

## Written submission from Neil King

As well as the decrofting problem the bill is designed to correct, there's another equally serious decrofting problem which has attracted no media attention (perhaps due to being overshadowed by the first problem).

It also arises due to legal advice received by the Crofting Commission on an unintended consequence of the wording of the legislation and could be corrected by the addition of a few words to the present bill (see below).

The issue I'm referring to is described in a note (which I've included as an appendix to this submission for ease of reference) released by the CC on their website on 18 February 2013 - see <http://www.crofting.scotland.gov.uk/news.asp?firstitem=5> (You'll note it affects letting as well but this submission is only concerned with its application to decrofting.)

What it means is that, supposing the landlord of a crofting estate sold a croft to its tenant, Mr A, under the right to buy. Then Mr A sells a part of the croft to Mr B. The CC's legal advice is that Mr B has no right to apply to decroft his part without Mr A's consent.

Where I think this could have great potential for injustice is when land (typically a small area, perhaps part of a garden) is bought in good faith without it being realised that it is croft land. Due to the fact that, hitherto, there has been no map-based crofting register, this can, in my experience as a rural property lawyer (now retired), happen very easily. When the crofting status of the land subsequently comes to light, the purchaser's remedy – to apply for decrofting – is dependent on the goodwill of a neighbouring owner.

In short, the CC's interpretation means that a neighbour – who may, of course, have an ulterior motive – can effectively pre-empt the “due process” of a decrofting application.

### Solution

Fortunately, I think there's a simple solution to this in the context of the present bill.

Proposed new s.24A of the 1993 Act to be inserted by s.1(2) of the bill only needs to be reworded with the addition of the words underlined below:-

#### ***24A Applications to decroft by owner-occupier crofters***

*(1) An owner-occupier crofter may apply to the Commission for a decrofting direction in respect of the whole or any part of a croft (or in respect of a part of such whole or part) owned by him.*

*(2) In this section and in sections 24B to 24D, a “decrofting direction” is a direction that the ~~owner-occupier's croft~~ land it relates to is to cease to be a croft.*

## **Wider issues going forward – consolidation**

Crofting legislation is now in such a mess, what with all the amendments of amendments, that it brings the Scottish legislative process into disrepute.

How long till the next time the CC announces it has taken legal advice with the consequence that it can no longer process a certain type of application – either at all or in the way we had been used to hitherto?

If I were a member of the RACCE committee, I'd be recommending acceptance in principle of this bill (subject to the amendment suggested above) only on the strict understanding the Scottish Government launches, within a very short timescale, a consultation to identify the numerous other glitches in the crofting legislation and then publishes a bill to (a) correct these glitches; and (b) consolidate all crofting legislation into a single, comprehensible Act.

## **Appendix**

### **Crofting Commission: Decrofting and Letting applications where a croft is owned by more than one person**

There was uncertainty in situations where the owners hold separate title to distinct parts of a croft, whether an application to decroft or let could be:

- Made separately by an individual owner in respect of the distinct part of the croft they own, or
- If such an application has to be made by all the owners of the croft in their capacity as, collectively, the 'landlord' of that croft.

The Crofting Commission took the view that it was essential to have clear policy on this issue. The Commission therefore, in order to clarify the situation, sought and obtained legal opinion on the practice of accepting applications submitted by only one of the croft owners where the croft is held in multiple separate ownership 'parcels'.

The matter was discussed at their Board meeting on 14 December 2012 and Commissioners agreed to adopt a policy that all decrofting and letting applications in respect of crofts with multiple owners, must be submitted by all the owners, in their capacity collectively as the 'landlord' of the croft, even in those cases where the application related to a part of the croft held in title by only one of their number.

Any application received in future from one of the owners, where a croft is held in multiple ownership, will be considered invalid and returned on the basis that the application was not submitted by the landlord of the croft.