

CONSULTATION RESPONSE FORM

Consultation paper on Draft Crofting Reform (Scotland) Bill

Please complete the details below. This will help ensure we handle your response appropriately:

Organisation:

SCOTTISH COMMITTEE OF THE ADMINISTRATIVE JUSTICE
& TRIBUNALS COUNCIL.....

Postal Address: ... George House,
126 George Street,
EDINBURGH
EH2 4HH

1. Are you responding as: (please tick one box)

- (a) an individual? (go to 2a&b)
(b) on behalf of a group or organisation? (go to 2c)

Individuals:

2a. Do you agree to your response being made available to the public (in SG library and/or on SG website)?

- Yes (go to 2b)
No

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes):

- Make my response, name and address all available
Make my response available, but not my name and address
Make my response and name available, but not my address

On behalf of groups or organisations:

2c. Your name and address as respondees will be made available to the public (in the SG library and/or on SG website). Are you content for your response to be made available also?

- Yes
No

3. We will share your response internally with other SG policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we

require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

Please fill in the form below to record your views. Other views (in addition to the questions) would also be welcome. Please continue on a separate sheet if necessary. The completed form should be sent, **by 12 August 2009**, to:

Future of Crofting Team
Scottish Government
Area 1-D
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY

Question 1: Do you have any comments on:

- (a) the proposal to make the Crofting Commission more democratic and accountable through the establishment of Area Committees?
- (b) the area to be covered by each Area Committee?
- (c) the process for Area Committee elections?

Comments:

No comment.

Question 2: Do you have any comments on the proposed changes to the constitution of the Crofting Commission?

Comments:

No comments on the proposed changes beyond recording that the functions of the Commission as a regulator involve issues of administrative justice. The Commission would be expected to conduct its business consistently with the principles of administrative justice.

Question 3: Do you have any comments on:

- (a) the proposed expansion of the powers and duties of the Crofting Commission?
- (b) what the balance of costs to the individual applicant and the taxpayer for processing regulatory applications should be?

Comments:

3 (a) No comment
3 (b) Subject to comments at 10 below the Committee considers that it is not unreasonable for individual applicants to be asked to bear some of the administrative cost of the regulatory process.

Question 4: Do you have any comments on the draft Regulatory and Equality Impact Assessment on the Governance proposals?

Comments:

No comment

Question 5: Do you have any comments on the identified regulatory trigger points that would require a first registration to be made in the Crofting Register?

Comments:

The Committee agrees the approach set out in consultation paper. The Committee considers for the reasons adopted in the paper that the opportunity to challenge boundaries available under existing law should be removed before crofts are first entered on the new register.

Question 6: Do you have any views on the process for making an entry onto the Crofting Register?

Comments:

The Committee has some concerns in relation to the proposition that

Once a croft is registered on the new register permanently it will not be possible to dispute any of the details contained within the register relating to that croft, except where there has been an administrative error in which case it will be possible to rectify the register.

While the Committee appreciates the need for certainty the Committee would be concerned if rights were in effect to be extinguished.

Question 7: Do you:

(a) agree with the type of information to be held on crofts in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

No comment.

Question 8: Do you:

(a) agree with the type of information to be held on common grazings in the Crofting Register?

(b) have any other comments about the information to be held?

Comments:

No comment.

Question 9: Do you consider the balance of costs between the applicant and the taxpayer in respect of registration to be correct and/or what level of registration fee do you think would be appropriate?

Comments:

The Committee would be concerned if the cost of first registration were to fall entirely on the applicant. No matter how welcome the proposals may be for the modernisation of the crofting system excessive costs may be a deterrent to participation on the part of crofters.

The Committee has no view in relation to the appropriate level of fee.

Question 10: Do you have any comments on the proposal to allow persons with an interest to challenge the details of a croft or common grazing being registered on the Crofting Register?

Comments:

: (i) The Committee notes that

the draft Bill contains a provision to allow a challenge to be made to croft boundaries at the point of first registration.

Plainly it is desirable that first registration decisions should be challengeable if - 3.2.3.6 –

Once a croft is registered on the new register permanently it will not be possible to dispute any of the details contained within the register relating to that croft, except where there has been an administrative error

See also comments at 6 above.

