

Crofting Consultation 2024

Proposals for Crofting Law Reform

June 2024

Ministerial Foreword



Crofting is a uniquely Scottish system of land tenure which supports communities and land use across the Highlands and Islands. The first crofting legislation, in 1886, was radical for its time and established the rights of crofters over the land that their families had occupied for many centuries. Crofting has a special place in the cultural heritage of Scotland, but we want it to play its part in our future too.

The Scottish Government is determined to ensure that crofting legislation enables and supports the sustainability of crofting, of crofters and crofting communities, and allows crofting to modernise, innovate, diversify and adapt to help meet today's and tomorrow's climate and environmental challenges. This consultation sets out a range of proposals for crofting reform which would help to achieve this.

The crofting system must help enable people to stay in rural and island communities while also supporting effective and sustainable land use. Crofting's place in agriculture and food production will remain at the heart of the system, but alongside these we now see crofting playing an increasing role in tourism, renewable energy generation, forestry, peatland restoration, beekeeping and small-scale horticulture production. I am grateful to everyone making traditional or innovative use of croft land, serving their communities in the present and stewarding the land for tomorrow.

A key theme of this consultation is the simplification of legislation:- to make innovation easier, to streamline processes, and to enable active crofting. The consultation seeks your views on a wide range of proposals, ranging from relatively small technical changes, to significant innovations regarding entry to crofting, the use of common grazings, providing new powers for the Crofting Commission, and the enforcement of crofters' duties.

I gratefully acknowledge the contributions already from many individuals and stakeholders to inform our approach to crofting law reform. This consultation builds on those earlier contributions such as the 2015 Crofting Law Sump, and the ideas of those who have more recently helped the Scottish Government to prepare these proposals, including specifically:

- The Law Society of Scotland's Rural Affairs Committee, for their 2020 paper on [Crofting Law Reform](#), which highlighted certain priorities for legislative change;
- Successive Board members and the staff of the Crofting Commission, who have advised on changes to make crofting regulation more efficient, for the benefit of crofters;
- and most especially, the members of the Crofting Bill Group.

The Crofting Bill Group, made up of key stakeholders has been unstinting in offering their time, advice, and ideas to the Scottish Government through multiple meetings in 2018-19 and again in 2022-24, and continue to do so. This engagement has been critical in working through proposals and possible solutions, and the individual and collective contributions have helped form the basis for this consultation. A list of current members can be found at Annex B.

The development of all these proposals has therefore benefited from the collective ideas of many people with expertise and knowledge in the subject, and most importantly, with

experience of crofting in recent times. This public consultation marks a key step in our readiness to legislate and will help ensure the widest possible input to our legislative proposals. Please take your time to consider the issues raised in this consultation and I shall be grateful for all the responses we receive.

Jim Fairlie

Minister for Agriculture and Connectivity

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Introduction

In 2021, the Scottish Government published our [National Development Plan for Crofting](#), setting out the importance of crofting across the Highlands and Islands and the need for the development of crofting, its communities, its economic strength and its contribution to the environment. The National Development Plan was accompanied by Scottish Government investment in a renewed development role for the Crofting Commission, and it also set out plans for reforming crofting legislation, which we are now building on with this consultation.

The principal legislation for crofting is the Crofters (Scotland) Act 1993, as amended, and this is referred to as “the 1993 Act” or “the Act” through this consultation.

The last time the Scottish Parliament made significant reforms to crofting law was in 2010 through the Crofting Reform (Scotland) Act 2010. That legislation established the Crofting 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).

These reforms have led to profound changes in crofting. Registration has brought certainty about land holdings where there was none before, and the coverage of the new Crofting Register continues to increase, now covering about 40% of crofts and common grazings. The Crofting Commission, under the leadership of successive majority-elected Boards, has established new ways of working in regulation, enforcement of duties, and supporting both crofting communities and grazings committees; and the census and the new process for addressing breaches of duty have changed the fabric of the system. There is greater fairness between tenant and owner-occupier crofters than previously.

However, 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. Similarly, although there has been an upturn in the number of active grazings committees, they and the landowners face complex processes if they wish to take forward innovations such as peatland or habitat restoration. For those aspiring to become crofters, the price of obtaining a croft in the area of their choice can be prohibitive. And both the Crofting Commission, and the crofters who make applications to them, advise that the regulatory processes set out in law are often onerous and sometimes illogical. Reform is now needed to address these and other challenges and to ensure that we protect and enable active crofting, and for crofters to play their role in changing land use across all the crofting areas.

We now propose to develop legislative options to build on earlier reforms. The priorities are:

- to help more people become crofters and better support existing crofters and their activities and businesses;
- to enable more and different activity to be undertaken on common grazings, including peatland restoration and other environmental initiatives;
- to empower the Crofting Commission to tackle breaches of duty through streamlined processes; and
- to resolve crofting regulatory issues more quickly through new and revised powers for the Crofting Commission.

The consultation seeks your views on proposals on:

- entry to crofting
- crofting communities

- use of common grazings
- strengthening residency and land use
- enhanced Crofting Commission powers
- simplifying crofting

The final section invites any comment on a number of clarifications and corrections that we propose to make to existing legislation.

1. Entry to Crofting

The market price of a croft tenancy, or of an owner-occupied croft, has risen considerably in recent decades, making it much harder for people of limited means, including many young people from traditional crofting families, to get a croft of their own. This price escalation is driven by a demand for land and lifestyle in remote areas of Scotland. Similar trends have been seen in attractive rural areas in other parts of the UK and internationally.

The Scottish Government and the Crofting Commission are working to reduce this trend. The enforcement of duties by the Commission reminds those who purchase tenanted or owner-occupied crofts that they are not just buying a piece of real estate but are committing to a lifestyle and a community. The Scottish Government has established the Scottish Land Matching Service to help put aspiring crofters (and farmers) in touch with people who can offer an opportunity on their land, and the Commission has launched a Succession Project with similar aims, focussing particularly on areas at particular risk of population decline.

Alongside other proposals such as faster enforcement of duties, we propose a specific legislative change that would help aspiring crofters purchase their first croft tenancy, namely that croft tenancies can be shared between two people. We also invite comments on the scope for using a croft lease as security for a loan.

Croft tenancies for two people

Most crofts have just one crofter. Since 1912 any assignation of a croft tenancy can only be to one person. This means that the only crofts which are shared by more than one person are some 1,500 owner-occupied crofts, and just four joint tenancies that have continued to be in joint hands since before 1912¹.

We propose that future assignations of croft tenancies could be to two people in a joint tenancy. This would be possible by a single crofter assigning the whole of the tenancy to two new people; by a crofter assigning part of the tenancy to a new crofter who would share with them; or on succession, if a deceased crofter had chosen to bequeath the tenancy to two people, for example, a son and daughter. Our proposal would limit joint tenancies to a maximum of two people.

Allowing two people to share jointly in a tenancy would bring crofting tenancies more in line with the position enjoyed by those taking out other tenancy agreements in other sectors, including standard agricultural tenancies. We also believe that this proposal could make crofts more affordable and would have a number of advantages for entry and succession to crofting:

- Any two people, for example a couple or friends, could pool their resources when buying a croft tenancy, knowing that they would both become joint tenants.
- An older crofter, wishing to pass their tenancy on to a family member or other acquaintance, could do this in two stages: inviting the new person to become a joint tenant; and later assigning or bequeathing the remaining share so that the new tenant became the sole tenant.

There would, however, be risks associated with this proposal, as there are in any joint venture:

¹ Each joint tenant may assign their share to an individual of their choice, so these tenancies have sometimes stayed in multiple hands, although many have been unified.

- A croft tenancy is a heritable tenancy, designed to continue for generations. While a shared tenancy may work well for as long as the two joint crofters agree about their plans for the croft, once a shared croft passes down to another generation, perhaps siblings or cousins, there is a risk that the two joint tenants would have quite different plans: one wishing to live on and invest in the croft, one wishing to live elsewhere. The one wishing to croft actively could be disincentivised from doing so because the value of their investment of time and money would be shared.
- Over time, joint tenancies could lead to increased fragmentation either of crofts themselves, or at least of control of crofts. Fragmentation has long been seen as detrimental to strong and sustained crofting communities.

To limit these disadvantages, we propose to limit the number of joint tenants to two, rather than have an unlimited number.

Question 1.1

Do you agree that two people should be able to share a joint croft tenancy? [Yes/No/Don't Know – comment]

Standard Securities

Traditionally, crofters were the tenants of their crofts, paying rent to the landlord. Since the Crofting Reform Act 1976, crofters have been able to purchase their croft for 15 times the annual rent, becoming the landowner whilst the croft still remained subject to crofting tenure. The term 'owner-occupier crofter' was first defined in the Crofting Reform Act 2010.

The Scottish Government considers that tenants and owner-occupiers should as crofters have an equivalent balance of rights and responsibilities within the crofting system. In principle, that should include a similar ability to borrow against the value of the land if owned or the value of the lease if rented.

However, the respective rights of an owner-occupier and a tenant which might be used as a security for a loan are very different as a matter of general property law. Although it would be particularly challenging to change the law to enable a standard security over a croft lease, the Scottish Government is working to establish whether there is a possible solution. We therefore seek views on whether, in principle, the power to grant a security over a croft lease would be supported.

In that context, information from sales provides clear evidence that a croft or a croft lease can be a valuable asset. However, those aspiring to buy a croft or enter into a croft lease may find it difficult to raise the necessary funds, partly because they cannot secure a loan against the new asset.

