



## **CROFTING CONSULTATION - PROPOSALS FOR CROFTING AND SCOTTISH LAND COURT BILL**

Report by Chief Officer, Economic and 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 the proposals for the Crofting and Scottish Land Court Bill, which closed on the 5 September 2025.

### **EXECUTIVE SUMMARY**

- 2.1 On 13 June 2025 the Scottish Government released a call for evidence, seeking views on proposals for changes to existing crofting legislation and the merging of the Scottish Land Court and the Lands Tribunal for Scotland. These include amendments to the [Crofters \(Scotland\) Act 1993](#) and the [Crofting Reform \(Scotland\) Act 2010](#). It introduces changes to the enforcement of crofters' duties, the powers of the Crofting Commission, common grazings, and the Crofting Register. Part two concerns the merging of the Scottish Land Court and Lands Tribunal for Scotland.
- 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 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 formal submission. It is proposed that the Comhairle's response be homologated, given that the closing date of 5 September 2025 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.**

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Appendix: Scottish Government consultation on proposals for the crofting and Scottish Land court bill: Response by Comhairle nan Eilean Siar.

Background Papers: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/crofting-and-scottish-land-court-bill/introduced/crofters-scotland-act-1993-keeling-schedule-updated.pdf>

## 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 to our island communities. The principal legislation for crofting is the Crofters (Scotland) Act 1993, commonly referred to as the ‘the act’. Reforms to crofting law were made in 2007, 2010 and in 2013. That legislation established the Crofting Commission (the 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). In 2021, the Scottish Government published its 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. This launched the Scottish Government’s crofting consultation in 2024 and the result of that consultation is the Crofting and Scottish Land Court Bill (Stage 1) (the Bill).
- 5.2 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. 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. The primary aim of the Bill is to support crofting as a way of life and protect crofting communities while simplifying the law.
- 5.3 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 5 September 2025.

## **CROFTING AND SCOTTISH LAND COURT BILL - PART 1**

- 6.1 Part 1 of the Crofting and Scottish Land Court Bill offers various reforms of crofting legislation, intended to simplify the legislation, improving the operation of the regulatory framework, strengthening land use and promoting 'environmental' activities on crofts and common grazings. The Bill aims to strengthen crofting in seven key areas; Crofting communities, Common grazings, Enforcement of crofters' duties, Crofting Commission powers, The Crofting Register, Electronic communications, and simplifying and clarifying aspects of crofting law. In order to review all the sections of the Bill the numbered sections have been grouped into the seven key areas that they pertain to with some crossover between sections.
- 6.2 Sections 1-7, concern Enforcement of Crofters Duties – All crofters have a legal duty to reside within 32km of their croft and to ensure their croft land is cultivated or put to another purposeful use. The legislation gives the Commission powers to enforce adherence to the duties, and the Bill aims to streamline and improve this legislation to give the Commission more power to act. The Commission will be entitled to require that questions about crofters' adherence to their duties can be resolved before their other applications are considered. In addition, the Bill will prohibit future transfers of owner-occupied crofts to legal persons such as a limited company or incorporated charity.
- 6.3 Sections 8-14, relate to Crofting Commission Powers - The Commission is the key public body charged with promoting the interests of crofting. The Scottish Government states the Bill will make changes to give it stronger autonomy, in particular relating to decisions on applications to decroft land. It will also give the Commission additional powers with which to resolve issues for individual crofters or crofting communities, in particular the power to award owner-occupier status when it is merited, and to adjust the boundaries of crofts with consent from all interested parties.
- 6.4 Sections 15-18, concerns Common Grazings - Two thirds of all crofting land is on common grazings and common grazing land is increasingly recognised as having great potential for peatland restoration, forestry, energy schemes, etc. The Bill aims to bolster and strengthen the role of Grazing Committees, giving them and individual shareholders more options for proposing environmental initiatives on common grazings. The Bill also aims to protect the connection between the inbye croft and grazings shares, by preventing the unintended separations of grazings rights, which have happened many times when crofts have been purchased, and by providing new flexibility for owners of common grazings, and the Commission, to reallocate shares.
- 6.5 Section 22-27, relate to The Crofting Register - The Crofting Register, held and managed by Registers of Scotland (RoS), was introduced by the 2010 Act. The Crofting Register complements the information held by the Commission in their Register of Crofts, in particular by including in the Crofting Register a map of each registered croft. A number of provisions in the Bill aims to refine the processes for registration of crofts in the Crofting Register, including the interaction between the Commission and RoS in handling first registrations, and more flexibility for both RoS and the Commission to correct errors in the Crofting Register.
- 6.7 Section 28-30, Electronic communications - The Bill includes provisions to modernise and broaden the methods available to crofters and the Crofting Commission for serving notices, giving public notifications, and holding meetings.
- 6.8 Sections 19-21 and 31-33, Simplifications and clarifications - The Scottish Government states that the Bill makes a range of simplifications and improvements to the way crofting is administered, including more flexibility for the Scottish Ministers in the appointment of Crofting Commissioners; and makes corrections and clarifications to the legislation as recommended at various times by the Scottish Land Court or suggested by the Crofting Law Group. The Scottish Government states that the price of a croft

tenancy has risen considerably in recent decades, making it much harder for people to get a croft of their own. The Bill states that the 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.

