

Response ID ANON-97CF-ZB1E-B

Submitted to Crofting consultation 2024
Submitted on 2024-09-02 18:57:30

Introduction

Entry to crofting

1.1 Do you agree that two people should be able to share a joint croft tenancy?

No

Please comment if you wish. :

We are not against this in principle as on face value it appears a straightforward and sensible idea but we do have some concerns that would need addressing should this go ahead.

Firstly, we wonder is there demand for this change? Have crofters been asking for this in enough numbers to warrant it and the potential consequences?

We are concerned that it is adding a potential layer of complexity that is not needed and we are unclear on what the real benefits of it would be. It is already possible, and happens in many instances, for one person to be the tenant but for the croft business to run as a partnership and pool their resources and finances that way. We are unclear what issue this would really be addressing.

As will become clear throughout our response, and as we will explain in much more detail, we are concerned that this does not do anything to address the real issue with entry into crofting, which is the market in croft tenancies and in fact, this could further drive this market because if two people combine their financial assets to this could have the effect of allowing even higher prices to be paid for croft tenancies.

It could also add complexity into the breach of duties process as the Commission will no doubt get drawn into lengthy discussions about who was responsible for complying with the duties should the two tenants have a disagreement, for example.

Q1.2 Do you agree with the proposal that regulatory barriers that limit the ability of an owner-occupier to grant a standard security over their croft should be removed or reduced?

No

Q1.3 Do you agree with the proposal that a tenant crofter should in principle be able to use their croft tenancy as security for a loan?

No

Q1.4 Do you agree that there needs to be modifications to rights and responsibilities when a security is in place over a croft?

No

Q1.5 Do you agree that if a croft tenancy is repossessed by a lender, the lender should be able to assign (sell) the tenancy on to a new tenant provided that either the landlord or the Crofting Commission agrees?

No

Q1.6 Do you wish to add comments in regard to the proposed application of standard securities to crofts?

Please comment if you wish. :

At face value, this proposal sounds like a positive step, but on balance, we again do not see this addressing the issues it is suggested to solve. We are aware that lenders are generally very hesitant to lend money on any land with a rural housing burden with only about 3 willing to do so and at present, lenders could in theory lend against owner occupied croft land but none do.

If the lenders could be persuaded to grant standard securities, we have concerns similar to that mentioned previously in that this may then drive the market in crofts further and still have the result that crofts will go to those with the bigger borrowing power (for instance, those with well established careers outside of crofting), rather than young crofters who are looking to secure their first croft and do not have any substantial equity or high salary.

We also again have general concerns about unintended complexity that may result from this change.

A more beneficial way of providing funding to new crofters which could address this would be to reintroduce a scheme similar to the Croft Building Grant & Loan Scheme where the candidate secures a loan from the Scottish Government (or another public sector body). Such a scheme could be set with criteria that enable aspiring new crofters to secure funding for acquiring crofts rather than those who would already have more power in the open market.

In general, we are extremely disappointed that – 16 years after the publication of the Shucksmith Report – no significant progress is made to address the

major issues crofting suffers from. The consultation gives the impression that the problem of affordable access to croft land can simply be resolved by the measures proposed above while, in fact, the introduction of commercial loans on croft land may even exacerbate the problem. The Scottish Land Matching Service is being overwhelmed with hundreds of enquires from people looking for a croft, while listing one available – at a stiff price of £70,000 for 4 acres of land. The real problem we are facing here is the escalating and entirely unregulated market in crofts, croft tenancies and land more generally. In the context of crofting, this has been made possible by the introduction of the right to buy.

We are deeply concerned that, once the present bill has become law the crofting dossier is seen as having been dealt with, and further, more meaningful reform urgently required will be kicked into the long grass. Further, we are very concerned that land reform and crofting reform seem to be seen as entirely different things while they in fact, significantly overlap and if thought of together, could offer a real chance to for the Scottish Government to fulfil principle two of its own Land Rights and Responsibilities Statement to work towards a more diverse pattern of land ownership and tenure.

Crofting communities

Q2.1 Do you agree that the right to object to applications should continue to be limited to crofters and grazings shareholders in the same township or grazings?

