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# Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd

## Review of Priorities for Crofting Law Reform



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# Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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# Executive summary

This report presents the outcomes of the Rural Economy and Committee's review of priorities for crofting law reform. The Committee's key conclusions and recommendations are as follows—

## *Legislative approach*

- The Committee considers it to be of fundamental importance that the Scottish Government's proposed bill provides for a legislative platform which fits with the reality of modern crofting practices; is relevant to the needs and aspirations of crofters and those who wish to be involved in crofting; and which aims to deliver a sustainable crofting sector.
- The Committee is also of the view that there is a need to move away from the piecemeal process of legislative development which has seen several crofting acts being passed in recent years. The proposed bill should therefore be comprehensive and seek to address as many of the issues identified within the crofting community requiring action as is possible.
- The recommendations contained in the report by the Crofting Law Sump Group should form the starting point for further consideration of legislative reform proposals.
- The Committee is also of the view that the new legislation should be accompanied by comprehensive and accessible guidance documents to allow all of those involved in crofting to more easily understand and implement the provisions.
- The Committee calls on the Scottish Government to commit to ensuring that the bill timetable will be structured in a manner which will allow sufficient time for thorough and detailed Parliamentary scrutiny; and that the passage of the bill is completed comfortably before the end of the current parliamentary session.
- The Committee recognises that legislation may not be required to resolve all of the priority issues within crofting. It is of the view that action to address such issues should not be held up during the period when new legislation is being developed.

## *Crofting policy*

- The Scottish Government should develop and produce an updated and clear statement of its overarching crofting policy which will, in turn, inform a legislative programme to give effect to this policy.

## *Crofting development*

- Given the importance of development function to the future of crofting, the Scottish Government should seek further views on where the responsibility for this should lie, to ensure that it fits most effectively with the objectives of its overarching crofting policy.

## *Role of elected Crofting Commissioners*

- The role and responsibilities of elected Crofting Commission commissioners should be carefully considered and defined as part of the crofting law reform process. The non-executive role for commissioners should be further developed and encouraged as a priority.

#### *Crofting Register*

- The completion of the mapping of common grazings should be given a high priority. The Committee calls on the Scottish Government and the Crofting Commission to consider how this might be achieved and resourced.

#### *Absenteeism and neglect of crofts*

- The process for managing cases of absenteeism and neglect of crofts should be reviewed by the Scottish Government, to identify whether any scope exists to streamline or simplify its operation.
- The Committee calls on the Scottish Government to examine why the legislative requirement for grazing committees to produce annual reports on matters such as absenteeism and neglect is clearly not being complied with and to consider whether it should be either removed or enforced.

#### *Support for new entrants to crofting*

- The Committee welcomes the Scottish Government's commitment to introducing a new entrants scheme for crofting. It also welcomes the Cabinet Secretary for Rural Economy and Connectivity's agreement to explore the potential for areas of common grazings to be used for the creation of new crofts, as part of the development of this scheme.

#### *Owner-occupier crofters*

- The Committee is of the view that options for the treatment of owner occupiers within the crofting environment should be examined in detail as part of the Scottish Government's consultation.

#### *Common grazings*

- The Committee is in no doubt that the legislation and guidance covering grazings committees needs to be updated to reflect modern circumstances and practices. It calls on the Scottish Government to include an examination of this issue as part of the crofting law reform process.
- The Committee agrees that the issue of the retention of shares in common grazings on the sale of crofting rights should be examined as part of the legislative reform process to determine whether any changes are required

#### *Small landholdings*

- The Committee notes the differing opinions held by stakeholders on linking crofting and small landholding legislation and is of the view that it should be the subject of wide consultation, to include both small landholders and crofters.

# Geàrr-iomradh

Anns an aithisg seo gheibhear toraidhean an sgrùdaidh a rinn Comataidh na h-Eaconamaidh Dùthchail is Cheanglaichean air na prìomhachasan a th' ann gus lagh na croitearachd ath-leasachadh. Chithear na prìomh cho-dhùnaidhean is molaidhean aig a' Chomataidh gu h-ìosal—

## *Beachdan a thaobh reachdais*

- Tha a' Chomataidh den bheachd gu bheil e fìor dheanamach gum bi am bile a thathar a' moladh mar bhun-stèidh reachdail a bhios: a' freagairt air an dòigh-beatha is na dòighean-obrach a th' aig croitearan san latha an-diugh; a' gabhail ealla ris na feuman a th' aig croitearan agus ris na tha iad a' rùnachadh agus ris na tha dhith air daoine a tha airson a bhith an sàs ann an croitearachd; agus a bhios ag amas air croitearachd mar dhòigh-beatha a chur air stèidh sheasmhach.
- Tha a' Chomataidh cuideachd den bheachd gum feumar stad a thoirt earrainnean reachdais is achdan a-steach mìr air mhìr, oir chaidh grunn achdan croitearachd a thoirt a-steach sna beagan bhliadhnaichean a dh'fhalbh. Mar sin, bu chòir don bhile a thathar a' moladh a bhith na bhile farsaing agus iomlan a dhèiligeas ris an uiread as urrainnear de na duilgheadasan a chomharraich muinntir na croitearachd a bha feumach air fuasgladh.
- Bu chòir do na molaidhean a gheibhear san aithisg aig a' Bhuidheann Sump airson Laghan Croitearachd a chleachdadh mar bhunait airson tuilleadh beachdachaidh a dhèanamh air na molaidhean a th' ann airson an reachdas ath-leasachadh.
- Tha a' Chomataidh cuideachd den bheachd gum bu chòir farsaingeachd de sgrìobhainnean stiùiridh mionaideach a bhith ann còmhla ris an reachdas ùr a bhios furasta am faotainn, feuch gum bi e nas fhasa don a h-uile duine an sàs ann an croitearachd buaidh nan cumhachan reachdail a thuigsinn agus an cur an sàs.
- Tha a' Chomataidh ag iarraidh air Riaghaltas na h-Alba a dhèanamh cinnteach gum bi an clàr-ama airson a' bhile air a dhealbh ann an dòigh a nì cinnteach gum bi ùine gu leòr aig a' Phàrlamaid sgrùdadh mionaideach a dhèanamh air a' bhile; agus dèanamh cinnteach gun tèid am bile a chrìochnachadh ann an deagh àm ro dheireadh an t-seisein seo den Phàrlamaid.
- Tha a' Chomataidh a' gabhail ris 's dòcha nach bi feum air cumhachan reachdail airson fuasgladh fhaighinn air gach prìomh chùis a chaidh a chomharrachadh a thaobh croitearachd. Tha iad den bheachd nach bu chòir dàil a bhith ann ann a bhith dèiligeadh ris a' leithid de chùisean fhad 's a thathar ag ullachadh reachdas ùr.

