

Written submission from Community Land Scotland

Crofting Community Right to Buy - Evidence on proposed Scottish Government amendments to Part 3 of the Land Reform (Scotland) Act 2003

Introduction

Community Land Scotland has long argued the need for changes to Part 3 of the Land Reform Scotland Act 2003 and welcomes the fact that the Scottish Government proposes to make important simplifications now using the Community Empowerment (Scotland) Bill.

In particular it is very welcome to see the repeal of the most tortuous mapping requirements within Section 73 of the Land Reform (Scotland) Act.

There are a number of other welcome changes to definitions and administrative arrangements.

Unless otherwise stated, Community Land Scotland either accepts or welcomes the changes set out by the Scottish Government.

Detailed observations on some amendments

Crofting community bodies

The provisions for bodies other than Companies Limited by Guarantee represent a welcome new flexibility.

In (4)(1A)(g) and in (1B)(g) there is the provision for the declaration of minutes upon request of “a” meeting of the community body. This is fine in principle, and as a matter of openness, however the provision is not clear as to whether this is any meeting, including sub-committee or working group, or only full meetings of the Board, or the AGM, or special meetings. Further, any request could not necessarily be met within the time-frame set out unless this was meant to apply to approved minutes. Greater clarity in the provisions would be necessary or could be set out in guidance or regulation to ensure clarity of what is intended.

In 1 (7) (b) (iii) (iii) it is proposed not to allow owner-occupier crofters registered in the Register of Crofts, as distinct from the Crofting Register, to be recognized. This distinguishes this particular group by reference to their registration at this time only in the Register of Crofts, and it is not clear why this is the case.

While there is provision for Ministers to alter this by regulation, and it is hinted that this could be used to subsequently include this group, no policy rationale is given for not including this group now.

Application: information about rights and interests in land

The repeal of the mapping requirements at Section 73 of the 2003 Act subsection (5)(b)(ii) and (f) is **very** welcome.

The inclusion of new provisions 3 (3) (5ZA) which require the identification of a range of persons is not currently required and this is not referred to, or the policy rationale explained, in the Explanatory Notes. The danger is that one set of onerous requirements (mapping) may be being replaced with another set of onerous requirements. It is not clear to what extent the information sought is readily within the reach of the crofting community body. It would appear that failure to be able to comply would have the effect of invalidating an application and it may be wise to allow for when a crofting community body has used all reasonable endeavors to ascertain the information, but this cannot be finally obtained, this should not invalidate an application.

The greater flexibility in the means of giving public notice by potentially adding to advertising in a local newspaper is welcome - 3(4).

Criteria for consent by Ministers

The proposal is to introduce a series of new requirements to Section 74 which seeks to accurately identify persons. This is a new requirement and, as at Section 73 referred to above, it is not clear to what extent the information sought is readily within the reach of the crofting community body. Failure to be able to comply would have the effect of invalidating an application and it may be wise to allow for when a crofting community body has used all reasonable endeavors to ascertain the information, but this cannot be finally obtained, this should not invalidate an application.

Ballot: Information and expenses

The onus is on the crofting community body to arrange and pay for the required ballot.

This new provision to allow the crofting community body to apply to have the costs of the ballot met by Ministers under conditions to be established in regulation would, on the face of it, represent a welcome additional flexibility.

However, this would leave the ballot arrangements between Part 2 of the Land Reform Act, by virtue of provisions proposed through Part 4 of the Community Empowerment Bill (yet to be agreed) and Part 3 of the Land Reform Act. Under the proposals for Part 2 of the LRA, Ministers would take responsibility for the organization, conduct and cost of the ballot, and this is welcome.

It is not clear why there should be a difference between Part 2 and Part 3 in this regard. There is everything to be said for consistency between the two parts. This is particularly so when it comes to a Part 3 application as the degree of controversy associated with such a purchase could be greater than a Part 2 purchase and where the correctness of the processes and procedures around the ballot could be of particular importance to the integrity of the process as a whole. This would be significantly assisted and help put any questions beyond doubt if arranged by Ministers.

Ministers should, as in Part 2, accept responsibility for ballot arrangements also under Part 3.

Other matters

If and when the proposals for amending Part 3 are approved, these need to apply equally to the new Part 3A or significant anomalies would arise between the different Parts of the Land Reform Act. The current Part 3A was drafted, based on the current Part 3 and now itself being reformed by the welcome amendments submitted to the Committee. This ought to be a technical and straightforward process, largely repeating the amendments suggested to Part 3. It is, however, vitally important, otherwise, for example, the tortuous mapping requirements about to be repealed for Part 3 would remain for Part 3A.

This is only raised as it is not referred to in the Explanatory Notes.

Community Land Scotland

16th February 2015