



SCOTTISH ESTATES BUSINESS GROUP

CROFTING REFORM BILL: Evidence to Environment and Rural Development Committee

BACKGROUND

SEBG represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland's land resource in ways which deliver social, economic and environmental benefits. The Group seeks to secure a sustainable and prosperous future for Scotland's rural areas.

OVERVIEW

The Group's members have widespread agricultural and crofting interests in Scotland, and share the stated objectives of the Crofting Reform Bill of ensuring crofting has a sound future. However, SEBG has concerns about certain provisions within the Bill, which we fear may not help achieve the objective of delivering a secure future for the crofting sector and indeed may run counter to it.

In summary, SEBG firmly believes that modernising crofting legislation is necessary and welcome. However, the greatest care must be taken to avoid legislative measures that will fuel the market in second homes and lease assignments which has developed in the traditional crofting counties. It cannot surely be in the interests of crofting for the new legislation to create a system where people can make a fast buck, regardless of the future. The new legislation, intended to underpin and encourage crofting as a sustainable way of life, risks delivering the very opposite. Furthermore, the legislation must not be allowed to create instability within the agricultural sector at a time when there is widespread industry acceptance that stability is of crucial importance.

SEBG's concerns relate to:

- the role of the Crofters Commission in facilitating sustainable crofting
- the unspecified extension of crofting areas;
- the introduction of crofting rights to small landholders;
- proposals for simplifying assignment of crofts, thereby facilitating a market in crofts and its potential consequences for new entrants;
- non-agricultural developments on crofting land;
- community body rights in relation to interposed leases;
- nominee purchase – not covered by the Bill.

PART 1: CROFTERS COMMISSION

Whilst the Group regards as laudable moves designed to update and modernise crofting legislation and administration and to simplify processes, attention ought also to be paid to how regulatory control is delivered in practice. The Crofters Commission's main objective is to promote and maintain a thriving crofting community. It must be a regulator as well as supporter. However, the Commission is perceived as being less effective than it might be. There is a need to put in place stricter controls on crofting grants for non-active crofters, and also to interpret "thriving" as the need to sustain the community through traditional methods first and foremost, coupled with diversity controlled to ensure it is sympathetic both to crofting as a way of life and to local circumstances and opinion. In addition, since the Bill is proposing extension of the role of an already overstretched Commission, it will be important that extra resources are directed at delivery of its expanded brief, including for training.

Apparent weakness by the Crofters Commission in delivery of its function as a regulator has facilitated the creation of the market in crofts. Strengthening the onus on the Commission as a regulator, making it a duty rather than a power, would help to rein in spiralling prices in the market for crofts.

The Taynuilt case - where the owner of croft land was granted approval to decroft by the Crofters Commission, despite local opposition, as a consequence of its being zoned for housing by the local authority - flagged up the need for the Crofters Commission to be involved in the early stages of planning applications where croft land was involved. SEBG suggests that as part of its new regulatory structure being established by the Crofting Reform Bill, the Crofters Commission should be listed as a statutory consultee in planning issues, to ensure the crofting community's voice can be heard, and at a sufficiently early time in the process to ensure its views can be given full weight.

Whilst demand for crofts may seem to be outstripping supply in places, some traditional crofting regions are seeing perhaps 25 – 35% of crofts being left unworked. Whilst the Commission maintains a register of crofts to enable it to carry out its functions, there is also a need to liaise more with landlords and grazings clerks to ascertain what is actually happening on the ground, to improve good practice on croft land, and to ensure that the issue of non-active or absentee crofters is properly dealt with. Linked to this is the need to encourage young people to take over from the elderly / non-active crofters, and to give the elderly / non-active more of an incentive to pass on crofts.

PART 2: CROFTS

Section 10: New crofts

An improvement in crofting administration and a serious attempt to tackle the issue of absentee crofters must be greater priorities for the Crofters Commission than extending crofting boundaries.

The original purpose of crofting boundaries was to retain a certain traditional lifestyle. Now, some years on, any area excluded from that original decision will have moved on from that model. It is questionable, therefore, whether extension of traditional crofting tenure to outwith current boundaries could have any practical effect in delivering that objective.

