



CROFTING LAW REFORM PROPOSALS 2024: CONSULTATION

Report by Chief Officer, Economic & Community Regeneration

PURPOSE

- 1.1 The purpose of the report is to seek homologation of the Comhairle's response to the Scottish Government consultation on crofting law reform proposals 2024, which closed on 2 September 2024.

EXECUTIVE SUMMARY

- 2.1 On 6 June 2024, Scottish Government opened a consultation seeking views on proposals for changes and simplifications to crofting law. These include entry to crofting, crofting communities, use of common grazings, strengthening residency and land use, and enhanced Crofting Commission powers.
- 2.2 The proposals aim to develop legislative options to build on earlier reforms. The priorities set out are to help more people become crofters and to better support existing crofters and their activities and businesses. The proposals also seek to enable more and different activity to be undertaken on common grazings, including peatland restoration and other environmental initiatives and to empower the Crofting Commission to tackle breaches of duty through streamlined processes. The reforms also seek to resolve crofting regulatory issues more quickly through new and revised powers for the Crofting Commission.
- 2.3 The Comhairle's response to the consultation is appended to this report. The proposed response was circulated to the Primary Industries Member Officer Working Group (PI MOWG) in advance - for finalising and approval - prior to its formal submission by 2 September 2024. It is proposed that the Comhairle's response be homologated, given that the consultation closing date preceded the current committee series.

RECOMMENDATIONS

- 3.1 **It is recommended that the Comhairle agrees to homologate its response to the Scottish Government Consultation, as appended to the Report.**

Contact Officer: Iain Kennedy, Economic Development Officer - iain.kennedy@cne-siar.gov.uk

Appendix: Scottish Government Consultation on Proposals for Crofting Law Reform: Response by Comhairle nan Eilean Siar.

Background Papers: [Supporting Documents - Crofting Law Reform Proposals 2024: Consultation \(www.gov.scot\)](http://www.gov.scot)

IMPLICATIONS

4.1 The following implications are applicable in terms of the Report.

Resource Implications	Implications/None
Financial	None relating to the Comhairle
Legal	None relating to the Comhairle
Staffing	None
Assets and Property	None
Strategic Implications	Implications/None
Risk	None
Equalities	None
Corporate Strategy	Support community sustainability, support growth and resilience within the agricultural sector in targeting continued local food production and contributing towards the objectives of the Islands Growth Deal (IGD) Outer Hebrides Food and Drink Programme.
Environmental Impact	None
Consultation	Appended to the report

BACKGROUND

- 5.1 Crofting law is rooted in legislation passed in 1886 giving rights to crofters for the first time over their Land. Over the next century, further legislation sought to support this unique system of land holding which is of great cultural significance in our island communities. The principal legislation for crofting is the Crofters (Scotland) Act 1993, commonly referred to as the 'the act'. Significant reforms to crofting law was made in 2010 through the Crofting Reform (Scotland) Act 2010.
- 5.2 That legislation established the Crofting Commission as successor to the Crofters' Commission; introduced the Crofting Register; defined the status of an Owner-Occupier Crofter; and introduced substantial new procedures for the Commission's enforcement of crofters' residency and land use duties, including the requirement for every crofter to return an Annual Notice (census).
- 5.3 In 2021, the Scottish Government published our National Development Plan for Crofting, setting out the importance of crofting across the Highlands and Islands and the need for the development of crofting. The National Development Plan was accompanied by a renewed development role for the Crofting Commission, and it also set out plans for reforming crofting legislation, with is the purpose of this consultation.
- 5.4 The Scottish Government recognises that crofting faces continuing challenges and opportunities. While many crofters are active members of their communities and working their land productively, too many crofts are currently in the hands of those who are not able, or not willing, to use their land. Similarly, grazings committees, and landowners face complex processes if they wish to take forward innovations such as peatland or habitat restoration.
- 5.5 Also identified is the price of obtaining a croft can be prohibitive for many would-be crofters. The Scottish government states that reform is now needed to address these challenges and to enable active crofting and for crofters to play their role in changing land use across all the crofting areas.
- 5.6 The Comhairle response to the consultation is appended to this report. The proposed response was circulated to the Primary Industries Member Officer Working Group (PI MOWG) in advance - for finalising and approval - prior to formal submission by the closing-date of 2 September 2024.

