

CROSS-PARTY GROUP on CROFTING

Meeting 25 of Parliamentary Session 5

Tuesday 27 October 2020 18.45 Via Zoom

MINUTES

Present:

Alasdair Allan MSPⁱ (Convener)
Patrick Krause SCF (Secretary)
Rhoda Grant MSP
Beatrice Wishart MSP
Edward Mountain MSP
Bill Barron CC
Alison McNab LSS
Ron Robinson SEPA
Donald MacKinnon SCF
Janette Sutherland SAC
Donald Murdie SCF
Caitlin Stott SP
Zoe Russell Uni Sterling
Richard Frew RoS
David Findlay CC
Murdo MacKay CnES
Kevin Patrick LS
Ross Lilley NS
Rhona Elrick RoS
Brian Inkster CLG
Fiona MacKenzie UHI
Maria Scholten SCF
James McPherson SCF
Jacq Kelly RoS
Malcolm Mathieson CC

Andrew Holt CC
Zoe Meldrum NFUS
Caitlin Stott SP
Donald Meek
John Toal CC
Maria de la Torre NS
Russell Smith SCF
Eleanor Garty WTS
Michael Nugent SG
Gordon Jackson SG
John Kerr SG
Stephen Cranston
Rosemary Champion SHS
Stephen Leask SIC
Kate Fry SP
Sandra Lindsay SCF
Laura Sinclair NFUS
M. Macneil
Mairi Mackenzie CC
Anna Brand SPICe

Note: there were 5 others present but could not be identified by zoom – this will be addressed for next meeting.

1. Welcome and Apologies

The convener welcomed everyone. Apologies were received from:

Yvonne White SCF; Fiona Mandeville SCF; Robin Haig SCF; Emma Harper MSP; John Scott MSP; Gail Ross MSP; John Finnie MSP; Donald Crichton CnES; Angus MacDonald MSP; Graeme Dey MSP; Donald Cameron MSP; Rod Mackenzie CC; Mairi Mackenzie CC; Jamie McIntyre WCP; Aileen Rore SG; Megan Rowland SLE; Lucy Sumsion NFUS; Sandy Murray NFUS; David Campbell CC; Billy Neilson CC; Liz Barron-Majerik LS; James Scott CC; Leanne Townsend JHI; Christina Noble JHI; Roz Corbett LWA; Anne Campbell CALLP; Siobhan MacDonald SAC; Murray McCheyne SLE; Neil Ross HIE.

2. AGM – appointment of conveners and secretary

It was proposed that Beatrice Wishart MSP join the conveners of the group – nominated by Rhoda Grant MSP, seconded by Alasdair Allan MSP. All conveners Rhoda Grant MSP, Alasdair Allan MSP, Edward Mountain MSP and Beatrice Wishart MSP proposed by secretary Patrick Krause, **agreed** by the group.

Secretary Patrick Krause proposed by convener Alasdair Allan, **agreed** by the group.

3. Minutes of previous meeting

The minutes of the previous meeting held on 06 March 2020 were approved.

4. Matters Arising

4.1 Disposal of plastic waste: Ronnie Robinson from SEPA gave an update. The main points were:

Prior to 2005 agricultural waste was not even deemed to be waste in the legislation. In 2005 the Agricultural Waste Regulations (Scotland) 2005 brought agricultural waste under the same regulatory regime as other commercial activities.

Under these Regulations, all farmers have a duty to ensure that they do not treat, keep or dispose of agricultural waste in a manner which may cause pollution of the environment or harm to human health. This has resulted in many farmers having recycling collection services organised for their farm and such practices are obviously to be encouraged, and should continue.

Historically the practice of incinerating farm plastics and other material in a drum incinerator had been tolerated, but an exemption to the waste regulations allowed the activity to continue.

It was European legislation which resulted in UK legislative changes being required back in 2012 that has led to what many refer to as the ban on farm burning. Scotland implemented these changes via our own legislation in 2013. (The Waste Management Licensing (Scotland) Regulations 2011 were amended). This has meant that the exemption is no longer applicable for the incineration of farm plastics in drum incinerators.