SEBG questions the need for extension of crofting boundaries. According to the Scottish Executive's Draft Crofting Reform Bill consultation paper, published in 2005 and on which this Bill is based, "it is now possible to create holdings in the rest of Scotland which in terms of tenant's rights and landlord's responsibilities can be identical to crofts without extending crofting legislation." There is therefore no need to extend crofting legislation, but rather, to modernise it by equipping it to cope with 21st century developments.

SEBG is extremely concerned about the effect any extension of crofting areas or rights to small landholders would have on confidence in the rural economy and specifically the agricultural sector. Extension by the Bill of absolute right to buy to small landholders in the non crofting counties would be very likely to reopen the whole debate on the absolute right to buy for tenant farmers generally, since it would create the potential for disparity between neighbouring tenants, with one being given an absolute right to buy whilst the other has a pre-emptive right to buy following a decision by the landlord to sell.

The Group fears that any further upheaval in the legislative basis on which agricultural holdings across the rest of Scotland are managed would seriously undermine the whole land management sector, just when the Agricultural Holdings (Scotland) Act 2003 is settling down and the new letting vehicles it introduced are being embraced. There is industry wide consensus that what is now needed, instead - particularly given the difficult trading conditions facing the whole agricultural sector - is a period of stability to allow the Act to bed down and for landlords and tenants alike to work together constructively to make the new arrangements work effectively. Such a period of stability would give greater confidence to invest to all those involved in the sector – and in many ways more importantly those not currently involved in but contemplating entry into the sector.

Further, it must be expected that the unspecified proposals would lead to the dilution of the funding currently available to crofters within established crofting areas. This would inevitably have a negative impact on the sustainability of crofting communities generally. A strong view has been expressed within existing crofting

counties that weaknesses in crofting administration should be addressed first, before any extension of crofting areas should be entertained.

Section 11: Statutory conditions

SEBG welcomes the intention to modify conditions of tenure so that unacceptable neglect or misuse of croft land can be identified and resolved. Measures to address the non-working or neglect of crofts by tenants are to be welcomed, but it will be important that they are matched by similar measures targeted at negligent owners, in the interests of best crofting tradition. SEBG welcomes, in principle, the indications being given by the Scottish Executive that amendments will be brought forward at Stage 2 to ensure that the requirements of and expectations on crofting owners replicate those on crofting tenants. However, the effectiveness of such a proposal, and thereby the way in which it works to inhibit absentee crofters, will be dependent on the way in which the Crofters Commission carries out its responsibility to monitor and act upon practice which falls below an acceptable norm.

Section 16: Assignment

SEBG members with crofting interests take active measures to facilitate new young entrants to crofting. However, the Bill proposes less scrutiny of assignments by the Crofters Commission. SEBG is concerned that the ease with which croft tenancies may henceforth be transferred will do nothing to restrict the market in crofts which has developed in recent years.

Increasingly, Scotland is witnessing remote and rural properties being bought up as second or holiday homes, with consequences for the sustainability of local economies and communities, as well as for the prospects of youngsters who may wish to continue to live in their local areas but who are forced to move away in the search for affordable housing. If nothing is done to limit the developing market in crofts, and for sums well out of the reach of aspiring youngsters, it will become increasingly difficult for young people to get that vital first step on the crofting ladder. This concern has real implications for the provision of what we see as the ability of these young aspiring croft entrants to tap into 'affordable housing' through the grants available, hopefully reducing the migration from some of Scotland's most fragile rural areas.

One measure which would assist would be to increase the clawback period on the onward sale of a croft after the exercise of the right to buy from 5 to 10 years. This would assist traditional crofting communities since it would help to protect against transfer of crofts on the open market for reasons less to do with crofting and more to do with making a "fast buck".

PART 5: SCHEMES FOR DEVELOPMENT

Section 34: Schemes for development

The opportunity for crofters to diversify is to be welcomed as an attempt to reinforce the economic viability of crofting as a business activity. However, SEBG would be concerned if the proposal to modernise conditions of tenure to allow wider use of crofts opened up the way for non-agricultural people to exploit good crofting land for business developments not necessarily suited to local conditions or community interests. Further, if too much leeway is created for non-agricultural development, then the selling on of croft tenancies at much higher prices, and mainly to those who are looking for a lifestyle change and who do not necessarily need to work or make a living from the croft, could be exacerbated.

