

COMMITTEE OF INQUIRY ON CROFTING

GOVERNMENT RESPONSE



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FOREWORD

The Scottish Government is focused on creating a more successful country with opportunities for all of Scotland to flourish through increasing sustainable economic growth. We will not have succeeded unless every part of Scotland, including the most remote, rural areas of Scotland, has the opportunity to flourish. It is this Government's view that, in certain places, crofting can play an important role in achieving that goal.

In the Government's programme for Scotland, we committed ourselves to reforming crofting, following the work of the current inquiry, recognising the unique contribution that crofting can make to the maintenance of thriving rural communities in Scotland's more remote areas. The Committee of Inquiry on Crofting has now reported to Ministers and this response marks the first step in our commitment to reform crofting.

In reforming crofting, we need to focus on what crofting can contribute to the development of a successful rural Scotland. We have to recognise that circumstances in the 21st century are quite different from the circumstances in the 19th century when the first Crofters Act was brought into force. The first Crofters Act was introduced to give tenant rights over the land they occupied to enable them to stay in their communities. Agriculture was a dominant feature of crofting but as we have moved into a more competitive, global market, crofting agriculture has declined and crofts have been put to wider uses. Today crofters exercise control over much of the land in their communities and trade their crofts and croft tenancies on the open market as demand for housing increases. The consequence of these trends is that traditional crofting practices are in decline and more and more land is being taken out of crofting tenure as crofters exercise their right to buy and realise the value of these assets in the open market.

Crofting is now at a crossroads and we need to decide which direction to take in order to secure the future of crofting. Bringing new blood into crofting communities and releasing their energies to help secure sustainable economic growth will be key. It is clear to me from the debates that have been held on this fundamental issue, and from the Committee's report, that the majority of crofters wish to see more effective regulation designed to keep land in crofting tenure, to ensure croft houses are lived in and land put to productive use.

But most crofters want to secure an even greater and even more important goal – the continuation of their traditions and way of life by means of handing on the opportunity to croft to future generations. That cannot happen, however, unless there is reform – reform that re-establishes the right balance between the individual and the community and which empowers crofters to plan their 21st Century future.

I have welcomed the vision that the Committee has set out for the future of crofting – one of growing, prosperous, inclusive and sustainable crofting communities. The Government has not accepted every single recommendation made by Professor Shucksmith and his colleagues, but we have listened carefully to the Committee and to all those who have commented on its findings. This document now sets out the Government's detailed response to that process. The next step will be to bring forward a draft Bill for consultation but I look forward to further debate on the Committee's report and on the Government's response as we, in partnership with crofters and the crofting community, take this matter forward.

Michael Russell MSP
MINISTER FOR ENVIRONMENT



Overview

1. Scottish Ministers appointed the Chair of the Committee of Inquiry on Crofting in December 2006 and the full membership of the Committee was announced in April 2007. The Committee was asked to develop a vision for the future of crofting and to identify administrative or legislative changes that were needed in order to realise that vision. The Committee undertook an extensive consultation, holding a number of public meetings across the crofting counties, and invited written submissions of evidence. It is important to note that well over two thousand people took part in this process, and that effective contributions came from every part of the Highlands and Islands, and beyond. Many contributors were active crofters.

2. The Committee of Inquiry launched its final report on the 12 May 2008 at an event in An Lanntair, Stornoway, and the Committee's conclusions were widely welcomed at the time throughout the crofting counties. The report provides an overview of crofting and makes recommendations in six areas. These are:

- Land and Environment;
- Rural Economies;
- Affordable Housing;
- Governance;
- Regulation and Enforcement; and
- Young People and New Entrants.

3. A debate on the Committee of Inquiry's report¹ was held in the Scottish Parliament on 15 May and the vision outlined in the report was again broadly welcomed. Since then the Government, Parliament, crofters and other stakeholders have been considering the content of the report and a wide range of opinion is emerging on the specific recommendations in the report. This document sets out the Government's initial response to the recommendations in the report and invites people to comment on the Committee's report and on the Government's response. Comments can be sent to the address at the end of this section.

4. There a number of key principles that the Government considers to be important in securing the future of crofting and of remote and rural crofting communities. These are:

- **Maintaining and increasing the amount of land held in crofting tenure.** One of the key indicators of the health of crofting is the amount of land that is subject to crofting tenure. The amount of land in crofting tenure is declining with more and more land being resumed and decrofted, most commonly for the purpose of building new housing. It is of course inevitable that from time to time land will be taken out of crofting tenure; but it is also important that as much land as possible remains in crofting tenure in order to secure the economic, social and environmental benefits that crofting delivers. A constant removal of land, particularly when it is removed for speculative purposes, cannot but harm both the individual crofting communities affected and crofting as a whole. The Government is therefore keen to ensure that land remains in crofting tenure. Where land is taken out of crofting tenure, we must ensure that it not only makes a full contribution to the local economy but also has the potential to allow the community to take some benefit from the value (real or theoretical) of the asset which has been removed from crofting. In addition, the Government has committed itself to designating new areas for crofting and will be bringing forward the necessary secondary legislation in due course.
- **Ensuring that land in crofting tenure is put to productive use.** There has been considerable debate in the past on what is considered to be productive use. It is generally agreed that the definition of productive use should be drawn widely to allow land to be used

¹ *Final Report of the Committee of Inquiry on Crofting*, <http://www.croftinginquiry.org/Documents/final-report>.

for a variety of purposes. Whether the land is being used to produce food, deliver environmental benefits, business premises or housing is not as important as ensuring that the land is being used in some shape or form. We recognise the role that Government can play in stimulating the productive use of land, but it is important that crofters play their part too. Greater use of existing powers may be needed to ensure that crofters who do not put their land to some form of productive use face a real risk of losing their tenancy.