ENTRY TO CROFTING

- 6.1 The Scottish Government (SG) recognises that the price of a croft tenancy has increased considerably over recent decades, making it much harder for people to obtain a croft of their own. Scottish Government and the Crofting Commission are working to reduce this trend in part by the enforcement of duties by the Commission. The Scottish Land Matching Service was also established to help put aspiring crofters in contact with people who can offer an opportunity on their land as well as a Succession Project which has similar aims. Scottish Government also propose specific legislative changes that could assist aspiring crofters purchase a first croft tenancy, namely that croft tenancies can be shared between two people and that a croft lease could be used as security for a loan.
- 6.2 Since 1912 any assignation of a croft tenancy can only be to one person, meaning that only crofts shared by more than one person are owner-occupied crofts. Scottish Government propose that future assignations of croft tenancies could be to two people in a joint tenancy. This would be possible through one crofter assigning the whole of the tenancy to two new people or by a crofter assigning part of their tenancy to a new crofter, who would share their tenancy - or on succession if a deceased crofter had chosen to bequeath the tenancy to two people. The proposal limits joint tenancies to a maximum of two people. Scottish Government believes that allowing two people to share jointly in a tenancy could make crofts more affordable and would have advantages for entry to and succession in crofting.
- 6.3 Scottish Government considers that tenants and owner-occupier crofters should have an equivalent balance of rights and responsibilities within the crofting system - and believes that this should include an ability to borrow against the value of the land, if owned, or the value of the lease if rented. Although challenging to change the law to enable a standard security over a croft lease, Scottish Government is working to establish whether there is a potential solution. There is a recognised issue among those aspiring to buy a croft or enter into a croft lease finding it difficult to raise the necessary funds as they cannot secure a loan against the asset. It is thought that - due to crofts having a capital value - lenders would lend on crofts if the legislative framework were in place to allow them to do so.
- 6.4 Currently an owner-occupier can grant a standard security for a loan/ mortgage over an owner-occupied croft. However, a standard security is only attractive to a lender if the secured asset can be sold on default. Crofting, being a highly regulated activity with significant regulatory barriers, could make it too hard for a lender to enforce a security as things stand. A tenant cannot currently grant a standard security over a croft lease. Scottish Government hopes to create a mechanism for doing so, however there would still be similar regulatory barriers to assigning the secured asset on default.
- 6.5 Scottish Government considers that changes to security law would facilitate access to finance that could be used to acquire a new croft or develop an existing one. The result could be a positive contribution to the development of the crofting sector, in turn making a vital contribution to increasing the population of remote rural areas and strengthening the rural economy. Scottish Government propose to change the law to enable banks to undertake secured lending over owner-occupied crofts and are interested in enabling securities over leased crofts if that is both supported and practicable. A security over an owner-occupied croft would be created by registering a standard security in the Land Register of Scotland, with the crofter being required to record the land in the Register. Granting a security over leased land also requires an entirely new process, though it is understood that a standard security could be granted over a lease - provided that both the lease and the security are registered in the Crofting Register.
- 6.6 In order for creditors to have the confidence to lend to crofters, SG believes it would be necessary to modify some of the statutory rights and responsibilities while the security is in place and until the loan has been discharged. The crofter or landowner would not be able to do anything that might significantly affect the value or interests in the security without first seeking the consent of the creditor. Therefore, it is proposed that the creditor should have to consent to specified changes - including the enlargement, assignation or division of a croft - and if the crofter defaults on the loan the creditor could call in the security.