SEPA have always appreciated that burning was a common farm practice and had decided not to seek enforcement regarding on farm burning unless neighbouring communities or properties were affected by the burning. The rest of the UK enforced the changes back in 2013.

A working group between the Scottish Government, NFUS, ZWS, SEPA, the plastic collectors and a recycling plant in Dumfries was set up and it was eventually decided that 2019 was a realistic timescale for starting to enforce the legislative change.

This has meant that from 1st January 2019, agricultural wastes, including plastic, should be taken to a licensed facility for recycling or collected by one of the farm plastic collection services which is now offered by a number of businesses and cost-sharing co-operatives.

Whether sending waste for recycling or disposal, farmers are obliged to keep records of the waste type and who it was passed to. Additional controls apply to special (also called hazardous) wastes such as redundant pesticides and further information should be obtained from SEPA before these are moved.

SEPA has tried to make the implementation as easy as possible as it is appreciated it is a big change for many but one which is ultimately better for the environment. ZWS maintain a list of collectors on their website and the SEPA website highlights that there are free exemptions which can be utilised and registered to facilitate collection hubs in remote areas. These are sometimes organised by collection companies but farmers, crofters or machinery rings could work together to set up collection hubs either on farms, on crofts, at auction marts or other centres.

If you store your own waste, you do not need to tell us, this is a free non registerable Para 41 exemption.

If you compact or bale waste you need a free para 17 exemption

If you set up an adhoc collection centres it requires a free Para 40 exemption

If you set up a more permanent collection centre a free para 17 registration is required

All these exemptions can be registered online or via a paper system

If you transport your own waste off site you need to register as a professional collector and transporter of waste – this can be done for free online.

If you transport waste other than your own you need to be registered as a waste carrier, this can be done online but costs £210 for 3 years.

There has been two voluntary extended producer responsibility schemes set up this year in Scotland.

The Agricultural Plastic Environment UK scheme – or APEUK have got 80% of the film providers to charge a levy which is passed on to farmers. The levy, currently 2p per Kg is used to fund the scheme and aid collectors who join the scheme. APE run many similar schemes throughout Europe.

The collectors have set up a different scheme called the UK Farm Plastic Responsibility scheme. They are against charging extra levies on farmers or crofters and work collaboratively with other collectors on a self funded basis to develop and expand collection and recycling of farm plastic in the UK

SEPA will keep a close eye on how these schemes develop and see what works best for Scotland's farmers and crofters.

Another interesting development is the trial of clear plastic film for silage wrap. Clear film is worth more when recycled as it can be used in many materials not just black products. It will be interesting to see if it produces good quality silage or not.

A market analysis of farm film plastics was also carried out this year and is available on the ZWS website. It confirms that there is about 22 000tonnes of farm plastic film being generated in Scotland per year and that there is scope to recycle considerably more.

Farm plastic film is difficult to recycle, it has approximately 50% contamination so keeping it as clean as possible is important to maximise its value as a material. To be processed it must be washed first but then it can and does get turned into all sorts of products such as stock-board, lumber, bin bags etc. as well as benches and chicken coups and the like. There are 3 main processing plants in the UK, two of which are in Dumfries.

The talk concentrated mainly on farm film, as this makes up the largest volume but generally all the other HDPE hard plastic products such as feed tubs etc. are easier to recycle and have a much higher intrinsic value and therefore have more available markets.

Round-table discussion:

Question: the £210 charge seems to be a deterrent for 'neighbourliness' – I am taking my waste so offer to take my neighbours too; would I have to pay?

Answer: Yes, the charge is across the board, for commercial collection.

Comment: But if I don't charge my neighbour then it isn't commercial. Commercial would imply charging for the service.

Answer: Collecting others' waste on a commercial basis needs the licence.

Comment: Landfill seems to just pass the problem on – there needs to be a recycling alternative to landfill.

4.2 National Development Plan for Crofting: Michael Nugent, SG crofting policy, gave an update on the progress of the NDPC. Main points were:

Work continues on the National Development Plan for Crofting and the intention is to have it published by the end of the year.