- **Ensuring that housing in the crofting counties makes a full contribution to the local economy.** An adequate supply of housing is vital to maintaining and increasing the population of any area. This makes it central to securing economic growth in the remote, rural areas of Scotland. We need to ensure that sufficient affordable housing is available to accommodate young people and inward migrants. Whilst second homes generate income for the economies of remote, rural areas, their contribution is not as great as a home that is used as a principal place of residence. Furthermore, the speculative demand for second homes often results in prices for crofts and houses that local people cannot afford. Therefore, it is essential that absenteeism is properly addressed. Moreover, as crofters control a significant proportion of land in certain communities, they can play an important part in achieving a steady supply of affordable housing for local people.
- **Giving more power to local people to determine their own futures.** As the Committee of Inquiry pointed out, there is a widespread belief that a key component of successful rural development is the local mobilisation of people, supported by Government and agencies, to take control of their own futures. By devolving power, we can enable communities to plan their own future and take decisions that are appropriate for their needs and circumstances. However, with power comes responsibility, and it is important to ensure that those taking decisions on behalf of their communities are representative and accountable.
- **Assisting young people and new entrants into crofting.** Crofting will only survive if young people continue to take up crofting. There are a number of factors that impact on this, and the Government is committed to making crofting an attractive way of life for generations to come. As we move forward with the development of crofting, we shall seek to ensure that special regard is paid to the needs of new entrants, without whose enterprise and commitment our crofting communities will be unable to survive.

5. The Government response to the individual recommendations of the Committee of Inquiry takes account of these key principles. The responses to the recommendations are provided in the remainder of this document and are set out in the order of the Committee's report. Government will be preparing a draft Bill for public consultation in 2009.

6. Comments on the Committee's report and the Government's response can be sent to:

Future of Crofting Team
Area 1-D
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY



Detailed Response

7. The Government's response follows the order of the recommendations made in the Committee's report. The Committee made recommendations in six key areas. The following sections address each of these areas in sequence.

- A. Land and Environment
- B. Strong Rural Economies
- C. Affordable Housing
- D. Governance for Crofting
- E. Crofting Regulation and Enforcement
- F. Young People and New Entrants

A. Land and Environment

8. Crofting has defined the landscape of the Highlands and Islands for centuries. However, the economy has changed dramatically over that period and this has had an impact on land use. Agriculture now operates within a global market place and the Government wants Scottish agriculture to continue to be a dynamic and competitive industry, ensuring long-term viability of rural communities. This is particularly important at a time when food security and the benefits of local food production have risen quickly up the national agenda. Of course, the focus of European and national funding has changed over the years to reflect global pressures and to enhance the benefits to society of managing land in an environmentally positive way. Diversification has also been encouraged, in order to help make rural areas less dependant on agriculture. Crofting areas have often led the way in terms of showing how income can be generated from a variety of sources and demonstrating good environmental management of the land. Scotland's unique natural heritage owes much to the skill, effort and determination of generations of crofters.

9. The Government welcomes the close attention that the Committee gave to the important, and often complex, interactions between land, the environment and crofting. This section sets out the Government's response to the recommendations on land and the environment in the Final report of the Committee of Inquiry on Crofting. The Committee's report comes at a time of substantial consultation on the future of the Common Agricultural Policy and on Less Favoured Areas. The Government will take full account of the recommendations made by the Committee of Inquiry on Crofting in shaping its response to these consultations.

3.2.19 Instead of a centralised facility serving the entire Highlands and Islands, support should be offered for private bull hire to meet the needs only of those areas where this would not be possible without this support.

10. The Government recognises the importance of maintaining livestock quality and cattle numbers in remote areas and encouraging crofters to work together to create viable cattle operations. It agrees with the Committee that a centralised bull stud facility is not the best way of achieving these aims. It will therefore look to replace the Crofters Cattle Quality Improvement Scheme (CCQIS) with new arrangements designed to facilitate private bull hire and to support community ownership in remote areas where the costs of transport or overwintering might otherwise prove prohibitive for crofting communities. New arrangements to mitigate these transport costs will be incorporated into the Scotland Rural Development Programme (SRDP). Unfortunately, EU State Aid requirements rule out SRDP support for bull purchase or hire (both being production aids).

11. It will not be possible to introduce these new arrangements before the autumn of 2009. For the transitional period, the Government plans to offer existing stud farm bulls, at a cost not exceeding current annual hire costs, to crofting groups which have taken advantage of the CCQIS in the last 3

years and who wish to make a permanent acquisition in the Spring of 2009. To allow time for groups to consider this option and to make the necessary arrangements, the Crofters Commission will maintain the present Bull Stud in Inverness to provide the necessary over-winter protection for the bulls and to arrange for outward transport next year. Where possible, the Government will look to vest ownership of any bulls transferred on this basis either in Grazings Committees or in Crofting Township Development Committees established in pursuance of Recommendation 3.12.5 of the Shucksmith Report. The Crofting Counties Agricultural Grants Scheme (CCAGS) can, of course, provide assistance for the construction of overwintering accommodation and other livestock facilities.

12. The Government proposes to close the central, state-owned stud facility in Inverness by summer 2009. The support currently available through the CCQIS to mitigate transport costs associated with private bull hire and for the provision of advice and assistance with the preparation of livestock plans will be maintained until new arrangements can be made under the SRDP. The CCQIS will then be discontinued.

3.3.1 We recommend that use should be made of potential flexibilities in the CAP Health Check Exercise including:

- **revision of Single Farm Payment rates to make their structure flatter, with consideration given to moving towards an area basis for payments, combined with an increase in modulation rates to increase moneys for rural development funding;**
- **use of extended national envelope provisions – to address disadvantages for small farmers and crofters in crofting areas, including possibly the funding of a bull hire scheme;**
- **introduction of mechanisms which permit allocations of Single Farm payment entitlement to newcomers.**

13. This is an important recommendation. The Government's consultation paper on the CAP Health Check² was published on the 13 June, with a closing date of 5 September. This consultation paper includes specific questions on moving away from the historic model of Single Farm Payments towards flat rate payments; on the level of modulation; on increased flexibility in use of the national envelope; and on potential use of the national reserve to give new entrants access to Single Farm Payments. A stakeholder group, which includes representatives of the Scottish Crofting Foundation, has also been established to give the Government advice on the CAP Health Check. Final decisions will be taken in the light of the outcome of EU-wide negotiations on the CAP Health Check, which are expected to reach a political conclusion later this year.