- 6.7 The creditor would then possess the croft for the purposes of realising value from the property and suspend specified rights of the defaulting crofter, including the right to purchase, to assign, and to claim compensation. For an owner-occupied croft, the creditor could then sell the croft to a new crofter. However, for a croft tenancy, a new tenant would need to be approved by the landlord. If the tenant is approved, then the Scottish Government considers that there should then be no need to obtain a second approval from the Crofting Commission. Alternatively, if the landlord objects to the assignation, then the creditor should be able to seek the approval for the proposed assignation from the Commission. Only if both the landlord and the Commission oppose the proposed tenant will the creditor need to find another person to purchase the tenancy.

CROFTING COMMUNITIES

- 7.1 The Law Society of Scotland has drawn attention to inconsistencies and lack of clarity in the current legislation's definition of a 'crofting community'. Scottish Government propose to also "*tidy up the various disparate references*" to 'district,' 'area' and 'locality' in relation to crofting communities. Mostly, a 'crofting community' will continue to be the local crofting presence in a particular place – defined as the crofters within a particular township, or with shares in a particular grazings - as listed in the Register of Crofts. However, SG want to lift a restriction that there must be two or more crofts in a township for these rights to apply - and include the several townships with only one croft.
- 7.2 The consultation also notes that certain matters are relevant to those outwith the 'crofting community'. Such matters as decrofting land and removing it from crofting tenure may impact on the wider crofting parish. Also reporting suspected breaches of crofting duties for investigation by the Commission may be pertinent to non-crofters with an interest in crofts being made available. While a case could be made for extending this right more broadly, SG - mindful that objections substantially lengthen the Commission's decision-making process on applications - consider this right should continue to be limited to crofters and grazings shareholders in the same township.
- 7.3 The Crofting Commission is currently required to consider the sustainability of crofting in the 'area' and also the potential demand for the croft when considering decrofting applications. Decrofting of a whole or part croft removes or reduces a future opportunity for someone to become a crofter. The Consultation therefore proposes that the Crofting Commission consider the sustainability of crofting across the parish, as recorded in the Register of Crofts when dealing with such applications.
- 7.4 Reporting a suspected breach of duties gives members of a crofting community, the right to report a suspected breach by a crofter of their crofting duties, requiring the Commission to investigate any breach that does not appear to them to be frivolous or vexatious. The process of reporting breaches is seen by SG as fundamental to maintaining the health of crofting, yet relatively few such reports are made. The consultation proposes that more reports might be made if the right was opened to people who are not already crofters, who might indeed be the ones with the strongest interest in the croft being made available for a new crofter.
- 7.5 The consultation also looks to make amendments to Public Notification, Service of Notices and Meetings. There are a number of occasions where public notification is required to be made by either an applicant or the Crofting Commission. This process involves placing an advert in one or more newspapers circulating in the district in which the subject croft or common grazing is situated. The notification of first registration of a croft requires the applicant to give notice by placing an advertisement in a local newspaper for two consecutive weeks. A common complaint is that people do not see adverts if they do not read a particular newspaper, and it is not always possible to identify a local newspaper circulating in the subject area. An alternative proposal is that the Crofting Commission website could be used for the purposes of public notification. Moving online would mean that all crofters, including stakeholders, solicitors etc, would know that there is only one place they would have to look to get access to public notifications and see what changes are being proposed within their community. The Scottish Government proposes that the Crofting Commission should be empowered to specify the requirements for advertising applications and to change these requirements from time to time.

