

CROSS-PARTY GROUP on CROFTING
Meeting 10 of Parliamentary Session 4
Scottish Parliament, room Q.1.03
Wednesday 31 October 2012 at 17.30

MINUTES

Present:

Jamie McGrigor MSP¹ (Chair)
Patrick Krause SCF (Sec)
Gwyn Jones EFNCP
Lucy Sumsion NFUS
Colin Kennedy CC
Simon Allison CC
John Brownlee SG
Billy Neilson NFUS
Hugh Donaldson HIE
Jean Urquhart MSP
Katrina Marsden SPICe
Pam Rodway Crofting Connections
Rhoda Grant MSP
Hugh Welsh RoS
John King RoS
Brian Inkster SLE
Jean Balfour SLE
Norman Leask SCF
Richard Frew SG
Richard Lyall SG
Douglas Pattullo Office of Jamie McGrigor MSP
Angus MacDonald MSP
Rob Gibson MSP

1. Welcome and Apologies.

Jamie McGrigor welcomed everyone and introduced new faces. Apologies were received from:

Derek Flynn SCF; Russell Smith SCF; Sandy Cross CC; Billy McKenzie SG; Dave Thompson MSP; Tavish Scott MSP; Kim Karam Office of Tavish Scott MSP; Gordon Jackson SG; Nigel Miller NFUS; Sandy Murray NFUS; Isobel McCallum HC; Amy Corrigan RSPB; Andrew Midgley SLE; Rosi Waterhouse SG.

2. Minutes of the previous meeting

Minutes of 19 September agreed, subject to two points in the SRDP discussion being clarified.

Action: PK to get clarification from Billy McKenzie.

¹ **Acronyms:** ANC Areas of Natural Constraint; CAP Common Agriculture Policy; CC Crofting Commission; CCAGS Crofting Counties Agricultural Grant Scheme; EC European Commission; ECHR European Court of Human Rights; EFNCP European Forum for Nature Conservation & Pastoralism; HC Highland Council; HIE Highlands & Islands Enterprise; LCA Land Capability for Agriculture; LFASS Less Favoured Area Support Scheme; LMO Land Managers' Options; MSP Member of the Scottish Parliament; NFUS National Farmers Union Scotland; RoS Register of Scotland; SAS Soil Association Scotland; SCF Scottish Crofting Federation; SG Scottish Government; SLE Scottish Land & Estates; SPICe Scottish Parliament Information Centre; SRDP Scotland Rural Development Programme; RSPB Royal Society for the Protection of Birds.

3. Matters arising

Actions achieved.

Action: PK to circulate reply from D Alexander to Jean Urquhart MSP on fuel query.

4. "Agri-environment on common grazings - a weakness in the RDP process?"

Gwyn Jones, EFNCP, gave a presentation. This has been circulated.

His conclusions were:

Lack of coherent policy?

- Prima facie case that common grazings are somehow disadvantaged in RD policy
- Suggests lack of coherent, 'joined-up', policy making
- RDP process is one case which is meant to be explicitly 'joined-up' through the programming approach (though direct payments will also be so from 2014)
- SRDP 2007-13 contains **no** references to common grazings in the main text
- SRDP 2014-20 needs to change this:
 - in the analysis
 - in the measures
 - in the monitoring and evaluation

Discussion

LMOs are not appropriate, very few options suitable for rough grazing. It was not a surprise that decoupling caused 'retreat from the hills' and the SG have failed to mitigate. It is absurd that in the light of the low stocking crisis SRDP measures are primarily about reducing stock numbers. The only one that could be beneficial, Summer Grazing, is stocked too high (25 cows / 100ha) so excludes many grazings. Reforming this would help a lot. There is a need to ascertain what stocking levels are required.

LMOs are going but investment options that work must continue and new ones be designed that do work. There needs to be management options specifically designed to deliver public goods. What would a suitable option look like?

Advisory service needs more support especially in the remoter areas.