3.3.2 We recommend that there should be a review of existing rates under the Less Favoured Area Support Scheme (LFASS) – to make them more reflective of the provision of public goods. Consideration should be given to increasing the minimum payment rate. New rates should be introduced by amendment to the Scottish Rural Development Plan (SRDP) in advance of the end of the current Plan.

14. The Government is committed to the future of LFASS, and its LFASS stakeholder group (which includes representatives of the Scottish Crofting Foundation) is currently reviewing the interim scheme, in place during the period 2007-2009. During autumn 2008, the Government plans to consult on the details of how LFASS should operate during the period 2010-13. This consultation will reflect the Committee's recommendation, seeking views on payment rates and securing environmental and other public benefits. Decisions will be taken in early 2009.

² *Future implementation of The Common Agricultural Policy in Scotland*, <http://www.scotland.gov.uk/Publications/2008/06/11125012/0>.



3.3.3 We recommend that in the forthcoming EU-led review of the Less Favoured Areas (LFA), there should be an examination of the possibilities for linking payment rates directly to the provision of public goods. Consideration should be given to the introduction of “mountain” classification for parts of Scotland.

15. This is another important recommendation. The Government has written to the EC stressing the importance to Scotland of Less Favoured Areas, urging the EC to take full account of the views of Scottish stakeholders during this review, and asking that when decisions are taken countries are given adequate and sufficient time to prepare for effective implementation. The Government explained to the EC that land management in Scottish Less Favoured Areas faces significant physical and climatic handicaps, and that active management of this land is necessary for the delivery of related environmental benefits and the maintenance of traditional agricultural landscapes, with LFA support for farmers and crofters being vitally important to maintaining the countryside and promoting sustainable farming systems. The Government will use its forthcoming consultation on LFASS to seek views on the introduction of “mountain” classification for parts of Scotland.

3.3.4 We recommend the elimination of constraints in the current arrangements which militate against newcomers. This should happen as soon as possible, and not later than the introduction of the new arrangements following the current interim LFASS.

16. This is a problem that faces new entrants who take on potentially eligible land for which LFASS payments were not made in 2006. In its forthcoming consultation on LFASS, the Government will seek views on suggested ways in which this problem might be overcome and is firmly committed to removing this, and any other, barrier to new entrants.

3.3.5 We recommend building further on the clear progress of the new Scottish Rural Development Programme by introducing:

- **a non-discretionary measure under “Options” suited to crofters and other small businesses with the provisions we set out in section 3.1.15; and**
- **new free-standing measures suitable to crofting under “Options” following commissioned research to identify suitable prescriptions, bearing in mind the diversity of crofting areas.**

17. The Scotland Rural Development Programme (SRDP) was developed following extensive stakeholder consultation. It is worth around £1.6 billion over the programme period (2007-13). At present, the non-discretionary measures include LFASS and Land Managers’ Options and the main competitive mechanism is Rural Priorities (expected to be worth around £800 million over the programme period). Modifications to the SRDP may be submitted for EC approval following consideration by the Programme Monitoring Committee. However, at this stage, the Government wishes to gain experience in implementation of the present Programme before introducing new measures that were not included in its original submission to the Commission. When adjustments are being contemplated we will bear firmly in mind the need for measures of particular benefit to crofters.

3.3.6 CCAGS should be retained and consideration given to extending the provisions to include; (a) support for land-based enterprises other than agriculture; and (b) a 10% uplift in support to young entrants. (See section 3.2.15). [of the Final Report of the Committee of Inquiry on Crofting]

18. The Government accepts that the Crofting Counties Agricultural Grants Scheme (CCAGS) should be retained within the Scotland Rural Development Programme (SRDP). In the light of the Committee’s recommendations, it will take forward proposals to re-orient support towards registered crofters and seek EU approval during the 2009 modification process (a) to extend the scheme to the whole of the Highlands & Islands Enterprise Area and (b) to amend the scheme to provide a 10% uplift in support to new entrants to crofting. It does not propose to extend CCAGS to support land-based enterprises other than agriculture since support is currently available through other elements of the SRDP for such enterprises.

B. Strong Rural Economies

19. The report of the Committee of Inquiry on Crofting states that, on average, 30% of a crofter's income comes from croft based activities. Therefore, it recognises that strong rural economies that provide opportunities to generate income off the croft are vital to securing the future of crofting. The Government agrees with this and its top priority is creating sustainable economic growth in all parts of Scotland. The Committee of Inquiry on Crofting has made a number of recommendations designed to strengthen the rural economies of the Crofting Counties and the Government's response to these recommendations can be found below.

20. The Government wants to see growing rural economies. It provides support to rural communities to strengthen the local economy through building capacity within the community to develop ideas. It also provides direct support to get these ideas off the ground, but this requires the communities themselves to use their initiative to generate enterprise. Crofters now exercise control over a large amount of the land in some communities and can play an important part in building stronger local economies through putting the land to productive use.

3.6.1 We recommend focusing development investment on building the potential of communities to encourage them to develop their own capacities. This would involve building on the lessons of LEADER and Initiative at the Edge.

21. We agree with this recommendation. The Scottish Government is committed to increasing the capacity of communities to develop their local economies and to building on the lessons of LEADER and Initiative at the Edge. With the development of Community Planning and Single Outcome Agreements, there is every opportunity for this type of approach to be mainstreamed across fragile areas, building upon the principles of community empowerment encouraged by the Committee.

22. In September 2007, the Government announced an additional £100,000 per annum for the Crofters Commission to provide a service to help crofting communities develop investment plans in order to secure funding from the Scotland Rural Development Programme and other sources. The Government will also be spending over £30m through the LEADER Programme in the Highlands and Islands over the period to 2013 and the first grant awards have already been made in a number of areas. The Initiative at the Edge programme, which focuses exclusively on some of Scotland's most remote and economically fragile communities as an area-based, community-led, partnership supported approach to local development, has been successful over its 10 year history. It offers many useful examples of best practice which Highlands and Islands Enterprise (HIE) will take forward in its proposed Growth at the Edge (GATE) approach.

