

CROSS-PARTY GROUP on CROFTING

Meeting 26 of Parliamentary Session 5

Tuesday 26 January 2021 18.00 by Zoom

MINUTES

Present:

Beatrice Wishart MSP ⁱ (Convener)	Sandra Lindsay SCF
Patrick Krause SCF (Secretary)	Calum MacMillan CnES
Alasdair Allan MSP	John MacAskill
Edward Mountain MSP	David Findlay CC
Angus MacDonald MSP	Murdo MacKay CnES
Gail Ross MSP	Fiona MacKenzie UHI
Malcolm Burr CnES	Siobhan Macdonald SAC
Bill Barron CC	Iain M Maciver
Donald MacKinnon SCF	John Maciver
Janette Sutherland SAC	Heather Mack CC
Donald Murdie	Mairi Mackenzie CC
Eleanor Arthur SCF	Murray McCheyne SLE
Liz Barron-Majerik	Fiona Mandeville SCF
Yvonne white SCF	Jamie McIntyre WCP
Donald Bruce	James McPherson SCF
Rhona Elrick RoS	Donald Meek
Richard Frew RoS	Zoe Meldrum NFUS
Abigail Campbell	Thomas Mulvey SLE
Kate Fry SP	Maria Scholten SCF
Andrew Holt CC	Christina Noble JHI
Brian Inkster CLG	Neil Ross HIE
Gordon Jackson SG	Zoe Russell Uni Sterling
Michael Nugent SG	Lucy Sumsion NFUS
Aileen Rore SG	John Toal CC
Gwyn Jones EFNCP	Caitlin Stott SP
Russell Smith SCF	Maria de la Torre NS
Darren Laing BBC	

1. Welcome and Apologies

The convener welcomed everyone. Apologies were received from:

Rhoda Grant MSP; Emma Harper MSP; John Scott MSP; John Finnie MSP; Graeme Dey MSP; Donald Cameron MSP; Rod Mackenzie CC; Robin Haig SCF; Stephen Leask SIC; Donald Crichton CnES; John Kerr SG; Sandy Murray NFUS; David Campbell CC; Billy Neilson CC; Malcolm Mathieson CC; James Scott CC; Eleanor Garty WTS; Laura Sinclair NFUS; Leanne Townsend JHI; Roz Corbett LWA; Rosemary Champion.

2. Minutes of previous meeting

The minutes of the previous meeting held on 27 October 2020 were approved.

3. Matters Arising

None

4. Crofting development

Assessing crofts as assets for payment of care charges

Malcolm Burr, Chief Executive of Comhairle nan Eilean Siar, gave the background and current policy on this.

Main points included:

The subject of assessing crofts is generating interest in WI and nationally it seems; there is a petition before the petitions committee of the Scottish parliament on this subject.

CnES took legal advice in the form of Counsel's Opinion in 2004 – the advice being that crofts could not be excluded from assessment. Senior Counsel's Opinion was taken last year and the advice was the same – there are no exemptions from assessment for crofts; clear opinion from Senior Counsel that crofts should be taken into account when assessing capital assets, including the croft house, where exemptions may apply the same as with any house. It would be a matter for the Scottish Parliament to determine whether as a matter of policy crofts should be exempted from the regulations.

It has been suggested that croft tenancies are different as the croft isn't the property of the tenant; this is true but croft tenancies have a value that a tenant can realise – this is what makes it different from other tenancies.

In summary, CnES took legal advice and it remains that crofts should be taken into consideration when assessing capital assets. CnES will be looking into the application of policy, in consultation with the Crofting Commission and other local authorities in crofting areas, and will see where this goes with crofting law reform.

Roundtable discussion:

Question: did the legal advice differentiate between owner occupiers and croft tenants?

Answer: yes it was asked specifically – the answer was that taking a croft into assessing for capital value was not dependent on it being owner-occupied or tenanted.

Question: Counsel's Opinion doesn't seem to take into account whether the tenant has the right to assign or not?

Answer: yes, the value is in the assignation.

Question: how we pay for care is a critical consideration for local authorities; however a tenanted croft is not owned by the tenant – it is the landlord's property. If a tenancy is renounced it goes back to the landlord with no value being given to it. So there seems to be a discrepancy as to how a tenancy is valued. There is a policy issue here that needs ironing out – can Scottish Parliament help? For example clarity is needed on Schedule 4 – where it says 'properties occupied by a third party are exempt' – does this include the landlord, they own the croft?