An owner-occupier can grant a standard security for a loan (a mortgage) over an owner-occupied croft. However, a standard security is only attractive to a lender if the secured asset can be realised (sold) on default. Crofting is a highly regulated activity, and there are significant regulatory barriers that could make it too hard for a lender to enforce a security.

A tenant cannot currently grant a standard security over a croft lease. It may be possible to create a mechanism for doing so, but even if that were so then there would be similar regulatory barriers to realising (assigning) the secured asset on default.

Although regulatory barriers would be removed or reduced if the croft could be taken out of crofting tenure (decrofted) by the lender if a borrower defaults on a secured loan, the

Scottish Government considers that whole-croft decrofting can have an adverse impact on crofting and crofting communities.

The Scottish Government considers that changes to security law would facilitate access to finance that could be used to acquire a new croft, or develop an existing one. This in turn would make a positive contribution to the development of the crofting sector, which makes a vital contribution to increasing the population of remote rural areas, and to strengthening the rural economy.

Crofts have a capital value in that they can either be sold, or a tenancy can be assigned for value subject to the agreement of the Crofting Commission.

For crofting tenancies, the lease has value as the outgoing crofter is entitled to be compensated for any permanent improvements made to the croft such as houses, farm offices, walls, fences, and so on. This right applies whether the crofter voluntarily departs or is removed. There is also potential value in that crofters are able to apply for planning consent for a house on their croft and, if successful, they would be eligible to apply for Scottish Government grants for a new build or home improvements.

A croft also has a 'working' value, in that it can be used to generate income through a number of means, such as farming, subsidy income, bed & breakfast accommodation, woodland creation, and so on.

We are looking to provide a process for granting and discharging a security over a croft or a croft lease, that makes a security attractive to both the crofter and the lender, but without the need to decroft. The law would need to change in that respect, and in particular would need to clearly set out the rights and responsibilities of crofters and creditors where a croft interest is used to secure a loan.

We propose to change the law to better enable banks to undertake secured lending over owner-occupied crofts, and are interested in enabling securities over leased crofts if that is both supported and practicable. The secured loan could be used either by an incoming crofter to obtain a croft tenancy or an owner-occupied croft, or by an existing crofter to make improvements to their croft.

It is not proposed that any such measures will modify the current process that applies where a crofter applies to decroft land in order to build a house on that land. It is expected that this process will continue as it currently does, with the crofter decrofting a small area of land as a house site, in order to grant a standard security over that land to raise the finance they need to build the house.

Granting a security over owned land

A security over an owner-occupied croft would be created by registering a standard security in the Land Register of Scotland. The crofter would need to register the land in that Register if that had not already been done.

Granting a security over leased land

A security over a lease could require an entirely new process.

The current thinking is that a standard security could be granted over a lease provided that both the lease and the security are registered in the Crofting Register.

It is also thought that there would need to be notice on the Land Register given that the existence of the lease and the security are a matter that would be of legitimate interest to, for example, a prospective purchaser.

Enforcing a security

Like any other borrower, it would be expected that crofters will repay the loan, and that the security would then be discharged as is the case for securities over other types of property.

In order for creditors to have the confidence to lend to crofters, it would be necessary to modify some of the statutory rights and responsibilities while the security is in place and until the loan has been discharged.

The Scottish Government considers that it should not be possible for the crofter or landowner to do anything that might significantly affect the value or interests in the security, without first seeking the consent of the creditor. We propose therefore that the creditor should have to consent to specified changes including the enlargement, assignation or division of a croft.

If the crofter defaults on the loan then the creditor would have the option of calling up the security. In this scenario, the creditor would possess the croft for the purposes of realising value from the property. The Scottish Government considers that it would be necessary to suspend specified rights of the defaulting crofter, including the right to purchase, to assign, and to claim compensation. In addition, neither the defaulting crofter nor the lender would be expected to meet the duties to be resident on the croft, or to cultivate the croft, or to put the croft to purposeful use.

For an owner-occupied croft, the creditor could then sell the croft to a new crofter in the same way as at present. The previously suspended duties would then apply in full to the new crofter.

However, for a croft tenancy, a new tenant would need to be approved by the landlord. If the tenant is approved, then the Scottish Government considers that there should then be no need to obtain a second approval from the Crofting Commission. Alternatively, if the landlord objects to the assignation, then the creditor should be able to seek the approval for the proposed assignation from the Commission.

Only if both the landlord and the Commission oppose the proposed tenant will the creditor need to find another person to purchase the tenancy.

Question 1.2

Do you agree with the proposal that regulatory barriers that limit the ability of an owner-occupier to grant a standard security over their croft should be removed or reduced?
[Yes/No/Don't Know]

Question 1.3

Do you agree with the proposal that a tenant crofter should in principle be able to use their croft tenancy as security for a loan?

[Yes/No/Don't Know]

Question 1.4

Do you agree that there needs to be modifications to rights and responsibilities when a security is in place over a croft?

[Yes/No/Don't Know]

Question 1.5

Do you agree that if a croft tenancy is repossessed by a lender, the lender should be able to assign (sell) the tenancy on to a new tenant provided that either the landlord or the Crofting Commission agrees?

[Yes/No/Don't Know]

Question 1.6

Do you wish to add comments in regard to the proposed application of standard securities to crofts? [Free text]

2. Crofting Communities

Extent of crofting community rights

The Law Society of Scotland has drawn attention to inconsistencies and lack of clarity in the current legislation's definition of "crofting community".

The Act² primarily defines "crofting community" in a narrow way, limited to those with crofts in the same township or shares in a common grazings associated with that township³; but at the same time, for certain purposes, the legislation introduces a wider interpretation. We propose to build on this approach, but to clarify it and to ensure that there is a justification for each occasion where a wider definition is used, as set out in the following paragraphs.

We shall also take the opportunity to tidy up the various disparate references to "district", "area" and "locality" where they appear in the Act in relation to crofting communities.

For most purposes, "crofting community" will continue to be the local crofting presence in a particular place – defined as the crofters within a particular township, or with shares in a particular grazings, as listed in the Register of Crofts. These are the people who are eligible for financial recompense in the case of a Scheme for Development, and whose interests must be considered by the Land Court for a Resumption application, or by the Crofting Commission regarding an application to create a croft or a common grazings, or when considering a termination. These people also have the right to be consulted on a proposed change of land use by a crofter, when such an application goes to the Commission because the landlord has not given consent.

However, the restriction that there have to be two or more crofts in the township for these rights to apply, will be removed. There are several townships listed in the Register of Crofts that have only one croft, where the above rights would still be relevant.

For some situations, as partially recognised in the current legislation, rights under crofting legislation may (or may not) need to be extended more widely. The issues are as follows:

Objections to applications

Where a crofter has made an application to the Crofting Commission, such as an application to divide a croft, apportion part of the common grazings, or decroft an area of land, other crofters in the township are entitled to object to the application. While a case could be made for extending this right more broadly, we are mindful that objections substantially lengthen the Commission's decision-making process on applications, and on balance we consider that this right should continue to be limited to crofters and grazings shareholders in the same township or same grazings.

Question 2.1

Do you agree that the right to object to applications should continue to be limited to crofters and grazings shareholders in the same township or grazings? [Yes/No/Don't Know - Comment]

² Throughout this consultation "the Act" refers to the Crofters (Scotland) Act 1993, which is the principal legislation on crofting.

³ See section 61, 1993 Act

Crofting Commission assessment of a decrofting application

Decrofting of a whole or part croft removes or reduces a future opportunity for someone to become a crofter. When considering such applications, the Crofting Commission is currently required to consider the sustainability of crofting in the “area” and also the potential demand for the croft. Sustainability and demand are concepts that need to be assessed across a wider region than the immediate locality. We therefore propose that the Commission should have to consider the sustainability of crofting across the parish, as recorded in the Register of Crofts.

Question 2.2

Do you agree that when deciding a decrofting application, the Crofting Commission should, alongside other considerations, be required to weigh up the sustainability of crofting across the parish? [Yes/No/Don't Know - comment]

Reporting a suspected breach of duties

Legislation⁴ gives members of a crofting community, as well as grazings committees, a grazing constable, or a Crofting Commission Area Representative⁵, the right to report a suspected breach by a crofter of their crofting duties, which triggers a requirement for the Commission to investigate any breach that does not appear to them to be frivolous or vexatious.

However, although the process of reporting breaches is fundamental to maintaining the health of crofting, relatively few such reports are made by the crofters entitled to make them. More such reports might be made if the right was opened to people who are not already crofters, who might indeed be the ones with the strongest interest in the croft being made available for a new crofter.

Question 2.3

Would you support the extension of the right to report a suspected breach of duty to:

- a) Subtenants and short-term leaseholders of crofts within the local crofting community?
[Yes/No/Don't Know]
- b) Non-crofters who reside within the local community where the croft is situated?
[Yes/No/Don't Know]

Public Notification, Service of Notices and Meetings

There are a number of provisions in the Act where public notification is required to be made by either an applicant or the Crofting Commission. This process involves placing an advert in one or more newspapers circulating in the district in which the subject croft or common grazing is situated. The notification of first registration of a croft requires the applicant to give notice by placing an advertisement in a local newspaper for two consecutive weeks. (Similar issues for grazing committees are considered in the next section.)

