

SCOTTISH GOVERNMENT CONSULTATION ON CROFTING LAW REFORM 2024:  
RESPONSE BY COMHAIRLE NAN EILEAN SIAR

**CONSULTATION QUESTIONS**

1. Do you agree that two people should be able to share a joint croft tenancy?

**Don't know.**

*It is understood that the aim is to make entry into crofting more accessible and affordable to new entrants and that is welcomed. However, there may be other methods to achieve this objective rather than Joint tenancy. Stronger enforcement of neglected crofts and more encouragement to sublet disused crofts to new entrants would see more entering crofting, albeit for a limited duration. The risk of increased fragmentation of crofts could result in an increase of subdivisions. This would be detrimental to the district and crofting communities overall. There could be a risk - depending on the size of the croft - that if subdivided it might not be large enough at that point for basic payments etc. and could become redundant as well as requiring to divide common grazing shares. While this proposal could work in theory, in practice it could lead to many more issues than the proposition would practically solve.*

2. Do you agree with the proposal that regulatory barriers that limit the ability of an owner-occupier to grant a standard security over their croft should be removed or reduced?

**Don't know.**

*In theory this could give younger crofters or would-be crofters an opportunity they could not otherwise access without significant savings. However this must be approached cautiously as it would require careful regulation, and the Crofting Commission's resources are already limited. There is also a concern amongst crofting communities locally that this would increase the price of crofts further when they already command a premium. It is understood that croft prices cannot legally be capped or restricted, so this proposal would need to be considered extremely carefully.*

3. Do you agree with the proposal that a tenant crofter should in principle be able to use their croft tenancy as security for a loan?

**Don't know.**

*In principle this is a good idea. However caution is required, in that if the market were to demand high interest rates or if there were other changes in circumstances, i.e. legislation, subsidies etc. there could be instances of crofts being repossessed which could have a detrimental effect on crofting communities. It could be an especially useful tool - for certain crofters – in order to add value to their agricultural business and potentially diversify into areas which may otherwise be outwith their reach, financially.*

4. Do you agree that there needs to be modifications to rights and responsibilities when a security is in place over a croft?

**Yes.**

*Naturally, if a lender were to agree to a loan on a croft it would require modification of some statutory rights and responsibilities while the security was in place. Prohibiting a crofter to significantly affect the value or interests in the security is reasonable, as well as the suspension of specified rights of the defaulting crofter, along with a duty to be resident on the croft and to put the croft to purposeful use.*

5. Do you agree that if a croft tenancy is repossessed by a lender, the lender should be able to assign (sell) the tenancy on to a new tenant provided that either the landlord or the Crofting Commission agrees?

Yes.

***That would be necessary, as it is difficult to foresee any lender that would be willing to provide a loan for an asset it would be unable to sell if a crofter defaulted. Also, there would be little incentive for a crofter to repay the loan where the lender was unable to repossess the croft.***

6. Do you wish to add comments in regard to the proposed application of standard securities to crofts?

***In theory standard securities on crofts could be an extremely useful tool to allow new entrants into crofting, though it would require careful monitoring. In practice this provision could facilitate lending for a croft-house that had not been decrofted. For example, if an estate were being sold and the croft-house and croft were placed on the market together, the croft-house would not be mortgageable unless it had been decrofted. If this issue were tackled and lenders were able to provide loans for croft-houses and crofts together, that could lead to many more young families purchasing such properties and becoming active crofters.***

7. Do you agree that the right to object to applications should continue to be limited to crofters and grazings shareholders in the same township or grazings?

Don't know.

***This could depend on the application. Some applications may be significant enough to affect others outwith the direct township that the application originated from. However, this may not be appropriate given the effect objections have on the Crofting Commission at present.***

8. Do you agree that when deciding a decrofting application, the Crofting Commission should, alongside other considerations, be required to weigh up the sustainability of crofting across the parish?

Don't know.

***This would depend on why the decrofting was occurring. If it were to be for multiple house-sites or plots for example, this should very much be considered and rejected without good cause.***

9. Would you support the extension of the right to report a suspected breach of duty to: a) Subtenants and short-term leaseholders of crofts within the local crofting community?

Don't know.

***Possibly, as the reporting party could potentially be able to acquire the tenancy if there was a genuine breach of duty and the croft became available for purchase subsequently.***

10. Would you support the extension of the right to report a suspected breach of duty to: b) Non-crofters who reside within the local community where the croft is situated?

Don't know.

