

# **Analysis Report: Crofting Consultation 2017**

**March 2018**

## Contents

Executive Summary.....	i
Gaelic summary (Geàrr-chunntas) .....	iv
1. Introduction .....	1
Background .....	1
Profile of respondents.....	1
Analysis and reporting.....	2
2. Scottish Government Crofting Policy.....	4
General comments on the policy approach .....	5
Bringing ‘new blood’ into crofting communities .....	5
Economics of crofting.....	6
Additional value of crofting .....	6
Specific geographic areas .....	7
3. Options for legislative change .....	8
Option 1 – Consolidation Bill.....	10
Option 2 – Bill amending existing legislation/pre-consolidation Bill .....	10
Option 3 – Bill amending existing legislation and restating crofting law	11
Option 4 – Bill setting out ‘new’ crofting law .....	12
Other Option .....	13
4. Specific legislative priorities .....	14
Absenteeism, Misuse and Neglect.....	14
Assignment and Succession.....	18
Common Grazings.....	22
Crofting Commission Regulatory Functions and Processes.....	26
Crofting Registration.....	29
Owner Occupation.....	32
Standard Securities .....	36
5. Ordering of priorities.....	40
6. Final reflections.....	46
Annex 1 - Organisations responding to the consultation .....	48

# Executive Summary

The Scottish Government's public consultation on Crofting Legislation and Future Priorities for Crofting sought views on the form of legislative change that may be required and priorities for crofting in the future. The Scottish Government is committed to reviewing the modernisation of crofting law within this Parliamentary session, with this consultation helping shape any potential new Bill.

In total 122 responses were submitted. The majority of responses (74%) were submitted by individual members of the public. The remaining responses were received from groups or organisations.

## Scottish Government's Policy on Crofting

Respondents were relatively evenly divided on whether they agreed with the stated Scottish Government policy on crofting. A very small majority of all respondents (51%) did not agree. Overall, rather than calling for a fundamental change in policy, most of the responses focused on specific aspects of wording of the policy. Responses also highlighted the desire for a sustainable crofting sector, commenting on the importance of support received through the various mechanisms available.

There was some uncertainty expressed about the implications of leaving the EU and, in particular, about the levels of support that may be available to agriculture and crofting thereafter.

Crofting was described as core to sustaining vibrant communities and to maintaining cultural and linguistic assets.

## Options for Legislative Change

When asked to indicate the most suitable way to proceed with any crofting law reform, the largest proportion of those answering (43%) preferred **Option 4**, a Bill setting out 'new' crofting law. Advantages identified in relation to this option included that it is the 'clean sheet' approach and could get rid of anomalies and loopholes in crofting law. However, there were some concerns that reaching consensus on a new Bill could be difficult and time consuming which may impact on the ability to deliver a Bill this parliament.

**Option 2**, a Bill amending existing legislation/pre-consolidation Bill, was the second most popular choice and was preferred by 24% of all those answering the question. Advantages identified in relation to this option were that it is a possible compromise option. It was felt that this option should be achievable within this parliament. However, there were concerns that it is a complex option that would not resolve all outstanding issues and that there could be a call for further legislation in the future.

**Option 1**, a Consolidation Bill, and **Option 3**, a Bill amending existing legislation and restating crofting law, were favoured by 3% and 18% respectively of those answering the question.

## Specific legislative priorities

The consultation asked about issues that are specifically related to crofting legislation and how it might be improved. The ideas presented related to either what is in current legislation (and can be reviewed) or what can be dealt with through a new Bill.

It should be noted that there was a diverse range of views about the best way forward each specific legislative priority and no clear consensus among respondents around preferred approaches. There were also occasions on which respondents appeared unaware of aspects of the current legislation and/or how it operates.

- **Absenteeism, Misuse and Neglect:** One of the most frequently made comments was that there is legislation in place to tackle absenteeism, misuse and neglect, but that the Crofting Commission does not take action and should be given the resources it needs to be more proactive. A number of respondents commented that support for crofters could help improve absenteeism, misuse and neglect. Examples of the type of support suggested included helping absent crofters to give up their tenancy and making allowances for people who have to live close to their work if their family can work on the croft in their absence.
- **Assignment and Succession:** Several respondents commented that the rules for crofters should be the same as for any other landholder. A number agreed with the Crofting Law Sump Report, which called for the issue of succession to be reviewed by a suitably qualified expert panel with understanding of crofting law and law of succession in Scots Law. A number of respondents highlighted the need ensure that whoever took on a croft had the ability to manage it.
- **Common Grazings:** Comments relating to Grazings Committees and their functions, including that Committees should be given a stronger role in developing townships. Others suggested abolishing Grazings Committees. Some respondents commented that there should be guidance from the Crofting Commission on the duties, responsibilities and powers of Grazings Committees.
- **Crofting Commission Regulatory Functions and Processes:** The two most frequently made comments in relation to the work of the Commission were that it lacks the resources to carry out its role as regulator effectively and that the crofting development role should be removed from Highland and Island Enterprise (HIE) and returned to the Crofting Commission. Other comments related mainly to policy or administrative changes that may be taken forward without legislative change. These included the time taken to reach regulatory decisions being reduced and the Commission taking on the development role.
- **Crofting Registration:** The most frequently raised issue, albeit not raised by a majority of respondents, was registration costs, and more specifically the opportunity to reduce them, with the next most common issue being that the

Crofting Registration process could be simplified or streamlined. Suggestions as to how this could be done included being able to submit all materials online and reducing the advertising requirements. Respondents also identified opportunities around the mapping of crofting boundaries, including that the approach taken should be streamlined.

- **Owner Occupation:** The most frequently made suggestion, albeit not raised by a majority of respondents, was that owner occupier crofters should have a right to decroft their property if they choose. A different perspective was that if a croft is purchased it should automatically be removed from crofting tenure. Others had concerns about removing owner-occupied crofts from the crofting tenure. It was suggested that this approach would, in all likelihood, herald the beginning of the end of the crofting system and that the use of right to buy provisions should be discouraged or they should be removed from statute.
- **Standard Securities:** The most frequently made comment was that granting a Standard Security over a croft tenancy would give crofters the ability to raise finance without having to decroft. It was suggested that this, in turn, could result in a reduction in decrofting. There were some concerns about the potential for default on loans and the control of crofts passing to financial institutions.

### Ordering of priorities

Absenteeism, Misuse and Neglect emerged as the highest priority, followed very closely by Crofting Commission Regulatory Functions and Processes. Standard Securities had the lowest relative priority. However, all of the priorities set out were seen as a priority by a significant proportion of respondents.

Some respondents commented on the overall approach as opposed to specific alternative priorities. For example, it was suggested that rather than concentrating on specific topics, the focus should be on incorporating the recommendations from previous work, including those of the Shucksmith Report<sup>1</sup>, into the legislation.

Other respondents identified specific areas which they thought should be a priority going forward. These included: promoting crofter's rights; policies focusing on securing the future of rural communities; and support mechanisms and agricultural subsidies.

In terms of any potential unintended consequences of crofting legislation reform, comments included that while they are likely or inevitable, they should be more predictable and manageable when associated with a well thought out new Act rather than the alternative options involving consolidation of the existing, very complex legislation.

---

<sup>1</sup> Available at: [https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/supporting\\_documents/Shucksmith%20Report.pdf](https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/supporting_documents/Shucksmith%20Report.pdf)

# Geàrr-chunntas

Bha a' cho-chomhairle phoblach aig Riaghaltas na h-Alba mu Reachdas Croitearachd agus mu Phrìomhachasan airson Croitearachd san àm ri teachd a' sireadh bheachdan air an t-seòrsa atharrachadh reachdail a dh'fhaodadh a bhith a dhìth agus air na prìomhachasan airson croitearachd san àm ri teachd. Tha Riaghaltas na h-Alba air rùnachadh ath-sgrùdadh a dhèanamh air ath-nuadhachadh lagh na croitearachd rè an t-seisein phàrlamaidich seo, leis a' cho-chomhairle seo a' toirt buaidh air Bile ùr sam bith a dh'fhaodadh a bhith ann.

Uile gu lèir, fhuair 122 freagairtean. Bha a' mhòr-chuid de na freagairtean (74%) bho dhaoine fa leth a bha nam ball den phoball. Thàinig an còrr de na freagairtean bho chomainn no buidhnean.

## Poileasaidh Riaghaltas na h-Alba air croitearachd

Bha an luchd-freagairt cha mhòr leth is leth air a cheist an robh iad ag aontachadh ris a' phoileasaidh a bha Riaghaltas na h-Alba a' cur air adhart air croitearachd. Bha mòr-chuid gu math tana (51%) ag ràdh nach robh iad ag aontachadh. San fharsaingeachd, an àite a bhith ag iarraidh atharrachadh bunaiteach ann am poileasaidh, bha a' mhòr-chuid de na freagairtean a' cur fòcas air taobhan sònraichte de bhriathran a' phoileasaidh. Sheall na freagairtean cuideachd gun robhar ag iarraidh roinn croitearachd a tha seasmhach, le beachdan ann air cho cudromach sa tha an taic a gheibhear tro na diofar dhòighean-maoineachaidh.

Chaidh mì-chinnt a chur an cèill mun bhuidh a bhiodh aig fàgail an Aonaidh Eòrpaich agus, gu sònraichte, mu na h-irean de thaic a bhiodh ann do dh'àiteachas is do chroitearachd às dèidh seo.

Chaidh a ràdh gun robh croitearachd fìor chudromach airson dèanamh cinnteach gum biodh coimhearsnachdan beòthail seasmhach agus gun rachadh stòrasan cultarach is cànanach a ghlèidheadh.

## Roghainnean airson atharrachadh reachdail

Nuair a chaidh iarraidh orra mìneachadh dè an roghainn a b' fheàrr leotha airson a bhith a' gluasad air adhart le ath-leasachadh lagh na croitearachd, thuir an àireamh a bu mhotha de na daoine a fhreagair (43%) gur e **Roghainn 4** a b' fheàrr leotha, Bile a' cur air adhart lagh croitearachd 'ùr'. Bha na buannachdan a chaidh a chomharrachadh a thaobh na roghainn seo a' gabhail a-steach gun robh e na dòigh-obrach 'duilleag bhàn' agus gum b' urrainn seo cur às do neo-riaghailteachd agus beàrnann ann an lagh na croitearachd. Ach, chaidh draghan a nochdadh gum faodadh e a bhith doirbh co-aonta a ruighinn air Bile ùr, gun toireadh seo ùine mhòr, agus gum faodadh seo buaidh a thoirt air a' chomas bile a libhrigeadh anns a' Phàrlamaid seo.

B' e **Roghainn 2**, Bile ag atharrachadh reachdas làthaireach/Bile ro-dhaingneachaidh, an dàrna roghainn a bu mhotha, le 24% de na daoine a fhreagair a' cheist a' taghadh seo. B' e na buannachdan a chaidh a chomharrachadh a

thaobh na roghainn seo gur e roghainn cho-rèiteachaidh a dh'fhaodadh a bhith ann. Bhathar a' faireachdainn gun gabhadh an roghainn seo a libhrigeadh sa Phàrlamaid seo. Bha draghan ann, ge-tà, gur e roghainn thoinnte a bhiodh ann, nach biodh i a' fuasgladh gach cuspair a tha gun rèiteachadh aig an ìre seo, agus gur dòcha gum biodh iarrtas ann air reachdas a bharrachd san àm ri teachd.

Fhuair **Roghainn 1**, Bile Daingneachaidh agus **Roghainn 3**, Bile ag atharrachadh reachdas làithreach agus ag ath-aithris lagh croitearachd taic bho 3% agus 18% den luchd-freagairt an urra.

### **Prìomhachasan reachdail sònraichte**

Anns a' cho-chomhairle, chaidh ceistean a chur a bha co-cheangailte gu sònraichte ri reachdas na croitearachd agus mar a ghabhadh a leasachadh. Bha na beachdan a chaidh a chur air adhart co-cheangailte ris na rudan a tha ann an reachdas làithreach (agus a ghabhas ath-sgrùdadh) no air dè a ghabhas dèiligeadh ris tro Bhile ùr.