No

Please comment if you wish.:

We feel that the right to object to applications should be extended so that other representations can be considered more easily. There could be many parties within a township who have a legitimate interest in what happens to a croft that are currently not afforded an opportunity to object whereas an absentee crofter from within the same township could.

If we are to protect crofting communities for future generations, then it is vital that the right decisions are made and we see no reason why other parties such as those living in the township that do not currently have crofter status, community council representatives, development trust representatives, etc could not be afforded the opportunity to object. It could be that objections from different categories of people could be weighted using criteria so that objections from the crofters and grazing shareholders are given more weight than others but we feel that wider views should be welcomed and considered.

It would also be helpful for all of those who consider objecting to be provided with guidelines as to what kind of material issues would be considered in a similar way to planning authorities. This could have the effect not only of reducing the number of spurious objections that waste everyone's time, but encouraging those with legitimate reasons as they will have clear indication that their concern is one that will be considered.

Q2.2 Do you agree that when deciding a decrofting application, the Crofting Commission should, alongside other considerations, be required to weigh up the sustainability of crofting across the parish?

Yes

Please comment if you wish.:

We agree that this seems a sensible approach.

Q2.3a Would you support the extension of the right to report a suspected breach of duty to:a) Subtenants and short-term leaseholders of crofts within the local crofting community?

Yes

Q2.3b Would you support the extension of the right to report a suspected breach of duty to:b) Non-crofters who reside within the local community where the croft is situated?

Yes

Q2.4 Do you agree that the Crofting Commission should be empowered to determine the permitted method to be used for a public notice, and should be able to change the requirements from time to time?

Yes

Q2.5 Do you agree that it should be possible for public meetings to be held on an appropriate online forum or as a hybrid meeting and need not be solely in-person meetings?

Yes

Use of common grazings

Q3.1 Do you agree that the grazings committee duty to report should be limited to the condition of the common grazings?

Yes

Q3.2 Do you agree that meetings to appoint a grazings committee need to be notified publicly?

Yes

Q3.3 Do you agree that shareholders should be responsible for informing their Grazings Committee of their preferred email or postal contact address?

Yes

Q3.4 Is there a need for further legislation on the purchase of grazings rights, or should the details of each transaction be left to the parties as currently?

More legislation is required

Please comment if you wish:

It would be good to see clarity on this matter so that we do not end up with lots more shares separated from the crofts by accident.

We would welcome further discussion on the best way to achieve this as both the options suggested here have merit.

Q3.5 Do you agree that the Crofting Commission should enforce adherence to residency and land use duties for stand-alone grazings shares?

Yes

Please comment if you wish.:

We think this is essential to ensure that grazing shares are not abused and held as a potential means of generating income by absentees who have no interest in actively crofting.

Q3.6 If a grazings share is forfeited by someone who is in breach, which organisation should have the initial responsibility of finding a new shareholder?

Grazings committee

Q3.7 If none of the grazings committee, the landlord and the Crofting Commission can find a new shareholder for a vacant grazings share, do you agree that the share should be dissolved and absorbed by the current shareholders and grazings committee?

No

Please comment if you wish.:

We agree that the grazings committee could be given the first opportunity to find a new shareholder but if they cannot, then it should pass to the landlord and then the Commission.

If this process fails at that time, we do not think the share should be dissolved and absorbed as this then removes it from any possible future use and is contrary to the principles muted elsewhere in this consultation about minimising the amount of crofts that one person can hold. Redistributing shares could have the same effect and should be the very last resort. A better solution might be to allow for a temporary let of the share, thereby retaining it for the future should a candidate for assignation/sale become apparent.

Q3.8 Do you agree that the provisions which allow crofter-led and joint-venture forestry schemes should be extended and adapted, to provide similarly for peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration or environmental improvements?

Yes

Please comment if you wish.:

It is vitally important that whatever is put in place here is clear and explicit about rights and does not allow for any ambiguity. There is still clarity needed around carbon ownership and we are seeing live examples where the lack of that clarity is already causing problems so it is essential that the wording is really clear and tight to avoid this in the future.