- 6.9 Crofting Communities appears in multiple sections – The Scottish Government states that Crofting has an important community dimension, and that the legislation reflects this by balancing the rights of individual crofters with the rights of the communities of which they are part of. One of the most common amendments in the Bill clarifies the definition of a crofting community as the crofters holding crofts and/or grazings rights in a particular township, with the townships being those recorded in the Register of Crofts. The Bill will also require the Crofting Commission to consider a wider area – the parish – when they are weighing up pressures on the sustainability of crofting. The amendments will also give subtenants and landlords, along with the crofters themselves, the right to report suspected breaches of duty to the Commission, while removing the grazings committee's duty to do so.

## **CROFTING AND SCOTTISH LAND COURT BILL - PART 2**

- 7.1 Part two of the Bill is to merge the Scottish Land Court and the Lands Tribunal for Scotland into one cohesive body, the Scottish Land Court. The Scottish Government states that the newly merged body will offer structural coherence, efficiency, and the delivery of a better service to litigants. The Scottish Government recognises the historical importance of the court to the agricultural and crofting communities, and the opportunity has therefore been taken to reproduce the provisions of the Scottish Land Court Act 1993 with some changes to ensure parity for judicial office holders of the new body. It is the intention that the Scottish Land Court will continue as before, meeting in Edinburgh but also throughout Scotland including in the crofting counties. The Bill provides for suitably qualified members of the merged Scottish Land to act as judicial members in the Upper Tribunal. The intention is to ensure that enough judicial members are available to assist with managing fluctuations in volumes of appeal cases and improving resilience in the Upper Tribunal.

## **OVERVIEW**

- 8.1 Certain proposals to the Bill are simple and seem practical, such as electronic communication of notices and meetings, simplifying the correction of errors on the map-based crofting register, streamlining enforcement action when dealing with breaches of duty and reducing the census requirements to once every three years. Other proposals are more concerned with clarity such as the defining of 'crofting community', the maximum period for a sublet or lease being 10 years and clarifying that the landlord has no responsibility for the provision of fixed equipment. Some parts of the Bill may be viewed as slightly more progressive such as giving subtenants and the right to report suspected breaches of duty within their township to the Commission, while entirely removing the duty (but not the right) of a grazings committee to report such breaches. Other proposals such as requiring that outstanding information is provided to the commission and the statutory duties are being adhered to before crofters' applications are considered as well as requiring the Commission to consider the decrofting history of a croft when taking a decision on a new decrofting application, can be seen as more progressive measures.
- 8.2 The more significant provisions in the Bill are prohibiting future transfers of owner-occupied crofts to non-natural persons and giving the Commission power to award 'owner-occupier' crofter status subject to yet unknown conditions. Other significant provisions include new powers to change croft boundaries subject to an agreement by all whose boundaries would be changed, this will be done through "boundaries adjustment" where no land is taken into or removed from crofting tenure; and "boundary remapping" where some land becomes, or ceases to be, croft land. The Bill also allows the fast tracking for assignments when the proposed assignee is a member of the crofter's family with

certain conditions being met. Other provisions relate to the use of common grazing allowing crofter led environmental initiatives on common grazings and adding use of common grazing for environmental purposes to the existing uses of grazing which do not require Commission approval. One of the most significant changes is the duty to cultivate and maintain a croft includes putting it to 'environmental use'. This is defined as any planned and managed use which does not adversely affect the use of adjacent land, and which may include (but is not limited to) peatland restoration, habitat creation and restoration, water management, or preserving protecting, restoring, enhancing or otherwise improving the natural heritage or environment and any other environmental or purposeful use.

- 8.3 Some of the Scottish Government's 2024 crofting consultation proposals that were widely discussed with the crofting communities in the Western Isles have not been brought forward. The duty to cultivate or otherwise use a croft does not require the crofter themselves to do the work if members of their family are doing it. This was not brought forward as concerns were expressed that changing the legislation might encourage more crofters to pass the work to even more distant relatives or acquaintances. The regulatory controls on sales over owner-occupied crofts where the proposed purchaser already has three or more crofts has also not been brought forward. Two of the most ambitious proposals, of joint tenancies and providing standard securities to be granted over croft tenancies, have also not been brought forward at this stage. These two proposals were suggested as mechanisms to assist with the rising cost of a croft tenancy and to help get younger people into crofting. However, it should be noted that there are powers already available to the Crofting Commission through imposing regulatory requirements on inactive and vacant crofters that could be exercised more vigorously. This would affect the values of crofts, increase the number of crofts available and make them more accessible to new entrants, ensuring a croft is seen as not just a saleable asset but one that can be lost if not properly managed.
- 8.4 During Scottish Government crofting engagement events in 2024 there was universal support for ending the creation of deemed crofts and restoring all previous deemed croft shares to the original croft they were separated from. What is proposed in this bill is a change in the current position so that when a crofter purchases their croft, any grazings share will remain attached to the croft unless the conveyance actively specifies otherwise. Therefore, deemed crofts can still be created and this loophole will not be fully closed.