Bu chòir toirt an aire gun robh farsaingeachd de bheachdan ann mun dòigh air adhart airson gach prìomhachas reachdail sònraichte agus nach robh co-aontachd aig an luchd-freagairt air dè na dòighean-obrach a b' fheàrr leotha. Uaireannan, bha e coltach nach robh cuid den luchd-freagairt eòlach air taobhan den reachdas làithreach agus/no air mar a tha e ag obrachadh.

- **Neo-làthaireachd, Ana-cleachdadh agus Dearmad:** B' e fear de na beachdan a chaidh a chur an cèill a bu trice gu bheil reachdas an gnìomh mar-thà gus dèiligeadh ri neo-làthaireachd, ana-cleachdadh agus dearmad ach nach bi Coimisean na Croitearachd ga chur an gnìomh mar as còir agus gum bu chòir barrachd goireasan a bhith aig a' Choimisean airson a bhith nas for-ghnìomhaiche. Thuirt cuid den luchd-freagairt gun cuideachadh barrachd taic do chroitearan gus neo-làthaireachd, ana-cleachdadh agus dearmad a lùghdachadh. Bha eisimpleirean den t-seòrsa taic a chaidh a mholadh a' gabhail a-steach a bhith cuideachadh chroitearan neo-làithreach gus an gabhaltas aca a thoirt seachad, agus a bhith a' tuigsinn an t-suidheachaidh aig dhaoine a dh'fheumas fuireach faisg air an obair aca ma tha an teaghlach aca comasach air obrachadh air a' chroit nuair nach eil iad an làthair.
- **Sònrachadh agus Còir-sheilbh:** Thuirt grunn den luchd-freagairt gum bu chòir na h-aon riaghailtean a bhith aig chroitearan sa tha aig luchd-seilbh fearainn sam bith eile. Dh'aontaich grunn den luchd-freagairt le Aithisg Cruinneachadh Lagha na Croitearachd, a mhol gum bu chòir leantainneachd còir-sheilbh ath-sgrùdadh le panail le teisteanasan iomchaidh le tuigse air lagh na croitearachd, agus lagh leantainneachd còir-sheilbh ann an lagh na h-Alba. Thuirt grunn luchd-freagairt gun robh e cudromach dèanamh cinnteach gun robh comas aig duine sam bith a bhiodh a' gabhail thairis croit gus a ruith.
- **Cùl-cinn:** Am measg nam beachdan a fhuair sinn air Comataidhean Ionaidh agus na foincseanan aca, bha gum bu chòir àite nas treasa a

bhith aca ann am leasachadh nam bailtean. Bha cuid eile a' moladh gun rachadh cur às do Chomataidhean Ionaidh. Thuirt cuid den luchd-freagairt gum bu chòir stiùireadh a bhith ann bho Choimisean na Croitearachd air na dleastanasan, uallaichean agus cumhachdan aig Comataidhean Ionaidh.

- **Dleastanasan agus Pròiseasan Riaghlaidh Choimisean na Croitearachd:** B' e an dà bheachd a rinneadh a bu trice mu obair a' Choimisein nach robh goireasan gu leòr aige gus an obair aige a dhèanamh mar riaghladair gu h-èifeachdach, agus gum bu chòir an dleastanas airson croitearachd a leasachadh a thoirt air falbh bho Iomairt na Gàidhealtachd is nan Eilean agus a thoirt air ais do Chomataidh na Croitearachd. Bha beachdan eile a' coimhead air atharrachaidhean poileasaidh no rianachd a ghabhadh a thoirt air adhart gun atharrachadh reachdail. Bha iad seo a' gabhail a-steach a' bhith a' lùghdachadh an ama a tha e a' toirt gus co-dhùnaidhean riaghlaidh a dhèanamh agus gum bu chòir dleastanas leasachaidh a bhith aig a' Chomataidh.
- **Clàradh Croitearachd:** B' e cosgaisean clàraidh a' chùis a chaidh a thogail a bu trice ged nach deach a thogail le mòr-chuid den luchd-freagairt, gu sònraichte cothrom na cosgaisean a lùghdachadh. B' e an dàrna cùis a bu chumanta gum bu chòir pròiseas Clàradh na Croitearachd a bhith nas simplidh no nas èifeachdaiche. Am measg nam molaidhean air mar a ghabhadh seo a dhèanamh, bha gum bu chòir cothrom a bhith ann na foirmean uile a chur a-steach air-loidhne agus a bhith a' lùghdachadh nan riathanasan a thaobh sanasachd. Chomharraich luchd-freagairt cothroman a thaobh mapachadh crìochan nan croitean, a' gabhail a-steach moladh gum bu chòir dhan dòigh-obrach a bhith nas èifeachdaiche.
- **Croitean Sealbhadair-còmhnaidh:** B' e am moladh a rinneadh a bu trice, ged nach deach a thogail le mòr-chuid den luchd-freagairt, gum bu chòir còir a bhith aig croitearan a tha nan sealbhadair-còmhnaidh an cuid seilbh a dhì-chroiteadh ma tha iad ag iarraidh sin a dhèanamh. Bha beachd eile ann gum bu chòir croit a thoirt a-mach à còir-fhearainn croitearachd gu fèin-obrachail mas e is gun rachadh a cheannach. Bha draghan aig cuid eile mu bhith a' toirt croitean aig sealbhadairean-còmhnaidh a-mach às a' chòir-fhearainn. Chaidh a ràdh le cuid gun robh e coltach gum biodh an dòigh-obrach seo ag adhbharachadh deireadh an t-siostaim croitearachd aig a' cheann thall agus gum bu chòir bacadh a bhith air ullachaidhean a thaobh còir ceannach no gum bu chòir an toirt a-mach às an reachdas.
- **Barantasan-stannardach:** B' e am beachd as trice a chaidh a dhèanamh gun toireadh Barantasan-stannardach air còir-fhearainn air croit comas do chroitearan ionmhas a thogail gun a bhith a' dì-chroiteadh. Chaidh am beachd a chur air adhart gum b' urrainn do seo, mar sin, dì-chroiteadh a lùghdachadh. Nochd cuid draghan gum faodadh smachd air croitean a ghluasad gu institiudan ionmhais mas e is nach rachadh iasadan a phàigheadh air ais.



## Òrdugh phrìomhachasan

B' e Neo-làthaireachd, Ana-cleachdadh agus Dearmad am prìomhachas as àirde a nochd, air a leantainn gu dlùth le Dleastanasan agus Pròiseasan Riaghlaidh Choimisean na Croitearachd. B' e barantasan-stannardach an cuspair a fhuair an ìre as isle de phrìomhachas an taca ris an fheadhainn eile. Ach, bha cuid nach bu bheag den luchd-freagairt a' coimhead air gach fear de na cuspairean mar phrìomhachasan.

Thug cuid den luchd-freagairt beachdan seachad air an dòigh obrach san fharsaingeachd an àite a bhith a' coimhead air prìomhachasan sònraichte a dh'fhaodadh a bhith ann. Mar eisimpleir, chaidh moladh an àite a bhith a' cur cuideam air cuspairean sònraichte, gum bu chòir fòcas an reachdais a bhith air cur an gnìomh nam molaidhean bho obair a rinneadh roimhe air croitearachd, a' gabhail a-steach molaidhean Aithisg Shucksmith<sup>1</sup>.

Shònraich luchd-freagairt eile raointean eile a bha iad den bheachd a bu chòir a bhith a' dol air adhart mar phrìomhachas. Bha iad seo a' gabhail a-steach: a' brosnachadh còraichean nan croitearan; poileasaidhean ag amas air seasmhachd nan coimhearsnachdan dùthchail; agus modhan taic is subsadaidhean do dh'àiteachas.

A thaobh buaidhean ris nach robhar an dùil a dh'fhaodadh tachairt mar thoradh air ath-leasachadh reachdas na croitearachd, bha beachd ann ged a tha e buailteach no do-sheachanta gum bi a leithid ann, gum bu chòir dhaibh a bhith nas fhasa ro-innse agus nas fhasa dèiligeadh riutha nuair a tha iad co-cheangailte ri Achd ùr a tha air a dheagh sgrìobhadh, seach a bhith tighinn tro na roghainnean eile a bhiodh a' gabhail a-steach daingneachadh an reachdais làithreach a tha fìor iom-fhillte.

---

<sup>1</sup> Ri faighinn aig: [https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/supporting\\_documents/Shucksmith%20Report.pdf](https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/supporting_documents/Shucksmith%20Report.pdf)

# 1. Introduction

This report presents an independent analysis of responses to the Scottish Government's public consultation on Crofting Legislation and Future Priorities for Crofting. The report presents the views of respondents to the consultation and an analysis of the points they made in their responses. It does not represent the view of the Scottish Government.

## 1.1 Background

Crofting is a specific form of land tenure, subject to the provisions of Crofting Acts and regulated by the Crofting Commission. The law governing crofting activities dates from the original rights enshrined in the Crofting Holding (Scotland) Act 1886. At various points over the subsequent 130 years there have been changes, additions or amendments to crofting legislation. The last consolidating legislation was the Crofters (Scotland) Act 1993, recent enough to be within living memory, but almost 25 years ago. The Crofting Reform etc. Act 2007 and the Crofting Reform (Scotland) Act 2010 resulted in some major legislative changes and were followed by the Crofting (Amendment) (Scotland) Act 2013.

During early 2017, the Scottish Government's Crofting Bill Team held public engagement sessions with a number of individuals and groups with a stake in crofting. One of the main themes to emerge from these discussions, and other work that has been undertaken such as the Independent Inquiry into Crofting, the Crofting Law Sump and Rural Economy and Connectivity Report on future priorities for crofting was that the law, as it stands, is too complex and not suited to the needs and requirements of modern day crofting. However, it was less clear what any new legislation should look like, and whether legislation was necessarily the best way to implement all of the changes required.

The Scottish Government published a consultation paper<sup>2</sup> on the 28 August 2017, seeking views on the type of new legislation that may be required and priorities for crofting. The Scottish Government is committed to reviewing the modernisation of crofting law within this Parliamentary session, with this consultation helping shape any potential new Bill.

The consultation closed on the 20 November 2017.

## 1.2 Profile of respondents

A total of 122 responses were submitted. The majority of these were received through the Scottish Government's Citizen Space consultation hub, although 30 were submitted via email or in hard copy. One response was submitted in Gaelic.

---

<sup>2</sup> The consultation paper can be found at: <https://consult.scotland.gov.uk/agriculture-and-rural-communities/crofting-consultation-2017>

Table 1 below lists the type of respondents.

**Table 1: Respondents by type**

Type of respondent	Number
<b>Organisations:</b>	
Common Grazings Committee	4
Community Landowner or Body	2
Crofting Business	2
Crofting or Smallholding Representative Body or Group	4
Estate, Landowner or Representative Body	2
Legal	5
Local Authority	4
Other	4
Public Agency or Body	5
<b>Total Organisations</b>	<b>32</b>
<b>Individuals</b>	<b>90</b>
<b>Total</b>	<b>122</b>

The majority of responses (74%) were submitted by individual members of the public. The remaining responses (26%) were received from groups or organisations.

A list of the organisations that submitted a response is presented at Annex 1 to this report.

### 1.3 Analysis and reporting

The remainder of this report presents a question-by-question analysis of the comments made. A small number of respondents did not make their submission on the standard consultation form but submitted their comments in a statement-style format. When these responses contained a clear answer to one of the closed questions this has been recorded. The remaining content was analysed qualitatively under the most directly relevant consultation question.

Overall, the comments frequently diverged and there were relatively few frequently made points or common themes to emerge, making the responses challenging to analyse. This divergence of views, and lack of a clear consensus on many issues, is reflected within this report. Additionally, in some instances, respondents either appeared to have misunderstood current crofting law and/or were unaware of some of its provisions. The analysis presented within the remainder of this report focuses on giving an overview of the type and range of comments made.

Please note that a small number of respondents made very detailed comments, sometimes highlighting specific legal or technical issues. This report sets out only

summary analysis of these comments. However, the Scottish Government's Crofting Policy Team has also reviewed all submissions.

If the respondent gave permission to publish, their original response can be found on the Scottish Government's website<sup>3</sup>.