Crofters and stakeholders have pointed out that the newspaper requirement can be overly prescriptive and costly, and fails to allow the use of new or evolving media outlets that may

⁴ See section 26A, 1993 Act

⁵ Legally known as ‘assessors’

be more appropriate. A common complaint is that people do not see adverts if they do not read a particular newspaper, and it is not always possible to identify a local newspaper circulating in the subject area. An alternative proposal is that the Crofting Commission website could be used for the purposes of public notification. Moving online would mean that all crofters, including stakeholders, solicitors etc, would know that there is only one place they would have to look to get access to public notifications and see what changes are being proposed within their community.

It is important to ensure that public notifications are accessible and that they reach the wider community, but the current issues demonstrate that flexibility would be beneficial. We propose that the Crofting Commission should be empowered to specify the requirements for advertising applications to it or by it, and to change these requirements from time to time. This would allow flexibility, to include other methods to advertise that become practical now or in future, and would remove the need to amend primary legislation as any future media outputs emerge. It could also reduce the administrative and cost burden for crofters.

Question 2.4

Do you agree that the Crofting Commission should be empowered to determine the permitted method to be used for a public notice, and should be able to change the requirements from time to time? [Yes/No/Don't Know]

There are a number of provisions in the Act where meetings are required to take place, for example, in appointing a grazings committee or when a grazing committee wish to discuss and vote on a proposal to use the common grazing for other purposes. We propose to clarify that future meetings should, where convenient, also be allowed to be held online or in a hybrid fashion.

Online meetings often require less cost and time compared to in-person meetings, and more people may be able to attend as a result. Online meetings also make it easier for participants to pick and choose what part of the meeting is relevant to them, and for them to share documents, plans etc with the group at no cost.

Question 2.5

Do you agree that it should be possible for public meetings to be held on an appropriate online forum or as a hybrid meeting and need not be solely in-person meetings? [Yes/No/Don't Know]

3. Use of Common Grazings

Grazings committees have a key role and responsibility in coordinating the activities and initiatives of crofters and other shareholders on the common grazing. Common grazings are a significant asset to crofting, crofters, landlords, and crofting communities. There are around 1,000 common grazings in crofting areas, covering approximately 550,000 hectares, which account for two-thirds of all croft land. Historically, most crofts comprised an inbye croft combined with a “grazings share” – the right to put a number of livestock on the common grazing land.

Common grazings are usually managed by a grazings committee, and approximately half of all grazings currently have a committee in office. Grazings committees make regulations to control the use and assist in the management of the grazings. Crofters who hold an interest in common grazings are shareholders in those grazings, giving them certain rights and responsibilities set out in legislation. Active grazings committees are the best way to ensure that common grazings are used effectively.

However, despite the commitment and hard work of hundreds of crofters and others on grazings committees across the crofting counties, for many years there has been a decline in the use of common grazings. Although raising livestock remains the most common crofting activity undertaken by crofters, livestock numbers are declining. Currently, the law restrains alternative uses for common grazing land and makes it difficult for new projects or initiatives to be implemented, due to the processes which the law requires for demonstrating agreement among shareholders and landlords.

We want to remove the barriers, where possible, for those active crofters and groups who want to use the common grazing, whether that is for livestock grazing, woodland creation, habitat restoration, biodiversity enhancement etc. Whether the project or initiative is the idea of the crofter, grazing committee or landlord, we want to make the process easier and ensure that all parties who have rights in the common are considered.

The ways in which land is being used is evolving and the Scottish Government wants to see grazings managed in a way that delivers economic, environmental, and community benefits. We want to see more consistency in the effective operation of common grazings to help meet current and emerging land use challenges, to support the sustainable development of crofting into the future and to provide economic and social benefit for crofters and crofting communities.

As well as simplifying the processes, there are two other issues to resolve to help achieve these aims. Firstly, the role of grazings committees needs to be simplified so that there can be more of them in office. Secondly, we need to encourage grazings shares to be used. We know that there are some crofters who have no desire to use their grazing share and would rather transfer it to someone who would use it for any of the purposes allowed within legislation. If we want to regenerate common grazings and further bolster the sector, we need those shares to be in the hands of people who want to use them.

Grazings Committee Duty to Report

Current legislation⁶ states that each grazings committee has a duty to report on the condition of the common grazings and on every croft, tenanted and owner-occupied, and must provide this information to the Crofting Commission.

⁶ See section 49A, 1993 Act.

These requirements have caused difficulty for many committee clerks who are particularly uncomfortable about the obligation placed on them. Individuals have expressed concern that they are expected to provide reports on family members, friends and neighbours which could lead to local and personal tensions.

Information on what activities are taking place on common grazing is vitally important and we do not want the Crofting Commission to lose that rich source of data. That data should be used to share good practices with other grazings committees and with shareholders looking to start up a committee.

However, we propose to relax parts of the reporting requirements and limit them to general matters such as the condition of the common grazing, so that grazings committees are no longer required to report on the condition of each individual croft – although if they wish, legislation does continue to give them the option of reporting individual suspected breaches at any time⁷.

Question 3.1

Do you agree that the grazings committee duty to report should be limited to the condition of the common grazings? [Yes/No/Don't Know]

Meetings of grazings shareholders

Grazings committees are elected at a meeting of the crofters who share in the common grazing, for a term of three years, following which a new committee is chosen at a similar meeting. (See also question 2.5 above, where we propose that such meetings can be held online if this is more convenient than a physical meeting.) Currently, the legislation requires such meetings to be notified publicly, e.g. through a newspaper advertisement; we propose that the Crofting Commission should be empowered to specify (and from time to time amend) the method for public notification, which could, for example, be by a notice on its own website. We also wish to clarify that the meeting to elect the next committee can be taken before the expiry of the previous committee's term, to avoid any gap between the outgoing committee and the new one.

Once in office, the grazings committee will call meetings of shareholders from time to time. Where these are public meetings, they will be advertised publicly on the Crofting Commission website or elsewhere. Grazings committees also have a responsibility to notify their shareholders for other (not public) meetings. Current legislation often requires the Grazings Committee to contact all shareholders by registered post, but we consider this blanket provision is too restrictive and costly, and that it should be a responsibility for each shareholder to ensure the Committee has up to date contact details for them, which could be either email or postal.

Question 3.2

Do you agree that meetings to appoint a grazings committee need to be notified publicly? [Yes/No/Don't Know]

Question 3.3

Do you agree that shareholders should be responsible for informing their Grazings Committee of their preferred email or postal contact address? [Yes/No/Don't Know]

⁷ See section 26A, 1993 Act.

The link between grazings share and inbye croft, and duties of grazings shareholders

In recent years some grazings shares have become separated from the 'parent' croft and are now deemed to be separate and distinct crofts in their own right. The legislation makes clear that crofting regulation continues to apply to them, which is why stand-alone grazings shares are sometimes referred to as "deemed crofts"⁸.

Grazings rights can be separated from the parent croft either intentionally (for example when the crofter applies to assign the share to another person) or unintentionally. The latter has happened on numerous occasions when a tenant crofter has exercised their right to buy their croft, mistakenly assuming that the grazings share would automatically retain its association with the inbye croft.

Currently, there is no automatic inclusion of the grazings right when a tenant crofter purchases their croft. The grazing right becomes a separate entity within crofting tenure, unless the crofter and landowner, through their solicitors, specify that the grazings right is part of the purchase. It is important that both parties consider whether to include the grazings right within the purchase, and it may be possible through legislation to provide more clarity on this matter, for example by:-

- specifying a standard form of words to be used when the grazings right is to remain attached to the croft; or
- providing that the grazings right continues to be associated to the croft by default, unless the parties specify otherwise.

Question 3.4

Is there a need for further legislation on the purchase of grazings rights, or should the details of each transaction be left to the parties as currently? [more legislation is required/details can be left to the parties/Don't Know – please explain your answer Free Text Box]

The crofter's duties to reside within 32 km of the croft and to make use of and maintain all of the croft, technically apply to any grazings share, whether it is associated with the croft or a separated unit. In the past, the Crofting Commission's regulation of duties was exclusively focussed on inbye crofts. With the growing number of grazings shares that are now separated, the Scottish Government believes it is important to clarify how duties apply to the holders of grazings shares. We propose that:

- For the majority of grazings shares, the ones that are attached to an inbye croft, the Crofting Commission will continue to regulate in accordance with current practice. If an active crofter chooses to use their croft for a purpose that does not require the use of the grazings, it would not normally be appropriate to enforce that use through Commission regulation. (The crofter would, of course, have the opportunity to assign, sublet or use the share, and/or a responsibility to contribute to the maintenance of the grazings as organised by the grazings committee.)
- On the other hand, for stand-alone grazings shares, the duty to be ordinarily resident within 32 km of any part of the common grazings and to either make use of the share

⁸ See section 3, 1993 Act. There are also some grazings shares which have never been part of the crofting system, having originally been shares attached to non-croft smallholdings. This section of this consultation does not apply to these.

or to participate in the committee and its activities, will apply; and in order to ensure that holders of standalone shares are contributing to the community and making productive use of their share in the land, the Crofting Commission should enforce these responsibilities as they do for any other croft.

Question 3.5

Do you agree that the Crofting Commission should enforce adherence to residency and land use duties for stand-alone grazings shares? [Yes/No/Don't Know – comment]

If someone is found to be in breach of any of their stand-alone grazing share duties, and does not agree to remedy this, then after the established due process by the Crofting Commission, they should eventually lose the share. Crofting law protects the rights of crofters, including in respect of the grazings shares which they own. But these rights have never been unconditional, and the crofter only retains the right in the land if they are using the land productively. At the current time, too many common grazings have fallen out of use or are not used much, and the Scottish Government believes it is important to review how the historic crofting principles can better be applied to common grazings.