***It is recognised that the process of reporting breaches is fundamental to maintaining the health of crofting, yet very few reports are made. It is not due to the low number of crofts that could be reported upon but rather that few crofters desire to report others for breaches. It is understood that more reports would potentially be made if the right were opened to non-crofters.***

11. Do you agree that the Crofting Commission should be empowered to determine the permitted method to be used for a public notice, and should be able to change the requirements from time to time?

Yes.

***Anything that could reduce the administrative and cost burden for crofters should be considered and would be welcomed if this could be managed by the Crofters Commission.***

12. Do you agree that it should be possible for public meetings to be held on an appropriate online forum or as a hybrid meeting and need not be solely in-person meetings?

Yes.

***Yes, if it were possible and accessible to all – i.e. that it wouldn't exclude certain individuals that could not gain access to the meeting for various reasons, such as lack of digital/ IT equipment or the ability to use it etc. However, with many crofters working away from the croft regularly – e.g. at sea or offshore industries etc. this could be a helpful and practical solution.***

13. Do you agree that the grazings committee duty to report should be limited to the condition of the common grazings?

Don't know.

***If anything other than condition of common grazings were an issue for a grazings committees, then this could be a helpful proposal. Given the size of some areas with a high volume of crofts, how many grazings committees would be reporting on these individual crofts correctly otherwise?***

14. Do you agree that meetings to appoint a grazings committee need to be notified publicly?

Yes.

***Grazings committees should have to advertise publicly on the Crofting Commission website or elsewhere and should be encouraged to contact shareholders individually before meetings, via email or text etc. As for any other group run by individuals, the effectiveness of common grazings is very much determined by shareholders in these groups.***

15. Do you agree that shareholders should be responsible for informing their Grazings Committee of their preferred email or postal contact address?

Yes.

***Grazings committees should be encouraged to contact shareholders, however the shareholders should also ensure that the grazings committee have the correct contact information.***

16. Is there a need for further legislation on the purchase of grazings rights, or should the details of each transaction be left to the parties as currently?

Don't know.

***Grazing rights should stay with the croft and the creation of deemed crofts should cease. It is not practical for genuinely active crofters to only have shares in the common grazing and not have a croft. From a production or purposeful use point of view, it would be exceedingly difficult to successfully operate as seasonal closures, and other restrictions would stop a crofter from continuously undertaking production***

**activities all year round. Therefore, what is the value of purchasing grazing rights, other than to receive land from a common grazing to build on or sell - which has been evidenced in the past?**

17. Do you agree that the Crofting Commission should enforce adherence to residency and land use duties for stand-alone grazings shares?

**Don't know.**

***It would be preferable to end stand-alone grazing shares. However if the residency and land use duties were to highlight the difficulties in not being in breach due to the challenges of using standalone grazings shares, this could reduce the numbers if enforcement were to be pursued.***

18. If a grazings share is forfeited by someone who is in breach, which organisation should have the initial responsibility of finding a new shareholder?

**Crofting Commission.**

***In line with the practice for a vacant tenancy, this should initially fall to the landlord, preferably working with the grazings committee, presenting a proposed new shareholder to the Commission for approval.***

19. If none of the grazings committee, the landlord and the Crofting Commission can find a new shareholder for a vacant grazings share, do you agree that the share should be dissolved and absorbed by the current shareholders and grazings committee?

**Don't know.**

***In the unlikely event that none of the stakeholders listed above can find a new shareholder then it should be acceptable that the share should be dissolved and absorbed by the current shareholders as proposed.***

20. Do you agree that the provisions which allow crofter-led and joint-venture forestry schemes should be extended and adapted, to provide similarly for peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration or environmental improvements?

**Yes.**

***It makes sense to allow consents for the more recent opportunities available to crofters. In addition, it would be a positive move to reintroduce habitat schemes.***

21. Do you agree that an owner who does not respond to a crofter or grazings committee application for forestry can be deemed to have consented (while retaining the right to make comments or objections at the next stage)?

**Yes.**

***Given that an owner has had sufficient time to object or make comments and hasn't - and has the right to make objections or comments at the next stage, it would be logical to deem them as not having an issue to raise at that point - and to have therefore consented to the application.***

22. Do you agree that the assessment of crofter-led innovations on common grazings should parallel the arrangements for inbye land?