USE OF COMMON GRAZINGS

- 8.1 Common Grazings are a significant asset to crofting, crofters, landlords, and crofting communities. There are around 1,000 common grazings in crofting areas, covering approximately 550,000 hectares, which account for two-thirds of all croft land. They are managed by grazings committees, and approximately half of all grazings currently have a committee in office. There has been a decline in the use of common grazings in recent years alongside livestock numbers declining. The law restrains alternative uses for common grazing land and makes it difficult for new projects or initiatives to be implemented, due to agreement among shareholders and landlords being required.
- 8.2 Scottish Government want to remove the barriers for active crofters and groups who want to use the common grazing for livestock grazing, woodland creation, habitat restoration, or biodiversity enhancement and ensure everyone who have rights in the common are considered. Scottish Government want to see grazings managed in a way that delivers economic, environmental, and community benefit as well as meet current and emerging land use challenges, to support the sustainable development of crofting. Scottish Government propose to simplify the processes as well as simplifying the role of grazings committees, so that there can be more grazings committees in office. The second issue to help achieve these aims is to encourage grazings shares to be used. Scottish government feel this could regenerate common grazings and further bolster the sector if those shares were in the hands of those who would use them.
- 8.3 It is a requirement that grazings committee report on the condition of the common grazings and on every croft, tenanted and owner-occupied to the Crofting Commission. Although some have expressed this legislation has caused difficulties the Crofting Commission does not want to lose this data. The Scottish Government proposes a reduction in reporting requirements and limit these to general matters such as the condition of the common grazing although, if they wish, legislation does continue to give them the option of reporting individual suspected breaches at any time.
- 8.4 Grazings committees are elected at a meeting of the crofters who share in the common grazing, for a term of three years, following which a new committee is chosen at a similar meeting. The legislation requires such meetings to be notified publicly - however the consultation proposes that the Crofting Commission should be empowered to specify and amend the method for public notification. Public meetings will be advertised publicly on the Crofting Commission website or elsewhere. Grazings committees also have a responsibility to notify their shareholders for other (not public) meetings, which could now be by phone or email etc.
- 8.5 Grazings shares can become separated from the 'parent' croft and are deemed to be separate and distinct crofts in their own right. The legislation makes clear that crofting regulation continues to apply to them and therefore they are referred to as 'deemed crofts.' This can happen either intentionally or unintentionally. Currently, there is no automatic inclusion of the common grazings right when a tenant crofter purchases their croft. The consultation proposes that the grazing right could continue to be attached to the croft by default unless the parties specify otherwise.
- 8.6 A crofter has a duty to reside within 32 km of the croft and to make use of and maintain the croft which technically applies to any grazings share whether it is associated with the croft or a separated unit. With the growing number of grazings shares that are now separated, the Scottish Government wishes to clarify how duties apply to the holders of grazings shares and proposes that the majority of shares attached to an inbye croft, continue to be regulated in accordance with current practice.
- 8.7 However for stand-alone grazings shares, the duty to reside within 32 km of any part of the common grazings and to make use of the share still applies. To ensure that holders of standalone shares are contributing to the community and making productive use of their share, the Crofting Commission should enforce these responsibilities as they do for any other croft. If someone is found to be in breach of any of their stand-alone grazing share duties and does not agree to remedy this - then they should lose the share following established due process by the Crofting Commission,.

- 8.8 Scottish Government believe it is important to review how the historic crofting principles can be applied better to common grazings. For any shares that are released in this way the priority should be to bring them back into use. It is proposed that the grazings committee, followed by the landlord, should have the opportunity to re-let the share - and if they do not find a new shareholder the Crofting Commission should organise a re-let itself. If every attempt to relet fails - in that no-one who intends to fulfil the duties is interested in taking on the share - then it is proposed that the share be dissolved and absorbed by the current shareholders and grazings committee.
- 8.9 There are large expanses of peatland on common grazings, and the Scottish Government states that maintaining these can make a significant contribution to carbon sequestration. In addition to the traditional uses such as grazing livestock the proposal allows for innovative uses of the common land either by the owner through a Scheme for Development or Resumption, or by an individual crofter through an apportionment. The consultation seeks to widen the existing provisions in respect of crofter-led and joint-venture forestry schemes to include peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration and environmental improvements.
- 8.10 Additionally, SG seek to remove two provisions within the legislation it deems overly restrictive. Firstly, to allow a grazings-committee-led forestry scheme with the appropriate consents to cover the whole of the common grazings for forestry or another environmental scheme. Secondly, when a grazings committee or crofter proposes a forestry scheme, the owner is entitled to refuse consent. However, if the owner does not reply to the application within six weeks they are "*deemed to have refused*" the application. Scottish Government consider this to be illogical and propose that if an owner does not respond within the deadline and give any reason to oppose the application they should be deemed to have given consent and should then proceed to the Crofting Commission for consideration. The Commission would still have to consult the landowner and consider any reasoned objection - however, the Commission would be entitled to approve the application after taking account of any objections, without recourse.
- 8.11 Legislation allows crofters to undertake work other than agriculture and forestry on common grazings. However, if the landowner does not approve they can prevent it from happening. Current legislation allows a tenant crofter to seek the consent of their landlord to do something innovative on the inbye croft. If the landlord refuses then the crofter can ask the Crofting Commission to decide. Scottish Government propose to introduce a similar process for common grazings to encourage a broader scope of activity.
- 8.12 Current legislation allows a landowner to apply to designate some land as a new common grazings unless the land in question is "*adjacent or contiguous*" to any croft. This exclusion is to ensure that the land will not be subject to the right-to-buy if it is subsequently apportioned by a crofter. Scottish Government feel that this is a significant restriction on the options open to landowners and propose to remove this exclusion.