---

<sup>3</sup> Responses can be found at: [https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/consultation/published\\_select\\_respondent](https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/consultation/published_select_respondent)

## 2. Scottish Government Crofting Policy

The first question sought opinions on current Scottish Government policy on crofting which was set out in summary in the consultation paper. More detailed information can be found on the Scottish Government website<sup>4</sup>.

### Question 1: Do you agree with the stated Scottish Government policy on crofting?

Table 2: Question 1 by Respondent Type

Type of respondent	Yes	No	Not answered	Total
Organisations:				
Common Grazings Committee	1	3		4
Community Landowner or Body	2			2
Crofting Business		2		2
Crofting or Smallholding Representative Body or Group	1	3		4
Estate, Landowner or Representative Body	2			2
Legal	2	2	1	5
Local Authority	2	1	1	4
Other	4			4
Public Agency or Body	2		3	5
<b>Total organisations</b>	<b>16</b>	<b>11</b>	<b>5</b>	<b>32</b>
<b>% of organisations answering</b>	<b>59%</b>	<b>41%</b>		
Individuals	37	44	9	90
<b>% of individuals answering</b>	<b>46%</b>	<b>54%</b>		
All respondents	53	55	14	122
% of all respondents	43%	45%	11%*	
<b>% of all those answering</b>	<b>49%</b>	<b>51%</b>		

\*Figures do not sum to 100% due to rounding

Respondents were relatively evenly divided on whether they agreed with the stated Scottish Government policy on crofting. A very small majority of all respondents (51%) did not agree. The majority of individual respondents disagreed (54%), while the majority of organisations agreed (59%). However, the majority of Common

<sup>4</sup> Scottish Government Crofting Policy: <http://www.gov.scot/Topics/farmingrural/Rural/crofting-policy>

Grazings Committees, Crofting Businesses and Crofting or Smallholding Representative Body or Groups disagreed.

A total of 92 respondents made a further comment. Of these, 50 respondents had answered 'no', 37 had answered 'yes'; and five had not answered the closed element of Question 1. The focus of the analysis presented below is on issues not addressed specifically at later questions.

## **2.1 General comments on the policy approach**

A number of respondents made general comments about the policy approach set out within the consultation document. These included that it is too complicated and requires simplification (two Individuals, Crofting or Smallholding Representative Body or Group).

Several respondents felt the policy statement showed a lack of specialist understanding of crofting or crofting law by the Scottish Government (two Common Grazings Committees, Crofting or Smallholding Representative Body or Group). It was suggested that a vision for crofting is needed, as this was currently felt to be lacking (Crofting or Smallholding Representative Body or Group, Local Authority). Others suggested that the focus needs to be on dealing with inconsistent and inadequate legislation and regulation rather than more general reform (Common Grazings Committee, two Crofting or Smallholding Representative Bodies or Groups, three Individuals).

A number of the respondents who had disagreed at Question 1 and who went on to comment felt that the consultation document appears to focus on duties rather than rights and protections for crofting and crofters (Common Grazings Committee, two Crofting or Smallholding Representative Bodies or Groups, eight Individuals).

## **2.2 Bringing 'new blood' into crofting communities**

A number of respondents commented on the consultation paper's reference to 'new blood', including suggesting that the term has not been defined (Estate, Landowner or Representative Body, Individual) or would be better rephrased as 'encouraging more active crofting' (Individual) or encouraging new entrants into crofting.

There were concerns expressed about the future of Gaelic communities (Individual) and it was suggested that a balance needs to be struck with the needs of existing populations with crofting heritage (two Individuals). In particular, it was suggested that it is also important to support and encourage local people, and especially young people (Individual).

A small number of respondents commented on the cost of accessing a croft, including that crofting tenancies are at prices which are unaffordable to lower income families (Individual). It was suggested that the introduction of the right to buy has led to an increase in more affluent buyers (Individual).

## 2.3 Economics of crofting

A number of respondents commented on the challenges of financial viability. Crofting was described as subsistence agriculture (Individual) or small-scale farming (two Individuals).

Commenting on the financial support for crofting, it was suggested that there has been a lack of investment by national and local government (Individual). Going forward, the likely impact of Brexit was noted (Other, Individual). It was suggested that the levels of support currently available through the Common Agriculture Policy and rural development funds will need to be sustained (Other).

There were a range of options suggested which it was thought might alleviate some of the economic challenges associated with crofting. These included:

- Amalgamating current crofts to create more viable opportunities for existing crofters (Individual).
- Creating more crofts where there is demand (Common Grazings Committee, Crofting Business) but ensuring they are of sufficient size to enable crofters to earn an income from crofting (Common Grazings Committee).
- Turning all crofts into agricultural tenancies (Legal).
- Using a small percentage of any future sales to create a fund to help young people access affordable loans (Individual).

## 2.4 Additional value of crofting

There were a number of comments on the 'added value' of crofting which respondents wished to see acknowledged. For example, it was suggested that crofters are protectors and custodians of the natural environment (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, two Individuals). It was also suggested that crofting's contribution to the Scottish Government's commitment to biodiversity and the environment should be recognised (Local Authority). Other comments included that crofting:

- Plays a role in supporting ecologically designated sites (Public Agency or Body, Individual).
- Supports the retention of populations in remote areas (two Public Agencies or Bodies). In particular, it was suggested that active crofting is a significant part of the fabric of rural economies; it is a base for economic activity and helps maintain local services and amenities (Public Agency or Body).
- Makes productive use of marginal land (Public Agency or Body).
- Contributes to local food economies through local food production, with low food miles (and reduced carbon footprint) important at times of concerns about food security (Crofting or Smallholding Representative Body or Group, Public Agency or Body, two Individuals).

The link with the preservation of heritage and culture, including the Gaelic language, was also made by a small number of respondents (three Individuals). Crofting was described as core to sustaining vibrant communities (Individual) and to maintaining cultural and linguistic assets (Public Agency or Body).

## **2.5 Specific geographic areas**

A small number of respondents commented on particular aspects of crofting associated with their area of Scotland, highlighting that the nature of crofting can vary according to each geographical region. Comments included:

- Much crofting policy does not apply in Orkney or Shetland as most crofts are owner occupied (Legal, Individual).
- Orkney should be decrofted as crofting status for owner-occupied crofts is holding back development (Legal).
- In Shetland, most crofts are run as small agricultural businesses (Individual). Many of these consist of an amalgamation of separate crofts (Individual).
- Absenteeism and abandonment are not issues for Shetland and the policy in these areas is not suited to needs of Shetland crofters (Individual).



### 3. Options for legislative change

The second question in the consultation looked at options for legislative change.

**Question 2: Please select your preferred option to indicate which you believe to be the most suitable way to proceed with any crofting law reform. Should you wish to suggest another approach that has not been discussed above, then please select 'other' and provide details.**

**Option 1 – Consolidation Bill**

**Option 2 – Bill amending existing legislation/pre-consolidation Bill**

**Option 3 – Bill amending existing legislation and restating crofting law**

**Option 4 – Bill setting out 'new' crofting law**

**Other option**

As set out in Table 3 (below), the largest proportion of those answering Question 2 (43%) preferred Option 4 - the Bill setting out 'new' crofting law. This was the most popular choice amongst both organisations (43%) and individuals (44%).

Option 2 - a Bill amending existing legislation/pre-consolidation Bill - was the second most popular choice and was preferred by 24% of all those answering the question. Option 3 - a Bill amending existing legislation and restating crofting law - was the choice of 18%, while only 3% preferred Option 1 - a Consolidation Bill. The remaining 12% of those answering the question preferred an alternative option to those set out within the consultation paper. Please note, however, that in their further comments two of these respondents stated a preference for Option 2.

**Table 3: Question 2 by Respondent Type**

Type of respondent	Option 1	Option 2	Option 3	Option 4	Other option	Not answered	Total
Organisations:							
Common Grazings Committee		2	1	1			4
Community Landowner or Body	1			1			2
Crofting Business				1	1		2
Crofting or Smallholding Representative Body or Group		2		2			4
Estate, Landowner or Representative Body		1		1			2
Legal			1	1	3		5
Local Authority			1	3			4
Other		1		1		2	4
Public Agency or Body		1		1		3	5
<b>Total organisations</b>	<b>1</b>	<b>7</b>	<b>3</b>	<b>12</b>	<b>4</b>	<b>5</b>	<b>32</b>
<b>% of organisations answering</b>	<b>3%</b>	<b>24%</b>	<b>20%</b>	<b>43%</b>	<b>11%*</b>		
Individuals							
Individuals	2	19	16	34	9	10	90
<b>% of individuals answering</b>	<b>4%</b>	<b>26%</b>	<b>11%</b>	<b>44%</b>	<b>15%</b>		
All respondents							
All respondents	3	26	19	46	13	15	122
<b>% of all respondents</b>	<b>2%</b>	<b>21%</b>	<b>16%</b>	<b>38%</b>	<b>11%</b>	<b>12%</b>	
<b>% of all those answering</b>	<b>3%</b>	<b>24%</b>	<b>18%</b>	<b>43%</b>	<b>12%</b>		

\* Figures do not sum to 100% due to rounding

A total of 98 respondents made a further comment (including two of the 15 respondents who did not answer the closed element of Question 2).

The analysis presented below covers the options in turn and presents the advantages and disadvantages respondents gave for each option. As noted above, a diverse range of comments were made, including on the options for legislative change. Respondents often held opposing positions, making it difficult to identify key themes concerning possible amendments to existing legislation or the development of any new legislation.

### **3.1 Option 1 – Consolidation Bill (3% in favour)**

Advantages identified in relation to Option 1 were:

- A consolidation Bill should be achievable within the timescale of the current Parliamentary session (Individual).
- It offers the safest and most stable way forward (Community Landowner or Body).
- Uncertainties due to Brexit mean now is not the time to make any major changes (Individual).

Disadvantages identified in relation to Option 1 were:

- Consolidation alone is not enough (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, Public Agency or Body, two Individuals). It would lead to the continuation of unsatisfactory legislation (Other, Individual).
- It would not allow for any substantive changes to be made (Legal).
- The need to resolve anomalies and inconsistencies in current crofting law is a higher priority than consolidation (Crofting or Smallholding Representative Body or Group).

### **3.2 Option 2 – Bill amending existing legislation/pre-consolidation Bill (24% in favour)**

Advantages identified in relation to Option 2 were:

- It is a possible compromise option, if accompanied by guidance on the application of legislation and commitment to a Bill setting out new crofting law (Local Authority).
- For some respondents, Option 2 was seen as the 'least worst' option (Common Grazings Committee, two Individuals).

An alternative approach put forward was that a hybrid of Options 2 and 4 could work, with a 'clean sheet' Bill once the initial amending Bill had bedded in. This would simplify legislation rather than just consolidating it (Crofting or Smallholding Representative Body or Group).

Disadvantages identified in relation to Option 2 were:

- It is a complex option and could lead to much debate without a good outcome (Local Authority).
- It will require two Bills (Legal).
- It does not address the current legislative problems (Other).
- It will be subject to constraints in terms of the parliamentary time available (two Individuals). There was a question as to whether a pre-consolidation Bill and consolidation Bill can be dealt with in the current Parliamentary session, even given that much of the work had already been done by the Crofting Law Group (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, two Individuals).

Other comments included:

- Statute should be simplified, with detail that does not need to be in primary legislation put into guidance (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, three Individuals).
- Clear guidance will make crofting more accessible for new entrants who need to understand their responsibilities (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Individual).

### **3.3 Option 3 – Bill amending existing legislation and restating crofting law (18% in favour)**

Advantages identified in relation to Option 3 were:

- It should reduce the number of pieces of legislation required (Common Grazings Committee, Individual).
- It could resolve anomalies and errors and restate the law in a more concise and accurate way (Legal, Individual).
- It would enable safeguards, such as those covering the rights of crofters, to be retained (Common Grazings Committee, Individual).
- It could deliver improved legislation in the life of a parliament (Local Authority) and address issues in a reasonable timescale (Individual).
- It offers the flexibility to make future changes (Legal).