For any shares that are released in this way, the priority should be to bring them back into use. We propose that the grazings committee, followed by the landlord, should have the opportunity to re-let the share, and if they do not find a new shareholder, the Crofting Commission should organise a re-let itself. If every attempt to relet fails, in that no-one who intends to fulfil the duties is interested in taking on the share, then we propose that the share be dissolved and absorbed by the current shareholders and grazings committee.

Question 3.6

If a grazings share is forfeited by someone who is in breach, which organisation should have the initial responsibility of finding a new shareholder? [Grazings committee, landowner, Crofting Commission, Don't Know]

Question 3.7

If none of the grazings committee, the landlord and the Crofting Commission can find a new shareholder for a vacant grazings share, do you agree that the share should be dissolved and absorbed by the current shareholders and grazings committee? [Yes/No/Don't Know - comment]

Use of common land

There are large expanses of peatland on common grazings, and putting (or keeping) these in good condition can make a significant contribution to carbon sequestration. We need to ensure that legal mechanisms facilitate peatland restoration and other beneficial initiatives on common land.

In addition to the traditional uses such as grazing livestock, the legislation⁹ allows for innovative uses of the common land either by the owner through a Scheme for Development or Resumption, or by an individual crofter through an apportionment.

⁹ See sections 19A, 20 and 52(4), 1993 Act

The legislation¹⁰ also provides for schemes led by the grazings committee or an individual crofter for forestry (either with the consent of the owner or as a joint venture with the owner) or for “other purposes”¹¹. However, the provisions relating to “other purposes” are more restrictive than those for forestry schemes, making it harder for the crofters to secure the necessary consents.

We propose to widen the existing provisions in respect of crofter-led and joint-venture forestry schemes, to encompass also peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration or environmental improvements. These should be key options for crofters in modern times, and the same provisions as relate to forestry should be made available.

Question 3.8

Do you agree that the provisions which allow crofter-led and joint-venture forestry schemes should be extended and adapted, to provide similarly for peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration or environmental improvements? [Yes/No/Don't Know -comment]

In addition, there are two current provisions within the legislation on crofter forestry which seem unnecessarily restrictive, and which we propose to remove, both for crofter forestry and for other environmental initiatives:

- A grazings-committee-led forestry scheme, with the appropriate consents, may cover anything from a tiny fraction of the common grazings to almost all of it, but may not cover the whole of the common grazings. We do not consider that crofters who wish to devote the whole of the common grazings to forestry or another environmental scheme should be prohibited from doing so, where all approvals and consents are in place.
- When a grazings committee or crofter proposes a forestry scheme, the owner is entitled to refuse consent, but must give their reasons for refusal which may on appeal be overturned by the Scottish Land Court.

However, if the owner does not reply to the application within the 6-week timetable, they are “deemed to have refused” the application. We consider that this is illogical and that if an owner does not respond within the deadline, and therefore has not given any reasons to oppose the application, they should be deemed to have given consent.

In this situation the proposal should proceed to the Crofting Commission for consideration. The Commission would still have to do its own consultation with the landowner, as it does for all such applications, and would consider any reasoned objection made at that stage. However, the Commission would be entitled to approve the application, after taking account of any objections, without recourse to the Land Court; because without any reasons given for lack of consent, there is nothing that needs to be assessed by the Court.

¹⁰ See sections 48(4) and 50, 1993 Act.

¹¹ See sections 48(4A) and 50B, 1993 Act

Question 3.9

Do you agree that an owner who does not respond to a crofter or grazings committee application for forestry can be deemed to have consented (while retaining the right to make comments or objections at the next stage)? [Yes/No/Don't Know]

Use of Common Grazings for other purposes

Legislation allows crofters to undertake work on common grazings, other than agriculture and woodlands. However, if the owner does not approve of the intended use, they can generally prevent it from happening. We propose to balance the interest of the owner and the crofter, and to ensure that the rights of both parties are considered.

On inbye croft land, current legislation allows a tenant crofter to seek the consent of their landlord to do something innovative on the croft and, if the landlord refuses consent, then the crofter can ask the Crofting Commission to decide. We propose to introduce a similar process in regard to common grazings, to encourage a broader scope of activity.

The proposal would be in line with the current crofter forestry process. Once the shareholders have come up with a proposal, the grazings committee will share this with the landlord who will either give their consent, which may come with certain reasonable conditions, or refuse their consent. The matter is then passed to the Crofting Commission for a decision, which can be appealed to the Scottish Land Court.

Question 3.10

Do you agree that the assessment of crofter-led innovations on common grazings should parallel the arrangements for inbye land? [Yes/No/Don't Know - comment]

Creation of new common grazings

Current legislation¹² allows a landowner to apply to designate some land as a new common grazings, but it prohibits this if the land in question is "adjacent or contiguous" to any croft.

This exclusion is to ensure that the land will not be subject to the right to buy if it is subsequently apportioned by a crofter. However, this is quite a significant restriction on the options open to landowners, and in any case there are other ways in which the landowner can ensure that the right to buy will not apply to such land, such as by getting the crofter to enter into a contract or agreement by virtue of which he/she is deprived of certain rights¹³. We therefore propose to remove this exclusion.

Question 3.11

Do you agree that a landowner should be able to apply to designate land as a new common grazing even if it is adjacent or contiguous to an existing croft? [Yes/No/Don't Know]

¹² See section 51A, 1993 Act

¹³ See section 5(3), 1993 Act

4. Strengthening Residency and Land Use

Breaches and the enforcement of duties

A cornerstone of the crofting system, since its first legislation in 1886, has been the requirement for each crofter to be resident on or near their croft, not to neglect or misuse their land, and to put it to cultivation or another purposeful use. The health of crofting communities, and of the broader rural and island communities of which they are part, depends on crofters fulfilling these duties.

Enforcement of these duties by crofters is a key responsibility of the Crofting Commission, as set out in the legislation. The processes (almost identical between those for tenant crofters and for owner-occupier crofters) for investigating and enforcing adherence to the duties are set out in detail in the 1993 Act¹⁴. The processes are designed to give any crofter, whom the Commission consider may be in breach, ample opportunity to rectify the position by complying with the duties themselves, or by transferring the croft, temporarily or permanently, to another crofter. However the process is lengthy, and in the interests of swifter and therefore more effective enforcement of duties, the Scottish Government proposes to streamline it.

Legislation sets out the actions the Crofting Commission must take if it is notified of, or otherwise becomes aware of, a suspected breach of duty by a tenant or owner-occupier crofter.

The current sequence is:

1. The Commission writes to the crofter to inform them of a suspected breach of duty and gives them 28 days to respond.
2. If, having considered any response, the Commission decides there is a breach, it writes to the crofter again inviting them to give an undertaking to resolve the breach and to confirm this with the Commission within 28 days.
3. The Commission will then consider any undertaking that is given and may accept it, with or without setting conditions.
4. If an undertaking is not provided, or if it is provided but not fulfilled, the Commission may proceed to terminate a croft tenancy or to require an owner-occupier crofter to let the croft.

At various stages in the process the crofter can appeal to the Scottish Land Court if they do not agree with the decision the Crofting Commission has taken, and the Commission is not able to proceed to the next stage until the 42-day appeal period has expired.

Therefore, if stages 1 to 3 run to their full timetable, even if no appeals are actually made, the basic stages extend for over 6 months before any decisions are made on the way forward. This is not conducive to efficient resolution of breaches.

It is right that this process must be thorough and careful, respecting the rights of the crofter in suspected breach of duty, as well as of the wider community. However, we believe it can be shortened, without any loss of fairness or thoroughness, by combining the first two stages above.

¹⁴See sections 5AA, 5B and 5C for tenant crofters, and section 19C for owner-occupier crofters, 1993 Act.

In future, the Crofting Commission should be able to start the process by writing one letter to the crofter, inviting them to say if they do not agree they are in breach of duty, or to offer a resolution or an undertaking if they agree that they are. The Commission's subsequent action, in either case, would be subject to appeal to the Scottish Land Court.

We know from the data that most crofters responding to a suspected breach of duty do not dispute that they are in breach. Therefore, the changes proposed will allow the Crofting Commission to accelerate these types of cases to a conclusion, saving the Commission and crofter nearly 3 months of processing time.

Question 4.1

Do you agree that the first two stages in the current process for investigating suspected breaches of duty should be combined, in order to streamline the overall process?
[Yes/No/Don't Know - Comment]

In addition, we propose to amend the legislation¹⁵ where it appears to compel the Crofting Commission to continue with enforcement action at certain stages, even when a solution to the breach has already been found.

See also question 2.3 in this consultation regarding who should be entitled to report a suspected breach of duty.

Definition of Crofters' Duties and Statutory Conditions

A crofter's duties are a cornerstone of the crofting system, and we propose to retain the fundamentals of the duties but make changes to the way they are defined.

The first duty of a crofter is to be ordinarily resident within 32 km of the croft.