## *Poileasaidh Croitearachd*

- Bu chòir do Riaghaltas na h-Alba aithris ùr is shoilleir a dhealbh agus ullachadh air a' phoileasaidh croitearachd iomlan aca a bhios an uair sin mar stiùir do phrògram reachdais a bheir am poileasaidh sin gu buil.

### *Leasachaidhean Croitearachd*

- Seach gu bheil leasachaidhean cho cudromach do mar a bhios croitearachd a' dol air aghaidh san àm ri teachd, bu chòir do Riaghaltas na h-Alba tuilleadh bheachdan iarraidh air cò ris am bu chòir obair leasachaidh a bhith an urra, gus dèanamh cinnteach gum freagair an obair leasachaidh sin air na cinn-uidhe ann am poileasaidh croitearachd an Riaghaltais san dòigh as èifeachdaiche as urrainn.

### *Dreuchd nan Coimiseanairean Croitearachd a thèid a thaghadh*

- Bu chòir beachdachadh gu faiceallach air an dreuchd agus na dleastanasan a th' aig na coimiseanairean a bhios air an taghadh aig Coimisean na Croitearachd agus bu chòir na dleastanasan sin a bhith air an dealbh mar phàirt den ath-leasachadh air laghan na croitearachd. Bu chòir barrachd leasachaidh a dhèanamh air na dleastanasan neo-dhreuchdail aig na coimiseanairean agus bu chòir an taobh neo-dhreuchdail sin den dreuchd a chur air adhart mar phrìomhachas.

### *An Clàr Croitearachd*

- Bu chòir prìomhachas mòr a chur air a bhith cur crìoch air mapadh a' chùil-chinn. Tha a' Chomataidh ag iarraidh air Riaghaltas na h-Alba agus Coimisean na Croitearachd beachdachadh air ciamar a ghabhas sin dèanamh agus ciamar a ghabhas e a mhaoineachadh.

### *Neo-làthaireachd agus croitean de nach eil cùram ga ghabhail*

- Bu chòir do Riaghaltas na h-Alba ath-sgrùdadh a dhèanamh air a' phròiseas gus dèiligeadh ri neo-làthaireachd agus croitean de nach eil cùram ga ghabhail, feuch a bheil dòighean ann san gabh am pròiseas a dhèanamh nas èifeachdaiche no nas fhasa.
- Tha a' Chomataidh ag iarraidh air Riaghaltas na h-Alba sùil a thoirt air cùisean gus faighinn a-mach carson nach eil comataidhean ionaltraidh ag ullachadh aithisgean bliadhna air neo-làthaireachd is neo-chùram mar a bu chòir dhaibh fon reachdas agus an uair sin beachd a ghabhail feuch am bu chòir cur às don chumha reachdail seo no a chur an sàs gu ceart.

### *Taic do chroitearan ùra*

- Tha a' Chomataidh a' cur fàilte air a' ghealladh aig Riaghaltas na h-Alba gus sgeama airson croitearan ùra a thoirt a-steach. Tha iad cuideachd a' cur fàilte air mar a dh'aontaich Rùnaire a' Chaibineit airson na h-Eaconamaidh Dùthchail is Cheanglaichean coimhead air mar a ghabhadh pàirtean den chùil-chinn a chur gu feum gus croitean ùra a chruthachadh, mar phàirt den sgeama ùr seo.

### *Croitearan le seilbh air croit*

- Tha a' Chomataidh den bheachd gum bu chòir coimhead gu mionaideach air na roghainnean a th' ann gus dèiligeadh ri croitearan le seilbh croit taobh a-staigh saoghal na croitearachd mar phàirt den cho-chomhairleachadh aig Riaghaltas na h-Alba.

### *Cùl-cinn*

- Tha a' Chomataidh gu math cinnteach gum feumar an reachdas is an stiùireadh a bhuineas ri comataidhean ionaltraidh ùrachadh gus am freagair iad air na cleachdaidhean is suidheachaidhean a gheibhear san latha an-diugh. Tha iad ag iarraidh air Riaghaltas na h-Alba an t-ùrachadh seo a dhèanamh mar phàirt den ath-leasachadh a nithear air laghan croitearachd.
- Tha a' Chomataidh ag aontachadh gum bu chòir coimhead air na ceistean a thaobh a bhith cumail earrainnean sa chùl-chinn nuair a thèid còraichean croitearachd a reic, agus sin a dhèanamh mar phàirt den phròiseas gus an reachdas ath-leasachadh feuch a bheil atharraichean a dhith.

### *Cuibhreannan fearainn beaga*

- Tha a' Chomataidh a' toirt an aire do na diofar bheachdan a th' aig luchd-ùidhe mu bhith dèanamh ceangal eadar reachdas airson croitearachd agus reachdas airson chuibhreannan fearainn beaga, agus bu chòir beachdan air sin a shireadh gu fada is farsaing, gus beachdan a ghabhail bho dhaoine le sealbh air cuibhreannan fearainn beaga agus bho chroitearan.

# Introduction

1. At its meeting on 5 October 2016, the Rural Economy and Connectivity Committee agreed to conduct a short, focussed review of priorities for crofting law reform. This report summarises the work undertaken by the Committee and contains its conclusions and recommendations.
2. The Committee agreed that the key objectives of this piece of work should be to:
  - inform it of the activity already undertaken by stakeholders and the Scottish Government in working towards a reform of crofting law;
  - allow it to make an assessment of the priority action that has so far been identified; and
  - make recommendations on any action it considers necessary to progress and complement the reform process.

## Oral and written evidence

3. The Committee held a series of oral evidence sessions in November 2016 and heard from a range of organisations, including those bodies representing crofting interests, crofting law experts, and the Crofting Commission. It took evidence from Fergus Ewing MSP, the Cabinet Secretary for the Rural Economy and Connectivity (“the Cabinet Secretary”) on 23 November 2016.
4. The Committee issued a call for written evidence on Monday 24 October 2016. 14 submissions were received and these can be found at **Annex C**.