Further, we are very concerned about the wording introducing a vague terms such as 'habitat restoration' or 'environmental improvements'. We are aware that the provision relates to respective schemes and as such supposedly involves some form of natural capital investment projects with clearly defined responsibilities. However, this could also be construed in a way that left to crofts being effective left alone. The idea of crofting is for crofts to be worked productively for food, fibre, timber etc. - but not just to sit there and be a nice bit of scenery or habitat. If crofts are bought or assigned just for 'restoring habitat', this will be the death of crofting.

Further, given the explicit mention of resumption and apportionment made in the relevant section, we would like to stress that, while we not object to carrying out peatland or habitat restoration, our approval of those options does not mean that we would endorse any provision that will facilitate the resumption and privatisation of common grazings.

Q3.9 Do you agree that an owner who does not respond to a crofter or grazings committee application for forestry can be deemed to have consented (while retaining the right to make comments or objections at the next stage)?

Yes

Q3.10 Do you agree that the assessment of crofter-led innovations on common grazings should parallel the arrangements for inbye land?

Yes

Please comment if you wish.:

Q3.11 Do you agree that a landowner should be able to apply to designate land as a new common grazing even if it is adjacent or contiguous to an existing croft?

Yes

Strengthening residency and land use

Q4.1 Do you agree that the first two stages in the current process for investigating suspected breaches of duty should be combined, in order to streamline the overall process?

Yes

Please comment if you wish.:

Q4.2 Do you agree that a crofter should not have to use or maintain their croft themselves, so long as they arrange for all the necessary and appropriate work to be carried out on their behalf?

No

Q4.3 Do you agree that a tenant crofter should not have to obtain consent before making use of the croft for an activity that is environmentally beneficial?

No

Q4.4 Do you agree that only natural persons should be able to become owner-occupier crofters?

Yes

Please comment if you wish.:

Q4.5 Do you agree that where a company or charity is currently an owner-occupier crofter, the croft should require to be transferred to one or more natural persons, the next time it changes hands?

Yes

Q4.6 Do you agree that we amend the Annual Notice requirement to at least once every three years, with the Crofting Commission entitled to choose how often and which years, subject to that constraint?

Yes

Q4.7 Do you agree that if a subtenant is not meeting their statutory duties, the Crofting Commission should be entitled to terminate the sublet?

Yes

Enhanced Crofting Commission powers

Q5.1 Do you agree that assignments should only require prior approval if the landlord raises an objection or if the incoming crofter already holds three or more holdings in the Register of Crofts?

No

Q5.2 Do you agree that transfer of owner-occupier crofter status should be subject to a Crofting Commission decision, in cases where the purchaser already holds 3 or more holdings in the Register of Crofts?

No

Q5.3 Do you agree that sublets should only require prior approval if the landlord raises an objection?

No

Q5.4 Do you agree that each incoming assignee and owner-occupier crofter should be required to confirm, at the next Census or within 2 years of taking up the croft, whether they are complying with duties?

Yes

Q5.5 If you wish, please comment on your answers to Q5.1 to Q5.4.

If you wish, please comment on your answers to Q5.1 to Q5.4.:

Some of the rationale for the Crofting Commission not overseeing assignments is premised on the view that there is little evidence in advance as to whether an individual will fulfil crofting duties, and that this can be better assessed after two years on the croft. We do not, however, think that this approach is helpful: It is not apparent what happens if a check is made, and the duties are not adhered to. Will croft tenancy status automatically be rescinded, or will non-compliant tenants – who potentially never had the intention to croft in the first place – have the benefits allowed by the duties process which is there all along anyway? In the latter case tenants will have ample time to find ways to comply with their duties while not actually intending to ever maintain the croft themselves – for example by simply subletting their croft to others.

SCF has previously proposed that owner-occupiers should need to seek approval of the Crofting Commission upon acquiring ownership of their croft to gain owner-occupier crofter status (and would be required to install a tenancy in the case where approval is not granted) and we make that proposal here again - That all individuals who purchase a croft are required to apply for owner-occupier crofter status regardless of how many crofts they already have.

If the proposed changes to assignment are made, there will be minimal oversight on croft transfers – regardless of the croft being tenanted or owner-occupied, as long as the individual in question does not hold three other crofts already (which is in itself an impractical criterion given that one individual croft can range from one to hundreds of acres in size).