Secondly, a crofter has duties in relation to how they care for and use their croft. The duties with regard to the land are inter-related, but between them cover two distinct aspects:

- **Using the croft**, through cultivation or through another purposeful use; and
- **Looking after the croft** and keeping it fit for use, maintaining it and not misusing or neglecting it. This may include maintaining its drainage and controlling any vermin and weeds, but what "keeping it fit for use" means can vary for each croft according to the uses that are being made of it by the current crofter.

We propose to retain these duties largely unchanged, albeit with the definitions brought up to date, and simplified where possible. Likewise, the Statutory Conditions, which sit separate from the crofter duties and set out a tenant crofter's additional responsibilities towards their landlord, will be modernised but largely unchanged.

However, with the help of the Crofting Bill Group, we will consider whether complaints about breaches of the Statutory Conditions should in future be decided by the Crofting Commission, with appeal to the Scottish Land Court, rather than going direct to the Land Court in every case.

¹⁵See section 26J, 1993 Act

The duty to be ordinarily resident is a personal duty, which the crofter must meet unless they have consent to be absent or have sublet the croft. It has however, long been recognised that the responsibility to maintain and use the croft can be met if the crofter arranges for someone else to carry out the necessary action. It is common for this to be done by the crofter's spouse, by other relatives, by a neighbouring crofter or a non-crofter, or by any combination of such persons. This is considered reasonable given, for example, that the crofter's other commitments or health may make personal work on the croft difficult for them.

We therefore propose that the legislation should in future recognise that the crofter's responsibility is to ensure the croft is used and is maintained, rather than that they themselves must personally do this.¹⁶

Question 4.2

Do you agree that a crofter should not have to use or maintain their croft themselves, so long as they arrange for all the necessary and appropriate work to be carried out on their behalf? [Yes/No/Don't Know]

We propose one more significant change to the land use duties, which concerns the uses that can be made of a croft by a tenant crofter. A tenant crofter has the right to use the croft for anything which comes under the definition of "cultivation" (which includes horticulture, the keeping or breeding of livestock, poultry or bees, the growing of fruit or vegetables, or use of the land as woodlands). However, if a tenant crofter wishes to use the croft for any other "purposeful use", they can only do so with the consent of either the landlord or the Crofting Commission.

We propose to broaden the list of "standard uses" of the croft which a tenant crofter can implement without requiring consent. In addition to cultivation as currently defined, this should include any activity that is environmentally beneficial, such as habitat restoration.

Question 4.3

Do you agree that a tenant crofter should not have to obtain consent before making use of the croft for an activity that is environmentally beneficial? [Yes/No/Don't Know]

Every new owner-occupier crofter must be a natural person

It has long been the case that every tenant crofter must be a "natural person", the legal term for a human being, rather than, for example, a limited company or a charity. The duties of a crofter – to live within 32 km of the croft and to use and look after the land – make sense when they are duties for natural persons.

However, there has been no such control over who can own an owner-occupied croft, and be a crofter in that sense. There are some owner-occupied crofts that are held by limited companies, and the law is not clear on what the duties mean in such a case.

An owner-occupier crofter is both the owner of the croft land, and subject to the crofting duties described above including the duty to live within 32 km of the croft. This only makes sense if owner-occupier crofters, like tenant crofters, are natural persons.

¹⁶ For a formal transfer of this responsibility to another person, a crofter can of course sublet their croft on a formal basis with the consent of the Crofting Commission, thereby transferring the duties of residency, cultivation and maintenance onto the subtenant.

We therefore propose to change the Act so that any legal person (not a natural person) that acquires ownership of a croft should be required to let the croft to a tenant crofter.

We do not at this time propose to apply this change to companies and charities that already have owner-occupier crofter status, although the Crofting Commission will seek to ensure that such owner-occupier crofters fulfil the crofting duties in a meaningful way. And, on the next transfer of that croft, the proposal will require that it can only be transferred to one or more people (natural persons).

Question 4.4

Do you agree that only natural persons should be able to become owner-occupier crofters?
[Yes/No/Don't Know – comment]

Question 4.5

Do you agree that where a company or charity is currently an owner-occupier crofter, the croft should require to be transferred to one or more natural persons, the next time it changes hands? [Yes/No/Don't Know]

Annual Notices (Crofting Census)

The Crofting Commission has a duty to give notice to each crofter to make an annual declaration regarding their croft through the Annual Notice, otherwise known as the Crofting Census. Crofters are asked every year to give any updates to their croft information and also to provide information on whether they are complying with their duties. This process helps to keep the Commission's information accurate and up to date, and also forms the basis for a key element of its action to ensure breaches of crofting duties are remedied.

It is considered essential to conduct a census immediately prior to each 5-yearly crofting election, to help ensure the list of eligible voters is as accurate as possible.

However, many crofters have made it clear that there is a frustration at having to repeatedly send the same information every year. In addition, the Crofting Commission has noted that gathering and processing annual census information is a burden on their resources, which might be more usefully re-directed to supplement the carrying out of its regulatory duties and pursuing non-returners and taking action on those that are in breach. Although there is a strong connection between the Annual Notice and crofting duty compliance, we consider that the proposal to amend the Annual Notice to at least once every three years – along with further digitalisation of the census – will provide the Commission with the flexibility to carry-out the exercise as often as it is deemed necessary, whilst ensuring that the Commission still has reliable up-to-date information.

Question 4.6

Do you agree that we amend the Annual Notice requirement to at least once every three years, with the Crofting Commission entitled to choose how often and which years, subject to that constraint? [Yes/No/Don't Know]

Enforcement of duties when a croft is sublet

A crofter may sublet their croft with the consent of the Crofting Commission¹⁷.

Where a crofter has sublet their croft, they are deemed to comply with the residency and land use duties (other than not to misuse) if the sub-tenant complies with the duties. Many crofters who are not able to fulfil the duties for a period of time, use sublets as a way of ensuring that the croft is occupied and used in the meantime. However, if the subtenant is themselves not ordinarily resident within 32 km of the croft, or not cultivating and maintaining the croft, it is not clear what remedy is available to the Crofting Commission. Legislation¹⁸ currently prevents the Commission from taking enforcement action to terminate the tenancy where the Commission has consented to the sublet.

Sometimes in these circumstances the sublet may be terminated by the crofter, but if this does not happen, we propose that the Crofting Commission should be entitled to withdraw its consent for the sublet if it considers that the subtenant is not complying with the duties of residency, cultivation and maintenance of the croft. To assist the Commission in coming to such a decision, the tenant crofter or other members of the crofting community should be entitled to draw a suspected breach of duty to the attention of the Commission, but the subtenant should also have the right of reply.

Question 4.7

Do you agree that if a subtenant is not meeting their statutory duties, the Crofting Commission should be entitled to terminate the sublet? [Yes/No/Don't Know]

¹⁷ See section 27, 1993 Act

¹⁸ See section 26B, 1993 Act

5. Enhanced Crofting Commission Powers

The focus of crofting regulation

The priorities for the regulation of crofting by the Crofting Commission need to be kept under review, to ensure that the system of regulation remains fit for purpose and effectively supports the sustainability of remote communities and effective land use in those communities. The Scottish Government is also mindful that any system of regulation needs to be proportionate. Regulation places restrictions on individuals, and also carries a cost to the public purse.

Historically, Crofting Commission regulation has focussed on three broad types:

1. Enforcement of crofting duties, for example taking regulatory action to ensure that crofters live within 32 km of their croft and put it to use.
2. Decisions which adjust the amount of land, or the configuration of land, under crofting tenure, such as creation of crofts, decroftings and apportionments.
3. Decisions on who holds crofts, such as assignations, sublets and short-term leases.

The Scottish Government considers that the first two types of regulatory decision are fundamental to the health of the crofting system, but that there are questions about the necessity and effectiveness of the third type. Both the Scottish Government and the Crofting Commission are keen for regulatory processes to be reviewed and for the Commission to introduce improvements that will increase overall efficiency in its service to its customers. Where the Commission focuses its efforts is critical to this outcome.

Currently, all proposed assignations, or sublets of leases, or proposed short-term leases, even from a crofter to a close family member, have to be assessed and approved by the Crofting Commission. These applications make up a significant proportion of the Commission's regulatory work, and represent about a third of all applications received (approximately 400 a year).

But the Commission can only reject these applications for a good reason, for example if there is evidence that an incoming crofter will not fulfil the crofting duties, and it is rare for such evidence to be available in advance of the assignation taking place. Consequently, it is not surprising that in 2022/23, 99% of assignations and 97% of sublets/short-term leases were approved rather than refused by the Commission. This does not suggest an effective and proportionate aspect of crofting regulation.

In contrast, there are currently no regulatory controls over the transfer of owner-occupier crofter status. Anyone who purchases an owner-occupied croft automatically becomes an owner-occupier crofter without requiring the approval of the Crofting Commission.

The Crofting Commission cannot refuse the purchase of the land which comprises the owner-occupied croft, as land purchases are not regulated by the Commission. However, we propose that the Commission could refuse the transfer of owner-occupier status, and if so, this would leave the incoming purchaser liable to be required to let the croft to a tenant crofter.

We consider that prior approval of lease arrangements, which include assignations, is not an effective way of ensuring that crofters fulfil their duties. This should instead be regulated by a post-transfer check after 2 years, whereby the new tenant is asked to confirm they are

adhering to their duties. This will be monitored by the Crofting Commission who will carry out post-transfer checks on a percentage of new assignees.

This new provision would free up Crofting Commission resources for direct engagement with crofters who are actually in breach of duties. However, prior approval of lease arrangements, and of purchases of owner-occupied crofts, is necessary to prevent any one person owning or controlling multiple crofts which would, we think, make it harder to maintain rural populations in the crofting counties.