## Previous work on crofting law reform

5. In carrying out its review, the Committee acknowledged and took into account the significant amount of work that has already been carried out in this area, including previous reforms of crofting legislation; more recent identification of priorities for further legislative reform by the Crofting Law Group and the Crofting Legislation Stakeholder Consultation Group; and the Scottish Government's intention to develop a National Development Plan for Crofting.
6. The key pieces of recent crofting legislation are: the Crofters (Scotland) Act 1993, which consolidated legislation made between 1955 and 1993 and remains the principal statute on crofting; the Crofting Reform etc. Act 2007; the Crofting Reform (Scotland) Act 2010; and the Crofting (Amendment) (Scotland) Act 2013.
7. In evidence to the Committee, several references were made to the report of the Committee of Inquiry on Crofting, chaired by Professor Mark Shucksmith, which was published in May 2008. The report made recommendations in relation to land and environment issues, rural economy issues, affordable housing issues, governance issues and crofting regulation and enforcement issues.
8. The Committee noted that the [Crofting Law Group](#) reported on the "Crofting Law Sump" in 2014 and identified 57 issues related to crofting law which it recommended should be taken forward in a future crofting bill. Of these issues, the Group identified 17 high priority propositions. These 17 issues are set out in **Annex A**.
9. Following the publication of the Sump report, the Scottish Government set up the Crofting Legislation Stakeholder Consultation Group to consider it. This group [reported](#) to the Scottish Government in February 2015, and recommended that the Scottish Government should promote legislation to address all 57 issues. However, the report recognises the complexity of the legislation and the need for further detailed work to address some of the issues. The group recommended that nine of the "high priority issues" identified in the Sump report should be taken forward by the Scottish Government by the end of Session 4. These were points 2 to 7, 13, 16 and 17 listed in Annex A.
10. The Group further recommended that if the Scottish Government was not able to take forward all nine of these points, it should take forward two points as an utmost priority, as they were causing acute difficulties. These were points 4 and 5 listed in Annex A. Since the group reported to the Government it is understood that the issue raised in point 4 has been resolved following a Scottish Land Court decision in a case called [MacGillivray v Crofting Commission](#). None of the other points have yet been actioned.
11. **The Committee notes that the issues identified in the Sump report and subsequently considered by the Crofting Legislation Stakeholder Consultation Group have been subject to detailed consultation and command broad support amongst stakeholders. The Committee is of the view that, moving forward, these issues should form the basis of proposals for the development of legislation by the Scottish Government to reform crofting law.**

# Proposed National Development Plan for crofting

12. The Scottish Government Programme for Government published on 6 September 2016 states that—

” This year we will also engage with crofting stakeholders to begin the process of drafting a National Development Plan for crofting as part of a sustainable rural economy. This will include measures to support new entrants, explore the scope to promote the creation of woodland crofts, consider support for croft housing, and ensure community-owned estates are not disadvantaged by the croft registration process. This engagement will inform a new Crofting Bill planned for later in the Parliament. <sup>1</sup>

13. The Committee questioned the Cabinet Secretary on the timescale for the production of the development plan. He responded—

” ...that process should be governed by the principle of getting it right, not getting it out...It is far more important to have a plan that is right, that wins support, that commands buy-in and which is visionary but deliverable and practical.

**14. The Committee agrees that it is important to take time to ensure that the National Development Plan fully reflects the needs of crofting communities. However, given that the engagement with stakeholders on the plan is also intended to inform the proposed new crofting bill, the Committee calls on the Scottish Government to publish an indicative timetable for its production.**

# Review of the Crofting Commission

15. On 7 November 2016 the Scottish Government announced a review of the Crofting Commission. The review considered—
  - governance arrangements relating to the Board and a review of the systems, procedures and support mechanisms to underpin effective decision making
  - the systems, processes and procedures in relation to decision making in three recent common grazings cases - at Bohuntin, Upper Coll and Mangersta. The review will not consider the decisions taken.
  - arrangements for handling conflicts of interest
16. Business advisers and accountancy firm Scott-Moncrieff carried out the review, the outcomes from which were [announced by the Scottish Government](#) on 3 March 2017.

17. **The Committee notes the outcomes from the review of the Crofting Commission and acknowledges that as well as identifying potential for improving governance arrangements, these may also influence future legislative reform.**

## Crofting development

18. One of the main changes in the Crofting Reform (Scotland) Act 2010 was to allocate responsibility for the development of crofting to Highland and Islands Enterprise (HIE).
19. There was consensus amongst many of the witnesses giving evidence to the Committee that the development function is an important one, but that very little development is happening under HIE. Specifically, concerns were expressed that HIE's focus was primarily on crofting community development rather than on providing support for individual crofters or promoting wider crofting interests.
20. Some witnesses asserted that the development function should sit with the regulation function in the Crofting Commission. Responding to these comments, Colin Kennedy, Convener of the Commission, told the Committee that the Crofting Commission could deliver this function, although additional resources would be needed to do so. His colleague, David Findlay, explained that the Commission currently has no agreed corporate view on whether it should have such a development role.
21. The Cabinet Secretary advised the Committee that a conscious decision was made during the passage of the 2010 Act that the development and grant-giving functions that were carried out by the Crofters Commission should not be transferred to the Crofting Commission, on the basis that it is “effectively, substantially and primarily a regulatory body”. He also indicated that the Commission did not have the budget to be a development body. On the question of HIE’s suitability for carrying out the crofting development function, the Cabinet Secretary said—

” HIE is well placed to perform its development role, not least because, ...unlike Scottish Enterprise, it has a social function as well as an economic duty. It differs in its statutory duties and in how it approaches its task.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 34<sup>2</sup>

22. **The Committee notes the view expressed by several witnesses that the Crofting Commission should be responsible for crofting development, as opposed to HIE. However, it also notes that the Scottish Government is satisfied that HIE is best positioned to carry out this role and that the Commission itself has no formal position on this matter.**
23. However, the Committee is concerned that, whilst the development function appears to be serving crofting communities reasonably well, the availability of effective support to individual crofters seems to have been lost.

24. The Committee recommends that, given the importance of development to the future of crofting, the Scottish Government should seek further views on where the responsibility for the function should lie, to ensure that it fits most effectively with the objectives of its overarching crofting policy.