The Plan, as it currently stands, contains the following sections:

- CC's role in the development of crofting
- CC job creation and partnership working
- Environment and biodiversity
- Housing
- Signposting
- Broadband infrastructure
- Local food networks

SG has been working very closely with the Commission on its role in the development of crofting. Work is also ongoing on a number of other sections of the Plan, such as:

- Financial incentives, which will cover the wide range of grants and support available to crofters.
- A Wildlife section – that will cover, deer, geese, sea eagles and ravens
- Digital skills
- Legislation
- Carbon credits

CAGS Focus Group has been looking at how we can widen the scope of CAGS – such as:

- Widening the eligibility criteria which will allow crofters that are involved in non-agricultural activities being able to apply
- Extending the eligible works that are currently supported under the scheme
- Introducing standard costs
- Introducing advanced payments.

The Plan will also contain a number of case studies and testimonials from crofters, which will hopefully illustrate what is currently being achieved by crofters and common grazings, and also to capture the views of the very people the publication targets.

Round-table discussion:

Comment: CAGS turn-around time is still too long!

Answer: the aim is to have a turn-around time of 90 days for big projects such as sheds, and 40 days for other. The average is 41 days. It could improve and the changes should help. It is a very popular and successful scheme – the budget is £2M but we are spending around £3M per year, that's in the region of 750 applications per year.

5. Crofting Legislation: Alison McNab of Law Society of Scotland talked about the consultation on four aspects of crofting law. Main points included:

Law Society Scotland is a professional body for over 12,000 Scottish solicitors with duties around regulation of the profession and representation of our members and the public interest more generally.

Proactive public policy projects in recent years - address areas of the law that have failed to meet the needs of our modern society or aren't working as expected. This year, LSS committed to consider the reform of aspects of crofting law.

Crofting law has developed over time in a piecemeal fashion - considered to be a complex and difficult area of the law. Not seeking to alter the underlying policy relating to crofting, building on work done by stakeholders to date.

A limited number of specific aspects of the law covered by project – aspects of **succession, owner occupier status, statutory conditions of tenure**, and **definition of 'crofting community'** - areas where practical challenges were being experienced by our members suggesting that the law is not working as intended or lacks clarity/certainty.

Work informed both by the experience and expertise of those in the working group but also valuable input from stakeholders via a written call for views and wider discussions.

Alison outlined what is proposed on each aspect and all can be found in the report which can be found at: <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-proactive-policy-work/>

Round-table discussion:

The Convener asked about the value of improvements to the croft. This is not within the scope of the project but Alison will see if the working group have any thoughts to share on this with the Convener directly.

Question: what about 'deemed crofts'? this seems to have taken the simple issue of grazings shares and elevated them to extreme complexity.

Answer: we appreciate that there are difficulties here. We considered the matter in the context of our work on succession (more in the report on that) but appreciate that there are wider issues.

Question: could 'the Bill Group' be reconstituted to have a bill ready for the next session of the Scottish Parliament?

Answer: while this is a matter for Scottish Government, the Law Society consider prompt action to take forward legislative reform for crofting is merited and would support reinstatement of the Bill Group to take this forward.

Convener: having the relevant Cabinet Secretary attend at a future CPG is merited. Agreed.

Action: Invite relevant Cabinet Secretary to a meeting of the group (after elections) to update on intentions regarding crofting legislation reform.

6. Crofting Administration

Bill Barron, CEO CC, summarised key developments at the Commission since the last meeting:

- Mairi Mackenzie had been elected Deputy Convener.
- The March meeting of the Convention of the Highlands and Islands, at which Crofting was to have been discussed, had been cancelled; but crofting should be on a COHI agenda in 2021.
- Almost all staff had been working at home since late March. This had presented logistical challenges, but a great deal of work had been done to improve connectivity and facilities for home working. Board meetings were taking place online which makes it much easier for visitors to observe the meetings. The next one is on 3 December.
- The Board has emphasised 5 priorities: the wellbeing of staff at a time when many are working in isolation; expanding duties enforcement; ensuring that capacity to process regulatory casework keeps pace with the numbers of applications received; using the new money (~ £300k) to enhance efficiency, especially through IT improvements (but also including a website refresh and a review of the strengths and weaknesses of grazings registration); and deciding how to implement the development role and recruit to the posts in the Western Isles.

