



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITION NO.

PE01729

Name of petitioner

John Maciver

Petition title

Legal protection of crofts from local authority care charges

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure crofting tenancies are exempt from local authority Financial Assessments for care charges.

Action taken to resolve issues of concern before submitting the petition

I have raised this issue with Comhairle nan Eilean Siar (CNES) and made a formal complaint.

I have contacted Mr Donald Cameron MSP who wrote to the Chief Executive of CNES and the Crofting Commission on my behalf seeking clarification on a number of questions

I have submitted a complaint to the Scottish Public Services Ombudsman (SPSO) about my dissatisfaction with the decision by CNES.

Petition background information

There is a grey area in the law with regard to whether or not a croft and croft property should be deemed to be 'capital assets' in terms of the legislation and therefore subject to consideration in local authority financial assessments for care charges. From my understanding, even specialist legal experts are unsure of this situation and it is my view that this urgently requires clarity from the Scottish Government.

I believe it is the view of crofting communities that a crofter has a statutory heritable right of tenancy and therefore crofts and croft property should be exempt. It is important for those communities that a definitive decision on this issue is made so that a consistent approach may be taken by local authorities and crofters' rights protected. A review of the current legislation and/or the accompanying guidance may be required.

During the last 18 months or so, my family has been in dispute with CNES after receiving a letter from them stating that they wished to consider a family house and croft, as a capital asset, in order to pay for my family member's ongoing care charges. I challenged the legal basis for their action and was informed that CNES had obtained

legal advice from Counsel in 2004. The Advocate's 'opinion' was that a croft and a croft house were 'likely' to be classed as capital and therefore required to be taken into account for the financial assessment of residents in respect of care charges.

CNES's decision to take the croft and croft house into consideration was taken in accordance with the Charging for Residential Accommodation Guidance 2017. However, the relevant sections in this guidance that apply (sections 6.001, 6.002 and 7.007), are solely based on the learned Advocate's 'opinion'. CNES informed us that the legislation that the Advocate relied on for that opinion is the National Assistance (Assessment of Resources Regulations 1992 as amended by the National Assistance (Assessment of Resources) Amendment No 4 (Scotland) Regulations 2003. I have serious concerns with the interpretation of these regulations by the Advocate, on behalf of CNES, which suggest that crofting tenure is a capital asset. The regulations specify buildings and land as capital assets but I would argue that a croft house is a permanent improvement to the croft and accordingly forms part of the tenancy. There is nothing apparent in these regulations that would define crofting tenure as a capital asset. My understanding is that crofting land is owned by the landlord who must have an interest in any action of this nature.

CNES stated that local authorities in other crofting areas also have a policy to include property subject to crofting tenure in their financial assessments. I am aware of at least one case on the Isle of Skye where this was not followed through and a debt held against a property was not pursued, after it was challenged. There is clearly inconsistency by local authorities in their interpretation and application of the Guidance which is grossly unfair to crofting families. We would like to see parity in decision making across all the crofting Council areas. This would ensure sustainability and promote equality in crofting communities.

We asked CNES to reconsider their decision to include the house and croft as an asset but they are not prepared to do so. They claim they are legally obliged to act in this way although I understand that it is discretionary. We would like CNES to reconsider their policy in dealing with these matters as we believe they are acting on unchallenged legal advice and are at odds with promoting the sustainability of crofting and equality within crofting communities.

Unique web address

<https://www.parliament.scot/GettingInvolved/Petitions/protectcroftsfromcarecharges>

Related information for petition

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

YES

How many signatures have you collected so far?

0

Closing date for collecting signatures online

20 / 08 / 2019

Comments to stimulate online discussion

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Do you agree that crofts and croft property should exempt from local authority Financial Assessments for care charges?

Do you have experience of the issues raised in the petition?

Are you aware of crofting communities who are being affected by this issue?
If so, what has been the impact on those communities?