Clearly, a careful balance will need to be struck in assessing what constitutes appropriate development. Scotland's progressive estates recognise and support the importance of business innovation and development in ensuring the sustainability of rural communities and welcome measures which will encourage greater opportunities for crofters to grow their business activities and incomes. However, we also look for reassurance that the Bill and its effects on the way in which the Crofters Commission is to carry out its role will not be able to be used as a "NIMBY-ist" vehicle to stop or divert well-meaning initiative.

We suggest that the guidelines to be used by the Crofters Commission in considering whether to grant approvals should be appropriately defined. While supporting the concept of alternative uses of crofts, given the current state of the agriculture sector, safeguards in the Bill should be extended to include the best interests of the local community and the natural and cultural heritage.

PART 6: CROFTING COMMUNITY RIGHT TO BUY

Section 35: Crofting community right to buy

SEBG appreciates concerns that there may be scope, in particular circumstances, for leases over crofting land to frustrate the intention of the crofting community right to buy or act as an impediment to sustainable development by a crofting community. The Group cannot condone action which can clearly be shown to be based not on good practice but designed solely to circumvent the stated will of Parliament.

Nevertheless, non-crofting leases over croft land are relatively commonplace – typically relating to the extraction of minerals, and use of the land for shooting and fishing – and exist for legitimate commercial purposes. Leasing arrangements are the usual means of maintaining the relationship between the owner of mineral rights and the developer extracting the minerals, not just on croft land but everywhere.

Further, it is a common ownership arrangement for property to be owned by a “fiar”, but occupied by another party under a lease for life. Arrangements such as this would presently fall under the proposed legislation, leaving a genuine life renter’s interest at risk of an absolute right to buy from a third party body. Further and tighter definition is essential to ensure that only those leases that can be shown to be a deliberate attempt to remove what would otherwise be eligible assets would be available for purchase by a crofting community body.

Even with tighter definition, there must be a strong risk that the proposal contained in the Bill to create a crofting community right to buy a tenant’s interest in commercial leases over eligible croft land, in addition to the right to buy the land itself, could have an adverse effect on the commercial exploitation of croft land generally. This could only be to the detriment of remote rural economies.

One issue which must also be resolved is the question of how the Crofting Community Right to Buy would apply in any areas where new crofts were created. There would not be a crofting community in existence prior to the creation of any new crofts, and the creation of one or two individual crofts (with the individual right to buy) would leave uncertainty over whether the wider absolute Right to Buy of crofting communities would then be created, or whether instead any new right was the pre-emptive Right to Buy of non crofting communities. SEBG suggests that the definition of what constitutes a crofting community in the context of new crofts must be clarified if uncertainty is to be avoided.

ISSUE NOT COVERED BY THE BILL

Nominee purchase

As stated above, SEBG firmly believes that modernising crofting legislation is necessary and welcome. However, the opportunity presented by the passage of the Crofting Reform Bill should be taken to introduce measures which would act as a brake on the developing market in second homes and lease assignments.

The provisions of the Crofting (Scotland) Act 1993 ensure that a crofter or his family successors would not be able to exploit any land acquired from the landlord by selling it to anyone else within 5 years of purchase unless sharing any gain with the landlord. The legislation nevertheless allows the crofter to contrive a conveyance from the landlord to a nominee without triggering this “clawback” provision. Such a device can be utilised by those who choose to “make a fast buck” at the expense of crofting by selling on to non-crofting interests ready to pay over the odds for their crofting equivalent of a “place in the sun”.

SEBG suggests the Committee take the opportunity presented by the Crofting Reform Bill to put restrictions on such nominee purchase. This proposal, which has regularly been put forward to the Scottish Executive by the SRPBA, could do much to assist the continuation of traditional and sustainable crofting by damping down the developing open trade in crofts which is already pricing local young people out of the market.

SEBG