- The Commission is using the new money to expand its Residency and Land Use (RALU) team (2 posts), its regulatory team (1 post) and to bring in 2 new 'development' posts. After internal moves to fill some of these, CC will shortly be advertising for a new IT specialist, an administrator/telephone receptionist with gaelic, a new member of the RALU team, and the two development posts, one of which would be at a relatively senior level and the other an assistant.

Round-table discussion

Question: why is a development role was being given to the Commission when it did not have enough resource to perform its regulatory functions?

Answer: there is a logic to this because the Commission had a statutory function to promote the interests of crofting, as well as to regulate it; and it had commissioners and staff with skills and knowledge about crofting. The Commission would not have agreed to take on the expanded role without a suitable increase in its funding and the expectation that a higher level of funding would continue.

Question: why is some of the 'development' money going to RALU and why were there not to be two relatively senior development roles.?

Answer: the Commission sees RALU as vital to crofting development and had explained to the Scottish Government, as early as April, that this would be one of the priorities for the new money. The idea to have only one senior 'development' post was because this work is seen as a pilot, to gain experience in how best it worked. However, if there are several good candidates for these roles there would be flexibility to take one each in Lewis and Benbecula, if the Board wished to do that.

Question: how does the Commission measure its overall progress with addressing absenteeism and neglect?

Answer: currently the number of crofts where breaches have been resolved through RALU action is around 200 crofts in the last 18 months. But with the expansion of the team it might be possible for next year's Business Plan to set a broader ambition for the impact of this work on crofting overall. This would be considered in the Spring.

Question: what is the rate of return of crofting 'census' forms?

Answer: the returns that admit to being in breach are the ones dealt with – they are the most straight-forward. The rate of return is more difficult to establish – as is the question of what to do with those who do not return the form.

7. Crofting Support

John Kerr, SG Head of agriculture policy, gave an update on agriculture, trade and crofting support for 2021. The main points were:

Covid-19 features very high in any strategy – please make a plan at croft level. There is a lot of information being sent out by SG. It helps if membership organisation pass on to members too please.

The Farming and Food Production Future Policy Group last met on 23 September and agreed that they need to meet further in order to finalise their report; expected that it will be published this year.

There is currently no scheduled formal rounds of negotiations between now and the end of the transition period (though informal talks continue). Any trade agreement reached with the EU will still serve significant disruption to Scottish business with tariff and non-tariff barriers likely to be in place.

RoW negotiations: the final US negotiating round before the US presidential election is taking place and is due to conclude on 30 November; the second negotiating round with Australia

concluded on 02 October; and the second round of New Zealand negotiations is currently taking place and due to conclude on 30 October.

The UK reached Agreement in Principle with Japan on 11 September. The legal text is being shared in batches with the Devolved Governments and the Scottish Government is completing an analysis of the agreement which will be published in due course.

The UK Internal Market Bill was passed at third reading by the House of Commons on 29 September, by 340 votes to 256 with a small number of Tory MPs not voting for the Bill. The revised Bill was introduced to the Lords on 30 September. The Scottish Government's view is that the UK Government's UKIM White Paper proposals pose a significant threat to the development of common frameworks and to devolution. In terms of governance, there is the potential for frameworks to be rendered meaningless. Frameworks have specifically been established to manage divergence, whilst respecting devolution. The UKIM proposals appear to limit Devolved Administrations ability to act if any standards were lowered and give UK Government a final say in areas which we would consider devolved policy, such as agriculture or animal health and welfare. The Scottish Parliament debated legislative consent for the Bill on 7 October, voting 90 to 28 to withhold consent.