**Don't know.**

***It is understood that the proposal is to balance the interest of the owner and the crofter and to ensure that the rights of both parties are considered. However, a common grazing is land that benefits all and should such innovations affect the common grazing for future generations this would need to be considered very carefully.***

23. Do you agree that a landowner should be able to apply to designate land as a new common grazing even if it is adjacent or contiguous to an existing croft?

**Don't know.**

***What could the reason be for a landowner to do this? That would require to be assessed on a case-to-case basis - with legislation not necessarily being the best option to address this issue.***

24. Do you agree that the first two stages in the current process for investigating suspected breaches of duty should be combined, in order to streamline the overall process?

**Yes.**

***In principle that would be sensible - and if it were actually to speed up the process that would be a welcome achievement.***

25. Do you agree that a crofter should not have to use or maintain their croft themselves, so long as they arrange for all the necessary and appropriate work to be carried out on their behalf?

**Yes.**

***It is reasonable and understandable that a crofter's other commitments or health may make in-person croft work difficult. Therefore instead of being forced to give up a tenancy or sell, for example, a crofter would best be encouraged to ensure that a croft is used and is maintained.***

26. Do you agree that a tenant crofter should not have to obtain consent before making use of the croft for an activity that is environmentally beneficial?

**Don't know.**

***That would be dependent on the activity. If an activity were to affect neighbouring crofts or a township negatively then it would be useful that consent was required. For example, if an area of a croft were to be flooded - that could be environmentally beneficial, though also have a detrimental effect on others, therefore a requirement for prior consent would be prudent.***

27. Do you agree that only natural persons should be able to become owner-occupier crofters?

**Yes.**

***This is the only logical conclusion.***

28. Do you agree that where a company or charity is currently an owner-occupier crofter, the croft should require to be transferred to one or more natural persons, the next time it changes hands?

**Yes.**

***While it is unfortunate that such anomalies were allowed to occur, a proposal to rectify this is welcome.***

29. Do you agree that we amend the Annual Notice requirement to at least once every three years, with the Crofting Commission entitled to choose how often and which years, subject to that constraint?

**Don't know.**

***In principle this would be acceptable, given the administrative burden annual returns place on the Commission. It is therefore hoped that crofters in breach of current reporting requirements could be targeted more effectively as a result.***

30. Do you agree that if a subtenant is not meeting their statutory duties, the Crofting Commission should be entitled to terminate the sublet?

**Don't know.**

***That should be dependent on the circumstances of a particular case. However, where a subtenant was found to be in breach of their duties termination would be appropriate in such circumstances.***

31. Do you agree that assignments should only require prior approval if the landlord raises an objection or if the incoming crofter already holds three or more holdings in the Register of Crofts?

**Yes.**

***The Comhairle's position in previous legislative proposals/ changes has been to support the maximum number of croft tenants possible, recognising the wider economic and social benefits accruing.***

32. Do you agree that transfer of owner-occupier crofter status should be subject to a Crofting Commission decision, in cases where the purchaser already holds 3 or more holdings in the Register of Crofts?

**Yes.**

***The Comhairle promotes crofters on individual crofts, rather than multiple crofts held by individual crofters.***

33. Do you agree that sublets should only require prior approval if the landlord raises an objection?

**Yes.**

***This would be a positive change and to be supported if it would indeed significantly accelerate the time taken to process assignation applications - therefore benefiting crofters as well as the Commission, consequently freeing-up more resources.***

34. Do you agree that each incoming assignee and owner-occupier crofter should be required to confirm, at the next Census or within 2 years of taking up the croft, whether they are complying with duties?

**Yes.**

***The Commission should actively be assessing whether crofters are compliant with their duties. This additional mechanism should also give the Commission more powers to act, where necessary.***

35. Do you agree that the Crofting Commission should be given the power to correct the status of croft owners who deserve owner-occupier status?

Yes.

***This would appear to be a logical proposal, which should assist in encouraging active use of croft land and allow individuals access to grant schemes if not already available. This would in turn bring more land into crofting use which would understandably be a positive outcome.***

36. Do you agree that the Crofting Commission should have the power to adjust croft boundaries, on an application by all the parties, where those parties are in agreement?

Yes.

***The landlord should have the original information, though in many cases the detail of croft boundaries were not recorded accurately. A power to adjust croft boundaries would help resolve issues where all parties are in agreement.***

37. Do you agree that the Crofting Commission should be able to correct errors in its Directions and Orders where the case for doing so is clear?

Yes.

***This is a useful and welcome proposal, as it can take several years to correct errors currently.***

38. When considering a decrofting application, do you agree that the Crofting Commission should consider whether the applicant is complying with their statutory crofting duties, such as being resident and cultivating the croft?