## Business advice

25. The Committee also explored with the Cabinet Secretary how business advice can be made available to crofters, both for new entrants and to those wishing to develop their businesses. In response, he said—

” I certainly agree that we need to be sure that appropriate advice is available to those who live and work in the crofting counties who wish to have it. It is especially important that businesses should be nurtured and supported where possible and appropriate and that the relevant sources of advices should be available to them.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 38<sup>3</sup>

26. **The Committee considers that more should be done to ensure that crofters are aware of the business development advice which is available to them and where they can obtain such support. It therefore calls on the Scottish Government and HIE to consider how business advice might be most effectively provided by the relevant bodies and promoted in crofting communities.**

## Role of elected Crofting Commissioners

27. The 2010 Act provides for up to six of the nine Crofting Commissioners to be elected. The first such elections were held in 2012, and the next elections will take place in March 2017.
28. During the Committee's evidence sessions, some witnesses expressed confusion as to whether elected commissioners were required to act on behalf of the whole commission or if they are simply delegates representing their own constituencies.
29. Other witnesses expressed concerns about the role of elected commissioners. For example, Sir Crispin Agnew stated that he was concerned, given that the Crofting Commission is part of the court system, that it is effectively a court with elected judges. He suggested that if the tribunal aspect of the Commission's role were to be removed, then there would be less of a problem, since the Crofting Commission would act in a similar way to democratically elected councils.
30. Eilidh Ross MacLellan both in written and oral evidence, was clear in her view that Commissioners should be appointed. She argued that elected Commissioners are not readily able to enforce tighter regulation.
31. As part of the discussion on the role of Commissioners, the Committee heard from David Findlay of the Crofting Commission that its board had agreed to a system of delegated decision making. In essence, this means that the staff of the Crofters Commission are tasked with making decisions in individual cases and the Commissioners have a wider overview on policy.
32. The Cabinet Secretary agreed that the role of elected commissioners is an important area for further debate and of potential reform. He also indicated to the Committee that the Scottish Government is supportive of the delegated decision-making approach. He said that he felt this was good for governance and would free up commissioners to work on strategic issues.

**33. The Committee shares the view that the role and responsibilities of elected commissioners should be carefully considered and defined as part of the crofting law reform process. It notes that this was acknowledged by the Cabinet Secretary.**

**34. The Committee is encouraged by the broadly positive reports of the delegated decision making approach which has been agreed by the Crofting Commission and is in the process of being implemented. It is of the view that the non-executive role for commissioners should be further developed and encouraged as a priority and taken into account as part of the wider consideration of the role of elected commissioners.**

## Crofting Register

35. The 2010 Act introduced a [Crofting Register](#), a free-to-search, public register of crofts, common grazings, and land held runrig, which is kept by the Registers of Scotland. It is map-based and shows defined extents of land and property on the Ordnance Survey map. It also contains information on the tenant or owner-occupier crofter on the land, as well as the landlord and/or the landowner of the registered land.
36. The Register is gradually being completed, as compulsory registration is triggered on the occurrence of certain events, such as applications by crofters, e.g. to assign, decroft, sublet etc. When the register is complete, it will be a definitive record of all land in crofting tenure in Scotland.
37. This register is distinct from the [Crofting Commission's Register of Crofts \(ROC\)](#) which is not map based. The Crofters (Scotland) Act 1993 requires this Register to contain an entry for each croft.
38. In evidence to the Committee, several issues were raised in relation to the Crofting Register.

## Costs of registration and notification

39. Some witnesses expressed concerns about the costs involved in registration, in particular the costs of public notification. Colin Kennedy of the Crofting Commission advised the Committee that the cost of newspaper notification amounted to £240, and that a £90 fee was required at every trigger point. In commenting on the issue, Donald MacKinnon of the Scottish Crofters Federation Young Crofters expressed the view that—

” ...as well as being overly bureaucratic, it represents a huge amount of money coming out of crofting...Whether that is really necessary needs to be looked at.

Source: Rural Economy and Connectivity Committee 02 November 2016, Donald MacKinnon, contrib. 43<sup>4</sup>

40. When this matter was raised with the Cabinet Secretary, he responded by saying that the Scottish Government will consider how the costs of advertising in local papers might be reviewed, and that a move to online registration might be an option.

41. **The Committee is of the view that a means should be devised to deliver an efficient, accurate and accessible crofting registration process at minimum cost to the registrant. The Committee welcomes the Cabinet Secretary's indication that the Scottish Government will explore this matter further and would encourage identification of an appropriate online solution which removes the need for costly advertising.**

## Mapping of common grazings

42. A key element of the completion of the Register of Crofts is the mapping of common grazings. The Committee was told by some witnesses that whilst some progress had been made in this exercise, activity had ceased due to funding issues. Lucy Sumsion of NFU Scotland said—

” Initially, there was funding to map all the common grazings and the Crofting Commission was going to do that...the funding has been withdrawn—at least for the moment—so no more common grazings are being mapped.

Source: Rural Economy and Connectivity Committee 02 November 2016, Lucy Sumsion, contrib. 42<sup>5</sup>

43. Joseph Kerr of the Crofting Commission illustrated the current position, informing the Committee that around 333 common grazings have so far been mapped, 90-100 were engaging, and there were around 400-500 with no engagement. He confirmed that the Commission’s resources for this work had been exhausted, but that it saw the mapping exercise as an important part of the registration process that it would like to see completed.
44. The Cabinet Secretary explained to the Committee that the Scottish Government had provided the Commission with an additional £400,000 over the period 2012-13 to 2015-16 to cover registration of all the circa 1,000 common grazings. However, this task had proved to be more challenging than first anticipated and he confirmed that only around 300 common grazings had been registered using this resource.
45. When questioned on the availability of further funding to allow the completion of the mapping of common grazings, the Cabinet Secretary said—

” Any decision on whether to devote resources from within its existing budget allocation to continue with common grazings registration would be for the Crofting Commission to make and would need to be balanced against the organisation’s other responsibilities...

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 60<sup>6</sup>

- 46. The Committee is of the view that the comprehensive registration and accurate mapping of common grazings is essential to the effective and efficient management of crofting. It therefore recommends that the completion of the mapping exercise should be given a high priority. To this end, the Committee calls on the Scottish Government and the Crofting Commission to initiate discussions on how this might be achieved and, importantly, how it will be resourced.**

## Mediation service proposal

47. The absence of a mechanism under which complaints related to the Crofting Register might be handled was raised with the Committee. Some witnesses expressed concern that the only way to appeal against an entry on the Register is via the Land Court, an approach which they considered excessive.

48. Both Sir Crispin Agnew and Elidh Ross MacLellan suggested that a mediation service funded by the Crofting Commission would be a useful means by which to deal with complaints related to the Crofting Register. David Findlay of the Crofting Commission agreed and said a mediation system for crofting boundaries and common grazings would be a great step forward.
49. In providing evidence to the Committee, Scottish Government officials indicated that they would need to consider the benefits of such a proposal and also any financial costs involved. They also suggested that, in practice, there were only a small number of cases involving complaints, the majority of which are resolved reasonably quickly through the Land Court, without the need for any specialist legal representation, thus reducing costs.