Disadvantages identified in relation to Option 3 were:

- It is a 'light' version of Option 2 (Crofting or Smallholding Representative Body or Group, two Individuals) which would tidy up legislation rather than allowing for substantive change (Public Agency or Body).

- It might require more time than the current Parliamentary session allows and may not be completed or could be dropped altogether (Common Grazings Committee, Crofting or Smallholding Representative Body or Group).

### **3.4 Option 4 – Bill setting out ‘new’ crofting law (43% in favour)**

Advantages identified in relation to Option 4 were:

- The principles of the 1886 Act have little application to modern times and new legislation is needed (Estate, Landowner or Representative Body, Individual). Option 4 focuses on the future rather than the past (Public Agency or Body, Individual).
- Reforms to legislation to date have not clarified the law but rather added to bureaucracy (Legal, two Individuals).
- It is the ‘clean sheet’ approach and could get rid of anomalies and loopholes in crofting law (Community Landowner or Body, Individual).
- It could include a new way of administering crofting, potentially decentralised to allow regional variations (Community Landowner or Body, Crofting Business).

Disadvantages identified in relation to Option 4 were:

- Reaching consensus on a new Bill could be difficult, lengthy and potentially unworkable (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, Public Agency or Body, three Individuals). There was a question as to whether legislation which was broad enough to receive the support needed to become law could be drafted (Local Authority, Individual).
- Existing legislation would be repealed, and the rights of crofters put at risk (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, three Individuals).
- It would require more time than available during the current Parliamentary session (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Local Authority, three Individuals). Respondents who mentioned time constraints as an issue also flagged up concerns about the current rights of crofters being repealed and also about consensus being hard to reach.

Other comments included:

- There should be an unambiguous statement of vision and policy for crofting (Other, Individual) supported by simple primary legislation, underpinned by regulation and guidance (Crofting or Smallholding Representative Body or Group, Public Agency or Body, two Individuals).
- New legislation must retain rights and protections which crofters already have including security of tenure; rights of succession and rents set independently

(Common Grazings Committee, Community Landowner or Body, Local Authority, Individual).

- Legislation should be framework legislation setting binding targets on government and giving powers to an independent commission to achieve targets. Secondary legislation could be created through Regulatory Orders (Crofting Business).

### **3.5 Other option (12% in favour)**

Comments about other possible approaches included:

- The existing law is satisfactory as it stands and should not be changed (Individual).
- Issues identified in the Crofting Law Sump could be implemented while other reform is considered (Legal).
- Crofting law should be abolished (Individual) and existing crofting tenancies turned into agricultural tenancies. Crofts could be included in existing law for farmers and agricultural land with any specific regulations brought through secondary legislation (Individual). If a system could be devised which would encourage new entrants and part-time farmers, it should apply to the whole of Scotland (Legal).

## 4. Specific legislative priorities

Section 3 of the consultation moved on to consider issues that are specifically related to crofting legislation and how it might be improved to help crofting thrive. The ideas presented related to either what is in current legislation (and can be reviewed) or what can be dealt with through a new Bill. They did not include issues that, while possibly of equal or greater importance to those in crofting communities, are non-legislative in nature.

Please note that under each of the issues, respondents frequently restated points raised at earlier questions. The analysis presented here avoids duplication and does not review issues that have already been covered.

A range of opinion and divergence of views was evident across each of the legislative priorities. As with the options for legislative change (above), there were very few frequently made points and no clear consensus around the best way forward. There was very little in the way of a clear steer for the Scottish Government around amendments to existing legislation or the development of any new legislation.

### 4.1 Absenteeism, Misuse and Neglect

Crofting legislation contains specific duties which crofters must comply with in relation to residency, use, misuse and neglect of crofts. Crofters must:

- be ordinarily resident on, or live within 32 km of the croft;
- not misuse or neglect the croft; and
- cultivate the croft or put it to another purposeful use.

#### Question 3

- A) What do you think are the main opportunities for change relating to Absenteeism, Misuse and Neglect?**
- B) What specific parts of the current legislation that you are aware of regarding Absenteeism, Misuse and Neglect could be changed to help these matters?**
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating to Absenteeism, Misuse and Neglect could be addressed?**

**Please provide any other comments you may have on Absenteeism, Misuse and Neglect.**

## **Main opportunities**

A total of 89 respondents made a comment on the main opportunities for change in relation to Absenteeism, Misuse and Neglect.

**Legislation and role of the Crofting Commission:** A number of respondents gave detailed observations on the legislation and also the role of the Crofting Commission. One of the most frequently made comments was that there is legislation in place to tackle absenteeism, misuse and neglect, but that the Crofting Commission does not take action. It was suggested that the Crofting Commission should be given the resources it needs to be more proactive (two Common Grazings Committees, Community Landowner or Body, Crofting Business, two Crofting or Smallholding Representative Bodies or Groups, Local Authority, seven Individuals).

Several respondents commented on the Annual Return (crofting census); it was suggested that there are many non-returns (two Individuals) but that these are not followed up due to resource constraints (Crofting or Smallholding Representative Body, Individual) meaning that the information available may not be reliable (Estate, Landowner or Representative Body). One respondent commented that the crofting register must be complete and kept up-to-date to allow crofting activities to be monitored (Individual).

Other respondents wanted an enhanced role for the Crofting Commission as a regulatory and croft development body (Crofting or Smallholding Representative Body or Group, Individual) with an enhanced budget (Individual). One respondent suggested there should be flexibility to allow the Commission to work with partners on specific issues such as severe neglect of multiple crofts (Local Authority).

Other comments included:

- The definition of neglect should be clarified (three Individuals). This would help crofters understand when they are in breach and what action is needed (Individual).
- A regional approach should be taken as there are different problems in different areas (Individual). In the Western Isles 70% of land is now in community ownership (Individual); there are no issues with absenteeism, misuse or neglect in the North Isles or Shetland (Local Authority, three Individuals).

**Sanctions:** Several respondents suggested that enforcement must be a priority (two Individuals), but that there are barriers, including cultural and resourcing issues (Estate, Landowner or Representative Body). For example, it was felt that reporting those who are inactive, neglecting or misusing crofts can cause local conflict (Estate, Landowner or Representative Body, Individual).

Several respondents commented that, where they are not meeting their duties, crofters should be made to assign, sublet or take action to meet their duties (Individual) or have their crofts removed (three Individuals). One respondent



thought there should be fines for misuse and neglect (Individual). Another thought that if a crofter is in breach of a duty they should not be able to apply for assignation or access Scottish Government funding until the breach is remedied or unless permission is given by the Commission (Estate, Landowner or Representative Body).

**Flexibility and support:** A number of respondents commented that support for crofters and flexibility in relation to their duties could help improve absenteeism, misuse and neglect. Suggestions included:

- Where absenteeism, misuse or neglect have occurred due to factors beyond the crofter's control (such as old age, infirmity or illness) shared tenancies or succession should be made possible (Local Authority).
- Support should be given to absent crofters to enable them to give up their crofting tenancy (Common Grazings Committee).
- There could be greater discretion around absenteeism (Community Landowner or Body) if another local crofter is using the land to make their own croft viable (Individual).
- The 32km rule should not matter if the croft is being worked (Individual). It was also suggested that the 32km rule should be removed (two Individuals). In contrast, there was a suggestion that residency requirements and other duties should be imposed on crofting landlords (Common Grazings Committee).
- Allowances should be made for people who have to live close to their work if their family can work on the croft in their absence (Individual).
- Housing plots and croft land should be treated as separate so that families have security of housing tenure without having to carry on working the land if they are unable to (Individual).
- Allowing more varied uses of crofts was also suggested, in part because some crofts are not agriculturally viable (two Individuals). One respondent thought that the link between grazing or agriculture and land use should be broken, as many crofts are located in areas where agricultural land is of low value (Individual)<sup>5</sup>.

### **Specific parts of the legislation**

A total of 61 respondents commented on specific parts of the current legislation that could be changed in relation to Absenteeism, Misuse and Neglect. Relatively few comments referred directly to the legislation. Those which did included:

- There should be one clear statement of duties as suggested by the Crofting Law Sump (Legal).

---

<sup>5</sup> Existing legislation does not require a link between grazing or agriculture and land use. What is required is 'purposeful use' which includes a range non-agricultural and agricultural activities.

- Clarification of what is meant by 'acceptable use' would be helpful (Estate, Landowner or Representative Body, Individual). 'Use/abuse' and 'purposeful use' should also be more clearly defined (Common Grazings Committee) as should 'neglect' (Legal).
- There should be a duty to 'cultivate and maintain' for tenants and owner occupiers (Individual).
- References to subletting should be amended to allow for the grouping of small land parcels into viably sized crofts (Individual).
- For those who inherit a croft but do not want to take up residency until later, legislation could allow sub-tenancy for a limited period (Individual).

### **Practical effects of making these changes to the legislation**

A total of 54 respondents commented on what the practical effects of making changes to legislation might be.

On the broader impact, one respondent thought that clearly drafted legislation would mean crofting may survive (Common Grazings Committee); another respondent was concerned that poorly drafted legislation may have an adverse effect (Common Grazings Committee).

Other of the effects suggested focused on social issues and included:

- If the Crofting Commission was to take a more active role in enforcing breaches of residence and use duties, communities could be sustained, including through new entrants into crofting (Legal, three Individuals).
- If land was decrofted, local communities might have a greater incentive to be more involved in the future of their areas (Individual).

Comments relating to financial issues included:

- Amalgamation of smaller crofts would allow new entrants a chance of making an income from crofting, encourage new entrants and perhaps increase retention of younger people (Individual).
- Allowing the free sale and disposal of crofts would encourage investment (Individual).

Comments relating to environmental issues included that purchasing crofting tenancies which are unused and offering them to new tenants could have environmental rewards through the regeneration of land (Individual).

Comments relating to equality issues included:

- Removing the 32km rule would help avoid disadvantaging those who have to generate income elsewhere (two Individuals).

- Allowing shared tenancies and transition arrangements for the gradual taking over of crofting tenancies could help promote social inclusion and equalities (Local Authority).

### **More appropriate ways to address issues**

A total of 58 respondents commented on other ways in which the issues relating to Absenteeism, Misuse and Neglect could be addressed. Comments made in earlier sections on Absenteeism, Misuse and Neglect which were policy related rather than relating to legislative issues are also included here. Comments included:

- Introducing price control for croft land would help encourage new entrants and reduce the scope for absentee owners to benefit from potential capital gains (Crofting Business).
- Rents should be increased for absentees or non-local residents (Individual).

### **Policy/administrative issues**

- New support mechanisms could be introduced after Brexit (Crofting or Smallholding Representative Body or Group).
- A subletting 'match making' service could help people who intend to pass their croft over to family members in future but who are unable to work the croft themselves in the meantime (Other).
- Training courses in maintaining and developing crofts could be offered to increase skills and confidence (Other).

### **Other comments**

A total of 38 respondents gave final comments in relation to Absenteeism, Misuse and Neglect. These comments included:

- Security of tenure should be absolute provided the rent is paid (Individual).
- The Crofting Commission should focus on absenteeism rather than misuse and neglect, which should be abolished (Individual).

## **4.2 Assignment and Succession**

Legislation on assignment and succession provides essential protection to crofters, allowing crofts to be transferred or inherited.

Assignment legislation governs the process by which a crofter transfers the tenancy of a croft either to another crofter or new crofter of their choice.

Succession legislation covers two circumstances relating to a deceased person:

- testate succession, whereby a crofter makes a will that names the person(s) they wish to leave the tenancy and/or common grazing shares to; or
- intestate succession, describing the succession to a deceased person's estate in the absence of a will or a will that cannot be given effect to.

While early engagement sessions organised by the Scottish Government raised relatively few issues relating to assignation or succession, the Crofting Law Sump Report raised a number of more technical issues, some of which were raised by respondents to this question.

#### **Question 4**

- A) What do you think are the main opportunities for change relating to Assignation and Succession?**
- B) What specific parts of the current legislation that you are aware of regarding Assignation and Succession could be changed to help address these issues?**
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating to Assignation and Succession could be addressed?**

**Please provide any other comments you may have on Assignation and Succession.**

#### **Main opportunities**

A total of 77 respondents commented on the main opportunities for change relating to Assignation and Succession. Of these two respondents felt that there is no need for change (two Individuals). Several respondents commented that the rules for crofters should be the same as for any other landholder (Local Authority, four Individuals).

