

Date : 25 November 2016

To : Rural Economy and Connectivity Committee

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REVIEW OF PRIORITIES FOR CROFTING LAW REFORM: CALL FOR EVIDENCE

1. NFU Scotland welcomes the opportunity to submit written evidence to the Rural Economy and Connectivity Committee (RECC) on the review of priorities for crofting law reform. With approximately 800 crofting members, NFU Scotland is very well placed to respond on behalf of those actively managing their crofts across all of Scotland's crofting areas.
2. NFU Scotland are members of the Crofting Stakeholder Forum, the Crofting Legislation Stakeholder Consultation Group and have previously submitted responses to the Crofting Law Sump.
3. NFU Scotland gave verbal evidence to the RECC on 2 November and this written submission is in addition to that.
4. The NFU Scotland Crofting Highlands & Islands Committee (CHIC) met on 18 November and members highlighted concerns about the short timescale that has been allowed for submissions to the RECC on this important issue. The CHIC members recognise, however, that this is just the start of a lengthy, and they hope thorough, process and welcome the decision by the RECC in taking the initiative to start the discussion.
5. Whilst it is widely recognised that crofting delivers a range of public benefits it is important that regulation needs to be in the crofters' interest as well as the wider public interest.

6. We believe that some of the problems arising from the 2010 Act resulted from the submission of several late amendments. These were not given sufficient scrutiny in relation to the needs of crofters and crofting, nor did they consider the 'layers' of crofting legislation already in place.
7. In October 2016 NFU Scotland consulted with our membership and the results indicated that 62% thought that crofting legislation should be reviewed, simplified and modified; 13% wanted to start again with a 'clean sheet'; 10% thought it should be abolished completely and 9% believed it should stay as it is.
8. NFU Scotland believe that there is an opportunity to greatly simplify crofting legislation. Much of what is currently included as primary legislation could either be removed completely or included in secondary legislation. This approach would lead to much greater flexibility in delivering crofting outcomes that are more responsive to the needs of crofters and crofting in the twenty-first century.
9. Crofting legislation needs to recognise the regional variation/diversity found across the crofting counties of different crofting systems – scale of crofts, land type, enterprises, cultural, climatic etc. There have been recent proposals put forward from a group of crofters in Sleat, on the Isle of Skye, in their paper 'Self-Regulation of the Current Crofting System to meet the Modern Need', where they propose a structure that would allow for more devolved regional self-regulation.
10. In our recent consultation, we asked members if they believed that there should be a more devolved system of regulatory decision making – 16% supported this; 32% did not agree and 52% were unsure and wanted to know more about how such a system might work.
11. Whilst NFU Scotland, at this stage, are not able to fully support a move to self-regulation, we do believe that it merits further investigation and will be exploring this in more depth with our members.
12. NFU Scotland believe that there are issues around the definition of activity, or purposeful use. We have concerns about how this requirement has been implemented by the Crofting Commission. There is a need to ensure that they are sufficiently resourced to do so.
13. There also needs to be differentiation within the legislation between inactive and active crofters/shareholders, particularly in relation to securing agricultural support payments and the distribution of funds on common grazings.

14. It is important that any reform in crofting legislation supports opportunities for young people and new entrants in to crofting. Issues around succession and assignation need to be addressed.
15. Access to rural housing and employment/business opportunities are vital in underpinning active crofting communities and, whilst these fall out with crofting legislation, it is important that they are kept at the forefront of any discussions on the reform of crofting legislation.
16. Agricultural activity, whilst not the sole use of crofts, is still significantly important not only in terms of supporting the local rural economy, but also delivering other public benefits such as conservation management and landscape diversity.
17. It is important that the economies of scale from an agricultural perspective within the crofting counties are maintained. Whilst population retention is one of the primary objectives of crofting, NFU Scotland also believe that it is important that a croft enterprise needs to be a reasonably sized unit to maintain its economic viability. In specific areas amalgamation, use of sub-lets and multiple ownership of crofts may well be the best option in terms of that local crofting community.
18. The current multi-agency approach to crofting development is confusing and often inaccessible for crofters. Since April 2009 Crofting Development was transferred from the Crofting Commission to Highlands & Islands Enterprise (HIE), who has since delivered Crofting Community Development through its Community Growth Plans and other related programmes.
19. In our recent consultation NFU Scotland asks members if they thought that there is a role for a single organisation dedicated to crofting development, which would be able to give advice and information to individual crofters and crofting communities as well as promoting the wider interests of crofting. 67% of respondents agreed that there should be 10% said no and 23% were unsure.
20. Of those who agreed that there should be a single agency tasked with delivering crofting development 57% thought that this should be the Crofting Commission; 17% thought it should be HIE and 26% thought it should be an 'other'.
21. NFU Scotland, however, believe that if that role is reinstated to the Crofting Commission, then the Commission needs to be radically reformed and sufficiently resourced to deliver that important function. In our consultation 38% of respondents believed that the Commission was currently either unsatisfactory or very unsatisfactory as a crofting regulator whilst 34% thought that it was competent.