STRENGTHENING RESIDENCY AND LAND USE

- 9.1 Scottish Government state that a cornerstone of the crofting system is that each crofter reside on or near their croft, not neglect or misuse the land, and put it to a purposeful use – and the health of crofting communities depends on crofters fulfilling these duties. Enforcement of these duties is the responsibility of the Crofting Commission. The processes for investigating and enforcing adherence to the duties are similar between tenant and owner-occupier crofters. The processes are designed to give any crofter considered in breach an opportunity to rectify the position by complying with the duties by transferring the croft to another crofter on a temporary or permanent basis. This process is considered lengthy, SG propose to streamline it - as it believes the process can be truncated without loss of fairness by combining two of the stages, thus reducing overall processing time. Additionally, the Crofting Commission propose to amend the need to continue with enforcement action at certain stages when a solution to the breach has already been found.

- 9.2 Scottish Government propose to make changes to how crofters' duties are defined whilst retaining the fundamentals of the duties. These duties are to reside within 32 km of the croft and to care for and use the croft. The duties regarding land are to use it for a purposeful use, keeping it fit for use and not misusing or neglecting it. The Scottish Government proposes to retain these duties but update the definitions of "*fit for use*" as well as modernise the statutory conditions of tenant crofters regarding responsibilities towards their landlord.
- 9.3 The consultation also proposes that complaints about breaches of the Statutory Conditions could in future be decided by the Crofting Commission rather than being directed to the Land Court on each occasion. The duty to be resident on or near the croft is one which a crofter must meet unless they have sublet the croft. The responsibility to maintain and use the croft can be met if the crofter has another person to carry this out. Scottish Government propose that that the crofter's responsibility is to ensure the croft is used and maintained either by the crofter or by another person.
- 9.4 The consultation also proposes changes to the uses that can be made of a croft by a tenant crofter, as a tenant crofter can use the croft for anything classed as cultivation. If a tenant crofter wishes to use the croft for any other "*purposeful use*" this requires the consent of the landlord or the Crofting Commission. Scottish Government wish to broaden the list of "*standard uses*" a tenant crofter can implement without requiring consent, to include any activity that is environmentally beneficial.
- 9.5 The consultation states that every tenant crofter must be a natural person – i.e. the legal term for a human being. There are however some owner-occupied crofts which are held by limited companies, where the duties are unclear. Scottish Government propose to change the Act so that any legal person (not a natural person) should be required to let the croft to a tenant crofter. This will only apply to new entries and not to companies and charities that already have owner-occupier crofter status. The Crofting Commission will attempt to ensure that such owner-occupier crofters fulfil their duties, and on the next transfer that croft could only be transferred to one or more natural persons.
- 9.6 The Crofting Commission has a duty to give notice to each crofter to make an annual declaration regarding their croft through the Annual Notice known as the Crofting Census. Many crofters have stated it is frustrating to repeatedly send the same information each year - and the Crofting Commission noting that processing annual census information is a burden on resources. The consultation proposes to amend the Annual Notice to at least once every three years in addition to digitising the census.
- 9.7 A crofter, with the consent of the Crofting Commission, can sublet their croft and they are deemed to comply with residency and land use duties if the sub-tenant complies with the duties. Crofters who are unable to fulfil their duties use sublets as a way of ensuring the croft is occupied and used. Should the subtenant breach the duties it is not clear what remedy is available to the Crofting Commission. Legislation prevents the Commission from taking enforcement action to terminate a tenancy where the Commission has consented to the sublet. The consultation proposes that the Crofting Commission should be entitled to withdraw its consent for the sublet if it considers that the subtenant is not complying with the duties of residency, cultivation and maintenance of the croft.