A number of respondents agreed with Part 9 of the Crofting Law Sump Report, which called for the issue of succession to be reviewed by a suitably qualified expert panel with understanding of crofting law and law of succession in Scots Law (Crofting or Smallholding Representative or Body, Estate, Landowner or Representative Body, Local Authority, three Individuals).

Several respondents noted that paperwork and processes could be improved (Crofting Business, Other, two Individuals) and that the mechanisms for assignation and succession should be simple and transparent (Public Agency or Body). It was suggested that clarification on procedures is needed, including the involvement of the Crofting Commission (Estate, Landowner or Representative Body, Legal, Individual).

A number of respondents highlighted the need ensure that whoever took on a croft had the ability to manage it. Points raised included:

- For both assignation and succession through a will, legislation should require the inheritor to demonstrate that they have the ability and experience to run a

croft (Estate, Landowner or Representative Body, Local Authority, Individual).<sup>6</sup>

- Consent of the Crofting Commission should be required for transfer to a beneficiary under a will (Legal) including intestate succession (Local Authority).

There were a number of comments relating specifically to assignation, including:

- For assignation to proceed the assigned should have to confirm they are going to actively tend the croft (four Individuals)<sup>7</sup>.
- Assignation and compensation for improvements must be retained as a fundamental right (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, two Individuals).
- It should be easier to assign (Crofting Business) with no requirement for expensive and time-consuming registration of family assignations which are approved by the Crofting Commission and landlord (Individual).
- A crofting tenancy should be able to be held jointly (Local Authority).

There were a number of comments relating specifically to succession. Several respondents commented on the time allowed for transfer of the tenancy when a crofter dies intestate. Some respondents thought that the 24 months for transfer of tenancy should be longer (four Individuals).

Other comments included:

- Passing on a croft in parts does not work in practice and should be reviewed (Crofting or Smallholding Representative Body or Group).
- The discrepancies between intestate transfer of tenancy and assignation should be eliminated (Crofting or Smallholding Representative Body or Group).
- If a crofter dies intestate, the croft should be considered vacant and returned to the Crofting Commission for reletting (two Individuals).

### **Specific parts of the legislation**

A total of 42 respondents commented on specific parts of the current legislation that could be changed in relation to Assignation and Succession. Four respondents did not think the legislation should be changed (Common Grazings Committee, Community Landowner or Body, two Individuals). Points made by those who were looking for changes included:

- A 'clean sheet' approach to the law of succession is needed as further amendments may only add to complexity (Legal).

---

<sup>6</sup> There are already requirements in law to ensure the assignee or successor are required to meet certain conditions.

<sup>7</sup> This is a requirement already in law for certain assignations.

- The way in which crofting succession interacts with the Succession (Scotland) Act 2016 should be clarified (Legal).

### **Practical effects of making changes to the legislation**

A total of 42 respondents commented on what the practical effects of making changes to legislation might be.

Effects relating to assignation included:

- Incentivising inactive crofters to give up their tenancies to new entrants would increase the level of crofting activity (Common Grazings Committee).
- Making it simpler to assign to family members could encourage older crofters to pass on crofts to the next generation (Crofting Business, four Individuals).

Effects relating to succession included:

- If the Crofting Commission had to give its consent for transfer to a beneficiary, there would be social benefits from ensuring the croft land is transferred to people who will actively manage it (Legal, Local Authority, Individual).
- Requiring a business plan from anyone who obtained a croft through assignation or succession would help stabilise local crofting populations (Individual).
- Allowing joint crofting tenancies would promote equality (Local Authority).

### **More appropriate ways to address issues**

A total of 29 respondents commented on other ways in which issues relating to Assignation and Succession could be addressed. Their comments were primarily policy or administration related rather than about proposed legislative changes. Comments included:

- Template notices could be published along with guidance which explains processes (Estate, Landowner or Representative Body).
- Where land is poor and not viable without subsidy, crofters could be allowed to subdivide crofts to provide house sites for family or friends, provided these were primary homes (Individual).
- A forum of older tenants or others wishing to give up their croft could be set up to discuss the options available (Individual).
- Incentives for assignation rather than succession could be put in place (Individual).
- Non-family assignations can create difficulties for new entrants as the value of the tenancy may be too high. The Scottish Government could include a financial incentive to the out-going tenant to redress the financial imbalance (Common Grazings Committee).

- The Crofting Commission should publish data on retention figures for crofts after assignation and succession (Individual).

### **Other comments**

A total of 30 respondents gave final comments in relation to Assignation and Succession. A number of the comments were brief, although a Legal respondent submitted detailed comments on succession.<sup>8</sup> Other comments included:

- Grazings Committees should be consulted if an intestate succession is likely to go out with the family (Common Grazings Committee).
- Assignation is complicated by the registration process. The interaction between the croft register and assignation should be reconsidered (Legal).
- If a croft tenancy has been on the market for 10 years, it should be considered that crofting has ceased. At this point, the Crofting Commission should have the power to intervene and replace the old tenant with a new one (Individual).

### **4.3 Common Grazings**

Common grazings are traditionally areas of land that crofters have shares in that allow them to graze livestock on that land. The grazings are owned by a landlord but the landlord has limited rights over this land as it is securely linked to crofts (and cannot be readily removed from crofting). There are around 1,000 Common Grazings in crofting areas.

Common Grazings are usually managed by Grazings Committees, approximately half of which currently have committees in office. Grazings Committees make regulations to control their use and assist in their management. The 1993 Act contains provisions on the appointment and operation of Grazing Committees.

---

<sup>8</sup> As noted earlier, all responses which are to be published can be found on the Scottish Government's website.

### Question 5

- A) What do you think are the main matters and opportunities for change relating to Common Grazings?
- B) What specific parts of the current legislation that you are aware of regarding the Common Grazings could change to help address these matters?
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating Common Grazings could be addressed?

Please provide any other comments you may have on Common Grazings.

### Main opportunities

A total of 76 respondents commented on the main opportunities for change relating to Common Grazings.

Several respondents commented that majority of Common Grazings are underused (Estate, Landowner or Representative Body, Local Authority, two Individuals) but that grazing shares should be used (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, four Individuals). A number of respondents took the view that grazing shares must be used and there should be a 'use it or lose it' approach taken (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, four Individuals). Three respondents noted that many who do not use Common Grazings want to retain their rights and may obstruct decisions by outvoting those who use the grazings (two Estate, Landowner or Representative Bodies, Individual).

**Governance:** There were a number of comments relating to Grazings Committees and their functions. One respondent thought that there should be an external chair for a Grazings Committee (Individual). Another commented that Committees should be given a stronger role in developing townships (Local Authority). Others suggested abolishing Grazings Committees, which they saw as self-serving (three Individuals). Other comments included:

- Committee positions should be paid, with economic development grants available (Individual).
- Voting rights should be for shareholders only (three Individuals), but there could be local resident input (Individual).

There was a mixture of views about apportionment of Common Grazings. One respondent thought that individual crofters should not be able to apportion areas of Common Grazings (Individual). Another suggested that permanent apportionment should not be granted, unless for housing (Individual). Another option put forward



was that full apportionments should be minimised and temporary, with no more permanent apportionments agreed (Individual).

With reference to the Rural Payments and Inspections Division (RPID), it was suggested that payments should only be made when a Committee is in place (Common Grazings Committee). Two respondents commented that shareholders using grazings should have their payments extended not only to soumings but actual land use (Common Grazings Committee, Crofting or Smallholding Representative Body or Group).

**Crofting Commission:** Some respondents made specific comments in relation to the Crofting Commission's involvement in Common Grazings and Grazings Committees. These included that there should be guidance from the Crofting Commission on the duties, responsibilities and powers of Grazings Committees (Estate, Landowner or Representative Body, two Individuals). It was also suggested that the Crofting Commission should have a specific section dedicated to supporting Grazings Committees (Individual).

**Economic opportunities:** A number of potential economic opportunities were highlighted by respondents, including infrastructure for renewable energy (Other, Individual), wind turbines, solar energy (Individual) and tourism (Other). Another respondent thought there could be biodiversity related financial incentives associated with maintaining grazings in good condition (Individual). Using Common Grazings for woodland to generate sustainable community fuel was also suggested (Individual).

### **Specific parts of the legislation**

A total of 49 respondents commented on the current legislation that could be changed in relation to Common Grazings. Suggestions included that the primary legislation could be simpler and supported by regulations and guidance (Crofting or Smallholding Representative Body or Group).

Comments relating to Grazings Committees included:

- Legislation should be strengthened so that shareholders know they must have a Common Grazings Committee in place (Common Grazings Committee).
- The legal framework should encourage closer collaboration and joint working between landlords and crofters (Individual). Landlords should have a statutory right to be present at Common Grazings Committee meetings (Estate, Landowner or Representative Body, Individual).
- Legislation should require the Crofting Commission to regulate the financial aspects of shareholders rights (two Individuals).
- Section 38 of the 2010 Act (the duty on Common Grazings Committees to report breaches) should be repealed (four Individuals).

- Section 48(1) of the 1993 Act on duties of Common Grazings Committees should be clarified (Individual).
- A 'public good' clause could be added into legislation to avoid individual shareholders utilising Common Grazings shares for personal gain (Individual).

### **Practical effects of making changes to the legislation**

A total of 50 respondents commented on what the practical effects of making changes to legislation might be. Points raised included:

- If landlords were more involved in Common Grazings this could potentially increase economic activity where mutual objectives were pursued (two Individuals).
- A 'public good' clause would reduce the number of disputes over money (Individual).
- Simplifying the rules on Grazing Committees might encourage younger people to join (two Individuals).
- Reallocating vacant shares could benefit new entrants to crofting and increase sustainability (Legal).

### **More appropriate ways to address issues**

A total of 43 respondents commented on other ways in which the issues relating to Common Grazings could be addressed. Comments included that the terminology should perhaps be changed from 'grazings' to 'land' or 'common land' (Crofting or Smallholding Representative Body or Group, Individual). Other suggestions included that:

- Grazings Committees could be amalgamated to help take more grazing back into active management (Local Authority).
- Training and other support should be provided for Common Grazings Committees (Crofting or Smallholding Representative Body or Group, Other, three Individuals).

### **Other comments**

A total of 32 respondents gave final comments in relation to Common Grazings. Most of these were brief, although a Local Authority and a Legal respondent made extensive comments. For example, it was suggested that consideration could be given to Grazings Committees being able to apply for limited liability status or to be a company limited by guarantee (Legal). Other comments included:

- Grazings Committees should be able to hold money for investments in the longer term (Other).
- National and local policy, including planning policy, should work hand-in-hand with any new legislation to realise enhanced development of Common Grazings (Public Agency or Body).

- There are very few issues in Shetland around Common Grazings (Individual).
- In the Western Isles, Common Grazings Committees could be replaced by a small team of management and administrative staff (Individual).

#### **4.4 Crofting Commission Regulatory Functions and Processes**

The Crofting Commission is a Non-Departmental Public Body (NDPB) responsible for regulating crofting. Its constitution, powers and duties are fully set out in the Crofters (Scotland) Act 1993, as amended by the Crofting Reform (Scotland) Act 2007, the Crofting Reform (Scotland) Act 2010 and the Crofting (Amendment) (Scotland) Act 2013.

The Crofting Commission's general functions are to regulate and reorganise crofting, and to promote the interests of crofting whilst keeping crofting matters under review. As the Commission operates within the framework of crofting legislation, there is potential for a future Bill to amend the legislation relating to the operation of the Commission and its Board, as well as the requirements placed on it.

##### **Question 6**

- A) What do you think are the main opportunities for change relating to the Crofting Commission's regulatory functions?**
- B) What specific parts of the current legislation that you are aware of regarding the Crofting Commission's regulatory functions that could be changed to help address these matters?**
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating to the Crofting Commission's regulatory functions could be addressed?**

**Please provide any other comments you may have on the Crofting Commission's regulatory functions and procedures.**

##### **Main opportunities**

A total of 74 respondents commented on the main opportunities for change relating to the Crofting Commission's regulatory functions. Many of the comments were policy or administration related, rather than proposals for legislative change.