## **CONCLUSIONS**

- 9.1 The Bill has been developed on the basis that it will simplify crofting law. However, this will not be realised through the proposals as presented. The Bill is amending existing legislation, rather than creating something new and these amendments are 55 pages of cross-referenced substitutions, deletions and insertions. Once updated to show the proposed amendments from this Bill, the '1993 Act' runs to over 150 pages and remains difficult to navigate, unwieldy and complicated.
- 9.2 Furthermore, the scale of proposed change will not have a substantive impact on reforming crofting law and tackling the major issues affecting crofting and crofting communities. Many of the previous proposals consulted on in 2024 have not been brought forward and several fundamental issues that garnered universal support at local meetings have not been addressed. Many of the proposed changes relate to wording and definitions within the Act and will have limited impact in crofting communities.
- 9.3 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 formal submission. It is recommended that the Comhairle's response be homologated, given that the closing date of 5 September 2025 preceded the current committee series.

## APPENDIX 1

### SCOTTISH GOVERNMENT CALL FOR EVIDENCE: RESPONSE BY COMHAIRLE NAN EILEAN SIAR

#### Consultation Questions

1. Part 1 of the Bill would make a number of changes to crofting legislation. Do you have any comments on any of these changes? Please say which sections of the Bill you are commenting on in your answer.

*The changes introduced by the Bill, do seem to aim to simplify existing crofting law, however the amendments being proposed are so unremarkable that it is difficult to explore or challenge the proposals. If the Bill leads to some simpler outcomes that would be a positive result, however it is questionable if the law itself is becoming any simpler. The Bill is amending existing legislation, rather than creating something new and these amendments are 55 pages of cross-referenced substitutions, deletions and insertions. Once updated to show the proposed amendments from this Bill, the '1993 Act' runs to over 150 pages and seems to remain difficult to navigate, unwieldy and complicated. Many of the previous proposals consulted on in 2024 have not been brought forward and several existing issues that garnered universal support at local meetings in the Western Isles have not been addressed. This is disappointing as there again seems to be a big opportunity missed to change the law for the better and tackle some of the major issues affecting crofting and crofting communities. It seems that the path chosen is the one of least resistance. Many of the proposed changes are to the wording and definitions within the act and therefore will be limited in the impact it will have. It seems that at this stage there has been more focus on semantics than on the deep-rooted issues.*

2. What changes would you have liked to see included in the Bill but which are not included?

*During the SG crofting engagement events in 2024 there was universal support in the Western Isles for ending the creation of deemed crofts and restoring all previous deemed croft shares to the original croft they were separated from. What is proposed in this bill is a change in the current position so that when a crofter purchases their croft, any grazings share will remain attached to the croft unless the conveyance actively specifies otherwise. Therefore, deemed crofts can still be created and this loophole will not be fully closed. The ending of deemed crofts and for all deemed croft shares to be returned to their parent croft should be a main priority for this Bill. This is what the amendment to the Bill should be dealing with. While the commission or Scottish Government didn't seek to allow the creation of deemed crofts they have also not closed the loophole to allow them to continue to be created. With the increase in Energy developments on common grazing land and payments going to share holders there is more than likely going to be far more individuals selling their croft and keeping the shares to be able to benefit from the payments generated from these schemes. Now would be the optimum time to close this loophole before any more deemed crofts are created.*

3. Part 2 of the Bill would allow for the merger of the Scottish Land Court and Lands Tribunal for Scotland. Do you have any comments on this merger?

*This portion of the bill will have much less effect on the Western Isles. The one thing noted seemed an excessive IT costs of 585k for the land court, also notable the increase in pensions contributions. The current employer pension contribution rate for CSPS is 28.97%. The pension contribution rate for JPS is 62.55%. The CSPS are then entitled to move to the higher pension rate so the contribution for the employer goes from £51,124. 86 to £110,383 an additional £59,259 per annum in employer contribution costs. It seem interesting that a merger such as this doesn't actually save any money but will in fact cost nearly £700k more with no increase in staff members or any relocation fees as they both currently occupy the same office space. If the merger results in greater efficiency that would be advantageous however it does seem that this will come at a cost.*

4. Do you have any other comments to make on this Bill?

*Comhairle nan Eilean Siar would encourage a review of the priorities currently proposed: given how infrequently crofting law reform opportunities arise there is a concern that an opportunity to deliver a more effective suite of legislative changes is being missed. The Comhairle would welcome the opportunity to engage with officials on how best to deliver those key issues that were included in the original consultation exercises but have now been dropped or diluted, and would encourage the committee at this evidence taking to press for amendments prior to the next stage of the bill's passage through the Scottish Parliament.*