We propose to redesign the regulatory controls on who takes on a croft, both for assignments / purchases of owner-occupied crofts, and for sublets / short leases. We propose that transfers or purchases should only need prior approval by the Crofting Commission in the following circumstances:

- in the case of an assignment:
 - where the proposed incoming crofter already holds three or more crofts and/or stand-alone grazings shares (deemed crofts), as recorded in the Register of Crofts, or
 - where the landlord objects.
- in the case of a sublet:
 - where the total period of the sublet would exceed 5 years, or
 - where the landlord objects.
- in the case of a short-term lease, where the lease would exceed 5 years.
- in the case of the purchase of an owner-occupied croft, where the proposed owner already holds three or more crofts and/or stand-alone grazings shares (deemed crofts), as recorded in the Register of Crofts.

As a result of these changes, the requirement for an assignment, sublet or short-term lease to be advertised would be removed, and the applicant would only need to notify the Crofting Commission and the landlord.

This will significantly speed up the time for processing assignment applications, which will benefit crofters. It will also benefit the Commission which will be able to use the released resource on matters such as regulating the land in crofting tenure, and resolving breaches of residency and land use.

Question 5.1

Do you agree that assignments should only require prior approval if the landlord raises an objection or if the incoming crofter already holds three or more holdings in the Register of Crofts? [Yes/No/Don't Know]

Question 5.2

Do you agree that transfer of owner-occupier crofter status should be subject to a Crofting Commission decision, in cases where the purchaser already holds 3 or more holdings in the Register of Crofts? [Yes/No/Don't Know]

Question 5.3

Do you agree that sublets should only require prior approval if the landlord raises an objection? [Yes/No/Don't Know]

Question 5.4

Do you agree that each incoming assignee and owner-occupier crofter should be required to confirm, at the next Census or within 2 years of taking up the croft, whether they are complying with duties? [Yes/No/Don't Know]

Question 5.5

If you wish, please comment on your answers to Q5.1 to Q5.4. [free text box]

Power to grant Owner-Occupier status

It is clear that a number of individuals have unintentionally, though in good faith, fallen into the circumstances of being a landlord of a vacant croft rather than an owner-occupier crofter. In some circumstances, the individual may be unaware of the situation. These are individuals who own and physically occupy a croft but, perhaps because of events in the distant history of the croft, do not meet the required conditions for an owner-occupier crofter as set out in section 19B of the 1993 Act. The Crofting Commission estimates that such circumstances apply in respect of possibly several hundred crofts.

Theoretically, the Crofting Commission could ask these individuals to put a tenant in place, but in many cases the Commission has no wish to do so. It has been left for the Commission to deal with this by "letters of comfort", indicating circumstances in which they would not seek letting proposals for these crofts. There is also the problem with a lack of any means to correct the status of those who "otherwise occupy" land stated by the Act to be vacant.

The proposal is that these individuals should be able to apply to the Crofting Commission to be granted owner-occupier status. We believe this makes sense in both policy and regulatory terms, in that it should assist in encouraging active use of croft land, and it will allow some individuals access to grant schemes that they don't currently have.

The obligation to prove eligibility will be placed on the applicant. Such as:

- proof of ownership of the land, including an extract from the land register showing the extent of the croft land owned and concerned in the application; and
- confirmation that the applicant understands the duties and obligations required of a crofter as set out in schedule 2 to the 1993 Act and is willing to abide by them.

It would then be for the Crofting Commission to decide whether to grant owner-occupier crofter status, taking account of the information provided by the applicant and such other criteria as might be specified. A successful application will be a trigger event for croft registration, and there will be recourse to the Scottish Land Court in the event of a dispute over the Commission's decision.

Question 5.6

Do you agree that the Crofting Commission should be given the power to correct the status of croft owners who deserve owner-occupier status? [Yes/No/Don't Know]

Minor reorganisation – Crofting Commission power to adjust croft boundaries by mutual consent

One of the more significant powers of the Crofting Commission is the power to “reorganise”¹⁹ crofts within a township, that is, to reallocate the land within a township for the benefit of the whole township. Typically, this involves adjusting the boundaries of crofts to make each croft more self-contained with coherent boundaries, while ensuring that the adjustments are fair to all the crofters involved.

The Commission generally uses this power only where there is consensus between all the crofters in the township and the landowner(s) as well, and this means it is relatively rarely used.

However, instances do arise where there is a desire to adjust boundaries between two neighbouring crofts, or a small number of crofts. Examples can include:

- A small number of neighbouring crofts on the same estate, where the historic boundaries are illogical, and their redrawing would be of benefit to all the crofters concerned.
- Cases where a small amount of land between two crofts does not belong to either, but it is agreed desirable to add it to one or both of the crofts.

For such cases and similar situations, we propose to create a new power for the Crofting Commission to change the boundaries of one or more registered crofts, on an agreed application submitted by all the parties involved, namely all the crofters whose croft boundaries would be changed, and all the landowners whose land would be affected by the changes. The process would be similar to that for a township reorganisation, except that the onus would be on the applicants, not the Commission, to work out the details of the changes they proposed.

Registration, or updates to existing registrations, of the croft boundaries would be required for all approved boundary adjustments, and if any applications (for example, adjusting the boundaries of two owner-occupied crofts) required change of land ownership, conveyancing would need to be organised by the parties, at their own expense, with consequential registration in the Land Register as well.

Question 5.7

Do you agree that the Crofting Commission should have the power to adjust croft boundaries, on an application by all the parties, where those parties are in agreement?
[Yes/No/Don't Know]

Crofting Commission power to correct manifest (clear) errors in its Directions and Orders

A Crofting Commission Direction or Order is a legal document, which may change the legal status of land or may grant rights to certain individuals. It cannot easily be set aside or altered, other than by a successful appeal to the Scottish Land Court.

¹⁹See section 38, 1993 Act

However, occasionally, after a Direction or Order has been issued, errors are sometimes discovered, particularly with maps. For example, it may come to light that part of an area covered by a Decrofting Direction was not part of the applicant's croft, or that part of an apportionment was not common grazings land. There may be other types of error, such as spelling mistakes for the croft or of one of the parties.

We propose that the Crofting Commission should have a power to correct such errors and reissue an amended Order or Direction. This may be the quickest and easiest way to correct what might otherwise be a difficult problem for the interested parties. However, we propose that this power should only be available for clear errors and where there is no dispute about the best way forward. An application to the Scottish Land Court would continue to be required to correct any other error.

Question 5.8

Do you agree that the Crofting Commission should be able to correct errors in its Directions and Orders where the case for doing so is clear? [Yes/No/Don't Know]

Decrofting

In most of the regulatory applications that the Crofting Commission has to deal with, such as assignments and divisions, the Commission must, in accordance with legislation, consider whether someone is using the land and is resident, before making its decision. However, in the case of decrofting applications, those considerations do not apply.

It has been raised by crofting stakeholders that there needs to be increased scrutiny on decroftings, in particular those that involve someone who is either in breach or suspected to be in breach of their duties, and where there have been multiple decroftings on the croft. We propose that when the Crofting Commission considers any decrofting application, including the statutory right to a house site, it will be a material consideration as to whether the applicant is complying with their crofting duties and whether the croft has received previous decroftings, and these might be reasons to refuse the application. This will include those applicants that have been served a breach of duty notice by the Commission. Currently, there is nothing in legislation preventing a crofter from making multiple decrofting applications whilst they are in breach of their duties.

Question 5.9

When considering a decrofting application, do you agree that the Crofting Commission should consider whether the applicant is complying with their statutory crofting duties, such as being resident and cultivating the croft? [Yes/No/Don't Know – comment]

Question 5.10

When considering a decrofting application, do you agree that the Crofting Commission should consider whether the croft has received previous decrofting applications? [Yes/No/Don't Know – comment]

Sanctions

In connection with regulation, crofting legislation gives a number of responsibilities to crofters and owners of croft land.

It is therefore important that we ensure that the information regarding duties is made available to incoming crofters and crofting solicitors and agents, in advance of any croft purchase to make it as easy as possible for them to comply with the various requirements.

The Crofting Commission may issue a Direction or Order which includes conditions that must be met by the crofter. Crofters are also required to complete the annual census, and both crofters and owners of croft land are in certain circumstances required to provide information to the Commission to enable it to regulate effectively.

It is in everyone's interests that orders are complied with, and that information required to properly regulate and support crofting is provided promptly and in full.

In order for that to happen there should be effective and proportionate sanctions for regulatory breaches.

Current legislation applies a variety of sanctions in cases where a crofter or owner has not complied with the requirements, including in some cases making this failure a criminal offence. Criminal sanctions will remain appropriate in cases of fraud (for example, fraudulent claims of crofting grants or subsidies), but there is rightly a high threshold to be met before any breach is the subject of criminal proceedings.

The Scottish Ministers consider therefore that the Crofting Commission should be able to apply administrative sanctions where there is a regulatory breach, and they seek views in that respect.

It has been proposed for example that the legislation should be updated to provide for sanctions on the following basis:

- Where a crofter has failed to comply with the conditions imposed by the Crofting Commission when approving their application, the penalty should be that the approval is revoked, unless there are particular circumstances that make this unrealistic in certain cases.
- Where a crofter or owner-occupier crofter has failed to complete the annual census, or to provide information required by law, the sanction may be that any current or future application they make may be put on hold by the Commission until the matter is resolved.

