

Charting a way forward for crofting

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focus



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Dr CALUM MACLEOD
analyses the
consultation paper
on the draft Crofting
Reform (Scotland)
Bill, which was
launched last week

CROFTING's iconic status as a lynchpin of rural development in the Highlands and Islands for over a century has long been recognised. Yet as anyone with even a passing interest in crofting is aware, there are concerns about its continuing capacity to fulfil this role effectively.

Such concerns revolve around a complex set of relationships between land occupancy and use, population retention and the cohesion of rural communities. These issues received a comprehensive airing in the Committee of Inquiry on Crofting, initiated by the then Labour-Liberal Democrat coalition Scottish Executive and chaired by Professor Mark Shucksmith.

The Committee of Inquiry's report was published in May 2008. It distilled a wealth of submitted evidence into a vision for the future of crofting encompassing growing, prosperous, inclusive and sustainable crofting communities; more resident, active crofters; and effective regulation of crofting in the interests of communities and the crofting system.

Underpinning this vision was a radical set of proposals to abolish the Crofters Commission and decentralise regulation by creating a Federation of Area Crofting Boards, transfer the development function for crofting to Highlands and Islands Enterprise and recast the rights and responsibilities associated with crofting by placing what the inquiry report termed an "occupancy burden" on croft houses, tying their building and sale to residency conditions. Other key proposals included updating the Register of Crofts and transferring responsibility for its administration to the Registers of Scotland, and better targeting of policy support measures for crofting linked to the Scottish Rural Development Programme.

In essence the broad thrust of the committee's vision was that the interests of individual crofters need to be rebalanced in favour of the wider interests of crofting to enable the latter to remain viable and play its full part in sustaining rural communities in the Highlands and Islands. This is potentially tricky ground to navigate in policy terms but now, with publication of the consultation paper on the draft Crofting Reform (Scotland) Bill, the Scottish Government has built on its initial response to the Committee of Inquiry by mapping out its preferred legislative route towards ensuring the sustainability of crofting.

In so doing, the Government appears — on the surface at least — ready to tackle the elephant on the croft; namely, whether the crofting communities of the future are to evolve on a narrow "functional" basis or more broadly conceptualised geographical notions of "place". Is crofting to be about the narrowly defined interests of "communities of crofters" or the potentially wider interests of "crofting communities"? Or is there a metaphorical (and literal) middle ground between the two?

If these seem like abstract academic questions, they shouldn't. They will ultimately shape the future direction of crofting policy and practice.

Few would argue that the legal rights secured by crofters in the 1886 Crofters Act — security of tenure, succession, fair rents, and value of improvements — were instrumental in retaining population in the Highlands and Islands for successive decades and contributing substantially to the social and economic fabric of the crofting counties. But the crofting demographics of the early 21st century are not those of 50, 20 or even 10 years ago. In an age of "occupational pluralism" (or, put simply, having more than one job) and declining livestock management, working the croft no longer represents the sole or even main income source for many crofters. And in some locations crofters are now in the minority in comparison to non-crofters in the community.

Other factors have had a more insidious impact on the cohesion of crofting communities. Most notably, sharp increases in the monetary value of crofts, leading to croft land being taken out of crofting tenure and sold on the open market. Indeed, it was the prospect of the 2007 Crofting Reform Bill (in its original, unamended form) unleashing the full speculative powers of the free market on croft land which triggered the establishment of the Committee of Inquiry on Crofting.

Add to the mix a Crofters Commission which, according to the Government, needs "root and branch reform to make it more transparent, democratic and accountable", together with the numerous examples of community land buy-outs, and the impetus for a more inclusive view of "crofting communities" in policy and practice becomes compelling. Indeed, the Committee of Inquiry's recommendations and the Government's current legislative proposals for crofting resonate clearly with what the OECD promotes as a new approach to rural development. One in which rural competitiveness is driven by the following features: local assets and resources, rather than relying only on agriculture; broadly based rural economies encompassing tourism, manufacturing and ICT; investment rather than subsidy; and the involvement of different levels of government and various local stakeholders.

IN ITS initial response to the Committee of Inquiry's report, published in October 2008, the Scottish Government indicated that it was minded to accept the majority of the Committee's recommendations. The legislative proposals contained in the draft Crofting Bill consultation — organised around the issues of "Governance", "the Crofting Register", "Support for Croft Housing", an "Occupancy Requirement" and "Crofting Regulation" — further reinforce that view.