- 50. The Committee considers that the introduction of an appropriate and proportionate mediation system for complaints related to the Crofting Register has potential merit. It therefore calls on the Scottish Government to explore the feasibility of such a system as part of its crofting consultations.**

## Crofting Commission budget

51. In the 2016-17 budget, £2.6 million was allocated to the Crofting Commission to “ensure that crofting is regulated to deliver strong crofting communities through tackling absenteeism and neglect whilst delivering other public goods such as well managed environment.” Since the Committee finished taking evidence, the draft budget 2017-18 has been published with £2.5m allocated for the operation of the Commission.
  52. The question of the potential provision of additional funding for the Commission was raised in evidence in relation to several issues, such as the mapping of common grazings, the possibility of a mediation service for crofters who dispute information on the crofting register, and the need for training and support for grazings committees.
  53. Witnesses from the Crofting Commission indicated that a new Act which simplified crofting law would allow the Crofting Commission to work more effectively and perhaps need fewer resources.
  54. The Cabinet Secretary commented that although he was aware that the Commission had “already taken proactive action to improve organisational effectiveness”, in common with all public bodies it will be required to work with the Scottish Government to make more progress at a time when there are serious pressures on budgets.
55. **Whilst the Committee acknowledges the budget pressures which exist, it is of the view that the Commission must continue to be funded at a level commensurate with its responsibilities. Should the role and responsibilities of the Commission change as a consequence of crofting law reform, the Committee would expect to see a corresponding change in its budget.**

## Absenteeism and neglect of crofts

56. One issue discussed in evidence to the Committee was how the issue of absenteeism and neglect was being addressed and whether, in doing so, this was actually having a tangible effect in making more crofts available to those want to enter crofting.
57. Crofting law requires crofters to be ordinarily resident on or within 32 kilometres of their croft. It also requires them not to misuse or neglect their croft, and to cultivate it or otherwise put it to a purposeful use.
58. Several witnesses expressed that view that activity on a croft was a more important factor than absenteeism. Lucy Sumsion of NFU Scotland said—

” When NFU Scotland made a submission on the bill that became the 2010 act, we were very much of a mind that the important aspect was not absenteeism per se, but activity. That is still our opinion. The Crofting Commission has put resources into the pursuit of absenteeism, but in many cases neglect and underutilisation are more significant.

Source: Rural Economy and Connectivity Committee 02 November 2016, Lucy Sumsion, contrib. 54<sup>7</sup>

59. Donald MacKinnon of SCF Young Crofters, made the point that enabling access to neglected crofts may provide an opportunity for new entrants and young crofters.
60. Elidh Ross MacLellan argued that tightening of regulation on absenteeism and neglect had freed up crofts. However, David Findlay of the Crofting Commission argued that the section of the 2010 Act which provides for this is complicated, time intensive and difficult for the Crofting Commission to implement. He said—

” The underlying principles and the policy are quite simple, but the process set out in the legislation is anything but.

Source: Rural Economy and Connectivity Committee 16 November 2016, David Findlay, contrib. 73<sup>8</sup>

61. The Cabinet Secretary acknowledged that the current process was viewed as cumbersome and indicated that to the Committee that he was willing to examine this. He said—

” With regard to new legislation, absenteeism and neglect clearly need to be considered and the most appropriate way to deal with them thought through. They are very sensitive issues, as they are about people’s lives.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 75<sup>9</sup>

- 62. Given the concerns raised by the Crofting Commission as to its complexity, the Committee recommends that the process for managing cases of absenteeism and neglect of crofts should be reviewed by the Scottish Government, to identify whether any scope exists to streamline or simplify its operation.**

- 63.

A related issue pursued by the Committee was the requirement under the 2010 Act for common grazings committees to submit annual reports on crofting covering a range of matters, including absenteeism and neglect. It was confirmed by Scottish Government officials that, despite encouragement by the Crofting Commission and there being a requirement to do so under the primary legislation, no committees have yet reported.

64. **The Committee acknowledges the sensitivities involved in the requirement for crofting communities themselves to produce annual reports on matters such as absenteeism and neglect. However, it calls on the Scottish Government to examine why this legislative requirement is clearly not being complied with and to consider whether it should be either removed or enforced and, if so, by whom.**

## Support for new entrants to crofting

65. The issue of providing new entrants with the opportunity to obtain crofts was raised by several of those who provided evidence to the Committee. The responsibility for encouraging new entrants falls under HIE's development responsibilities.
66. The Cabinet Secretary confirmed to the Committee that the Scottish Government has made a commitment to the introduction of a new entrants scheme and provided an update on progress. He said—

” Work has already begun in the crofting stakeholder forum to identify what such a scheme might look like. As we understand it, a draft new entrants paper has been compiled, and it focuses strongly on making crofts available and the reintroduction of the croft entrants scheme.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 40<sup>10</sup>

67. The Cabinet Secretary also advised the Committee that crofters are already eligible to apply for other new entrants schemes and funding such as the young farmer start-up grant; the new entrants start-up grant; and the new entrants capital grant through the Common Agricultural Policy.
68. The Committee was keen to explore whether some areas of common grazings might be resumed to allow for the formation of new crofts and thus encourage more crofters. The Cabinet Secretary indicated that the Scottish Government would carefully consider this proposal as it develops the new entrants scheme.

**69. The Committee considers it to be essential to the future sustainability of crofting that a realistic and achievable route exists for those who wish to obtain a croft for the first time. It therefore welcomes the Scottish Government's commitment to introducing a new entrants scheme for crofting and it looks forward to seeing the proposals which emerge.**

**70. The Committee also welcomes the Cabinet Secretary's agreement to explore the potential for areas of common grazings to be used for the creation of new crofts, as part of the development of the new entrants scheme.**

## Access to mortgages to purchase crofts

71. The Committee heard from several witnesses that one of the barriers to new entrants to crofting was in accessing mortgage funding to purchase crofts. For example Eilidh Ross MacLellan said—

” At least those who have a croft or croft tenancy can theoretically obtain mortgages to build a house by decrofting first. There is no solution currently, for those who do not have funds to purchase a croft in the first place...One must be a cash purchaser if one is to purchase a croft...This results in a grossly unfair system that discriminates against young people and those who live locally.<sup>11</sup>

72. Colin Kennedy of the Crofters Commission illustrated the nature of the difficulty, advising the Committee that whilst 44 tenancies had been terminated in the last few years, 30 crofts were still lying vacant. He argued that the problem was not the issue of crofts not being available, but that potential crofters did not have money available to acquire them.