Answer: This is largely a matter of fairness – if you have an asset that has a value that can be realised, it would be fair that this is included in an assessment of capital assets.

Question: do other Councils agree with this?

Answer: yes, we have received agreement from all the other Councils in the crofting counties. CnES has never had to resort to the 'forced sale' of a croft or tenancy – the estate has always met the debt, also from other means.

Comment: a landlord is obliged by law to compensate a tenant for permanent improvements should the tenant renounce or be forced to give up the tenancy. It would be interesting to see this happen in this case. And what if the tenant is put in care but recovers sufficiently to be able to return to the croft? Heritable tenancy is what it says. This is more about a Council chasing a debt owed by the estate. Lastly, an Opinion is only an opinion until it is tested.

Comment: SCF considered this at length and finds it difficult to not agree that a croft or tenancy is an asset – no evidence has been presented that would suggest otherwise. SCF encourages crofters to consider succession as early as possible. Tenants have the right to assign the croft so they should consider this before it becomes an issue. We hope that the new crofting development posts in the Western Isles will focus on getting unused crofts assigned. Clarity is needed on policy; it is made to look like the local authorities have a choice but then legal Opinion suggests not; clear policy guidance from Scottish Government on how to deal with this is therefore needed.

Answer: yes that is exactly right, this is the position. Councils will deal with each individual case on merit but we don't have discretion regarding capital assets.

Question: the Crofting Bill Group dealing with legislation reform is in abeyance but will be resurrected in the next session; is this an item that the group could consider? the group is there to prepare a Bill to correct the faults of the 2010 Act.

Comment: people need a power of attorney in the background as these things can happen quite unexpectedly. When looking at succession, please give someone power of attorney.

Question: this issue has been looked at by this group before and concluded that clearer direction was needed from SG. Has SG given any policy direction on this?

Answer: no. we have had legal advice but not a policy steer from Government. The legal advice is clear on capital assets and the Councils in the crofting areas follow this, but it is a Government matter whether it wants to benefit crofters with the use of exemptions from recovery of care costs.

Comment: this is probably not a matter for the Crofting Bill Group as it seems to be a policy issue rather than a legal one. As has been said, Opinion is just opinion until it becomes enacted in law. This is not to put down opinion from the top crofting lawyer, but to make clear that this is really a matter for politicians, not lawyers.

Comment: there should be a lot of emphasis on succession planning, but succession planning is not the answer to this issue.

Comment: crofts are not just about money – this aspect must be preserved.

Comment: Banks will not take a croft as standard security on a loan as the tenant does not have the right of ownership, so there is a gap – legal opinion being that the croft is an asset and banks saying it is not.

Comment: the issue of a croft being standard security is before the Crofting Bill Group and is moving forward.

Action: sec to write to the appropriate Minister on behalf of the group asking for policy advice on this issue. Agreed.

II. Public access to croft land – is the code sufficient?

Yvonne White, SCF, introduced the discussion on the increased access to croft land and associated attack and harassment of livestock by dogs, littering and damage to property. Main points included:

Is the code sufficient? In a word no.

There are increasing numbers of people accessing the countryside for recreational purposes. That is great given it has so many positive benefits and should be encouraged. However it needs to be properly managed by local authorities to ensure both the visitor and crofter and farmer have a positive experience.

Over the past year there have been many instances of the increasingly negative impact of public access. Crofters being verbally abused when speaking to a group of campers on his land; an old lady crofter being sworn at and pushed; crofters mid-lambing asking walkers to put their dog on a lead being told "no I have the right to roam"; areas littered with camping equipment, soiled nappies and human fouling, and worrying of livestock by out of control dogs. And its goes on. The reports seem to get worse nearer areas of high population. And maybe in the crofting counties we are starting to suffer the emotional and financial impact that farmers in lowland areas have had to endure for years from irresponsible people accessing their land.

We know there are various Acts and codes which govern unsocial behaviour in the countryside like littering for example. The 'right to roam' is about taking a responsible approach but all too often this is simply not known or ignored by some. Indeed there are many reports about the 'right to roam' being flung in the face of crofters who politely ask visitors to cease certain behaviour like controlling their dog around livestock.