Administrative responsibility for establishing a new and definitive Register of Crofts will be assumed by the Registers of

Scotland. The draft Bill also addresses support for croft housing by making specific provision to enable a standard security to be taken over a crofting tenancy. In this respect the Register of Crofts will assume particular significance by providing legal certainty over the extent and interests in crofts.

The Crofters Commission has gained a reprieve of sorts. Its crofting community development function has already been transferred to Highlands and Islands Enterprise under that agency's "Growth at the Edge" approach — a strong signal that the future development of crofting will occur on the basis of broad and inclusive geographical communities of "place" rather than narrower and potentially more exclusive communities of "function".

This shift in perspective is mirrored in the Government's proposals for the future governance of a renamed and radically-reorganised Crofting Commission. The draft Bill makes provision for the creation of six area committees, each composed of up to 12 members, with responsibility for regulatory decision-making in its area. This would represent a significant change from the current decision-making process, authority for which lies solely with the commission's eight area-based commissioners.

The proposal is that the majority (seven) of area committee members would be crofters, elected by crofters. However, the committees would also include representatives of local authorities and other crofting interests including landlords and community trusts. In this way the Government is proposing to simultaneously decentralise and broaden governance arrangements for crofting regulation. If and when these arrangements are established through statute, their successful implementation will be crucially dependent upon the extent to which a fit can be found between the interests of crofters and the wider community in interpreting the committees' regulatory responsibilities.

In submissions to the Committee of Inquiry the Crofters Commission was widely perceived as weak and inconsistent in enforcing regulation in relation to absenteeism, neglect of crofts and decrofting. This may be so. But such criticisms fail to reflect the realpolitik of regulatory enforcement in crofting and other policy contexts too. Enforcement strategies are resource-dependent; and resources run out, as was the case with the commission's absenteeism initiative of the late 1990s. Equally troublingly, the legal powers which the regulator is perceived by the wider public to possess may not actually exist or may be unenforceable in practice.

The Government's proposals seem to recognise these issues by shifting the focus from reactive to proactive regulation and beefing up the commission's legal capacity to undertake such an enforcement approach. In this way the reconstructed Crofting Commission would be required to take action on absenteeism "unless there is good reason not to". "Good reason" may be something of

a moveable feast, however. And what constitutes "acceptable" and "unacceptable" absenteeism merits further careful consideration. Similarly, the draft Bill would empower the Crofting Commission to take enforcement action against any crofter who is misusing, neglecting or not putting their croft to any purposeful use without requiring a complaint to be made or requiring the consent of the landlord.

A final key area in which the draft Crofting Bill contains provisions relates to the thorny issue of occupancy "burdens". These were recommended by the Committee of Inquiry, effectively tying all croft houses to residency and to be included in conveyancing when next assigned or purchased. In the Government's proposals "occupancy burdens" have been finessed by civil servants into the marginally less emotive "occupancy requirements". Responsibility for administering and regulating these requirements is envisaged as being held by the local authority in the relevant area — a prospect which is unlikely to fill these organisations with great enthusiasm, given its resource implications and potential difficulties in enforcing the requirement.

The Government's proposals do allow for a degree of flexibility by envisaging that local authorities be permitted to lift the occupancy requirement as a matter of housing and planning policy. How that would address the criticism of inconsistent enforcement across the crofting counties levelled at the current Crofters Commission remains to be tested.

The report of the Committee of Inquiry into Crofting represented a vital milestone on the journey towards ensuring that crofting continues to play a central role in the sustainable development of the Highlands and Islands. In turn, the legislative proposals contained in the consultation paper for the Draft Crofting Reform (Scotland) Bill appear to substantively embrace the majority of the report's key recommendations.

There remain important questions as to how certain aspects of these proposals — most notably "Area Committees" and "Occupancy Requirements" — would function in practice. Nevertheless, they are in line with the vision of broadly-defined, inclusive and empowered crofting communities presented by the Committee of Inquiry.

As the consultation process on the draft Bill commences it would be all too easy for the next stage in the debate on the future of crofting to become entangled in vested interests and party politicking. It is in crofting's, and ultimately in all our interests, to ensure it does not.

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