

Written submission (Part 2) from Brian Inkster, Inksters Solicitors

Following on from my earlier submissions on the Crofting (Amendment) (Scotland) Bill (“the Bill”), I have drafted an alternative bill that deals with my main concerns, namely:-

- (i) The over complex nature of the drafting of the Bill and the fact that a new set of provisions have been created to deal with decrofting by owner-occupier crofters rather than simply linking such decrofting in with the existing provisions contained in section 24(3) of the Crofters (Scotland) Act 1993.
- (ii) The introduction of what is arguably new law that has no place in a bill which has the sole purpose of fixing flaws in the existing law created by the Crofting Reform (Scotland) Act 2010 (“the 2010 Act”)
- (iii) The omission to deal with the problems associated with applications to decroft by owner-occupiers as opposed to owner-occupier crofters.

This exercise shows that crofting law can be amended in a relatively simplistic way to achieve the outcomes sought. In so doing it renders obsolete the transitory provisions and the complicated table of modifications contained in the Bill. By making it more digestible it minimises the possibility of error caused by an over complex approach to the problem at hand. It reduces the length of the Bill from 1700 words to 621 words whilst still introducing new provisions to deal with the problems associated with applications to decroft by owner-occupier crofters. It probably could have been shortened even further by simplifying what is now clause 3 (appeals against certain decisions) of my alternative bill. However, I decided to simply maintain the drafting contained in the Bill as this particular clause may never be used and has, in any event, a very short life and limited effect.

I would suggest that the Scottish Parliament should seriously consider the approach taken by me as one to adopt. Here it is:-

An Alternative

Crofting (Amendment) (Scotland) Bill

An Act of the Scottish Parliament to allow decrofting by owner-occupier crofters and by owner-occupiers; and for connected purposes.

1. Applications to decroft by owner-occupier crofters and by owner-occupiers

(1) The Crofters (Scotland) Act 1993 (c.44)(the “1993 Act”) is amended as follows.

(2) After subsection 23(10) insert-

“23(10A) Notwithstanding the terms of subsection (10) above an owner-occupied croft will always be vacant for the purposes of decrofting under section 24(3) and can be declared vacant for the purposes of section 25(3).”

- (3) After subsection 23(12A) insert-
- “23(12B) An owner-occupier who is not an owner-occupier crofter and who owns a distinct part of a croft (as opposed to a pro-indiviso share of a croft) shall be entitled to apply for a direction under section 24(3) without the requirement for an owner-occupier or an owner-occupier crofter of the remainder or any other part of the croft to concur in that application.”

2. Retrospective effect and application

- (1) All applications made or purported to be made by an owner-occupier crofter under section 24(3) of the 1993 Act and directions granted or purported to be granted by the Commission under section 24(3) of the 1993 Act to such an owner-occupier crofter from 1 October 2011 until the coming into force of this Act are valid and enforceable.
- (2) All applications made or purported to be made by an owner-occupier (who is not an owner-occupier crofter or a pro-indiviso owner of a croft) under section 24(3) of the 1993 Act, without the concurrence of any other owner-occupier or owner-occupier crofter, and directions granted or purported to be granted by the Commission under section 24(3) of the 1993 Act to such an owner-occupier from 1 October 2011 until the coming into force of this Act are valid and enforceable.
- (3) In this section, the “Commission” and “croft” and “owner-occupier crofter” have the meanings given in the 1993 Act.

3. Appeals against certain decisions

- (1) In the case of a decision of a kind mentioned in subsection (2), section 52A of the 1993 Act applies with the modification that, in subsection (2)(b), for “the Commission dispose of the application” there is substituted “the coming into force of the Crofting (Amendment) (Scotland) Act 2013”.
- (2) The decision referred to in subsection (1) is one purported to have been made—
- (a) by the Commission under section 24(3) of the 1993 Act,
 - (b) on an application of a kind mentioned in subsection (3),
 - (c) during the period from 14 January 2013 until 25 February 2013.
- (3) The application referred to in subsection (2)(b) is one purported to have been made-
- (a) by an owner-occupier crofter under section 24(3) of the 1993 Act,

- (b) during the period from 1 October 2011 until the coming into force of this Act.
- (4) In the case of a direction of a kind mentioned in subsection (5), section 25(8) of the 1993 Act applies with the modification that, in paragraph (a), for “the giving of public notification of the making of the direction” there is substituted “the coming into force of the Crofting (Amendment) (Scotland) Act 2013”.
- (5) The direction referred to in subsection (4) is one—
 - (a) purported to have been given—
 - (i) by the Commission under section 24(3) of the 1993 Act,
 - (ii) on an application of a kind mentioned in subsection (3),
 - (b) in respect of which the Commission gave public notification during the period from 14 January 2013 until 25 February 2013.
- (6) In this section, the “Commission” and “owner-occupier crofter” have the meaning given by the 1993 Act.

4. Commencement

This Act comes into force on the day of Royal Assent.

5. Short Title

The short title of this Act is the Crofting (Amendment) (Scotland) Act 2013