3.6.2 We recommend greater integration between the “strengthening communities” and “business support” aspects of HIE's and local authorities' work – with greater priority being given to small projects (especially microbusinesses), community businesses and social enterprises, together with targeting on the remoter parts of crofting areas.

23. The Scottish Government agrees that there needs to be greater integration between the “strengthening communities” and “business support” aspects of HIE's and Local Authorities' work. HIE's proposed GATE approach in fragile areas involves working closely with Local Authorities as part of the community planning process, bringing the integration of economic and community development. HIE's proposed GATE approach is focused on their identified Fragile Areas and would include assistance to microbusinesses (minimum intervention of £5k) where there is clear community benefit. HIE will continue the programme of assisting communities to create enterprises to develop land assets and renewable energy initiatives which generate income. It will also assist in the development of innovative ideas such as low carbon islands, community “hubs”, development of new and woodland crofts, and the delivery of services through digital technology.



3.6.3 A strategic approach to in-migration, return migration and population retention should be encouraged – aimed at developing new enterprise and the establishment of the types of communities where people want to live.

24. We also concur with this recommendation. Indeed the Scottish Government has set in its Economic Strategy a population growth target for Scotland to match average EU-15 population growth in the period 2007 to 2017. To achieve this it is adopting a strategic approach to in-migration, return migration and population retention. While this is a national target it is recognised that even a small increase in the population of remote, rural communities may have a significant impact on the economic and social development of these areas. The Scottish Government will be working with Highlands and Islands Enterprise, local authorities and other service providers to encourage people to live, work and learn in Scotland, including the crofting counties. Improving employment opportunities, housing availability and other factors will make crofting and other remote rural communities more attractive places to live and work. In return, the injection of new blood, new vitality and new ideas will help the crofting counties prosper.

C. Affordable Housing

25. Housing is a key issue in crofting communities and is vital to retaining and increasing the population of our remote, rural areas. This makes it a central component of strengthening the rural economy. However, it is a contentious issue in some crofting communities. There is a view that some housing developments are not making a full contribution to the local economy, since the houses are not being used as a permanent place of residence. Moreover, the uplift in value associated with those developments may accrue to an individual crofter (in fact sometimes an absentee individual crofter) without any contribution being made to the well being and future of the crofting community in which the development is set.

26. The Government wishes to encourage the provision of affordable housing and has a general preference for the use of less productive agricultural land for this purpose where circumstances permit. The relationship between crofting and housing has changed considerably as demand for housing has changed. Pressure to use land under crofting tenure for housing has increased recently; and there is a mixture of views on the use of croft land for housing. These issues are discussed in more detail in the section on crofting regulation and enforcement, but it is important to note the difficulties in reconciling the conflict between using land for housing so as to strengthen the wider rural economy and using land for the purpose of agriculture. As crofters control a significant proportion of land in some communities, they have a vital role in this debate.

27. The recommendations in this section focus on support for housing and the Government's response to these recommendations is provided below. The Government recognises that crofting tenure requires additional support to be made available for croft housing, but it is important to note recommendation 3.15.8 in considering the recommendations on housing, since this recommends that legislation be amended to facilitate crofters' ability to obtain loan finance without the necessity of decrofting. The Government intends to open a dialogue with lending institutions on how crofters might use their tenancies to secure loan finance. This would impact significantly on support for croft housing.

3.9.1 An enhanced CHGS – designed to permit house building or improvement without decrofting.

3.9.2 The enhanced CHGS should not be available to those who decroft.

28. The Government proposes to take forward an immediate review of the Croft House Grant Scheme (CHGS) alongside two other rural housing grant schemes (the Rural Home Ownership Grant and the Rural Empty Property Grant). The review will consider the recommendations made by the Committee of Inquiry on Crofting, including the level and conditions for support.

29. In order to keep land in crofting tenure, the Government shares the Committee of Inquiry's view that specific crofting support arrangements should be limited to houses built on croft land. However, this is crucially dependent on crofters being able to access loans for house building without decrofting. Therefore, it will not be possible to reach a conclusion on this until it is known whether or not lending institutions will be prepared to lend using a crofting tenancy as security; or whether alternative means of securing loans, such as a Government guarantee, need to be explored.

30. The Government is not attracted to the proposal to reintroduce the loan element of the Croft House Grant Scheme since it considers the private sector to be better equipped to act where a person defaults in the repayment of a loan. It would prefer in principle to proceed by way of shared equity arrangements enabling the public sector to acquire a share in the value of any housing constructed. However the Scottish Government will continue to investigate loan guarantee schemes which operate in other areas of rural life to see if any of these might provide a workable model for croft housing provision. This will be done as part of the review of rural housing.



3.9.3 The provision of affordable housing for non-crofters would be supported by the measures detailed at paragraph 3.8.4. [of the Final Report of the Committee of Inquiry on Crofting]

31. The Government accepts the Committee's view that the primary source of affordable housing will be through Registered Social Landlords (RSLs) and community trusts. However, affordable housing can also be provided by private developers and by local authorities. The Government is committed to providing incentives for local authorities to recommence new build programmes and has set aside £25 million for this. More generally, the Government is currently taking action in respect of many of the measures detailed in the Committee's Report, as set out below.

(Public owners of land (including the Government, Forestry Commission and SNH) should be encouraged to assemble and make land available to Registered Social Landlords (RSLs) at low cost)

32. The Government is very enthusiastic about ensuring that state-owned land should be made available in this way and has been vigorously pursuing the matter. The National Forest Land Scheme already gives RSLs and other housing providers first call on surplus Scottish Government land that is managed by the Forestry Commission. Several sites are already augmenting affordable housing supply in rural communities. The Housing Supply Task Force, chaired by the Minister for Communities and Sport, is looking at the use of public sector land as an early priority.