The laying of Statutory Instruments will ensure a functioning statute book for Scotland covering all areas agriculture, horticulture, support of agricultural payments and cross compliance, marine and fisheries issues, environmental issues, trade and food standards Scotland. Scotland's agreement to UK SIs is dependent on the timely sharing of draft instruments which allow SG and this Parliament to properly scrutinise and assess the details of each Statutory Instrument.

There are a number of substantial concerns in the context of the Northern Ireland Protocol and the Internal Market Bill.

UK Gov guarantees that 'farming support' funding will continue, but there is vagueness about what exactly this means – and whether it includes non-CAP areas such as forestry and Leader.

Round-table discussion:

Question: should we put the tups out? there have been buoyant markets but what about next year – how many lambs should we plan for?

Answer: the markets were better than expected this year, but the sheep sector is very exposed. SG is planning to help the industry – this is in process. SG cannot advise on individual business decisions, but it is appreciated that it is difficult. There is no certainty what the position will be post-January, and it could be very challenging.

Question: what will be the situation between Scotland and Northern Ireland after January?

Answer: After January any goods moving from Scotland to NI will need inspections as Scotland / UK is sovereign territory. There will need to be a lot more staff to make the inspections and information for businesses on the procedures they need to comply to.

8. AOB

Sec notified that 'public access to croft land' and 'assessing crofts for care costs' would be main topics for next meeting.

9. DONM

January 2021, date to be confirmed.

i Acronyms: AECS Agri-Environment Climate Scheme; AF Assynt Foundation; CAB Citizens Advice Bureau; CALLP Coigach & Assynt Living Landscape Partnership; CBS Community Broadband Scotland; CC Crofting Commission; CAGS Crofting Agricultural Grant Scheme; CCx Crofting Connections; CFS Care Farming Scotland; CHGS Croft House Grant Scheme; CLG Crofting Law Group; CLS Community Land Scotland; CnES Comhairle nan Eilean Siar; CRSF Crofting Register Stakeholder Forum; CWA Community Woodlands Association; DEFRA UK Gov Dept. for Environment, Food and Rural Affairs; EC European Commission; ECCLRC Scottish Parliament Environment, Climate Change and Land Reform Committee; EFNCP European Forum for Nature Conservation & Pastoralism; FLS Forest and Land Scotland; FFRWG Freight Fares Review Working Group; GFN Good Food Nation; HIE Highlands & Islands Enterprise; HSCHT Highland Small Communities Housing Trust; JHI James Hutton Institute; LS Lantra Scotland; LSS Law Society Scotland; LWA Land Workers Alliance; MSP Member of the Scottish Parliament; NDPC National Development Plan for Crofting; NFUS National Farmers Union Scotland; NGMRG National Goose Management Review Group; NISR Newcastle Institute for Social Renewal; NRMHF National Rural Mental Health Forum; NS Nourish Scotland; NS NatureScot; NTS National Trust for Scotland; RECC Scottish Parliament Rural Economy and Connectivity Committee; RoS Registers of Scotland; RSABI Royal Scottish Agricultural Benevolent Institution; RSPBS Royal Society for the Protection of Birds Scotland; SAA Scottish Assessors Association; SAC consulting arm of SRUC; SAS Soil Association Scotland; SCF Scottish Crofting Federation; SCFYC SCF Young Crofters; SCRG Scottish Churches Rural Group; SCVO Scottish Council for Voluntary Organisations; SFT Sustainable Food Trust; SG Scottish Government; SGCLSG Scottish Government Crofting Legislation Stakeholders Group; SGCSF Scottish Government Crofting Stakeholder Forum; SGRPID (RPID) Scottish Government Rural Payments and Inspections Directorate; SHS Small-Holder Scotland; SIM Support In Mind; SLE Scottish Land & Estates; SPICe Scottish Parliament Information Centre; SRA Scottish Rural Action; SRN Scottish Rural Network; SRP Scottish Rural Parliament; SRUC Scottish Rural (University) College; THC The Highland Council; UHI University of Highlands and Islands; WCP Woodland Crofts Partnership; WTS Woodland Trust Scotland; ZWS Zero Waste Scotland.