The whole CAP / SRDP package needs looking at. Pillars 1 & 2 are inter-related and should be complimentary.

Lack of cattle on low-ground leads to lack of cattle on the hill; again, this is about the whole package.

Management of grazings is vital from an environmental perspective; they are a very important carbon store; 30% of Europe's deep filed is in Scotland, most in the Highlands and Islands. The Macaulay Land Capability for Agriculture classification should be expanded to include capability of carbon sequestration to bring more support (payment for public goods). What is Scotland doing to support the management of our peatlands? Shockingly little.

Nearly half of grazings are not regulated – this is unacceptable and must be rectified. There is concern over the Crofting Act amendment that forces grazings committees to report on the situation of all crofts. Crofters will resign from committees or not join committees that have to do this. It will hamper getting grazings regulated. Is the 'Duty to report' misrepresented? Can it be done in an acceptable way? What will the Crofting Commission ask for?

Action: PK to ask the CC for information on what they will ask Grazings Clerks to report on.

5. Registers of Scotland demonstration of the Crofting Register

John King and Hugh Welsh gave a demonstration of the Crofting Register on-line.

Discussion

What if two neighbours put in maps that have over-lapping boundaries? The first received is put on the register and all neighbours are notified. The neighbour with shared boundaries that don't agree can put in an objection. They have 9 months to object. If an objection is received after the 9 months it is referred to the SLC. They will make a decision and will award costs. It would reduce objections / appeals if applicants consult with their neighbours before submitting their map.

What happens over disputed title? This would only be a problem for owner-occupiers - title is recorded on the Land Register; they would have to go to the Lands Tribunal.

Details of shares in Common Grazings are not recorded on the Crofting Register. SG is considering how to do it – it would need a legislation change. 'Deemed crofts' seem to be an anomaly; how will they be recorded as they have no boundaries? At the moment they can't be. If shares are recorded in detail they will be recorded as 'deemed shares'.

Collaboration is key to avoiding disputes. Community mapping has been suggested by and is being piloted by the SCF. This gained support of the legal profession and many MSPs in the Bill phase. The SG have pledged £100k to support group applications in the form of a discount to each individual's application fee. SCF argue that the fee is the least of the potential costs (e.g. surveying, legal costs). SCF have written to the Minister asking for support for facilitation of community mapping from the £100k but it was refused.

Action: a letter to be drafted to the Minister from the CPG asking for support for community mapping.

6. Implementation of the 2010 Crofting Act

Richard Frew, SG, provided an update on the implementation of the Crofting Reform (Scotland) Act 2010.

Implementation remains on track and the 3rd Commencement Order, covering provisions relating to the Crofting Register and consolidation of crofting law, was made on 29 October 2012 and came into force the following day. It contained 3 commencement dates: 30 October 2012, for commencing provisions necessary for preparation of introducing the new Crofting Register and section 52 pre-consolidation of crofting law provisions; 30 November 2012 for commencing provisions to allow voluntary registration of croft land on the Crofting Register; and 30 November 2013 to introduce provisions requiring registration of croft land ("triggers for registration"). Croft land voluntarily registered from 30 November 2012 would also be required to register subsequent events to ensure the Register remains up-to-date and provides legal certainty on registered croft land.

A further 4 crofting statutory instruments had been made on 30 October and would be laid in Parliament on 1 November and Richard explained the purpose of these instruments. These are: The Crofting Register (Transfer of Ownership)(Scotland) Regulations 2012; The Crofting Register (Notice of First Registration)(Scotland) Order 2012; The Crofting Register (Fees)(Scotland) Order 2012; and The Crofting Register (Scotland) Rules 2012. These are negative instruments and would be subject to a 28-day Parliamentary process, which will allow the Register to become publicly available, as planned, from 30 November 2012.

Discussion

The 'Duty to Report' is raising concerns and crofters are resigning from grazings committees. This has not been helped by negative press (WHFP) and a quote from an SCF office bearer voicing members' concern over this issue. SCF have been putting a positive face on this in local meetings but a clear steer from CC is needed (see Action above).