Yes.

***It should be a consideration to ensure that an applicant is complying with their crofting duties, as crofting should only be for active compliant crofters - not those that do not comply and intend to have multiple decroftings applications in, or to simply sell off croft land for capital gain.***

39. When considering a decrofting application, do you agree that the Crofting Commission should consider whether the croft has received previous decrofting applications?

Yes.

***In limited circumstances there could be a case for reasonable exceptions. A case could be made for large active crofting families to retain family members in the area. Also, there appears to be a disparity in the size of area that can be decrofted in the Outer Hebrides in comparison to the rest of Scotland - with the usual maximum size considered acceptable being 0.2 of a hectare of garden ground.***

40. Do you agree that the Crofting Commission should be able to use administrative sanctions where there is a regulatory breach?

Yes.

***This could be a useful tool for resolution and act as a deterrent where there is a clear and proven breach.***

41. If you answered yes to 40, do you agree that the Crofting Commission should be able to revoke approval or decline to deal with applications?

**Don't know.**

***It would depend on the case and the surrounding circumstances., declining to deal with applications is a strong response and a clear reason - however an appropriate rectification solution should be conveyed to the applicant if this method is chosen.***

42. If you answered yes to 40, do you consider that any other type of administrative sanction should be available as well as, or instead of, a power to revoke approvals or consider applications?

**Don't know.**

***As long as applicants have the reasoning behind the administrative sanction- and how the matter can be resolved - clearly conveyed to them, any appropriate sanction should be considered.***

43. Do you have any suggestions for how we split the number of Commissioners between elected and appointed?

***More elected Commissioners theoretically means where crofters are unhappy they have a say as to who is in post, therefore maintaining more elected than appointed Commissioners may be preferable.***

44. If we were to reduce the number of elected Commissioners, how should we divide the crofting counties into constituencies?

***There have been discussions over several years in Uist and Barra around having a Commissioner covering that area. For example, Argyle has a Commissioner for an area smaller than Uist and Barra – and this proposal would allow for more and better coverage. Rather than reducing the number of Commissioners perhaps look to locate them more effectively in areas with a greater number of crofts and therefore crofters. An option for dividing Crofting Counties into constituencies would be to follow the way the number local Councillors are elected according to the number of voters on the Electoral Roll – and in this way potentially more crofts and crofters would be better represented.***

45. Should anyone who has twice previously been elected as a Crofting Commissioner be able to stand again in another crofting election?

**Don't know.**

***An election, being a democratic process, provides the opportunity for crofters to have a say as to whether they want a Commissioner to serve another term. Theoretically, if a Commissioner is providing a good service a term-limit would not be required as the process is democratic. Similarly, if a Commissioner is considered not to be performing to an acceptable standard they can be removed via the ballot-box in subsequent elections.***

46. Should voter eligibility operate on the same basis as for the previous three elections?

**Yes.**

***This Does not affect the Outer Hebrides, as there is one Commissioner for the whole of the area.***



47. Do you agree that we should extend the powers of the Keeper of the Registers of Scotland for correcting errors in the Crofting Register?

Yes.

***Currently it can take years to resolve issues - therefore if the proposal provides a simpler more cost-effective approach to Register and reduces the number of Scottish Land Court challenges, then this would be a welcome development.***

48. Do you agree that all registration applications should be copied to the relevant landlord, in order to allow the landlord to comment if he or she chooses to do so?

Don't know.

***If a landlord reviewing an application would help achieve a more accurate Register and lead to fewer rectifications, that would be advantageous.***

49. Do you agree that the purchase of title to a croft by a tenant crofter should be a trigger for registration in the Crofting Register?

Yes.

***This would increase the number of crofts registered which would, on the whole, be helpful to crofting communities.***

50. Do you agree that owner-occupiers should be required to give the same personal information for the Register of Crofts as tenants?

Yes.

51. Do you agree that the deadlines for these four particular types of decision should be removed from the legislation?

Don't know.

***A clearer explanation of the rationale for the removal of the deadlines would be needed to assess whether this was required.***

52. Do you agree that where all the crofters and owners of the land in question, wish to set up a permanent crofting right of access, they should be entitled to do so?

Yes.

***That would appear to be acceptable if all parties were in agreement.***

53. If you wish, please add any comments on any of the proposed clarifications set out in this section of this consultation.

***Nothing further to add.***