22. The Crofting Stakeholder Forum have identified the following as the key priorities. In our discussions, other issues were also identified, but these are the ones that the forum believed were the priorities.
1. Simplify crofting legislation
 2. Make crofts available for new entrants and develop a new entrants' scheme/succession
 3. Increase affordable housing & develop a croft house loan scheme
 4. Develop crofting – lead body?
 5. Ensure that financial incentives are positive for crofting
 6. Common Grazings
23. The Forum is currently developing papers on the each of the above six themes. Along with a paper outlining what is still unfinished business from the Committee of Enquiry (the 'Shucksmith Report') and highlighting the public benefits that crofting can deliver.
24. NFU Scotland believes that there are important issues around common grazings (CG) that need to be addressed. Some of these are currently been looked at through a Crofting Commission stakeholder group, which NFU Scotland sits on.
25. NFU Scotland believe that CG regulations should set out the essential requirements that a Grazings Committee must do. It should then be up to the local Grazings Committee, in consultation with their shareholders, what else they want to include in their regulations that are relevant to their local circumstances/area.
26. However, we believe that there are some key overarching principles that need to be accepted
- There should be an attitude of openness and transparency
 - There should be sound financial recording and accounting (as with any voluntary group)
 - Best practice procedures should be followed
27. Currently there are several outstanding issues
- Active V inactive shareholders – difference between funds that are received that all shareholders have a right to e.g. resumption money and funds that relate solely to the active shareholders e.g. livestock/grazing related.
 - Remuneration of the grazings clerk
 - The Committee should be ultimately answerable to the shareholders

- Underutilisation of the CG/risk of abandonment
 - Allocation of unused shares
 - Many CGs remain unregulated and this needs to be addressed
 - Role of RPID and the disconnect between their requirements and what crofting legislation requires.
 - There is an urgent need to rebuild trust and confidence within CG Committees, crofting communities and between the Crofting Commission.
 - Registration of some CG still outstanding and needs to be completed with dedicated resources.
28. The suggestion has been made by some that owner-occupier crofters should be removed from the requirement to comply with crofting legislation. This is on the basis that crofting legislation is primarily about the relationship between a landlord and the tenant i.e. the crofter. The question, therefore, is once that relationship has been broken is there any need for an owner-occupier to comply with crofting legislation?
29. NFU Scotland currently do not have a position on this as we would need to consult more fully with our members. There are several important issues to consider and initial concerns could be what impact this would have on the management of common grazings and on the crofter's duties i.e. the residency duty, the duty not to misuse or neglect the croft and the duty to cultivate and maintain.
30. A significant concern would be that those 'crofts' would then be available for sale on the open market with the possibility that they would only be sold to the highest bidder. Without a residency and activity requirement there is a high risk that these properties could then become 'second homes'.

Concluding Comment – since the implementation of the Crofting Reform (Scotland) Act 2010 it has been very apparent that there are significant issues relating to crofting legislation. The introduction of the Crofting (Amendment) (Scotland) Act 2013 was urgently needed to address issues surrounding owner-occupiers. Subsequently the Crofting Law Sump report has highlighted further anomalies. NFU Scotland believe that crofting legislative reform is urgently needed, but priority must be the development of 'good' legislation i.e. well thought out, researched and constructed. We welcome the intervention of the RECC on this important issue.