7. Residential care home charges and crofting

Richard Lyall, SG, gave a presentation on care home fees. The main points were:

- The Social Work (Scotland) Act 1968 prescribes the statutory obligation upon councils to assess the needs of people and determine the level of care. It is the responsibility of the local authority to establish the funding method and efficient use of services based on the needs assessment.
- Local authorities conduct a financial assessment after determining the provision of care required. At this stage local authorities refer to the Charging for Residential Accommodation Guidance and regulations to consider the circumstances of an individual for paying for their care needs.
- Crofts and croft tenancies are assets, in the same way as family homes are assets. The sales of each of these are conducted on a regular basis through outlets within the crofting counties.
- It is the local authorities' responsibility to interpret the guidance and regulations applying the exemptions of capital disregard according to the circumstances of the individual and their property. It is for local authorities to decide whether the croft house and garden or the whole croft property should be considered within the scope of charging regulations. Disputes that may arise on the interpretation of guidance and regulations is a matter to be resolved by the courts.
- We plan to update the Charging for Residential Accommodation Guidance to take cognisance of the Westminster-led welfare reform changes and will take this opportunity to provide an example of the treatment of a croft to provide clarity to local authorities and encourage consistency of approach.

A full brief is attached to the minute as appendix A.

Discussion

Local Authorities do not have consistent policy regarding crofts as assets. Guidance is needed. LAs will be consulted. It will be guidance only so LAs can still use discretion, so there could still not be consistency.

How can croft tenancies, when not being able to be used as security on a loan be considered an asset with a value? Banks decided that they could have a value and could be used as security (draft crofting bill). Croft tenancies can only be assigned. A landlord can veto an assignation, therefore the tenancy cannot be used as security – and therefore has no value. An owner-occupied croft could be viewed as an asset but there is a question over whether a tenancy should. Valuation is based on what something would get if it was offered on the open market. Tenancies have been offered on the open market and do fetch a price.

8. Consolidation of Crofting Acts

This is a standing item on the agenda until something happens about it.

9. AOB

- Pam Rodway gave a brief update on Crofting Connections project, which is ready for a further 3 year phase. Thanks to the group for the letter of support; Pam also gave a brief on Terra Madre, the international festival, at which crofters and their produce were well-represented. Thanks to Rob Gibson MSP for his support to Slow Food and Terra Madre.
Action: Put food on the agenda for a future meeting.
- Some concerns over the CC Plan.
Action: Ask Susan Walker to attend the next meeting and present the Plan if possible.
- **Action PK to circulate report on planning initiative of CC and THC. To be on a future agenda for discussion.**

10. DONM

12 December evening

Appendix A

BRIEFING NOTE - CROFTS AS ASSET FOR CARE HOME/ RESIDENTIAL EXPENSES

- The Social Work (Scotland) Act 1968 prescribes the statutory obligation upon councils to assess the needs of people and determine the level of care. It is the responsibility of the local authority to establish the funding method and efficient use of services based on the needs assessment.
- Local authorities conduct a financial assessment after determining the provision of care required. At this stage local authorities refer to the Charging for Residential Accommodation Guidance and regulations to consider the circumstances of an individual for paying for their care needs.
- Crofts and croft tenancies are assets, in the same way as family homes are assets. The sales of each of these are conducted on a regular basis through outlets within the crofting counties.
- It is the local authorities' responsibility to interpret the guidance and regulations applying the exemptions of capital disregard according to the circumstances of the individual and their property. It is for local authorities to decide whether the croft house and garden or the whole croft property should be considered within the scope of charging regulations. Disputes that may arise on the interpretation of guidance and regulations is a matter to be resolved by the courts.
- We plan to update the Charging for Residential Accommodation Guidance to take cognisance of the Westminster-led welfare reform changes and will take this opportunity to provide an example of the treatment of a croft to provide clarity to local authorities and encourage consistency of approach.
- Community care policy has long been to maintain those who wish to stay in their own homes, or homely settings within the community. The NHS has worked with local authorities over the years to increase services to people in their own homes and has reduced long stay hospital accommodation for older people.
- The Reshaping Care for Older People programme aims to develop practical ideas to meet the changing needs of Scotland's increasingly elderly population.
- Providing free personal care has considerably reduced the amount that care home residents pay, but Scottish Government policy has always been clear that where people can afford to they should continue to meet - or contribute to - their living costs, just like someone living in their own home. Individuals would have been responsible for paying for their own heating, housing and food had they not been placed into residential care.