ENHANCING CROFTING COMMISSION POWERS

- 10.1 Scottish Government is mindful that any system of regulation needs to be proportionate. Crofting Commission regulation has focussed on the enforcement of crofting duties, the configuration of land such as creation of crofts, de-crofting and apportionments - and decisions as to who holds crofts. Scottish Government consider the first two to be fundamental to the health of the crofting system - however there are questions about the necessity and effectiveness of the third element. All proposed assignments, sublets, or proposed short-term leases must be assessed and approved by the Crofting Commission, making up a third of all applications received each year. The consultation proposes a new provision to free up Crofting Commission resources for direct engagement with crofters who are in breach of duties, alongside prior approval of lease arrangements and purchases of owner-occupied crofts - to prevent any one person owning or controlling multiple crofts.

- 10.2 Scottish Government propose to redesign the regulatory controls on who takes on a croft, both for assignments and for sublets and that transfers or purchases should only require prior approval by the Crofting Commission in certain circumstances. As a result a requirement for an assignment, sublet or short-term lease to be advertised would be removed and the applicant would only need to notify the Crofting Commission and the landlord, significantly accelerating processing times.
- 10.3 The consultation states that there are several hundred crofts whose owners are classed as being the landlord of a vacant croft rather than an owner-occupier crofter. These individuals can own and physically occupy a croft but do not meet the required conditions for an owner-occupier crofter. It is therefore proposed is that these individuals should be able to apply to the Crofting Commission to be granted owner-occupier status.
- 10.4 The Crofting Commission has the power to "*reorganise*" crofts within a township, which involves adjusting the boundaries of crofts. The Commission generally uses this power only where there is consensus between all the crofters in the township and where there is a desire to adjust boundaries between two neighbouring crofts. The consultation proposes new powers for the Crofting Commission to change the boundaries of one or more registered crofts, if agreed by the landowners whose land would be affected. The new process puts the responsibility on the applicants to work out changes at their own expense.
- 10.5 A Crofting Commission Direction or Order is a legal document that can change the legal status of land or grant rights to individuals - and which cannot be altered other than through a successful appeal to the Scottish Land Court. Occasionally, after a Direction or Order has been issued, errors have been discovered - and it is proposed that the Crofting Commission should have a power to correct such errors and reissue an amended Order or Direction. It is proposed that this power only be available for clear errors and where there is no dispute as to the resolution.
- 10.6 Crofting legislation gives a number of responsibilities to crofters and owners of croft land; therefore it is important that information regarding duties is made available to incoming crofters. The Crofting Commission may issue a Direction or Order which includes conditions that must be met by the crofter. Current legislation applies a variety of sanctions in cases where a crofter has not complied with the requirements, including in some cases making this failure a criminal offence. Criminal sanctions will remain appropriate in cases of fraud, however there is a high threshold before this becomes the subject of criminal proceedings. Scottish Government propose that the Crofting Commission should be able to apply administrative sanctions where there is a regulatory breach.
- 10.7 In most of the regulatory applications that the Crofting Commission handles it must consider whether someone is using the land and is resident before making its decision. However, in the case of decrofting applications, those considerations do not apply. The consultation suggests that there needs to be increased scrutiny on decrofting, particularly in cases of a breach or suspected breach of duties and cases of multiple decroftings. The Crofting Commission proposes that when considering any decrofting application it will be a material consideration as to whether the applicant is complying with their crofting duties in addition to previous decroftings, which may be reasons to refuse the application. The consultation proposes to introduce legislation preventing a crofter from making multiple decrofting applications whilst they are in breach of their duties.
- 10.8 The Crofting Commission replaced the former Crofters' Commission in 2012. The Crofting Commission is made up of nine Board Members, six Commissioners elected by crofters and three who are appointed by SG. The consultation seeks views on proposed measures on a range of electoral issues that could be taken forward in secondary legislation, such as balancing the Board with a more even split of elected and appointed members. Additionally, should there be a cap on the number of times that a commissioner can be elected?