Other approaches are possible, and we welcome views in that respect.

Question 5.11

Do you agree that the Crofting Commission should be able to use administrative sanctions where there is a regulatory breach? [Yes/No/Don't Know - Comment]

Question 5.12

If yes, do you agree that the Crofting Commission should be able to revoke approval or decline to deal with applications? [Yes/No/Don't Know]

Question 5.13

If yes to Q 5.11, do you consider that any other type of administrative sanction should be available as well as, or instead of, a power to revoke approvals or consider applications? [Yes/No/Don't Know]

Elections of members of the Crofting Commission

The Crofting Commission was established in 2012, replacing the former Crofters Commission, with a new constitution.

The Crofting Commission is unique among Non-Departmental Public Bodies in that the majority of its Board is elected, through elections which take place every five years. The Board of 9 comprises 6 commissioners elected by crofters, and 3 who are appointed by the Scottish Government in the usual way.

Elections to the Commission are regulated by the [Crofting Commission \(Elections\) \(Scotland\) Regulations 2011](#)²⁰

Following the crofting elections of 2022, it was agreed between the Crofting Commission and the Scottish Government that the 2011 Regulations need updating.

The 2011 Regulations are made under paragraph 7 of schedule 1 to the Crofters (Scotland) Act 1993. Paragraph 7(6) provides that before making regulations under that power the Scottish Ministers must consult such persons or bodies as they think appropriate on the constituency boundaries to be used, and the persons who are eligible to vote, in elections of persons as members of the Commission.

Therefore, we are taking this opportunity to consult on proposed measures on a range of electoral issues that would be taken forward in secondary legislation.

It has been 12 years since the establishment of the current arrangement, and it is appropriate to take this opportunity to take stock. Throughout the life of the Crofting Commission, elected commissioners have provided leadership for the Commission from within the sector. However, no system is perfect and there are areas that we may wish to look at in order to strike a better balance:

- The Crofting Commission can suffer a lack of continuity in its leadership if most or all of the elected commissioner posts change hands at the same time, as happened at the 2017 elections.
- The same commissioners might be elected for several consecutive elections, preventing the desirable turnover of Board membership.
- It may be necessary, following elections, to choose as appointed commissioners those who have particular skills to complement the rest of the Board, such as an ability to represent the views of landlords or to speak Gaelic (both required by legislation), or experience of finance, audit, IT or public sector governance. With only three appointed posts available, there can be considerable pressure on the appointments process.

The role of the Crofting Commission Board is to provide leadership and direction for the Commission, together with support and guidance, and to ensure the Commission delivers its functions effectively and efficiently. There are advantages to having both elected and appointed members on the Commission Board, and it is also important that we ensure that any given Board has the depth of knowledge and experience to carry out its functions.

²⁰ S.S.I. 2011/456, as amended by S.S.I. 2016/424

Whilst we are keen to retain a strong voice for democratically-elected crofters, we would like to hear the views of crofters on whether we should consider balancing the Board with a more even split of elected and appointed members. This might reduce the number of crofters on the board, but not always, as crofters can also apply for the appointed positions.

Additionally, we would like to consider whether there should be a cap on the number of times that a commissioner can be elected, for example, twice only. This change would be in line with accepted good practice in Board membership, and the implied limit of 10 years as an elected commissioner would be similar to the limit of 8 years that an appointed commissioner can serve on the Crofting Commission Board.

Question 5.14

Do you have any suggestions for how we split the number of Commissioners between elected and appointed? [Free Text]

Question 5.15

If we were to reduce the number of elected Commissioners, how should we divide the crofting counties into constituencies? [Free text]

Question 5.16

Should anyone who has twice previously been elected as a Crofting Commissioner be able to stand again in another crofting election? [Yes/No/Don't Know]

Voting in Elections

Currently, only registered crofters (including those of deemed crofts) and owner-occupier crofters aged 16 years or older can vote in the crofting elections. The previous elections operated on the basis of one vote per croft except that a crofter could only have one vote no matter how many crofts they had. If a crofter had crofts in more than one constituency, the constituency where they were eligible to vote was the one where they lived.

These arrangements appear to command the confidence of the crofting electorate and consequently, the Scottish Government is not proposing any changes to voter eligibility in this bill.

Question 5.17

Should voter eligibility operate on the same basis as for the previous three elections? [Yes/No/Don't Know – comment]

6. Simplifying Crofting

Crofting Register Rectification

The Crofting Register is a public list of crofts, common grazings and land held runrig, and is maintained by the Keeper of the Registers of Scotland. It is the legally-authoritative, map-based register and provides a definitive record of the extent of, and interests in, land within crofting tenure. In addition to showing the boundaries of land, the register also contains information on the tenant and owner-occupier crofter and the landlord of the croft.

An application for first registration is made in the first instance to the Crofting Commission which checks the information contained in the application against the information contained in the Commission's own Register of Crofts.

Current legislation provides that the Keeper of the Registers of Scotland may rectify the Crofting Register in three instances:

- where a mistake has been made by the original applicant;
- where a mistake has been made by the Crofting Commission; or
- where a mistake has been made by the Keeper.

Around 80% of rectification applications relate to the size of the area of the croft or common grazings. The majority of these errors result from applicant error and there is a financial cost associated with their correction. Currently, unless the Keeper is responsible for the registration error, she/he cannot take the initiative to rectify the mistake but must wait until either the original applicant or the Crofting Commission asks her/him to do so. We are proposing to amend the current rectification provisions to extend the powers of the Keeper to:

- rectify the Register when she/he becomes aware of an inaccuracy, with or without being first requested to do so by either a third party or the Crofting Commission; and
- correct typographical errors in the Register outwith the formal rectification provisions of the Act.

This proposal will provide a simpler and more cost-effective approach to Register rectification for clear and straightforward inaccuracies, allowing greater accuracy to be achieved; and will minimise the number of Scottish Land Court challenges, thereby providing a more cost-effective approach to maintaining the Register for all involved, including crofters.

Question 6.1

Do you agree that we should extend the powers of the Keeper of the Registers of Scotland for correcting errors in the Crofting Register? [Yes/No/Don't Know]

We also propose to make the following two changes.

Firstly, we propose to extend the definition of "original applicant" to include an executor of an original applicant (and others in an analogous position). This will allow a rectification to be applied for without having to revert to the Scottish Land Court.

Secondly, before submitting a registration application to the Crofting Commission, we propose that a tenant crofter must serve notice of the application on the landlord, giving the landlord a specified period of time to respond to the crofter, if they choose to do so. The Commission will not forward the application to the Registers of Scotland until it has confirmation that it has been shared with the landlord. We believe that letting the landlord see the application will help us achieve a more accurate Register and see fewer rectifications. It will be up to the landlord to decide whether to offer comment to the crofter, and it will be up to the crofter to decide whether to modify the application.

Question 6.2

Do you agree that all registration applications should be copied to the relevant landlord, in order to allow the landlord to comment if he or she chooses to do so? [Yes/No/Don't Know - comment]

First Registration upon purchase from Landlord

Registration of a croft on the Crofting Register confirms the crofter's rights to the land and informs others of those rights too. The number of crofts registered with the Crofting Register has been growing steadily, and the Scottish Government is keen to see this accelerate, for the benefit of all.

Many changes involving a croft are 'triggers' that require the croft to be registered if it is not already in the Crofting Register. However, an exception is when a tenant crofter exercises the right to buy and becomes an owner-occupier crofter. As this process involves a conveyance of a defined piece of land, the additional administration required for entry in the Crofting Register will normally be straightforward, and we propose that this event should also be a trigger.

Question 6.3

Do you agree that the purchase of title to a croft by a tenant crofter should be a trigger for registration in the Crofting Register? [Yes/No/Don't Know]

Personal Information for the Register of Crofts

The Register of Crofts is a public list of crofts which contains basic information about the croft and the people associated with it, and is held and updated by the Crofting Commission. Currently, the law requires that the name, age and date of birth for tenants and landlords are included in the Register of Crofts. However, there is no such requirement for owner-occupier crofters.

Question 6.4

Do you agree that owner-occupiers should be required to give the same personal information for the Register of Crofts as tenants? [Yes/No/Don't Know]

Timescales for Crofting Commission decisions

The current legislation provides for the Crofting Commission to determine four types of application within a fixed period. Other matters that the Commission must determine are not subject to any such statutory deadline.

The legislation does not provide for the consequences of failing to meet a deadline. Also, there does not seem to be any particular reason for those four matters to be treated differently from other functions of the Crofting Commission. It therefore seems arbitrary to single them out, and doing so could lead to a misapplication of resources that might be better used to process other applications and other important matters.

We therefore propose to abolish the statutory deadlines for these four decision types, which are:

- The Crofting Commission has 28 days to decide whether to give its consent to an application by a crofter to put their croft to another purposeful use, in cases where this has not already been approved by the Landlord.
- The Commission has 28 days to decide whether to give its consent to an application by a crofter to be absent from his/her croft for a period of time.
- When engaging with a crofter over a suspected breach of duty, the Commission has 14 days to decide whether a crofter is in breach of duty, in the light of representations put to the Commission by the crofter.
- At the next stage in the current process, the Commission has 28 days to decide whether to accept an undertaking by a crofter as to how and when a breach will be rectified.

(Note that our proposals above for the simplification of the duties enforcement process envisage the latter two processes being combined.)