The two most frequently made comments in relation to the work of the Commission were that it lacks the resources to carry out its role as regulator effectively (two Common Grazings Committees, Crofting Business, Crofting or Smallholding Representative Body or Group, Legal, Local Authority, eight Individuals) and that the crofting development role should be removed from HIE and returned to the Crofting Commission (two Common Grazings Committees, Crofting Business,

Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, Local Authority, eight Individuals).

**Resourcing:** There were some positive comments about the work of the Commission, but also concerns that without the required resources it cannot fulfil its regulatory functions (Common Grazings Committee, Crofting Business). One respondent noted that a well-resourced Crofting Commission is at the heart of crofting legislation (Crofting Business). However, it was also noted that it is a small organisation regulating over 20,000 crofts and, it was suggested, without the required complement of staff (Individual). Other comments included that the time taken to reach regulatory decisions should be reduced, either by legislative reform or increased resources (Legal).

**Development role:** Whilst many respondents linked the need for increased resources to the current workload of the Commission, other respondents raised issues about funding and support because they envisaged an expanded role for the Commission. Specific comments included that increased resources would be required if the Commission took on the development role (Common Grazings Committee, Crofting Business, Crofting or Smallholding Representative Body or Group, Local Authority, four Individuals). Other comments included:

- If the Commission takes on a development role this should not dilute its regulatory functions (Estate, Landowner or Representative Body) but rather should increase its awareness of the impact of regulatory decisions on the development of crofting (Individual).
- An independent crofting body with powers and resources is needed, especially in light of Brexit and the replacement of current support for crofters with a new system (Crofting Business).

**Simplification:** A number of respondents commented on the Crofting Commission's processes and suggested there was the potential for simplification or increased efficiency (five Individuals). Specific suggestions included fixed timescales for the processing of regulatory functions (Crofting Business) and producing documentation in Plain English (two Individuals).

### **Specific parts of the legislation**

A total of 31 respondents commented on specific parts of the current legislation that could be changed in relation to the Crofting Commission's regulatory duties. Of these, seven stated that they were not sure or had no comment. Points raised by others included:

- The Commission should have more power over Grazing Committees (Individual).
- Legislation should be more community focused and not just focused on crofting (Individual).

## **Practical effects of making these changes to the legislation**

A total of 35 respondents commented on what the practical effects of making changes to legislation might be. Suggestions included:

- Abolishing the Commission would allow its budget to be used for supporting local crofting communities (Common Grazings Committee).
- Allowing the Commission greater flexibility in how it resolves regulatory problems would reduce uncertainty and expense for crofters (Legal).
- Making legislation which relates to the Crofting Commission community based rather than crofting based would create a fairer, more equitable system (Individual).
- Speeding up the time taken to investigate disputes would benefit the rural economy (Estate, Landowner or Representative Body).
- Increased power over Grazings Committees would increase fairness locally (Individual).
- If the Commission was responsible for crofting development, regulatory decisions could take account of the environmental, social, equality and financial impacts, for example when considering decrofting applications for house sites (Individual).

## **More appropriate ways to address issues**

A total of 32 respondents commented on other ways in which the issues relating to the Crofting Commission's regulatory functions could be addressed. Comments included:

- Commissioners should visit each township once or twice each year (Estate, Landowner or Representative Body).
- The number of Commissioners should be increased where crofting is at its highest density, for example in the Western Isles (Individual).
- Some regulatory functions (for example, breach of duties) could be dealt with by local crofting communities and Common Grazings Committees (Legal).
- Local Authority Planning Services should not decide on an application proposing development on croft land until the Commission has had the opportunity to consider the possible impact on crofting (Individual).

## **Other comments**

A total of 32 respondents gave final comments in relation to the Crofting Commission's regulatory functions and procedures. Points included that all Commissioners should be elected, and the majority should be crofters (Common Grazings Committee). Other suggestions included that the Commission's Inspectors could do more to support crofters. For example, the count and inspection of sheep quotas could be at weekends for those crofters who work elsewhere during the week (Individual). It was also suggested that all Crofting

Commissioners should be elected and that the majority should be crofters (Common Grazings Committee).

## 4.5 Crofting Registration

The 2010 Act introduced the requirement for the Keeper of the Registers of Scotland to establish and maintain a public Crofting Register of crofts, common grazings and land held runrig. The Register of Crofts enables the ready identification of property rights and boundaries to provide certainty over the areas of land associated with a croft.

### Question 7

- A) What do you think are the main opportunities for change relating to Crofting Registration?**
- B) What specific parts of the current legislation that you are aware of regarding Crofting Registration could be changed to help address these matters?**
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating to Crofting Registration could be addressed?**

**Please provide any other comments you may have on Crofting Registration.**

### Main Opportunities

A total of 72 respondents made a comment on the main opportunities relating to Crofting Registration. Of these, three Individual respondents commented only that they did not see any opportunities.

Otherwise, a small number of respondents commented on the need for registration. Points raised included that crofting registration should be scrapped (two Individuals) or the need for deemed registration should be removed (Other). It was suggested that there is no compelling reason for crofts to be registered any differently from any other land (Public Agency or Body), and that the question as to why crofting registration is necessary should at least be considered before looking at how it might be improved upon (Local Authority). However, others were of the view that croft registration is positive and/or required (Estate, Landowner or Representative Body, Local Authority, three Individuals).

Some concerns were raised about the current approach, including a suggestion that the system is not fit for purpose, and that some entries in the Crofting Register are inaccurate (Legal) or contain no information on the extent of the crofts (Legal). The challenges associated with correcting such inaccuracies were also noted (Legal), along with a suggestion that the current legislation will, in some instances, be unenforceable (Legal). It was noted that the Crofting Reform (Scotland) Act

2010 requires a croft to be registered on the sale of the croft or any part of it, but that in order to register a croft it has to be defined on a plan. This latter issue was highlighted as possibly causing particular challenges for Orkney because of the owner occupation tradition (Legal).

The most frequently raised issue was registration costs and, more specifically, the opportunity to reduce them (Estate, Landowner or Representative Body, 14 Individuals). Specific suggestions were that:

- There should be an initial period during which there is assistance with the costs of registration (two Individuals).
- Registration costs should be covered by the landlord rather than the tenant (Individual).

The next most frequently raised general theme was that the Crofting Registration process could be simplified or streamlined (Crofting Business, Local Authority, nine Individuals). Suggestions as to how this could be done included being able to submit all materials online (Individual) and reducing the advertising requirements (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, six Individuals).

Respondents also identified opportunities around the mapping of crofting boundaries, including that the approach taken should be streamlined (Local Authority, Public Agency or Body, two Individuals). A specific suggestion was that a community mapping approach should be used and that this should be structured around townships or parishes (two Common Grazings Committees, Crofting or Smallholding Representative Body or Group, four Individuals). Other mapping-related comments included:

- Common Grazings should be included (two Common Grazings Committees, Crofting or Smallholding Representative Body or Group, Local Authority, two Individuals). It was suggested that this approach would require adequate resourcing (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, four Individuals).
- The proposal in the Shucksmith Report suggesting that a boundary that had remained uncontested for 20 years should be recognised as a defined boundary should be revisited (Local Authority).

Other opportunities for change put forward included:

- Merging the Crofting Commission's Register of Crofts and the Registers of Scotland Crofting Register into a complete Crofting Register (Estate, Landowner or Representative Body).
- Making landlords or estate owners responsible for registering all crofts on the land they own (Individual).
- Applying crofting legislation across Scotland to allow existing smallholdings and newly created crofts be registered under crofting tenure (Common

Grazings Committee, Crofting or Smallholding Representative Body or Group, two Individuals).

### **Specific parts of legislation**

A total of 30 respondents commented on the specific parts of the current legislation regarding Crofting Registration.

The only specific reference to the legislation was that Part 2 of the 2010 Act could be simplified to deliver a more efficient process for registration, notification and advertising registrations. It was noted that there are anomalies in Part 2 that do not fit well with subsequent developments in crofting law or crofting regulation (Public Agency or Body).

In terms of aspects of the current legislation which could be changed the following were suggested:

- There should be no requirement to register a croft on a family assignment (Individual).
- The 9-month period for making an objection could be reduced (Individual). Alternatively, the 9-month period should be kept (Local Authority).
- The clause that allows anyone 'who is otherwise aggrieved' to object should be removed (Individual).

### **Practical effects of making changes to the legislation**

Although 33 respondents commented at this question, their comments tended to be very brief. Suggested effects of making changes to the legislation were:

- A more streamlined, cost-effective system (Estate, Landowner or Representative Body, 10 Individuals) with possible cost savings, including for those registering crofts (Common Grazings Committee, Local Authority, Public Agency or Body, two Individuals).
- Increased certainty and security for applicants for registration (Public Agency or Body). Increased accuracy of the Register if it is made easier and more cost-effective to have inaccuracies corrected (Legal).
- Reduced boundary conflict once short-term initial conflicts have been resolved (Estate, Landowner or Representative Body).
- Making it possible to create new crofts (two Individuals) and, in particular, more woodland crofts (Individual).

### **More appropriate ways to address issues**

Only 22 respondents commented at this question, although not all comments addressed whether there are more appropriate ways to address issues relating to Crofting Registration than by making changes to legislation.

Two respondents thought there were not more appropriate ways (two Individuals). The specific suggestions made by those who did included:



- Having only one Register and the Scottish Government placing a requirement on the organisation responsible for the Register to ensure that any inaccuracies are corrected as a matter of urgency (Common Grazings Committee).
- Allowing the grazing share to be registered with the croft for both shares and deemed crofts (Individual).
- Improving the search facility on the Crofting Register website (Individual).
- The Scottish Government looking at a new incentive scheme to encourage more registrations of common grazings in particular (Local Authority).
- Using an alternative approach to registration, such as community mapping (Other).

Finally, it was noted that the Keeper of the Registers of Scotland and the Crofting Commission are already working to create efficiency savings within the constraints of the current legislation. This includes promoting community mapping as a means of increasing the coverage of the Crofting Register (Public Agency or Body).

### **Other comments**

A total of 21 respondents made an additional comment in relation to crofting registration. It was suggested that the Crofting Register seems to bring little benefit to crofters (Local Authority, two Individuals). As at earlier questions, some comments reiterated the need to simplify the process (two Individuals). However, it was also suggested that experience suggests that the majority of croft registrations proceed without disagreement or challenge (Individual).

Other points raised included:

- The rationale for a crofter purchasing their croft not triggering registration is unclear if the aim is to get information about the extent of croft land on to a map-based register (Legal).
- It would be helpful if the Crofting Commission was undertaking both the Grazings and Townships register in order to ensure consistency (Other).
- The Crofting Register should have a 'burdens' section where pertinent information about the croft can be recorded (Individual).

## **4.6 Owner Occupation**

The current intention is that both croft tenants and owner occupiers should have an equivalent balance of rights and responsibilities within the crofting system, in relation to the rights of crofting communities and future entrants to crofting. The current legislation largely reflects this principle of equivalence, but changes could be made to either strengthen it or depart from it.

Stakeholders have expressed concern that a technical loophole in the current law has been identified whereby some owner occupiers do not have the status of

'owner occupier crofters'. The Bill could provide an opportunity to rectify this, if considered appropriate.

### **Question 8**

- A) What do you think are the main opportunities for change relating to Owner Occupier crofts?**
- B) What specific parts of the current legislation that you are aware of regarding Owner Occupier crofts could be changed to help address these matters?**
- C) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- D) Apart from changes to legislation, are there other more appropriate ways that issues relating to Owner Occupier crofts could be addressed?**

**Please provide any other comments you may have on Owner Occupier Crofts.**

### **Main Opportunities**

A total of 65 respondents made a comment at Question 8a. One respondent suggested the current legislation should be kept (Crofting Business). However, the remaining respondents did see opportunities for change. For example, it was suggested that the distinction between owner-occupied and tenanted crofts should be removed (Common Grazings Committee, Crofting Business, three Individuals). It was also suggested that the single term 'crofter' should be used (Crofting or Small Holding Representative Body or Group, Legal, Local Authority, six Individuals).