73. When questioned on this issue, the Cabinet Secretary expressed his own concern about the difficulties in obtaining mortgage finance. He said—

” This is undoubtedly a key area that we all need to consider carefully. It is a matter of fundamental rights. It is unfair that people who live on crofting land should find it so difficult to get access to a loan to build or buy a house on the same terms as everybody else who is not in the crofting counties.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 36<sup>12</sup>

74. The Cabinet Secretary also told the Committee that he had held meetings with most of the major banks in Scotland and that they had indicated a willingness to consider how this issue might be resolved.

**75. The Committee notes that the Cabinet Secretary has already held discussions with banks to explore how access to mortgages to purchase crofts can be made easier. Whilst it recognises the challenges in providing the necessary security to lending institutions, the Committee considers that access to mortgage finance, combined with the proposed new entrant scheme, could significantly enhance opportunities for new entrants to crofting.**

## Owner-occupier crofters

76. The 2010 Act explicitly legislates for owner-occupier crofters, and gives them the same rights and responsibilities as crofters who remained tenants. However, some crofters fall outwith the definitions in the Act.
77. In written evidence, Eilidh Ross MacLellan highlighted the legal complexities associated with owner occupier crofters—
- ” ...life since the 2010 Act has, in my experience been considerably more complex for crofting solicitors, and thus more expensive for clients, than it was previously. The definition of “owner-occupier” excludes many of those whom it was designed to catch, and has resulted in a new category of crofter who is neither a tenant crofter, nor an owner-occupier crofter in terms of the new definition.<sup>13</sup>
78. In evidence to the Committee, two separate schools of thought emerged as to how owner occupier crofters should be treated. Some witnesses suggested that all occupiers of crofts should be subject to same rights and responsibilities. For example, Sir Crispin Agnew explained that there are three types of occupiers defined in section 19 of the Crofting Act, which is a difficult and technical section. He argued that different definitions of crofters could be done away with and anyone occupying a croft should be subject to the same regulations.
79. Other witnesses were of the opinion that owner occupiers should be taken out of crofting rights and regulations altogether. Murray McCheyne told the Committee that he does not understand why owner occupiers are subject to the same conditions as other (tenant) crofters. He argued that there is no good reason for this to be the case and suggested that if crofting legislation did not apply to owner occupiers, this would represent a significant step in simplifying crofting legislation.
80. Responding to questioning, Michael O’Neill advised the Committee of the Scottish Government’s position on this matter. He said—
- ” Given where we are with thinking about new legislation, it is really too early to say that there is a firm view on the matter. There is a case to be made either way, and people should feel free to make their views heard as we go forward to ensure that each case is considered on its merits.

Source: Rural Economy and Connectivity Committee 23 November 2016, Michael O’Neill, contrib. 94<sup>14</sup>

- 81. The Committee agrees with witnesses that the provisions in the 2010 Act on owner occupiers are complex, inconsistent with other definitions of land ownership and have proven difficult to apply. It is of the view that options for the treatment of owner occupiers within the crofting environment should be examined in detail as part of the Scottish Government’s consultation.**

## Common grazings

82. There are around 800 regulated common grazings in the crofting counties. Common grazings are usually managed by a grazings committee, which makes Grazing Regulations to control their use. The 1993 Act contains provisions on the appointment and operation of grazings committees.
83. The crofters or others who hold interests in common grazings are known as shareholders. Shareholders in common grazings are entitled to apply to the Commission for an apportionment of part of the common grazing for their exclusive use.
84. Whilst the Committee was told by Peter Peacock of Community Land Scotland that grazings committees were important for “a vibrant and active crofting community”, some witnesses expressed concern that they were no longer fit for their intended purpose.
85. For example, Murray McCheyne of Scottish Land and Estates argued that grazings committees were developed within an agricultural context and that they are not suited to the modern day, where more diverse activities were becoming more evident.
86. Sir Crispin Agnew agreed with this view and said that grazings committees are not working because they have a very narrow role under the Act, which is to manage common grazings and maintain fixed equipment. The Act is not appropriate to manage modern issues such as subsidy regimes, environmental obligations, and renewable energy opportunities.
87. The Cabinet Secretary told the Committee that when common grazings first came into being they were appropriate to how crofting was organised and managed at that time. He acknowledged, however, that it might now be appropriate for them to assume a different role. He said—

” ...things have changed substantially since then, but the role, definition, duties, functions and organisation of grazings committees have not been updated alongside them. As a result, law reform should involve examining the potential for grazings committees or their future equivalents to take on business development or community development company-type roles.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 97<sup>15</sup>

88. **The Committee is in no doubt that the legislation and guidance covering grazing committees needs to be updated to reflect modern circumstances and practices. It calls on the Scottish Government to include an examination of this issue as part of the crofting law reform process.**

## Shares in common grazings

89. Another issue which arose during the Committee’s consideration related to shares in common grazings which have become separated from crofts to such an extent

that those who sell their crofts retain their common grazings shares and do not actually use them. It was suggested to the Committee that if new entrants are unable to obtain a share in the common grazings they will not enter crofting. Responding to this, Gordon Jackson from the Scottish Government said—

” We do not have figures, but anecdotal evidence suggests that a number of common grazings are underutilised and that some people who have shares are not utilising them. There is a missed opportunity and, as the committee has recognised, the area needs to be looked at in the context of crofting law reform and how matters are progressing.

Source: Rural Economy and Connectivity Committee 23 November 2016, Gordon Jackson, contrib. 106<sup>16</sup>

90. **The Committee considers that every opportunity should be taken to remove any barriers which are likely to prevent new entrants to crofting. It therefore agrees that the issue of the retention of shares in common grazings on the sale of crofting rights should be examined as part of the legislative reform process to determine whether any changes are required.**

## Small landholdings

91. As part of its review, the Committee also explored whether it might be appropriate for the respective legislation governing small landholdings and crofting to be linked.
92. Small landholders are tenants under the Small Landholders Acts 1911-1931. The character of these small landholdings is similar to crofts and the legislation governing them has a shared history with crofting. Small landholdings remain in Scotland outwith the crofting counties. Small landholders in the areas where crofting tenure was extended in 2010 can apply to convert their holding into a croft. To date no small landholders have succeeded in doing this.
93. The Land Reform Review Group recommended that small landholders should have a right to buy their holding. During Parliamentary consideration of the Land Reform (Scotland) Act 2016, the issue of small landholders was raised. The Scottish Government undertook a consultation on small landholdings which ended in November 2016, indicating that this would be followed by legislation if a need was identified as a result of the consultation.
94. Witnesses appearing before the Committee held mixed views about the benefits of linking these systems. Peter Peacock of Community Land Scotland said that he did not think they should not be brought together. However, Derek Flyn argued that small landowners should be dealt with under the same legislation as crofters. Both Colin Kennedy and David Findlay from the Crofters Commission also thought there was merit in looking at the idea of linking the two.
95. The Cabinet Secretary indicated to the Committee that he was open to looking at whether linking the two legislative systems might have potential. He said—  
  
” I am not ruling out the possibility that we may need to simplify and improve the legislation that governs smallholding and crofting and look at how best to make crofting and small landholding legislation work in practice.  
  
Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 119<sup>17</sup>
96. He went on to say that there was a need to obtain and consider the views of all small landholders before decisions are made on whether this matter might be pursued further.

97. **The Committee notes the differing opinions held by stakeholders on linking crofting and small landholding legislation and is of the view that it should, as suggested by the Cabinet Secretary, be the subject of wide consultation, to include both small landholders and crofters.**

# Crofting policy

98. A key issue to emerge during the Committee’s review was the suggestion that the Scottish Government’s policy on crofting needed to be clearly defined prior to the development of the proposed crofting legislation. Several witnesses commented on this. For example, Sir Crispin Agnew said—

” ...the crofting legislation is not fit for purpose because it does not have an underlying policy theme that is appropriate to the present day and age.

Source: Rural Economy and Connectivity Committee 09 November 2016 [Draft], Sir Crispin Agnew QC, contrib. 3<sup>18</sup>

99. Colin Kennedy of the Crofting Commission said—

” Crofting plays a significant role, but we need a clear steer from Government on what it wants crofting to deliver. It can then create the legislation to provide for that.

Source: Rural Economy and Connectivity Committee 16 November 2016, Colin Kennedy, contrib. 135<sup>19</sup>

100. The Cabinet Secretary told the Committee that he agreed that clarity was required on what the policy objectives of crofting should be. He said—

” Whatever the approach, we need to think strategically about what we want from crofting and about what we want and expect from new legislation. We need to be clear at the outset about what we want crofting to deliver, so being clear about the role of crofting and the vision that we have for it will be key.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 26<sup>20</sup>

**101. The Committee agrees with those witnesses who expressed the view that, prior to identifying what should be delivered from legislative reform, there needs to be an overarching policy which provides a clear understanding of the role crofting is expected to play in the 21st century.**

**102. The Committee also considers it to be essential that these policy proposals take into account the priorities identified by the Sump to address the current challenges faced by the crofting sector.**

**103. The Committee calls on the Scottish Government to develop and produce an updated and clear statement of crofting policy which will, in turn, inform a legislative programme to give effect to this policy.**

## Legislative approach

104. Whilst the stakeholders who appeared before the Committee were unanimous that legislative reform was necessary, much of the discussion in evidence to the Committee was around the format and shape of the crofting bill which is proposed by the Scottish Government. A range of different approaches, which are not mutually exclusive, were proposed by witnesses. These are summarised as follows—
- **a clean slate** – a bill to repeal and replace all extant crofting legislation;
  - **simplification and modernisation** – a bill which would address the complexities of current legislation and allow crofting law to be more easily applied and understood and relevant to the 21st century;
  - **an act to deal with Sump issues** - a crofting reform act to deal with the Sump recommendations;
  - **consolidation** of all current crofting legislation.
105. When providing evidence to the Committee, the Cabinet Secretary indicated that the Scottish Government would aim to address some of the concerns about the complexity of the current legislation which exist amongst stakeholders. He said—
- ” We understand that crofters have long been concerned about overly complicated and outdated legislation, so we want to modernise crofting law to make it more transparent, understandable and workable in practice.
- Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 26<sup>20</sup>
106. When asked whether the Scottish Government has a preference for the approach that it may take in developing its proposed bill, the Cabinet Secretary advised the Committee that he had no fixed view and that he felt that all of the various options should be fully considered before a decision is reached. He said—
- ” I would far prefer to work towards developing in collaboration an agreement on whether to take a fundamental overhaul approach or an upgrading and improving approach. That needs time.
- Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 125<sup>21</sup>
107. The Committee is of the view that the most appropriate mechanism for the delivery of the Scottish Government's proposed bill should be determined as consultation with stakeholders progresses and the likely content of the proposed bill becomes clearer.
108. However, the Committee suggests that there would be a distinct advantage in the Scottish Government making a decision on the legislative approach as early as possible in the consultation process as this could well inform stakeholders' comments on the detailed provisions to be included in bill.
109. The Committee is clear in its view that, as part of the of the bill development process, the Scottish Government should fully take into account the

recommendations contained in the report by the Crofting Law Sump Group and particularly those that were identified as priority issues by the Crofting Legislation Stakeholder Consultation Group.

110. The Committee notes that these recommendations appear to have the broad support of crofters, crofting law experts, crofters' representative groups and many other stakeholder organisations. As stated earlier in this report, it considers therefore that these should form the starting point for further consideration of legislative reform proposals.
111. The Committee also considers that, at an appropriate point in the legislative development process, the Scottish Government should clearly indicate which of the Sump recommendations it is minded to address as part of its crofting law reform proposals. Where the Scottish Government is not minded to take forward individual Sump recommendations through legislation, it should provide an explanation as to why it has reached this view and whether it considers the objective can be delivered via alternative means.

## Conclusions on legislative approach

**112. The Committee considers it to be of fundamental importance that the proposed bill provides for a legislative platform which fits with the reality of modern crofting practices; is relevant to the needs and aspirations of crofters and those who wish to be involved in crofting; and which aims to deliver a sustainable crofting sector.**

**113. The Committee is also of the view that there is a need to move away from the piecemeal process of legislative development which has seen several crofting acts being passed in recent years. The proposed bill should therefore be comprehensive and seek to address as many of the issues identified within the crofting community requiring action as is possible.**

**114. The Committee recognises that legislation may not be required to resolve all of the priority issues within crofting. It is of the view that action to address such issues should not be held up during the period when new legislation is being developed.**

**115. The Committee is also of the view that the new legislation should be accompanied by comprehensive and accessible guidance documents to allow all of those involved in crofting to more easily understand and implement the provisions.**

# Timing of consultation and legislative proposals

116. The Committee was keen to get a broad sense of timing for the development and introduction of the Scottish Government's legislative proposals and it explored this with the Cabinet Secretary. He made it clear that he recognised the importance of crofting legislation and said—

” Crofting legislation is important and we need to get it right. Crofting is an essential part of our history and our culture and it is crucial that we take the time to do this properly.