While we consider these particular deadlines, especially in the absence of specified consequences, to be flawed, the Scottish Government and the Crofting Commission are taking other steps to improve the timeliness of Commission decisions across all application types. Following an independent review of the Commission's staffing in 2021, the Scottish Government provided the Commission with additional resources to help it improve the turnaround times for processing applications; and the Commission is developing Customer Service Standards which will be published on its website.

Question 6.5

Do you agree that the deadlines for these four particular types of decision should be removed from the legislation? [Yes/No/Don't Know - comment]

Access rights

In property law, rights of access between neighbouring landowners can be agreed by creating a servitude right of access. One of the owners agrees to have his or her land "burdened" by a servitude right of access in favour of a neighbouring "benefited" owner. These rights are transferred when ownership of the land is transferred.

We propose that there should be an equivalent, straightforward mechanism for setting up a permanent access right across tenanted crofting land, given the many situations where this

would be a useful way of ensuring access to different crofts. Currently, the legislation provides only for this to be done by an application to the Land Court, in cases where all the land in question is tenanted from the same landowner. We propose that where all the crofters and the owner(s) are agreed, they should be entitled to set up a crofting right of access simply by drawing it up and notifying the Crofting Commission. This would then become a permanent right of access and binding on their successors, unless one or other party applied successfully to the Land Court to have the right modified.

Question 6.6

Do you agree that where all the crofters and owners of the land in question, wish to set up a permanent crofting right of access, they should be entitled to do so? [Yes/No/Don't Know]

7. Clarifications and Corrections

Decrofting without a stated purpose

Legislation sets out in some detail how the Crofting Commission is to assess the merits of a decrofting application based on its stated purpose and the amount of land required for that purpose. However, there is further legislation that implies that applications without a stated purpose can also be assessed and based against a different set of criteria. This duplication appears to be unintended, and we want to remove it and ensure that every decrofting application is accompanied by a reasonable purpose.

Registration Requirement – Decrofting perpetual leases

Before tenant crofters were given the right to buy their croft in 1976, the 1955 Crofting Act allowed crofters of a certain age to negotiate with their landlord and get a conveyance of the site of a dwellinghouse and, in exchange, the remaining croft would be regarded as vacant and the landlord would be able to relet it. This policy was seen as a way to allow elderly crofters to stop crofting without them losing their croft house. These croft houses came to be known as section 17/18 conveyances or ‘feus’ – named after the relevant section of the 1955 Act. The 1955 Act also allowed absentee crofters, who had obtained title to their croft house site following an action by the Crofting Commission, to terminate their croft tenancy.

These types of transactions were stopped when the Crofting Reform Act 1976 came into effect, when every tenant crofter was given the right to purchase the site of their dwellinghouse and decroft it.

Currently, all unregistered crofts are required to be registered on the Crofting Register before any part can be decrofted. However, as these feu crofts amount to no more than the croft house site and garden ground, it is considered unnecessary to have these sites registered in advance of a decrofting application, only to be immediately removed from crofting tenure.

Notification of change of ownership of croft land

Owners of croft land have a number of rights and responsibilities in connection with crofting, so it is important that both the Crofting Commission’s Register of Crofts and the Registers of Scotland’s Crofting Register have accurate information about the ownership of croft land, including common grazings. We propose to clarify that the responsibility of a purchaser of croft land to notify the Commission of that purchase applies to all changes of ownership of land subject to crofting tenure, whether that be a croft (tenanted or owner-occupied), crofting estate, all apportionments, or common grazings. In each case the purchaser, whether that be crofter or landlord, will be required to notify the Commission within one month so that the Commission can update its Register of Crofts.

This should be a standard add-on to the conveyancing process, and should normally be undertaken at the same time as the purchaser’s solicitor is updating the Land Register and (where required) the Crofting Register held by the Registers of Scotland.

Until the new ownership has been notified to the Crofting Commission, the owner will not be able to comment on any regulatory applications by the crofters.

Assignations

Currently, there are two separate assignation processes where the assignor and assignee have different roles depending on whether the croft has been registered or not. That no

longer seems necessary nor desirable, so we are proposing to introduce one single process for assignation.

In the case of an unregistered croft, the proposal is to decouple the registration process from the assignation process. If the croft has not been registered then it needs to be registered first, then it follows the same assignation process as a registered croft.

Apportionment

It is unclear in law when an apportionment comes into effect. We propose to make it clear that an apportionment comes into effect on the date of its registration. We also propose that all apportionments granted by the Crofting Commission, regardless of when, are reviewable.

Maximum length of sublet

We will put beyond doubt that the maximum duration of any sublet, whether approved by the Crofting Commission and/or by the landlord, is 10 years – although sublets can be considered for renewal by a further application.

Terminology

The current crofting legislation uses the word “crofter” to mean a tenant crofter, with an owner-occupier crofter requiring to be referred to in full. This is different from the popular use of the word “crofter”, which could refer to either. Insofar as the change can be made without introducing new complexities, we propose to amend legislation so that any reference to a crofter will include a reference to an owner-occupier crofter except where the context or statutory provision otherwise provides.

Civil partnerships

We intend that all references to married people in the crofting Acts should in future include civil partners.

Uncompleted titles

There is a technical issue regarding the definition of an owner-occupier crofter when an executor transfers the right to acquire ownership of the property by way of what is known as deduction through links in title, where a docket on the confirmation acts as a link in title or “midcouple.” This is known generally as an “uncompleted title” held by an “uninfert proprietor”. For instance, it is not uncommon for a widow or widower not to complete title by registering the title in the Land Register or recording the title in the Register of Sasines, until many years later when the property is sold to a third party. It would be good practice for them to complete the title, but it is acknowledged that a beneficiary can competently hold the rights to the land on the basis of a link in title without having to do so.

When the land in question is an owner-occupied croft, this can cause difficulties for the owner and for the Crofting Commission, as it is not clear whether the uninfert proprietor qualifies as an owner-occupier crofter in their own right. This can leave land without a crofter for an extended period, and exclude the owner from the rights and responsibilities of being an owner-occupier crofter.

We propose to clarify the law in that respect.

More time for the Crofting Commission to develop a Policy Plan

Six out of nine crofting commissioners are elected, and so every five years, when the Crofting elections take place, the Board of the Crofting Commission is liable to see multiple changes of membership and with it, perhaps, a change in the Board's policies and objectives for crofting. Following each election, the Commission is required to develop a new Policy Plan, setting out its policies, priorities and values; and once the Plan has been approved by the Scottish Government, the Commission must take decisions in accordance with what they have set out in the Plan.

Current legislation requires the Crofting Commission to develop, consult on and submit the new Policy Plan to the Scottish Government within six months following each election, but experience has shown that this period of time is often too short, as it requires a new Board to approve a draft plan for consultation within its first three months or so. In practice, a Board with several new members takes longer than that for the members to get to know each other and to work out their collective ideas.

We therefore propose to extend the deadline for submission of a Policy Plan to 12 months.

Flexibility on who chairs Crofting Commission meetings

The legislation currently specifies that "the Convener must, if present, chair meetings of the Crofting Commission and any of their sub-committees". This has proved to be quite restrictive. On one occasion when the Convener was attending a hybrid meeting over a weak internet connection, it would have been much more practical for one of the commissioners in the room to chair the meeting. On another occasion the Commission wanted to use a guest chair for a policy workshop, to allow the Convener to join the discussion on an equal basis with others. We propose to amend the current legislation to provide for more flexibility in who chairs Commission and sub-committee meetings.

Jurisdiction of the Scottish Land Court

The vast majority of appeals against Crofting Commission decisions are to the Scottish Land Court. However, this does not apply in the case where the Commission decides to remove one or more members of a grazings committee from office on the grounds that they are not properly carrying out their duties. In such an instance, the only appeal is to the Court of Session. We propose to change this by providing for appeals to be made to the Scottish Land Court.

Question 7.1

If you wish, please add any comments on any of the proposed clarifications set out in section 7 of this consultation. [free text box]

Annex A - How to respond to this consultation

We are inviting responses to this consultation by no later than **Monday 2nd September 2024**.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/agriculture-and-rural-economy/crofting-bill-consultation-2024>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 2 September 2024.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Crofting Bill Team
Scottish Government
D Spur
Saughton House
EDINBURGH EH11 3SP

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at **croftingbillconsultation@gov.scot**

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Annex B – Membership of the current Crofting Bill Group

Donna Smith	CEO Scottish Crofting Federation
Donald MacKinnon	Scottish Crofting Federation
Rhianna Montgomery	NFUS
Laura Sinclair	NFUS
Gary Campbell	CEO Crofting Commission
Malcolm Mathieson	Convener Crofting Commission
David Findlay	Solicitor Crofting Commission
Brian Inkster	Solicitor – Crofting Law Group
Murray McCheyne	Solicitor
Robbie Forbes	Law Society of Scotland
Stephen Cranston	Law Society of Scotland
Stephen Young	Scottish Land & Estates
Jackie McCreery	Scottish Land & Estates
Rhona Elrick	Registers of Scotland
David Robertson	Registers of Scotland
Alison Irving	Scottish Land Court
Maria de la Torre	NatureScot
Sandra Holmes	Highlands & Islands Enterprise
Siobhan MacDonald	SRUC – SAC Consulting
Drew Ratter	Highlands and Islands Agricultural Support Group – Shetland Islands Council
There is also an open invite to COSLA and Crofting Commission Commissioners.	



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