The most frequently made comment was that owner occupier crofters should be able to decroft their property if they choose (Local Authority, 10 Individuals). A different perspective was that if a croft is purchased it should automatically be removed from crofting tenure (Estate, Landowner or Representative Body, Legal, three Individuals). It was suggested that this approach could also apply to owner occupiers and landlords of vacant crofts or landlords of parts of vacant crofts. The Estate, Landowner or Representative Body respondent raising this issue commented that those wanting to remain in the crofting system could take steps to install a new tenant or divest themselves of ownership.

Others had concerns about removing owner-occupied crofts from the crofting tenure (Local Authority, Individual). It was suggested that this approach would, in all likelihood, herald the beginning of the end of the crofting system (Local Authority) and that the use of right to buy provisions should be discouraged or they should be removed from statute (Community Landowner or Body, four Individuals). A Public Agency or Body respondent commented that the choice of whether to include the right to buy in any new legislation should be considered very carefully. They suggested that any decision should be informed by evidence around the best balance of social and economic benefits for crofting communities, crofting, and crofters. Another Public Agency or Body also commented that the reasonableness

of the purpose for decrofting should be balanced against the long-term interests of the crofting community.

Other general comments specifically about ownership included that:

- It has proved very difficult to apply regulation to owner-occupied crofts and attempts to address problems through the 2010 Act have not been successful (Local Authority). A contrasting view was that the approach taken by the 2010 Act is sound in principle – to make the legislation for owner-occupied crofts mirror as closely as possible the arrangements for tenanted crofts – but allowing discretion for the Crofting Commission to decide cases on their merits (Public Agency or Body).
- Consideration should be given to whether legal persons, such as a company, should be entitled to be the designated occupier of a croft (Legal).
- The issue of ownership of multiple crofts needs to be considered (Common Grazings Committee, Crofting or Small Holding Representative Body or Group, five Individuals).

A small number of comments were made around crofting funding, grants or costs. These included that:

- Development grants should be available to owner occupier and tenant crofters (Crofting Business, Individual).
- If an owner-occupied property is decrofted, these former crofters would be able to access commercial lending that is not available to tenant crofters (Estate, Landowner or Representative Body).
- If an owner-occupied property is decrofted, consideration would need to be given to the level of commuted repayment of any grant assistance (Estate, Landowner or Representative Body).
- The costs, and particularly the legal costs, associated with buying a croft can be high (three Individuals).

### **Specific parts of legislation**

A total of 24 respondents commented on the specific parts of the current legislation regarding Owner Occupier crofts that could be changed. A small number of these reiterated points made at the previous question.

General suggestions for change included:

- That all parts of every Crofting Act need to apply equally to all crofters, irrespective of ownership, and when the croft became owner-occupied (Crofting Business).
- Implementing the changes proposed by the Crofting Sump law (Local Authority).

Specific suggestions included:

- Upon the exercising of the right to buy under section 12, the land acquired would be removed from crofting tenure (Estate, Landowner or Representative Body).
- Changing the formula applied to determine the purchase price of a croft (Individuals).

### **Practical effects of making changes to the legislation**

Although 27 respondents commented at this question, their comments tended to be brief and sometimes reiterated points made above.

The further comments made included that changes to the legislation would have the effect of making things simpler (Common Grazings Committee, Estate, Landowner or Representative Body, Individual). It was also suggested that it would be fairer (Individual) and would create equal responsibilities or equality (three Individuals). Specifically, it was suggested it would create equity with other landowners in Scotland (Individual) or with non-crofting neighbouring property (Estate, Landowner or Representative Body).

Other more specific effects identified included:

- Increased stability or security for owners, including those who have invested in their croft (two Individuals).
- An increase in entrepreneurship (Individual). Also, increased opportunities to make a croft viable (Individual).
- Reduced costs to the public purse in relation to croft grants (Estate, Landowner or Representative Body).
- Owners being able to access commercial lending (Estate, Landowner or Representative Body).
- A reduced caseload for the Crofting Commission (Estate, Landowner or Representative Body).

### **More appropriate ways to address issues**

Only 14 respondents commented at this question, and most comments covered issues already addressed above. Additional suggestions for other ways to bring about change included:

- The Crofting Commission taking a position that people who own and occupy croft land are owner occupiers even if they took ownership before 2010 (Crofting Business).
- Providing a grant scheme for encouraging investment in crofting, including a full housing loan (Individual).
- The Scottish Government, through HIE, making land buy out funding available to individual crofters rather than just to whole crofting communities (Crofting Business).

## **Other comments**

A total of 27 respondents made an additional comment, although many of these were brief and reiterated points covered at earlier questions.

A Legal respondent commented on the role of owner occupier crofters within the crofting system. They reported that while one view is that one of the fundamental principles of the Crofting Reform (Scotland) Act 2010 was that owner occupier crofters and croft tenants should be subject to the same, or at least very similar, duties, others would argue that owner occupier crofters should be free from crofting regulation. They suggested that, whichever view is taken, the position of owner occupier crofts should be addressed specifically within the legislation to ensure legal certainty.

An Other respondent highlighted a specific set of arrangements applying to the National Trust for Scotland's ownership of crofts and how these arrangements then impact on the sale of crofts to tenants.

Finally, it was suggested that the focus of this consultation has very much been on the farming aspect of crofting and that insufficient attention has been given to the contribution crofts can make towards tourism (Estate, Landowner or Representative Body).

## **4.7 Standard Securities**

Tenant crofters have raised the issue of being unable to secure funding for housing or business development. One of the main reasons for the inability to secure funding is that tenant crofters are unable under the current law to have a Standard Security issued over their tenancies. Crofters are usually required to exercise their right to buy the croft under section 12 of the 1993 Act, so they then can obtain a Standard Security over their ownership of the croft holding. In order to make the secured asset more attractive to lenders, the property usually needs to be decrofted so that it is not subject to 1993 Act regulation.

During the development of the 2010 Act it was intended for the legislation to introduce the ability for Standard Securities to be raised over crofting tenancies. This proved complex, however, and the provisions were removed late on in the passage of the Bill through the Scottish Parliament. Subsequently, the Scottish Government has received a number of calls to reintroduce legislation in relation this matter.

### **Question 9**

- A) What do you think are the main opportunities from granting a Standard Security over a croft tenancy?**
- B) What do you think would be the practical effects of making these changes to the legislation (e.g. financial, environmental, social, equality or other effects)?**
- C) Apart from changes to legislation, are there other more appropriate ways that issues relating to Standard Securities could be addressed?**

**Please provide any other comments you may have on granting Standard Securities on croft tenancies.**

### **Main opportunities**

A total of 65 respondents commented on the main opportunities from granting a Standard Security over a croft tenancy. The most frequently made comment was that it would give crofters the ability to raise finance without having to decroft (Crofting Business, Local Authority, Public Agency or Body, five Individuals). It was suggested that this, in turn, could result in a reduction of decrofting (Public Agency or Body, two Individuals).

There were some concerns about the potential for default on loans and the loss of owner-occupied crofts into the control of financial institutions (Community Landowner or Body, three Individuals). It was noted that the Crofting Law Sump Report had recommended that the definition of crofter should exclude a commercial body, such as a bank, being able to take possession of a croft (Individual).

Several respondents commented that they agreed with Crofting Law Sump Report (sections 10.1 – 10.4) regarding Standard Securities and that crofting mortgages should be reviewed by an expert group of practitioners, with an understanding of both crofting law and the laws of securities in Scots law (Crofting or Smallholding Representative Body or Group, Legal, Individual).

Some respondents were sceptical as to whether lenders would engage with Standard Securities (two Local Authorities, Estate, Landowner or Representative Body, Individual). Two respondents commented that a crofting tenancy is not a marketable asset, therefore lenders would not be interested in a croft as security (two Individuals).

One respondent noted that surveyors may need to advise lenders on the value of the croft in the event of the lender having to call up the Security. They pointed out that the Crofting Law Sump Report has already suggested that the Crofting Register may be the place to register these securities (Legal).

There was also reference to the general challenges that new entrants to crofting, and especially young people, can face when trying to secure the necessary

finances to purchase a croft. Several respondents suggested approaches which could address the problems being experienced. These included:

- A Scottish Government underwritten voluntary scheme of finance to provide mortgages without security (Community Landowner or Body, Other, Individual).
- A crofting credit union (Crofting or Smallholding Representative Body or Group, two Individuals) or Scottish Government loans (Crofting or Smallholding Representative Body or Group).
- Reintroducing Crofting Building Grants and Loan Scheme (Community Landowner or Body, two Individuals).
- Scottish Government loan guarantees to financial institutions, through an agency or a non-participating financial institution (Individual).
- A crofting bank and lending to the value of land and improvements (Individual).

### **Practical effects of making these changes to the legislation**

A total of 35 respondents commented on what the practical effects of making changes to legislation might be. Suggested effects included:

- Affordable housing is an issue (Individual) therefore changes could make crofting more attractive to those who want a loan, especially for housing (Individual). In particular, young crofters could access funds to build houses in crofting areas (two Individuals).
- There is a risk that croft tenancies become burdened. In cases of default the process for dealing with transfer of assignation would have to be considered (Local Authority).
- The restrictive title under the present right to buy legislation would have to be removed (Individual).

### **More appropriate ways to address issues**

A total of 30 respondents commented on other ways in which the issues relating to Standard Securities could be addressed.

One respondent suggested that the Scottish Government could work with lenders to create financial options for crofters which do not require Standard Securities (Public Agency or Body). Another suggested that the new Scottish Investment Bank could lend on the basis of a croft tenancy (Individual). Two respondents referred to the Crofting Building Grant and Loan Scheme, which was secured by a personal bond, as a possible funding mechanism (Legal, Individual). Another respondent commented that there should be evidence on the levels of default on this scheme, which they understood to be very low, indicating that a government loan-based system or government supported credit union might work (Individual).

## **Other comments**

A total of 27 respondents gave final comments in relation to Standard Securities on croft tenancies. One legal respondent gave a very detailed response on issues regarding succession. Other comments included:

- Standard Securities threaten security of tenure (Individual).
- The idea of Standard Securities should be dropped as unworkable (Individual).
- Owner occupiers can experience difficulties too, for example when selling their croft, as potential buyers may have problems securing a mortgage (Individual).



## 5. Ordering of priorities

Question 10 asked respondents to consider which of the seven issues discussed above should be priorities for the Crofting Bill.

**Question 10: Please list in order of 'highest priority' first to 'lowest priority' last**

A total of 77 respondents answered the quantitative ranking question. However, not all respondents used the full range of the 1-7 ranking; 14 respondents did not use the full range. Some simply identified only a smaller number of priorities (perhaps using the first, second and third ranking but not ranking the other issues. Others identified first or second priorities at Question 11 below, and then ranked others using the remainder of the 1-7 scale. Others identified their main priorities at Question 11 but still ranked the other seven priorities at Question 10 on the 1-7 scale.

Given these variations, the figures presented in Table 4 and Chart 1 below should be seen as indicative.

Respondents were most likely to select Absenteeism, Misuse and Neglect or Crofting Commission Regulatory Functions and Processes as being their first priority. These areas were a first priority for 21 and 17 respondents respectively. Respondents were least likely to select Crofting Registration; this was a first priority for only two respondents.

At the other end of the spectrum, Standard Securities emerged as the lowest priority for the largest number of respondents having been chosen by 21 respondents. Assignment and Succession was the lowest priority for only one respondent.

The chart presents the total relative priority given to each of the seven issues.<sup>9</sup> Very much reflecting the results of the basic frequency (as set out in Table 4), Absenteeism, Misuse and Neglect emerged as the highest priority, followed very closely by Crofting Commission Regulatory Functions. Standard Securities had the lowest relative priority. Overall, however, all priorities received a degree of support.