(Rural Home Ownership Grants (RHOGs) should be actively promoted throughout crofting communities by local housing enablers and RSLs)

33. The Scottish Government agrees that mechanisms to help prospective purchasers in rural areas are an important part of its Low-cost Initiative for First-Time buyers (LIFT). A recent review of Rural Home Ownership Grants (RHOGs) suggested that they were more widely known in areas like the Highlands and less so in non-crofting areas such as the south of Scotland. Consideration of this recommendation will form part of the wider review of rural housing grants.

(In larger settlements, quotas of affordable housing should be required of private developers, even in small schemes, subject to the overall viability of the scheme)

34. The Scottish Government's *Planning Advice Note 74: Affordable Housing* already makes provision for this, and suggests a benchmark of 25%. The Government revised *Scottish Planning Policy 3: Planning for Homes* in July 2008, and this now contains the 25% benchmark, for the first time, in national planning policy.

(New models should be developed appropriate to scattered settlements, such as a new shared equity/ RHOG model and community-initiated and owned housing similar to the 'constellation model' pioneered in the Western Isles in the 1990s)

35. The Scottish Government's review of rural housing grants will consider whether improvements can be made to the existing schemes and will look carefully at the Committee of Inquiry's specific suggestions on new models.

3.9.4 Local crofting development plans should set out in what circumstances housing may be built on in-bye land and good common grazings in any local area. There should be a presumption against building on in-bye land unless the local crofting development plans specify that this is essential together with any conditions.

36. The Government is keen to encourage more public involvement in the planning process and for there to be a greater articulation of crofting considerations in land use planning in the crofting counties. Where possible, it would also like to see housing constructed on poorer quality land rather

than on better quality in-by land that might be put to agricultural use. Decisions on whether or not housing should be developed on particular sites is properly a matter for planning authorities but the Government will now look to local authorities to ensure that the needs of crofting communities are fully considered in their decisions on the appropriate use of croft land. It is also important that housing supply is considered in the broader context of the social and economic development of the region as a whole.

37. Recommendation 3.12.5 suggests that local crofting development plans could be drawn up by Crofting Township Development Committees. The Scottish Government has made available resources to encourage the production by communities of their own local crofting development plans. It expects that regulatory and planning authorities will have proper regard to plans prepared by communities for the future of their townships.

3.9.5 Measures to assist new entrants to crofting should be emphasised in the allocation of future funding.

38. In reviewing housing grants to rural areas, the Government will seek to ensure that future arrangements give priority to the attraction of new entrants into crofting. The Government acknowledges that new entrants are vital to securing the future of crofting and aims to encourage this wherever possible. Measures to assist new entrants into crofting will, of course, be dependent on the availability of crofts as well as issues of affordability.



D. Governance for Crofting

39. The current governance arrangements for crofting have been in place for over 50 years and it is appropriate to consider whether or not they are still fit for purpose. The existing arrangements may have served crofting well in the past but in more recent times there has been some substantive criticism of the Crofters Commission, with accusations levelled at it for being, in part at least, an over-centralised bureaucracy with less appreciation of local circumstances and needs than is required. The Scottish Government believes that power needs to be devolved towards communities so that decisions better reflect local circumstances. With power comes responsibility; and it is therefore important to ensure that decisions are taken objectively, are transparent and that there are clear lines of accountability for the decisions taken. However we also recognise the potential for conflict within crofting communities if regulatory power is devolved too far.

40. The most immediate impact of crofting regulation is on the crofter, although the cumulative impact of crofting regulatory decisions can affect the wider community, particularly when a significant proportion of land in the local area is in crofting tenure. Therefore it is important to consider the balance between the individual interests of the crofter and the wider interests of a community.

41. Where there are changes in governance arrangements that will affect staff, the Government will consult with staff and unions to ensure that staff concerns are addressed.

42. The following gives the Government's response to the recommendations in the Governance for Crofting section of the Committee of Inquiry's report.

3.12.1 We recommend a separation in the functions of (1) crofting regulation and enforcement, (2) crofting development and (3) the maintenance of the crofting register. Greater local accountability and ownership is also required in the implementation of the regulation and enforcement function.

43. The Government accepts this recommendation and agrees that there should be a separation in the functions of (1) crofting regulation and enforcement, (2) crofting development and (3) the maintenance of the crofting register. As described below, crofting regulation and enforcement will be retained by the Crofters Commission, crofting development will be undertaken by Highlands and Islands Enterprise and a new Register of Crofts will be established by the Registers of Scotland.

3.12.2 The Crofters' Commission would therefore be wound up. We recommend that the regulation and enforcement function should be discharged in future by a new *Federation of Crofting Boards*, a single organisation consisting of 7-10 elected *Local Crofting Boards*, and an executive supplying staffing support, finance and other central services to these Boards.

44. The Government does not agree with this recommendation. The Crofters Commission has experience and knowledge of crofting issues and it is important that this expertise is preserved. However, it needs root and branch reform to make it more transparent, democratic and accountable. The Government therefore considers that the Crofters Commission should be retained but radically reformed and reconstituted. Recently the Crofters Commission has made some strides towards becoming more sensitive to local circumstances through establishing Area Commissioners and reinvigorating the assessors network. The Government has welcomed these developments but believes the Commission can go much further; and we therefore propose to reconstitute the Crofters Commission as an NDPB with subordinate Area Committees. The Board of the NDPB will be made up of the convenors of the Area Committees and a minority of ministerial appointees, including the Chair of the NDPB. The reconstituted NDPB will assume responsibility for staff, finance and other central services but will look to share corporate services in line with the principles of Efficient Government.

