

CALL FOR EVIDENCE FOR THE PROPOSED COMMUNITY EMPOWERMENT (SCOTLAND) BILL AT STAGE 2 – CROFTING COMMUNITY RIGHT TO BUY

Scottish Land & Estates is a private membership organisation representing landowners, land managers and rural businesses across Scotland and has a dedicated internal crofting group as well as being an active participant in the Scottish Parliament's cross-party group on crofting. We welcome this opportunity to provide written evidence and have been closely involved with the wider aims of this Bill from our initial participation in the Terms of Reference Group.

We have reviewed the amendments brought forward by the Minister and would comment as follows:-

1. As previously indicated we are relaxed about the extension of legal structures which may constitute crofting community bodies to include SCIOs and BenComs and the repeal of the auditing of accounts requirement for crofting community bodies. However, we would question why there is provision for the SCIO or BenCom to withhold information contained in minutes. We would suggest that data protection legislation would already cover certain disclosures and if there is a "commercial" confidentiality or sensitivity angle then this needs to be more explicit than currently expressed in 1A(h)(i) and (ii) and 1B(h)(i) and (ii). Transparency is important and vexatious or spurious reasons for withholding information require to be avoided. Further explanation is needed as to what these provisions seek to achieve.
2. It is important that crofting community bodies are appropriately constituted as now, in terms of Company Limited by Guarantee or as is proposed in terms of SCIOs or BenComs referred to above. However, the proposed amendment (A1)(b) widens this to other bodies as may be prescribed. While again there are requirements to meet, we feel that the category of community body should be a matter for primary legislation and that the extension to SCIOs and BenComs is sufficiently broad at present. If there are other particular types of structure which the Scottish Government has in mind in addition to SCIOs and BenComs then these should be stated now.
3. Information about rights and interest in land is as important for crofting as other landholdings in Scotland. The Scottish Government are in the interests of consistency and accountability currently pressing ahead with land registration targets of which we are in principle supportive. However, the proposed amendments to section 73 of the Land Reform (Scotland) Act 2003 ("the 2003 Act") by way of sections 47(2)(ii) and 47(2)(f) would be a retrograde step and go against this wider policy approach towards title and ownership in Scotland. The existing provisions specified in section 73(5)(b)(ii) are not unduly onerous, in that the details sought regarding pipes, fences and other boundary matters are simply where "*known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining*". Generally in terms of registration and valuation as well as from a practical perspective we are opposed to the amendment repealing these two subsections. Communities want to know what they are purchasing and land acquired by a crofting community body is by and large not in isolation from adjoining land and any shared usage of facilities such as sewerage or water pipes where known should on a practical level be identified.

4. We agree to the Crofting Community Body paying for the ballot and the provisions for their reimbursement in certain circumstances. However, we have concerns regarding the new (4A). In terms of (4A)(a) and(b), "Information" should only be to substantiate or supplement information already established and not additional information to circumvent due process. As we commented in our consultation response in relation to Part 2 Community Right to Buy there needs to be transparency, clarity and a tangible outcome and a ballot is the only way to legitimately demonstrate community support. Clarity is required as to what the Minister intends by this provision.
5. The amendment in relation to valuation requires to be re-visited. In our view the inclusion of counter representations is not required in this instance. Provided the valuer is appropriately qualified, properly experienced and has the ability to communicate effectively with both the owner of the land and the crofting community body seeking acquisition then (9A) is completely unnecessary and complicates the process which goes against the aims of this Bill.
6. A consequence of the proposed (9A) is that the right to buy process becomes more protracted as (9B) extends the period for determination of value from 6 weeks at present to 8 weeks. The longer the delay, the greater the detriment in both financial and potentially relationship terms between owner and crofting community body and we are opposed to (9B) unnecessarily lengthening the process. Should the Minister accept that (9A) is surplus to requirements then (9B) would naturally not be required.
7. As with valuation, the amendments proposed in relation to compensation do not in our view assist with the practical working of the crofting community right to buy process. The proposed new section 89(4) in the 2003 Act makes provision for the Minister to specify through secondary legislation amounts payable in compensation. While recognising that a mechanism is necessary, we would respectfully question whether the Minister is the appropriate assessor of the level of compensation. Clearly it is important that those owning land subject to compulsory acquisition are properly compensated and advice from qualified and experienced valuers should be expressly obtained. This would provide some welcome independence.

In terms of the proposed section 89(4)(d) the procedure under which claims are to be made is left to Ministerial Order as at present. While we accept that is the appropriate way to handle the detail of the procedure, we would affirm that in any consideration there needs to be parity between the level of detail sought in justifying a claim and the level of detail provided in determining the relative success or otherwise of a claim, as well as a clear time-limited period from receipt of a compensation claim to ultimate determination of that claim. Those who have suffered financial loss and delay require to be properly and timeously engaged with and have their claim progressed in a straightforward way.

8. The proposed amendment to section 92 of the 2003 Act is not acceptable. The period which the Land Court has to make determination has been doubled from 4 weeks to 8 weeks or potentially longer. While we would accept in exceptional and complex circumstances 4 weeks may not be a sufficiently long period, in those particular cases it should be for the Land Court to apply to Ministers for further time for consideration, demonstrating why the additional time is required, otherwise the 4 weeks period ought as a general rule to remain. As indicated previously, time limits are vital.

Written Evidence

We understand that the Land Court's own rules require decisions to be written and are therefore think the references to written statements are superfluous. There would be an unfortunate inference drawn that the Land Court did not know what it was doing if it is unable to provide a written statement within a reasonable time period and the 4 weeks which operates to date is usually sufficient. We feel the provisions as drafted in the Minister's amendment are too lax and that confidence in the Land Court will be undermined by this amendment as currently drafted.

Jason Rust
Legal Adviser