Question 5.4 is misleadingly worded in a way that avoids the option of checks being made before assignment or purchase. The proposals here deceptively give the impression that crofting duties are the only matter of substance that the Commission must consider and that it cannot really do this until two years after a croft has been transferred. That appears to dismiss some other important elements that the Commission is currently required to consider in theory when deciding over assignments such as:

- The interests of the crofting community in the locality of that land;
- The sustainable development of that community;
- The interests of the public at large;
- Any objections from the landlord; any objections from members of the crofting community, including the grazings committee where the land or part of it is common grazings; any objections from anyone the Commission consider has a relevant interest in the application.
- Any approved Commission Plan and any other matter the Commission consider relevant.

The new proposals would appear to eliminate these requirements introduced to ensure better crofting regulation, simply on the basis that the Crofting Commission appears not to apply them anyway. Noticeably, the interest of the estate will generally still be considered as a landlord will retain the right to object. However, it is not clear how the interests of a crofting community will be considered as there will no longer be any right for a member of the crofting community or a grazings committee to object. Hence what is proposed now will entail minimal regulation of croft transfers and is contrary to the aspirations of the 2010 Act which followed on from the Crofting Inquiry to ensure the better regulation of crofting.

We welcome the intent to enforce breaches of duties more stringently and we do acknowledge the significant workload of the Crofting Commission and the general pressure on the public purse. We also understand the desire to make procedures more efficient, however, we do not think that crofting law reform should be mainly guided with a view to maximising efficiency, if this comes at the cost of a heightened risk for crofters and crofting communities to face further unsustainable and unjust outcomes. A proposal of this nature should not be contemplated in isolation, particularly when there is no serious consideration of controlling how the market impacts upon crofting. Until that is done there should be no alteration to the croft assignment process.

Q5.6 Do you agree that the Crofting Commission should be given the power to correct the status of croft owners who deserve owner-occupier status?

Yes

Q5.7 Do you agree that the Crofting Commission should have the power to adjust croft boundaries, on an application by all the parties, where those parties are in agreement?

Yes

Q5.8 Do you agree that the Crofting Commission should be able to correct errors in its Directions and Orders where the case for doing so is clear?

Yes

Q5.9 When considering a decrofting application, do you agree that the Crofting Commission should consider whether the applicant is complying with their statutory crofting duties, such as being resident and cultivating the croft?

Yes

Please comment if you wish.:

We do agree, however, it depends on what exactly is qualified as cultivation. If, as question 4.3 suggests, any 'activity that is environmentally beneficial' potentially qualifies as purposeful use or cultivation (to which we object), this could be construed in a way that implies that it would be considered 'productive use' for a crofter to manage a croft purely for environmental benefit i.e. 'rewilding'. Simple 'habitat restoration' or 'environmental benefit' should not be considered sufficiently productive to qualify for crofters to meet their duties – and, consequently, should not be sufficient to legitimise any decrofting decision.

Q5.10 When considering a decrofting application, do you agree that the Crofting Commission should consider whether the croft has received previous decrofting applications?

Yes

Please comment if you wish.:

We must find a way to stop the erosion of croft land through successive decroftings and are all aware of examples where this activity has had a detrimental effect on crofting townships who have seen plots of land decrofted and sold off to parties that have no interest in crofting.

Q5.11 Do you agree that the Crofting Commission should be able to use administrative sanctions where there is a regulatory breach?

Yes

Please comment if you wish. :

We think this would be an effective and just way to reinforce the importance of duties and the responsibilities that go with being a crofter.

Q5.12 If you answered yes to Q5.11, do you agree that the Crofting Commission should be able to revoke approval or decline to deal with applications?

Yes

Q5.13 If you answered yes to Q5.11, do you consider that any other type of administrative sanction should be available as well as, or instead of, a power to revoke approvals or consider applications?

Yes

Q5.14 Do you have any suggestions for how we split the number of Commissioners between elected and appointed?