(ii) From the flowchart in the consultation paper it is not apparent what avenue of appeal is open to people who either have their challenge of the details in an application to the new Crofting Register rejected, or those whose own application to register their croft on the new register rejected. We would need some more detail on the appeal position in order to assess the proposals fully.

Question 11: Do you have any comments on the draft Regulatory and Equality Impact Assessment of the proposals for the development of a new and definitive Crofting Register?

Comments:

The Committee is concerned that an expectation that cost of first registration fall on the applicant alone might prejudice individual rights.

Question 12: Do you have any comments on the proposal that tenant crofters should be able to use their croft tenancy as security for a loan?

Comments:

No comment.

Question 13: Do you have any comments about the process for granting and discharging a standard security over a crofting tenancy?

Comments:

No comment.

Question 14: Do you have any comments on the proposed modifications to rights and responsibilities when a standard security is granted over a croft?

Comments:

No comment.

Question 15: Do you have any comments on the proposed modifications to rights and responsibilities when a creditor enforces the security?

Comments:

No comment.

Question 16: Do you have any comments on the draft Regulatory and Equality Impact Assessment for support for croft housing?

Comments:

No comment.

Question 17: What are your views on the principle of an occupancy requirement applying to houses built on land taken out of crofting tenure?

Comments:

The Committee has no view on the principle of an occupancy requirement. However the Committee notes the proposals for backdating the requirement and is concerned in general terms about legislation having retrospective effect.

Question 18: Do you have any comments on:

(a) the length of time required to be resident in a house in order to meet the occupancy requirement?

(b) other aspects of the attachment and administration of the occupancy requirement?

Comments:

The Committee is interested in the concept of restriction being placed on the use of property which has been taken out of crofting. It is not for the Committee to address the policy intention, but the Committee might consider attachment of restrictions on use of property which has been taken out of the general regulatory regime to be novel.

Question 19: Do you have any comments on the proposed exceptions to time considered as being absent for the purpose of the occupancy requirement?

Comments:

The Committee has no comment on the circumstances listed beyond remarking that it might be unwise to be over prescriptive, and some flexibility to develop the categories would be appropriate. .

Question 20: Do you have any comments on:

(a) the proposals for extinguishing, suspending and reinstating the occupancy requirement?

(b) whether or not Local Authorities should be able to zone areas where it would extinguish the occupancy requirement as a matter of policy?

Comments:

Decisions of local authorities under such powers clearly involve issues of administrative justice. The proposals are outline only at present and more detail is required. We look forward to being consulted further as this area develops.

Question 21: Do you have any comments on the proposals relating to the enforcement of the occupancy requirement and the right of appeal?

Comments:

The Committee notes the extent of administrative penalties envisaged by the Bill. The Committee does not in general terms approve powers which allow public authorities to impose penalties especially of the level allowed for - (£5000). The Committee considers that the preferable course would be for the matter to be dealt with by the sheriff.

Question 22: Do you have any comments on the draft Regulatory and Equality Impact Assessment of the occupancy condition?

Comments:

No comment

Question 23: Do you have any comments on the proposed definition of an owner-occupier?

Comments:

No comment

Question 24: Do have any comments on the proposals that are designed to help achieve greater equality in the treatment of tenant and owner-occupier crofter and help to free up crofts for new entrants to crofting?

Comments:

The Committee note that the effect of the proposals might be to imperil the tenure of current owner occupiers.

Question 25: Do you have any comments on the proposals in the draft Bill that are designed to enable the Commission to take more effective action against absenteeism?

Comments:

The Committee notes that the exceptions listed in 6.2.3.2 which might be sufficient for absenteeism to be justified, and in particular is not aware why the list differs from that at 5.2.4.1 which deals with absence sufficient to justify exception to the occupancy requirement..

Question 26: Do you have any comments on the proposals in the draft Bill to enable the Commission to take more effective action where a croft is not being put to productive use?

Comments:

No comment.

Question 27: Do you have any comments on the draft Regulatory and Equality Impact Assessment for the proposed changes to crofting regulation?

Comments:

No comment.

Questions 28: Do you have any additional comments on the Consultation Paper and Draft Bill?

Comments:

No comment

Note

This form is provided for the convenience of consultees. However, responses to the consultation will be accepted in any format and consultees are not required to use this form when commenting on the proposals set out in this consultation document.