Source: Rural Economy and Connectivity Committee 23 November 2016, Fergus Ewing, contrib. 26<sup>20</sup>

**117. The Committee agrees that sufficient time must be taken to conduct comprehensive consultation to ensure that the proposed new legislation is fit for purpose. However, this must be done to a timescale which ensures that the passage of the bill is completed comfortably before the end of the current parliamentary session. The Committee also calls on the Scottish Government to commit to ensuring that the bill timetable will be structured in a manner which will allow sufficient time for thorough and detailed Parliamentary scrutiny.**

**118. The Committee looks forward to engaging with stakeholders and the Scottish Government in the coming months and years as discussions continue around the development of crofting policy, the National Development Plan for crofting and emerging proposals for crofting law reform. It fully supports the creation of a policy and legislative landscape which is fully fit for purpose, allowing crofting to flourish and to continue to make a sustainable contribution to the rural economy in Scotland.**

# Annex A

## Crofting Law Sump group - priority recommendations

In October 2013 the Crofting Law Sump group was established. The purpose of ‘the Sump’ was to gather together details of the significant problem areas within existing crofting legislation. Its final report ([Crofting Law Group, 2014](#)) was published in November 2014. The Sump report identified 57 issues with crofting law which should be taken forward in a crofting bill. Of these it identifies 17 high priority propositions:

1. Work should commence on the preparation of a simplified crofting code.
2. To simplify Crofting Law, the term “crofter” should be re-defined to take account of everyone who is entitled to occupy a croft as a principal.
3. There should be a clear duty on the “person who acquires croft land” to inform the Commission and this should apply to the persons identified at (A), (B) and (C) above. Further, it should apply not only to ‘croft land’ but also any site of a dwelling-house on or pertaining to a croft and any common grazing or part thereof.
4. Where owners of croft land hold separate title to distinct parts of a vacant croft, there should be provision to overcome a situation where one landlord fails to respond or unreasonably refuses to consent to an application in respect of that croft. Likewise, if any landlord refuses, the Commission should have the power to decide when a refusal is unreasonable and overturn that refusal.
5. It should be made possible for a person to apply to the Commission to be recognised as the rightful occupier of a croft (and as such the crofter) where, for instance, a person is a constituting landlord.
6. The legislation should be amended to exclude decrofting applications and directions in respect of ‘ss 17 & 18 Feus’ from the registration provisions; and such feus, which are readily identifiable, should be issued with a decrofting direction (or similar) without the need to register them as crofts.
7. A subtenant being required to obey both (a) the statutory conditions and (b) the statutory duties. Statutory condition 6A should be amended to state that “The crofter shall be responsible for ensuring where the croft is sublet, that the subtenant adheres to the statutory conditions *and duties*”.
8. The legal consequences of failure or delay by the Commission should be clarified. The suitability of 28 days as a time limit should also be considered along with all the other time limits imposed on the Commission.
9. The matter of succession (i.e. to the rightful occupancy of crofts) should be reviewed by a committee of practitioners well-versed in crofting law and the law of succession in Scots Law.

10. The matter of using permanent improvements on tenanted crofts for mortgage purposes should be reviewed by a committee of practitioners well-versed in crofting law and the law of securities.
11. It should be made clear when the Commission decides to grant any application subject to conditions that reasonable and proportionate sanctions will follow should these conditions be breached.
12. The effect of a successful appeal on any regulatory decision by the Commission requires to be assessed and adjudicated. Power to do so should be given to the Commission when it is not given to the Land Court.
13. There is disagreement about the need for public notification. The Sump was created to identify where the statute is neither clear nor effective. This is a case in point. The matter should be revisited.
14. There should be a new power to resolve matters by means of a minor reorganisation of a croft or two requiring redrawing of boundaries or declaration of rightful occupiers, i.e. a limited reorganisation scheme not at present allowed for. The appropriate body to be empowered to do so is the Commission.
15. Some matters might be resolved if the Commission were able to consider two applications together: (a) creating the croft and (b) letting to the desired tenant.
16. For the benefit of certainty regarding alternative uses for croft land, we agree that a procedure similar to s 5(3) should be available to owner-occupier crofters either by application to the Land Court or the Commission, preferably the latter.
17. The process of assignation of a croft tenancy has been complicated by the introduction of the registration process. The current process is potentially unworkable. This must be resolved soon.

## Annex B

### Extracts from the minutes of Rural Economy and Connectivity Committee meetings

#### 6th Meeting, 2016 (Session 5), Wednesday 5 October 2016

**3. Crofting legislative priorities (in private):** The Committee agreed its approach to a review of legislative priorities for crofting.

#### 8th Meeting, 2016 (Session 5), Wednesday 2 November 2016

**1. Review of priorities for crofting law reform:** The Committee took evidence from—

- Lucy Sumsion, Crofting Policy Manager and Regional Manager for Argyll and the Islands, NFU Scotland;
- Patrick Krause, Chief Executive, Scottish Crofting Federation (SCF);
- Donald MacKinnon, SCF Young Crofters; Peter Peacock, Policy Director, Community Land Scotland;
- Murray McCheyne, Chair of Crofting Policy Group, Scottish Land and Estates

#### 9th Meeting, 2016 (Session 5), Wednesday 9 November 2016

**1. Review of priorities for crofting law reform:** The Committee took evidence from—

- Derek Flyn, Crofting Law Consultant;
- Sir Crispin Agnew QC;
- Eilidh Ross MacLellan, Solicitor.

Written evidence

- [Eilidh Ross MacLellan](#)

#### 10th Meeting, 2016 (Session 5), Wednesday 16 November 2016

**1. Review of priorities for crofting law reform:** The Committee took evidence from representatives of the Crofting Commission —

Colin Kennedy, Crofting Commission Convener, Joseph Kerr, Head of Regulations and Duties, and David Findlay, Solicitor, Crofting Commission.

#### 11th Meeting, 2016 (Session 5), Wednesday 23 November 2016

**3. Review of priorities for crofting law reform:** The Committee took evidence from—

- Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity, Scottish Government;

- Gordon Jackson, Head of Agricultural Development and Crofting, Scottish Government;
- Michael O'Neill, Crofting Bill Team Leader, Scottish Government.

# Annex C

## Written evidence

[Eilidh Ross MacLellan](#)

[Shetland Agricultural Sectors and Shetland Islands Council](#)

[Shetland Agricultural Sectors and Shetland Islands Council supplementary](#)

[Highlands and Islands Enterprise](#)

[James McPherson](#)

[Michael Otter](#)

[Crofting Commission](#)

[The National Trust for Scotland](#)

[Brian Inkster](#)

[Brain Inkster supplementary](#)

[NFU Scotland](#)

[Ian McLean](#)

[Uilleam Smith](#)

[Scottish Land & Estates](#)

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