Please comment if you wish.:

We think the answer to this question depends on how the purpose of Commissioners is defined. If they are to function solely in a strategic role concerned with strategy and governance issues, then you could argue that shifting the balance to have more appointed Commissioners might be the correct option. Conversely though, if the intention is that Commissioners are there to bring crofting knowledge from specific geographic areas to support policy development and contextual decision making, then either maintaining, or indeed, increasing the number of elected Commissioners would be more appropriate.

On balance, we would prefer that the majority of Commissioners remain elected.

Q5.15 If we were to reduce the number of elected Commissioners, how should we divide the crofting counties into constituencies?

Q5.14:

We do not support the idea of reducing the number of elected Commissioners and actually would propose that a review of the constituencies is undertaken as the current system sees a huge imbalance in the number of crofters represented by each Commissioner. It may be, for example, that splitting the Western Isles and the West Highlands into two constituencies provides more equitable representation than currently.

Q5.16 Should anyone who has twice previously been elected as a Crofting Commissioner be able to stand again in another crofting election?

No

Q5.17 Should voter eligibility operate on the same basis as for the previous three elections?

Yes

Please comment if you wish. :

Simplifying crofting

Q6.1 Do you agree that we should extend the powers of the Keeper of the Registers of Scotland for correcting errors in the Crofting Register?

Yes

Q6.2 Do you agree that all registration applications should be copied to the relevant landlord, in order to allow the landlord to comment if he or she chooses to do so?

No

Please comment if you wish. :

Whilst we understand the sentiment behind this proposal, we do not support this change as it places an unnecessary extra burden on the crofter in what is already quite a difficult process for some. Also, many crofters are not even sure where or how to contact their landlord so may be unable to fulfill this requirement through no fault of their own.

Q6.3 Do you agree that the purchase of title to a croft by a tenant crofter should be a trigger for registration in the Crofting Register?

Yes

Q6.4 Do you agree that owner-occupiers should be required to give the same personal information for the Register of Crofts as tenants?

Yes

Q6.5 Do you agree that the deadlines for these four particular types of decision should be removed from the legislation?

Yes

Please comment if you wish. :

Although we agree with this in principle, we do have some concern that this may have the effect of lengthening the duties process which is in contradiction to the proposal to shorten it in certain circumstances.

Q6.6 Do you agree that where all the crofters and owners of the land in question, wish to set up a permanent crofting right of access, they should be entitled to do so?

Yes

Clarifications and corrections

Q7.1 If you wish, please add any comments on any of the proposed clarifications set out in this section of this consultation.

Please comment if you wish. :

About you

What is your name?

Name:

Donna Smith

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Crofting Federation

Further information about your organisation's response

Please add any additional context:

We consulted with our members, board and council through a series of meetings ahead of preparing our response. Our staff, board and council also attended many of the roadshow meetings to hear and participate in the discussions. Our response has been prepared accordingly based on what we have heard from our members.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

email address:

donna@crofting.org

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very dissatisfied

Please enter comments here.:

Overall, the consultation gives the impression that the decisions already have been made. Relevant questions or options are omitted. Other questions are framed in a tendentious or misleading way. Further, the option to comment seems to be restricted in an arbitrary way and it is not clear why there is an option to comment in some instances and in others there is not.

As for an example question 4.3. states "Do you agree that a tenant crofter should not have to obtain consent before making use of the croft for an activity that is environmentally beneficial?" Yet it only gives the option to say Yes or No without the option to add a comment.

We have had to respond with 'no' which could be read in a way that would suggest that our organisation does not agree that tenants should have the same rights as owner-occupiers. However, this is not at all the case and not the reason why we say no.

We are concerned about the implications of the second paragraph of the relevant section which states that no consent from the landlord or the Commission should be required for 'an activity that is environmentally beneficial'. Read in conjunction with the rest of the section, this could be construed in a way that implies that it would be considered 'productive use' for a crofter to manage a croft purely for environmental benefit i.e. 'rewilding'. Allowing pure habitat restoration on crofts will be counterproductive to getting more food grown on crofts and to getting more crofts into active use, and particularly counterproductive towards getting crofts into the hands of people who will contribute positively to crofting communities.

However, this addressing complexity is simply avoided by not providing a free text field to respond.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

We would prefer the option to respond via a word/pdf document as done in other consultations.