SIMPLIFYING CROFTING

- 11.1 The Crofting register is a public list of crofts, common grazings and land - which is maintained by the Keeper of the Registers of Scotland. It is a map-based register and provides a definitive record of land within crofting tenure. In addition to showing the boundaries of land the register also contains information on the tenant, owner-occupier crofter and the landlord of the croft. Scottish Government propose to amend the current rectification provisions to extend the powers of the Keeper - creating a simpler and more cost-effective approach, resulting in greater accuracy.
- 11.2 The consultation proposes to extend the definition of "*original applicant*" to include the executor of an original applicant, which would allow a rectification to be applied for without having to revert to the Scottish Land Court. Additionally, before submitting a registration application to the Crofting Commission SG proposes that a tenant crofter must serve notice of the application on the landlord, giving the landlord a specified period to respond to the crofter. The application would not be forwarded to the Registers of Scotland unless and until confirmation that it has been shared with the landlord was received by the Commission, thus achieving a more accurate Register.
- 11.3 The number of crofts registered with the Crofting Register has increased steadily and SG is keen to see this accelerated. Changes involving a croft are usually 'triggers' that require the croft to be registered if it is not already in the Crofting Register. An exception is when a tenant crofter exercises the right-to-buy and becomes an owner-occupier crofter. Scottish Government propose that this event should also be a trigger for entry into the crofting register. The Register of Crofts is a public list of crofts which contains basic information about the croft and the people associated with that croft. The law requires that the name, age and date-of-birth for tenants and landlords are included in the Register of Crofts. The Consultation proposes that owner-occupiers should be required to give the same personal information for the Register of Crofts as tenants currently provide.
- 11.4 Current legislation requires the Crofting Commission to determine four types of application within a fixed period, with no consequences for failing to meet a deadline. Scottish Government wish to abolish the statutory deadlines for these four decision types, which are; consent to an application by a crofter to put their croft to another purposeful use; whether to grant consent to an application by a crofter to be absent from the croft for a period of time; engaging with a crofter over a suspected breach of duty; and deciding whether to accept an undertaking by a crofter as to how and when a breach will be rectified. With there currently being no recourse for failing to meet a deadline, SG propose that these fixed response periods be removed.
- 11.5 Rights of access between neighbouring landowners can be agreed in law by creating a servitude right of access. This occurs if an owner agrees to have their land "*burdened*" by a servitude right of access in favour of a neighbouring "*benefited*" owner. These rights are transferred when ownership of the land is transferred. Scottish Government propose that there should be a similar straightforward mechanism for setting up a permanent access right across tenanted crofting land to create access to different crofts. Currently, this can only be done by an application to the Land Court when all the land is tenanted from the same landowner. Scottish Government propose that - where all parties are agreed - crofting right of access could be created simply by drawing this up and notifying the Crofting Commission. This would then become a permanent right of access, binding on their successors - unless one or other party applied successfully to the Land Court to have the right altered.

CONCLUSIONS

- 12.1 It is widely recognised by crofters and landlords that crofting law, in its present form, presents challenges and that change is needed. The considerable size and scope of crofting legislation makes striking the right balance between satisfying the interests of all the different stakeholders difficult to achieve. Any simplification of crofting law is welcome, providing it does not adversely affect crofters or crofting communities. Most of the reforms proposed, whether technical or more substantial, would require to be tested to assess success in achieving their intended aims.

12.2 The Comhairle's response to the consultation is appended to this report. The proposed response was circulated to the Primary Industries Member Officer Working Group (PI MOWG) in advance – to be finalised and approved - prior to its formal submission. It is recommended that the Comhairle's response be homologated, given that the closing date of 2 September 2024 preceded the current committee series.