45. The Government proposes that there should be a maximum of 6 Area Committees to ensure that they are sufficiently large enough to avoid conflicts within communities. Legislation might provide for the following Committees to be established:

- Orkney and Shetland
- Western Isles
- Northern Highlands
- Southern Highlands
- Skye, Lochalsh and Lochaber.
- Argyll, Bute, Arran and Cumbrae

46. In proposing the Area Committees, consideration has been given to the workload, ease of travel within the Area Committee area and alignment with Local Authority boundaries. Each Area Committee will take regulatory decisions for its area. However, the Area Committees will be subordinate to the Crofters Commission Board and will exercise delegated powers in the name of the Crofters Commission. Their regulatory policies and individual decisions may be subject to appeal to the regulator before any appeal may be made to the Land Court.

47. Each Area Committee might be expected to comprise up to twelve members, with a majority of crofters. Seven members of the Area Committee would be crofters elected by crofters and two members would be nominated by the relevant local authorities. Having local authority representation on Area Committees will ensure that crofting regulatory decisions take account of local authority housing, planning and economic development policy. A further three members of the Area Committee would be appointed by the Board of the Crofters Commission in order to ensure appropriate representation of other crofting interests, such as landlords and community trusts. Each Area Committee would elect its own Chair from amongst the crofter representatives and crofters would always be in the majority on the Area Committee and on the Commission itself.

48. In consultation with Local Authorities, the Scottish Government will give further consideration to the detailed governance and electoral arrangements for constituting the NDPB in this way. Its proposals will be enshrined in draft legislation, on which the Government expects to consult in 2009.

3.12.3 Responsibility for development of crofting should be given to a powerful *Crofting and Community Development* body, ideally within HIE.

49. A number of different agencies impact on crofting and they should all contribute to the development of crofting. Recognising the contribution that crofting can make towards the socio-economic development of the Highlands and Islands, we believe that it is important that crofting and community development should not fall to a separate “body” within HIE but should instead be treated as an integral part of the agency’s mainstream economic and social development work. The crofting development function would be carried out by HIE in exercise of its functions under the Enterprise and New Towns (Scotland) Act 1990. This will ensure that the contribution of crofting and crofting community development is considered within the broader context of rural development in the Highlands and Islands, particularly in the remoter, more fragile areas. The function will be transferred to HIE as soon as is practicable and, following the transfer, will be overseen by HIE’s Strengthening Communities Group, working closely with HIE’s area based teams.

3.12.4 Responsibility for the Register of Crofts should be taken over by the Registers of Scotland – following a consultancy exercise to assess the accuracy of the Register, the specification required to maintain appropriate regulatory action in the future and a transition plan to bring the Register up to that specification.



50. This recommendation parallels recommendation 3.15.7. The Government's response to that recommendation is set out below.

3.12.5 At community level, grazings committees should be modernised to become *Crofting Township Development Committees* with a broader remit and more inclusive membership. Their primary function will be to develop and agree strategic plans for local crofting development, with the support of the new Crofting and Community Development body.

51. Whilst we recognise the force of this recommendation, the Government is not convinced that all present grazings committees could be transformed in this way. We therefore wish to encourage change rather than demand it. The Government has already been helping crofting communities to develop plans for the future of their communities and there are examples of where grazings committees have successfully developed and agreed strategic plans for local crofting development. This work was supported under the Crofting Community Development Scheme and is consistent with much of the work now undertaken by the Crofters Commission and HIE through Rural Direct and Initiative at the Edge. There is evidence that much can be achieved through voluntary means rather than through a regulatory approach.

52. We propose that grazings committees should continue to be encouraged to develop local crofting development plans and that HIE should support this activity through its Growth at the Edge approach. Grazings committees need to be revitalised in some areas and crofters will be encouraged to appoint more non-crofters to the committees in order to ensure that local development plans reflect the aims of the whole community, though crofters must remain in the majority. The Government has already made available financial support for the development of local community business plans and their implementation through the Scotland Rural Development Programme and we will guide grazings committees towards accessing such support.

53. Further consideration is being given to the best model for producing local crofting development plans, learning from approaches such as the Community Futures approach adopted in Loch Lomond and the Trossachs National Park. However, it is important for regulators to acknowledge the wishes of a community as expressed in any properly formulated plan and, therefore, both the crofting regulators and the planning authority will be expected to be mindful of these plans when formulating their own policies and making regulatory decisions.

3.12.6 An annual “State of Crofting” Report should be submitted to the Scottish Parliament by the Federation of Crofting Boards, having consulted with the Crofting and Community Development body.

54. The Government endorses this recommendation and will expect the new NDPB to report to Ministers and Parliament in this way. Current legislation requires the Crofters Commission to make an annual report to the Scottish Ministers on the exercise and performance of their functions and requires Scottish Ministers to lay a copy of the report before Parliament with such comments as they may think fit to make. Similar arrangements are likely to apply to the Commission in any new legislation, so we will roll this requirement up into these new arrangements, with the “State of Crofting” report having within it the formal report and accounts of the Commission.

E. Crofting Regulation and Enforcement

55. The Committee of Inquiry's report indicates that there is a wide range of opinions on crofting regulation and enforcement, with some areas of the crofting counties preferring a lighter approach to regulation and enforcement and other areas desiring a tougher approach to regulation. This will be reflected to some extent by the approach adopted by the Area Committees, whose policies will reflect local circumstances. Nevertheless, there will need to be a national framework for crofting regulation that ensures consistency of approach to crofting across Scotland.

56. At present, there is not a clear distinction between the roles and responsibilities of the landlord and the regulator. Furthermore, at present the regulator is not free to act and in some circumstances either requires the consent of the landlord before taking action or requires a complaint to be made. If crofting regulation is to be more rigorously enforced then it will be necessary to free up the regulatory body. Therefore, the Government will be reviewing current legislation in order to ensure that the regulator is able to take more decisive action.

3.15.1 We believe new legislation is needed to replace, simplify and clarify the accumulated laws which set the framework for crofting today.

57. The Scottish Government is sympathetic to the aims of this recommendation. However, in view of the complexity of crofting law, the process of simplification would, if properly undertaken, significantly delay the implementation of these policy proposals. The Government therefore proposes a twin-track approach.