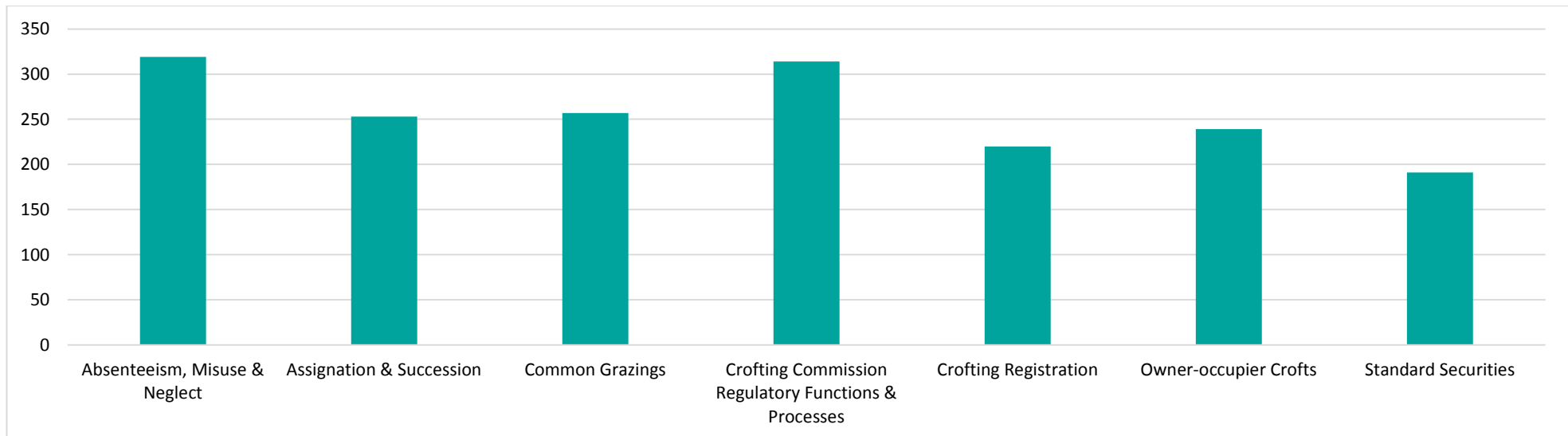
---

<sup>9</sup> The first priority was awarded 7 points, with points then awarded on a sliding scale and with the seventh priority awarded one point. Please note that as not all respondents used the full scale this approach will give a small relative weighting to issues tending to be awarded the higher priorities.

**Table 4: Priorities allocated to various issues**

Issues	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>
Absenteeism, Misuse and Neglect	21	15	8	6	2	2	8
Assignment and Succession	5	8	16	10	11	8	1
Common Grazings	8	8	10	11	13	8	4
Crofting Commission Regulatory Functions and Processes	17	15	8	8	7	3	6
Crofting Registration	2	6	12	10	12	13	8
Owner occupier Crofts	7	10	5	9	12	12	9
Standard Securities	7	4	6	8	3	13	21

**Chart 1: Totalled relative priorities for Crofting Bill**



**Question 11a: Are there any other priorities for crofting that have not been considered in this consultation?**

A total of 47 respondents made a further comment.

A small number of respondents noted that it was difficult to rank the seven priorities listed, including because they are all issues which need to be addressed (Common Grazings Committee, Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, Legal, two Individuals).

Some respondents commented on the overall approach as opposed to specific alternative priorities. For example, it was suggested that rather than concentrating on specific topics, the focus should be incorporating the recommendations from previous work into the legislation, including the Shucksmith Report (Local Authority, Crofting or Smallholding Representative Body or Group, two Individuals). Another respondent suggested that the focus should be on developing a strong vision and direction for crofting over the next 20 years (Crofting Business).

Other respondents identified specific areas which they thought should be a priority going forward. These were all non-legislative and included:

- Promoting crofter's rights (Common Grazings Committee, Individual).
- Policies focusing on securing the future of rural communities (Common Grazings Committee, Local Authority). There was specific reference to the retention of population in the most fragile areas of the Northern and Western Periphery (Local Authority).
- Support mechanisms, and agricultural subsidies in particular (Local Authority, four Individuals). There was specific reference to the possible impact of Brexit (Local Authority).
- Housing-related support (Common Grazings Committee, Community Landowner or Body, Local Authority, Individual).
- Support for new entrants into crofting (Community Landowner or Body, two Crofting Businesses, Individual).
- Policy relating to Woodland Crofting, including encouraging new woodland crofts (Community Landowner or Body, Crofting or Smallholding Representative Body or Group).

**Question 11b: Are there any potential unintended consequences of crofting legislation reform?**

A total of 34 respondents made a comment about unintended consequences of crofting legislative reform. Two of these respondents thought there would be no

unintended consequences (two Individuals). A small number of other respondents felt that unintended consequences are likely or inevitable (Public Agency or Body, two Individuals). However, a Public Agency or Body suggested that they should be more predictable and manageable when associated with a well thought out new legislation than would be the case with the alternative options involving consolidation of the existing very complex and flawed legislation. Similarly, a Local Authority suggested that if the 'clean slate' approach is not taken, further anomalies could arise.

Other respondents referred to possible consequences associated with the overall approach taken including that the legislation is welcome as long as the ethos of the crofting system is not compromised (Community Landowner or Body). Other comments included that legislative reforms could result in loss of historical and fundamental crofter's rights (Common Grazings Committee, two Individuals). Other possible consequences identified included:

- On-going damage to the potential for business development on the land due to regulatory processes (Local Authority).
- A loss of cultural and linguistic diversity, particularly if indigenous Gaelic-speaking people and stable communities are replaced with new, English-speaking, transient communities (two Individuals).
- Having given more responsibility and flexibility to the Crofting Commission, the system may lack feedback mechanisms (Individual).
- Introducing Standard Securities may have the effect of pricing young new entrants out of the market (Individual).

**Question 11c: Please tell us any other thoughts you have about the proposed Crofting Legislation reform not covered in your earlier answers.**

A total of 27 respondents gave other thoughts about the proposed Crofting Legislation. Comments were diverse but frequently covered points made at earlier questions. Additional points sometimes identified areas which respondents felt should have been addressed in the consultation paper. These included:

- Apportionments. It was suggested that crofters have the right to apply for an apportionment of a part of the common grazings for a specific purpose and a discussion of the opportunities should be included in the consultation (Individual).
- Section 10 of Schedule 2 of the Crofters (Scotland) Act 1993 (The crofter shall not do any act whereby he becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985), has not kept pace with the changing circumstances whereby the Account in Bankruptcy may discharge the bankruptcy in 6 months to a year. This needs to be reconsidered (Individual).

Other comments addressed the potential of crofting communities, with issues raised including:

- The potential crofting communities have to contribute to the provision of affordable rural housing, whilst making sure that locally important, good quality land or land of high natural conservation/biodiversity value is protected if alternative sites are available (Local Authority).
- The potential of crofting to help transform Highland and Island communities, including through the development of tourism and by neighbouring crofters working together to achieve economies of scale (Estate, Landowner or Representative Body).
- Two Individual respondents commented on the role of HIE. One suggested the transfer of the development function to HIE has not been a success and that these responsibilities should be returned to the Crofting Commission (Individual). The other respondent raised concerns about relying on bodies such as HIE to address the socio-economic challenges crofting communities face. (Individual).

Finally, a Local Authority respondent commented that it will be important to ensure that Crofting legislation works in harmony with other parts of the Government's legislative programme, such as Land Reform, Community Empowerment and Localism. They also noted that that crofting systems vary across the Crofting Counties and, unless regulations are able to vary with location, there is a risk of enacting 'lowest common denominator' legislation.

**Question 11d: If you have any comments on non-legislative, wider aspects of crofting please provide them.**

A total of 44 respondents made an additional comment either at Question 11d or otherwise outwith the main consultation questions. Some of these further comments were substantial. The main themes are presented within the analysis below. Further detail can be found within the responses published on the Scottish Government's website. All responses have been reviewed by the Scottish Government's Crofting Policy Team.

A small number of organisational respondents made extensive statements covering the current position of crofting and their priorities or vision for the future (Community Landowner or Body, Local Authority). Amongst the topics covered were the modern-day function of crofting (Community Landowner or Body) and the role crofting can play in economic and social development (Community Landowner or Body, Estate, Landowner or Representative Body, two Public Agencies or Bodies).

Other comments focused on how any legislative reform should be taken forward. They included that:

- There is a range of existing work or evidence which should be drawn on to inform any legislative reforms. Reference was made to the Final Report of the Committee of Enquiry on Crofting and the Crofting Sump Law (Crofting or Smallholding Representative Body or Group, Estate, Landowner or Representative Body, Local Authority).
- It will be important to ensure that those with specialist knowledge of crofting and crofting law are involved in taking any reforms forward (Crofting or Smallholding Representative Body or Group).
- Crofting Law is 'first and foremost' about protecting the rights of crofters and care must be taken to ensure that single-issue pressure groups do not have undue influence (Common Grazings Committee).

## 6. Final reflections

The Scottish Government is committed to reviewing the modernisation of crofting law within this Parliamentary session. This consultation sought views on the type of new legislation that may be required and priorities for crofting.

As highlighted throughout this report, the comments submitted by the 122 respondents to this consultation were diverse, making it challenging to identify any clear themes. This is perhaps typified by responses to whether or not respondents agreed with Scottish Government crofting policy, where views were almost evenly divided. In this instance, closer analysis showed that most of the responses focused on specific aspects of wording of the policy, rather than calling for a fundamental change.

There were also parts of the consultation where the views expressed by respondents were, at times, in opposition to each other. For example, the issue of Absenteeism, Misuse and Neglect was one where increased sanctions and enforcement were desired by some respondents, whilst others argued for flexibility and support. Tightly defined duties and vigorously applied sanctions for breaches are not likely to be compatible with a flexible approach.

In terms of best approach for any future legislation, by some margin the strongest support was for Option 4, a Bill setting out 'new' crofting law. However, this was favoured by less than half of the overall total number of respondents, with a significant proportion (almost a quarter) favouring Option 2, a Bill amending existing legislation/pre-consolidation Bill.

Other than there being a reasonable body of opinion behind Option 4, a Bill setting out new crofting law, there was little else to emerge in terms of clear consensus that points to any individual option being the favoured approach. For example, although a degree of priority was placed on Absenteeism, Misuse and Neglect and Crofting Commission Regulatory Functions, other legislative priorities also received support. Overall, the differences across the legislative priorities were not significant, making it harder to identify the way forward with any clarity.

This range of opinion was reflected in the comments on each of the specific priorities where suggestions for changes were sometimes pulling in opposite directions. For example, some respondents favoured a stronger role locally for Grazings Committees, whilst others thought they should be abolished. In other parts of the consultation respondents focused their attention more on policy or administrative changes, for example in relation to the functions and processes of the Crofting Commission. Whilst undoubtedly useful, these do not give any clear steer for future legislation.

The consultation paper noted that the views submitted to this public consultation exercise would be used to help shape any new Crofting Bill to be brought before

Scottish Parliament. Overall, as illustrated above, there was little in way of clear consensus to suggest what should be contained within any Bill, albeit the largest proportion of respondents did think that Bill should be setting out new crofting legislation.



## Annex 1 - Organisations responding to the consultation

ALGAO Scotland
Argyll and Bute Council (Officer response)
Bòrd na Gàidhlig
Brodies LLP
Comhairle nan Eilean Siar
Community Land Scotland
Crofting Commission
D&H Law
EMBO Trust
Firm of Ardbhan Croft
GB & AM Anderson
Geary Township Common Grazings Committee
Highland Council
Highlands and Islands Enterprise Limited
Knockfarrel Produce
Law Society of Scotland
Lindsays
Lochcarron Estate
Lows Orkney Ltd
NFU Scotland
Registers of Scotland
SAC Consulting
Scottish Crofting Federation
Scottish Land & Estates
Scottish Land Commission
Shareholders of Tarskavaig Township
Shetland Islands Council
Sleat General Grazings Committee, Ferrindonald Grazings Committee, Teangue Grazings Committee
Smallholding Scotland
South Erradale Opinan & Porthenderson Common Grazings
The National Trust for Scotland
Woodland Crofts Partnership



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2018

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78851-662-4 (web only)

Published by The Scottish Government, March 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS365026 (03/18)

W W W . G O V . S C O T