BACKGROUND

1. The current rules on charging for residential care give local authorities discretion to decide whether someone has disposed of an asset in order to reduce their accommodation charges and if the council concludes that avoiding care charges was a significant factor in the decision to dispose of an asset, regardless of how long ago the transfer took place, then they can calculate the financial assessment on the basis that the resident still owns the asset (notional capital).
2. The National Assistance (Assessment of Resources) Regulations 1992 provides the framework for local authorities to charge for residential care home services. It is for local authorities to interpret the

Regulations in applying their policies – it is then a matter for the Courts to decide. Property is normally included in the financial assessment of ability to pay for residential care. Section 7 of the Charging for Residential Accommodation Guidance (CRAG) focuses on property. If a local authority decides a croft or croft tenancy constitutes capital, it will also need to consider whether it permits a capital disregard under the regulations. The local authority can use its discretion to disregard capital including in cases where that property is either occupied by the care home resident's spouse or partner/civil partner, a lone parent estranged or divorced from the resident or a relative over 60 or under 16.

3. Providing free personal care has considerably reduced the amount that care home residents pay, but Scottish Government policy has always been clear that where people can afford to they should continue to meet - or contribute to - their living costs, just like someone living in their own home. It is fundamentally for local authorities to interpret and apply the Regulations and, in so doing, they will require to assess whether any particular item constitutes capital to be taken into account. If a local authority is of the view that a croft tenancy constitutes capital for the purposes of the Regulations, it will of course also require to consider whether the circumstances require or permit the application of a capital disregard. Obviously in the event of dispute, the interpretation of the Regulations is a matter for the courts. We are currently aware that councils treat crofts differently as either a capital asset or not, namely Highland & Western Isles Council, but there may be other instances.
4. The Charging for Residential Accommodation Guidance (CRAG) requires to be updated in light of the Welfare Reform agenda. As part of this the Scottish Government plans to provide an example for the treatment of crofts. This should provide some clarification on the interpretation of crofts as part of the financial assessment.
5. The Scottish Government recognises crofting is a traditional Scottish farming practice that is a part of Scottish heritage. This subsistence form of farming has its unique characteristics but the distinction between a croft and property owned by an individual is difficult to distinguish. In terms of ownership of property (e.g. land or an owner-occupied croft) a title is held, and a croft tenancy bestows rights to assign it to another. Disposing of both a property or a croft tenancy can take place by means of sale. Legally anything that is owned by a person or entity can be defined as property. Property is divided into two types: "real property" which is any interest in land, real estate, growing plants or the improvements on it, and "personal property". The Crofting Commission has published policy and guidance for both crofting and decrofting.
6. Owner-occupied crofts and croft tenancies are assets. The sales of each of these are conducted on a regular basis through outlets within the crofting counties. The sale, enforced or voluntary, of a croft or a croft tenancy does not endanger the system of crofting. Land transacted in such a manner remains in crofting tenure and the buyer is required to comply with the statutory duties to live on, or near to, the croft and to put it to purposeful use. In addition, the Crofting Commission is required to approve any new tenant having considered the long-term interests of the crofting community.

RICHARD LYALL
Reshaping Care for Older People
Scottish Government
Floor 3ER St Andrew House
Tel. 0131 24 (45430)
<http://www.scotland.gov.uk/Topics/Health/care/17655>