58. First, new legislation will be needed to implement some of the policy proposals outlined in this Government response. The Government therefore proposes to consult in 2009 on a substantive draft Bill that will amend existing legislation.

59. Second, the Government will give further consideration as to how best crofting law might be simplified and clarified, and on what timescale. It will bring forward proposals on the consolidation of crofting law when it consults on the draft amending Bill.

3.15.2 No change should be made to those rights given to individual crofters in the 1886 Crofters Act, namely security of tenure, succession, fair rents and the value of their improvements. However these rights should only be enjoyed by those resident on or near their croft and using the land beneficially.

60. The Scottish Government accepts that the fundamental rights of crofters should be protected and that more rigorous action is needed to tackle absenteeism and neglect of croft land. The Government proposes to review the provisions in the Crofters Act to ensure that Area Committees can take swifter action to end the tenancies of those who are failing to meet the residency requirement or use the land beneficially. Where the crofter is an owner-occupier and is failing to meet the residency requirement or to use the land beneficially, the Area Committee should be able to assign a tenant to the owner-occupier.

3.15.3 We recommend that all croft houses be tied to residency through a real burden, which would be deemed to be included in the conveyancing when next assigned or purchased. This would run with the land in perpetuity. Decrofting the house site or purchasing the landlord's interest will not extinguish this burden. Crofters may apply to the Local Crofting Board to have the burden removed subject to the provisions in section 3.14.3. [of the Final Report of the Committee of Inquiry on Crofting]

3.15.4 A crofter wishing to assign or transfer their croft, or forced to do so through failing to fulfil the residency burden or enhanced burden should be given three options as set out in section 3.14.4 (see below).

- 
- **(the assignation or transfer of crofts will be permitted within families provided they satisfy the size/number criteria for occupying crofts set out from time to time for that area by the Local Crofting Board**

For non-family assignation or transfer the crofter has two choices:

- **if there is a croft house or, a decrofted but burdened house with the croft, the unit can be transferred freely (subject to an enhanced burden that would tie the new owner not only to occupancy but also to working the land); or**
- **alternatively, the house can be detached from the croft, subject to the provisions at section 3.14.6 below, and retained or sold at open market value, but with the residency burden retained. In this event the assignation/sale of the bare land croft will be subject to rules set by the Local Crofting Board – again reflecting the public interest, which might mean assigning to a tenant selected by the Board, for example a new entrant. The price of the bare land croft will be set by the District Valuer as the open market value subject to the requirements of residency and actively/beneficially working the land (i.e. the enhanced burden.)**

61. The Scottish Government recognises the problems faced by crofting communities as a result of absenteeism, neglect and speculation of croft land resulting from an external demand for second homes. However, it does not agree that the proposed burden is the best approach to addressing these problems. It believes that it is only necessary to consider an occupancy condition where land has been decrofted (or resumed by the landlord). Such an occupancy condition would require any house on land that has been decrofted, or that is subsequently built on land that is decrofted, to be used as a permanent place of residence. The enforcement of this condition would not be a matter for the crofting regulator, but for the relevant local authority. The Government will therefore consult with local authorities about the utility of this type of condition and its enforcement prior to bringing forward detailed proposals when it consults on draft legislation in 2009.

62. If such an occupancy condition were introduced, the local authority would be able to take the sort of enforcement action taken to secure compliance with the conditions of planning consent if the occupancy condition were not being met. In the event of consistent default, the local authority would also be able to force (a) the letting of the property to someone who would fulfil the occupancy condition or (b) the sale of the property. It is the Government's view that this should be sufficient to address speculation on croft land for the purpose of building second homes and could provide a source of affordable housing for local people.

63. Tougher enforcement by the Area Committees of existing legislative provisions relating to croft land, which require crofters to live on or near their croft as well as put their croft to some form of beneficial use, will achieve the aims of the Committee's recommendation in relation to croft land. The Government will consider giving greater powers to the regulator to subdivide crofts so that crofts that are not being worked can be detached from croft houses that are being used as permanent places of residence in order to increase the availability of crofts for new entrants and young people.

64. The Government will also explore the possibility of making provision for the Area Committee to tie a single house site to a bareland croft as a condition of decrofting consent. Such a tie would enable crofters to decroft a house site in order to obtain loan finance from commercial lenders but the link to the croft would be maintained. If a crofter sold the house, they would either have to sell/assign the croft or the new landlord would need to accept the current crofter as tenant. Similarly, if the crofter assigned the croft, they would be required either to sell the house with it or to rent it to the assignee. Financial support for croft housing would, in future, be restricted to those houses that either remained in crofting tenure or were "tied" to the croft through this particular condition on the house title and/or condition of decrofting.

65. The Government acknowledges that this is a contentious issue and will continue to take account of any views expressed by stakeholders before bringing forward legislative proposals. Before deciding how to proceed, the Government will also take into account the forthcoming results of research already commissioned from the University of Stirling into the viability of different types of occupancy restriction in rural Scotland, with a view to meeting its ambition to increase overall housing supply.

3.15.5 Owner-occupiers and tenants should be treated alike, simply as crofters, in all aspects of crofting. Each Local Crofting Board should have the power to suspend (or not) the 1976 Crofting Reform (Scotland) Act's right to buy.

66. The Scottish Government agrees that owner-occupiers and tenants should be treated alike in all aspects of crofting and will review the legislation to ensure this is the case.

67. In view of the recommendation that owner-occupiers and tenants should be treated alike, it is not clear why Area Committees should have the power to suspend the right to buy. The key objective is to keep land in crofting tenure. Whether the landowner is the crofter, a community body or a private landowner has no special bearing on the policy. However, the Government will monitor the use of the right to buy and keep the matter under review.

3.15.6 All sub-lets and tenancies should require the consent of the Local Crofting Board, who should also be given the power to place a limit on the number of crofts or the amount of land which can be held or worked by any one crofter. The Boards' policies on these matters should reflect the content of local Crofting Development Plans, where these exist.

