategic approach to land use and planning is needed rather than allowing development to be determined solely by financial incentives.

Agenda item 4

Michael Nugent (Scottish Government) update on the Crofting Bill

Main points included:

- The Crofting Bill team has been busy drafting policy instructions which are now with legal colleagues for drafting legal instructions and provisions.
- The government is still working toward introduction before summer recess, after which it will move to stage one of the parliamentary process (evidence gathering phase led by the parliamentary committee).
- Proposals in the bill are expected to include:
 - Allowing the Commission to grant owner-occupier crofter status
 - Ensuring only natural persons can become owner-occupier crofters
 - Reducing the frequency of the crofting census
 - Imposing administrative sanctions on crofters who breach their duties
 - Addressing "the big three" issues: dual tenancy, standard securities, and changes to the regulation of fascination
- The Minister (Mr. Fairley) is aware of concerns expressed by stakeholders regarding these matters and will take them into consideration.

Discussion

Comment (Andrew Thin): He expressed appreciation for support from Michael and noted that the Crofting Commission's work is 80% regulatory, guided by legislation and the policy plan. Despite a 40% increase in regulatory applications over six years, all but one type is now ahead of target for turnaround times. Streamlining regulatory processes and clarifying policy would allow faster decisions and free up resources for duties enforcement, which delivers the public value of crofting tenure.

Comment (Donald Murdie): There's a concerning situation where one-third of a township's grazing shares were assigned to an absentee who can't be located, while four active crofters in the township have no shares, hindering sustainable development of the crofting township.

Response (Andrew Thin): While not commenting on specifics, if crofting is to remain useful as a form of land tenure, duties enforcement must become a bigger priority, especially regarding residency. Robust evidence is needed for enforcement, and while he's committed to addressing duties breaches, success will require more than just court action - it needs social pressure, communications, and a range of approaches.

Comment (Donald Macsween) There is also an issue relating to neglected crofts. The only way to get people actively crofting is to make it financially viable.

Comment (Arthur): Crofters generally want to see duties enforcement strengthened but are reluctant to report neighbours, friends, and family for non-compliance.

Improved Commission communication could help address this, as some crofters don't realise, they've self-reported when completing the annual notice.

Comment (McPherson): The Lord Justice General actually recommended the Guide to the Human Rights Law in Scotland, the fifth edition has just been published. It might be easier for the commissioners if they've got a copy of that and read it with understanding to actually shift some of these people who are sitting, if you like, as an investor.

Question: The Crofting Commission has one elected member for the Western Isles, what prospect is there for another to cover Uist and Barra?

Response: Michael and Andrew heard the question and noted it was a legislative point.

Agenda item 5

Discussion on Agricultural Support and Secondary Legislation

Discussion

Comment (Tim): There was debate at committee and in chamber about the Scottish suckler beef calf scheme and calving interval period, particularly for small farmers and crofters. The second piece was the whole farm plan, and discussion was had with SCF whether this was fair to expect smaller farmers and crofters to complete this, worth noting however no financial penalty in not doing this

Comment (Ariane Burgess): The parliamentary committee is concerned about the process for secondary legislation coming from the Agriculture Bill. Unlike primary legislation, secondary legislation comes quickly with limited time for consultation. The committee has asked for reasonable batches of related measures, but this can create challenges when some proposals are supported while others are problematic.

Comment (Convenor): There were concerns raised about the calving interval and accidental abortions leading to being unable to meet requirements and therefore lose the subsidy.

Response (Ariane Burgess): Donna and I were assured by the minister they were aware of this and this would not affect the crofter.

Comment (Donald McKinnon): It's important not to lose sight of the unfairness of the calf scheme for small herds, where crofters with fewer than eight cows need 100% success within the 410-day calving interval to receive the same payment as under the previous scheme. The force majeure provisions don't adequately address this fundamental unfairness. Front-loading payments could still be introduced within the regulations that have been passed.

Comment (Donna Smith): There's an important distinction between being consulted and being listened to. SCF has spent many hours in stakeholder groups discussing

these issues in good faith, but that doesn't mean their concerns shouldn't be raised when secondary legislation comes before the committee.

Comment (Donald Bruce): As someone who participated in consultation with the Rural Affairs Committee a year ago, he emphasised that the framework act didn't address substantive issues, which would come through secondary legislation. Crofters are already largely "green" in their practices, so paying only for improvements could disadvantage crofting communities who have limited room to make further environmental improvements.

Response (Ariane Burgess): Stakeholders should be involved earlier in the design process, before legislation comes to parliament. The government should be consulting "behind the curtain" on secondary legislation just as they do with primary legislation, focusing not just on consultation but on producing workable solutions.

Agenda item 6

Date of next meeting

May 2025