

Written submission from the Crofting Commission

Proposed Amendments to Part 3 of the Land Reform (Scotland) Act 2003

Views of the Crofting Commission - Section 71 – Amend definition of ‘crofting community’.

The Crofting Commission has previously highlighted the anomalous situation which entails that two Acts with relevance to crofting provide different definitions of what constitutes a crofting community. The Crofters (Scotland) Act 1993 as amended defines the crofting community at Section 61(1) as “*all the persons who (either or both) –*

(a) occupy crofts within a township which consists of two or more crofts registered with the Crofting Commission;

(b) hold shares in a common grazing associated with that township;”

While the Land Reform (Scotland) Act 2003 refers to a crofting community body, it would be helpful, as recommended by the Crofting Commission and other respondents, if the terminology offered greater clarity between this and a crofting community.

The Crofting Commission notes specifically the amendments to section 71(5) for the purpose of admitting “*more crofters who are excluded by the existing legislation.*” In particular we note the change to subsection (5)(a)(ii). This no longer mentions the stipulated distance of 16 kilometres which itself was changed by the Crofting Reform (Scotland) Act 2010. For consistency of approach, the cross-reference with revised crofting legislation should continue to be recognised within this sub-section. In particular, the revised distance of 32 kilometres should also be a qualifying factor in this legislation.

The Crofting Commission recommends that the revised subsection should read:

are tenants of crofts in the crofting township whose names are entered in the Crofting Register, or the Register of Crofts, as the tenants of such crofts, and are complying with the duty to be ordinarily resident on, or within 32 kilometres of their crofts.

While the Commission agrees with the proposal to extend eligibility to owner-occupier crofter category, we do not understand the variation in registration requirements between that of a crofting tenant and that of an owner-occupier crofter. The category of owner-occupier crofter was again introduced by the Crofting Reform (Scotland) Act 2010. It is proper that the category should be recognised within the revision of this legislation also. However, it appears to have been recognised from the responses to the Call for Evidence that confining tenant participation to the Crofting Register was counter-productive in terms of what the amending legislation is trying to achieve. The same logic extends to owner-occupier crofter category, and we can see no logical reason for it not to include those who are registered on the Commission’s Register of Crofts.

The Crofting Commission recommends that the proposed subsection (5)(a)(iii) should read:

are owner-occupier crofters of owner-occupied crofts in the crofting townships whose names are entered Crofting Register, or the Register of Crofts, as the owner occupier crofters of such crofts, and are complying with the duty to be ordinarily resident on, or within 32 kilometres of their crofts.

Section 74(1) and 97B – Identification of owner, tenants and certain creditors

The Crofting Commission and other respondents have previously expressed reservations about the addition of the categories for identification as proposed at section 74(1). In particular, it was considered that there were limitations to what a crofting community body could be reasonably expected to source and provide. Requiring such onerous conditions, without recognitions of all reasonable endeavour to secure identity, appears contrary to the general purpose of the amendments.

The Crofting Commission recommends in the proposed amendments to section 74(1)(o) – (r) that wording of the following nature be introduced:

Having made all reasonable endeavours to identify such owners, tenants, sporting tenants or creditors by making appropriate enquiries in the relevant registers, including the Land Register, Register of Sasines, Books of Council and Session, Crofting Register and Register of Crofts.

The requirement to identify tenants or sporting tenants should be restricted to tenants whose lease is registered in one of the public registers, namely the Land Register, Register of Sasines, Books of Council and Session, Crofting Register and Register of Crofts.

The obligation to identify creditors should be restricted to creditors who have a Standard Security registered in the Land Register and Register of Sasines.

Section 73 – Croft land mapping

The Crofting Commission is generally in agreement with or has no specific comment to make on other proposed amendments. However, we would wish to make reference to **Section 73**. We welcome the proposed modification in subsection (5)(b)(i) which references the rights and interests *known to the crofting community body* and also the removal of the subsequent sub-paragraph (ii).

The Provision for recognition of what is known to the crofting community body in this instance is what the Commission considers should also be recognised in what has been related previously in terms of section 74(1). In addition, we note the proposed inclusion in **Section 73(5)** of the need to list those mentioned in the new subsection (5ZA). This relates to identifying owners, tenants, creditors and sporting interests. We would again recommend that this should contain the proviso – *known to the crofting community body*.

In this overall context the Crofting Commission would recommend that the mapping requirements are no more onerous than the mapping requirements for anyone making a registration to the Land Register.