68. The Scottish Government agrees that sub-lets and assignments should require the consent of the Area Committee. The consent of the Crofters Commission is currently required in respect of assignments and subletting. The Government agrees that Area Committees should be able to develop their own policies in respect of assignments and subletting which are of particular relevance to their area. The new regulatory NDPB will be required to have an equal opportunities policy and all Area Committees will be required to adhere to that policy.

3.15.7 Responsibility for the croft register would be taken over by the Registers of Scotland – following a consultancy exercise to assess the accuracy of the current register, the specification required to maintain appropriate regulatory action in the future and a transition plan to bring the register up to that specification.

69. The Scottish Government agrees that responsibility for establishing a definitive new Register of Crofts should be entrusted to the Registers of Scotland. The Keeper of the Registers of Scotland has welcomed the proposal and recognises the synergies between the Register of Crofts and the property registers he is currently responsible for maintaining. It is considered that a new Register of Crofts is required that will provide legal certainty on the extent of, and interests in, a croft. It would be similar to the current Land Register and would be open to public inspection. The Keeper would charge a fee in accordance with a standard fee schedule to make an entry on the new Register of Crofts. Consideration will also be given as to whether or not a fee for inspection of the new register would apply.

70. Legislation will be required in order to establish a new croft register and to confer associated functions on the Keeper of the Registers of Scotland. It will provide for the first entry of a croft in the new register to be made when a defined regulatory decision is to be taken in relation to that croft. Further consideration will be given to the type of transaction that will trigger the recording of a first registration. The speed of establishment of the new register will depend on the rate of regulated transactions, but a complete register should be created in this way within one or two generations.



3.15.8 Boundaries of crofts which in practice have been accepted for twenty years will not be challengeable.

71. The Scottish Government appreciates the intention of this recommendation but is not persuaded that the opportunity to challenge boundaries available under the existing law should be removed before crofts are first entered on the new register. Whilst the Crofting Reform etc. (Scotland) Act 2007 stated that a croft is any holding that has been registered in the Register of Crofts for a continuous period of 20 years and has not been challenged, the description of the boundaries in the old Register of Crofts may not be sufficiently accurate to define the boundary of a croft. Furthermore, the description may not be sufficient to satisfy the “long negative” provided for under the Prescription and Limitation (Scotland) Act 1973. The Government will therefore look to make provision for challenge at the point of first registration. Once the period for challenge has elapsed and the croft has been recorded definitively on the new register, it will not be possible to challenge the boundary again.

3.15.9 The Registration of Leases (Scotland) Act 1857 should be amended to make a crofting lease registrable and hence eligible for standard securities. (See section 3.14.18). [of the Final Report of the Committee of Inquiry on Crofting]

72. The Scottish Government accepts the principle that crofters should be able to obtain loan finance without the necessity of decrofting. However, it may require more than amending the Registration of Leases (Scotland) Act 1857 in order to achieve this. The Government proposes to consult with the Committee of Scottish Clearing Banks and other lending institutions in order to determine what lenders would require before they were content to lend to crofters using the crofting tenancy as security for any loan.

3.15.10 All holdings similar to crofts within defined crofting parishes should, if their owners or tenants wish, become subject to crofting regulation.

73. Under current legislation, owners of land can make an application to the Crofters Commission to constitute land that they own in the crofting counties or in an area designated by Scottish Ministers as a croft. Tenants of holdings subject to the Small Landholders (Scotland) Act 1911, in areas designated by Scottish Ministers outwith the Crofting Counties, can have the holding designated as a croft provided no part of the land is tenanted by other means. Holdings tenanted under the Agricultural Holdings (Scotland) Acts 1991 and 2003, whether in the crofting counties or in new areas designated, cannot be converted to crofts without the written agreement of both owner and tenant. The Government considers that tenants of small holdings, other than those subject to the Small Landholders Acts, should not be able to convert to crofting without the landowner’s agreement and therefore rejects this recommendation.

3.15.11 Government should consider back-dating the introduction of the real burden to all assignments and purchases made after May 12th 2008, so as to forestall any rush to avoid the provisions of the legislation.

74. The scope of the proposed occupancy condition is described in response to Recommendation 3.15.4 above. The Government will consult local authorities about the utility of this type of condition and its enforcement prior to bringing forward detailed proposals when it consults on draft legislation in 2009. Such legislation will be framed so as to make retrospective provision to place any proposed occupancy condition on houses built on land taken out of crofting tenure after 12 May 2008 in accordance with the Government’s statement to Parliament on that date in response to Parliamentary Question S3W-12829.

F. Young People and New Entrants

75. The Committee of Inquiry on Crofting does not make any specific recommendations in this section of its report, but describes the intended cumulative effects of its proposals and how these would encourage young people and new entrants into crofting.

76. The Government agrees that young people and new entrants are vital in securing the future of crofting and has agreed the measures proposed by the Committee to facilitate this. It has agreed to review legislation to consider whether the regulator should have the ability to subdivide crofts from house sites where the croft is not being used but the house is being used as a permanent place of residence. This should increase the supply of crofts for young people and new entrants. The Government has accepted the Committee's recommendations in respect of stimulating the broader rural economies of crofting communities to help generate employment opportunities and off-croft income. The Government has also agreed to provide additional support to young people and new entrants through crofter-specific agricultural grants and to refocus future assistance for croft housing with the needs of new entrants in mind.

77. The Government concurs with the view that the establishment of new crofts for new entrants should be considered and in that regard continues to drive forward the establishment of forest crofts. Using surplus government land in order to create other new traditional crofts has been proposed by a variety of individuals at meetings held to discuss the Shucksmith recommendations. The Government will consider what possibilities exist for the establishment of new crofts on land in the ownership of Scottish Ministers and will report on this matter when a draft Bill is brought forward. The Government continues to encourage private landowners to create new crofts.

78. The Government will take further action to assist new entrants wherever possible, but also accepts that a healthy jobs market and a thriving rural economy are important elements in retaining (or attracting back) young people and thus in creating the circumstances for them to enter crofting. Joined up government is therefore as important to crofting as it is to all other aspects of national life in Scotland.

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