So how do you address this increasing problem? Is it signage ? As notices informing dog owners about lambing and calving taking place are ignored, should field gates be locked at certain times of the year?

There are Access officers who facilitate access for visitors but their remit does not seem to include support for crofters and farmers with regards access issues. They are a bit like the Skye ghost car, talked about but never actually seen.

How do we educate people in responsible use of the countryside ? We should be teaching children at the earliest age about respect for the natural environment and all its creatures and plants, the fauna and the flora, and respect for other people.

The Dogs (Protection of Livestock amendment bill) which passed stage 1 on the 21st Jan has cross party support. The original act was introduced in the early 1950's and obviously much has changed in the seven decades since, not least the increased number of dog owners accessing the countryside side. The amended bill will introduce tighter more robust regulations around the control of dogs in relation to the worrying of livestock. It is a step in the right direction. We need concentrated effort to reconsider access rights.

Roundtable discussion:

Comment: there are 'hotspots' – for example the Fairy Glen; inundated with tourists who seem to lack any sense of responsibility.

Comment: the livestock protection bill has gone through stage one so there is little room now for further meaningful amendments.

Comment: there is no 'right to roam' – there is a right to take responsible access.

Comment: there has been a lot of research by NFU Mutual to put in place infrastructure and education to avoid abrasive interactions.

Question: is this unique to crofting?

Answer: no, farmers are experiencing the same, but the increase in tourism in crofting areas is increasing the problem, and crofting has unique aspects like extensive, unfenced grazings, which is assumed 'wild'. Education is key.

Comment: someone mentioned hotspots – the North Coast 500 promotion has created more hotspots – concentrations of tourists. Promotion without facilities in place.

Comment: Covid-19 lockdown seems to have increased the problem – more people out walking and more dogs as pets.

Maria de la Torre, NatureScot gave an agency perspective:

NatureScot deals with access issues at a national level, at a local level it is the local authority that has responsibility, so making contact with local authorities about specific problems or areas may be something to consider.

NatureScot has run regular campaigns to highlight responsible access with dogs around livestock. Last year's campaign was combined with wider messages about responsible access during COVID, for example including responsible camping. Between April and the end of August, this campaign had a combined reach of 6.4 million people on Twitter and Facebook, supported by media releases which were picked up at least 47 times – all resulting in a total of over 360,000 visits to the Scottish Outdoor Access Code website – so this is a major area of effort.

NatureScot's 2021 SOAC promotion campaign will be run jointly with other public bodies including VisitScotland, FLS and the National Park Authorities, as part of a wider co-ordinated response to the exceptional visitor management issues that arose last year. This joint approach should further extend the reach of this campaign during the coming year.

NatureScot recently worked with NFUS, SLE, Police Scotland and the Scottish Kennel Club to agree improved high level messaging about responsible access with dogs, in particular to accommodate the wide range of circumstances that can apply in crofting areas where livestock can graze extensive unenclosed coastal or upland areas – and we will use this in future campaigns.

Various approaches can be used to help manage these issues locally, including providing time-limited signs or paths to guide people away from sensitive areas. Local authority access officers have a key lead role in providing local advice and are important contacts to discuss any local access issues (contact details are on the SOAC website).

Nothing in the Code encourages or legitimises any behaviour which is an offence (and most of the behaviour that causes significant problems in the outdoors is indeed an offence under current legislation). This would need to be addressed in conjunction with the police, accepting that enforcement can be difficult in more sparsely populated rural areas. NatureScot has expressed support for the current Member's Bill promoted by Emma Harper MSP which seeks to increase penalties for attacks on livestock.

Janette Sutherland, SAC Consulting Portree talked about the project entitled Scotland's Rural Tourism Economy post Covid19: A Natural Capital Approach.

This project is funded by the University Innovation Fund from the Scottish Funding Council. Natural Capital is the world's stock of natural resources, for example soils, water, air, and all living organisms. The inspiration behind the project is from the two main enterprises that rely on the abundant natural capital in the Highlands and Islands; namely Agriculture and Tourism. These can be complementary, but, in some cases, especially as regards high density 'tourism hot spots' there can be considerable conflict. This project aims to bring crofting and tourism sectors together to look for innovative solutions. The project has many facets however tonight I want to talk to you about one in particular.

SAC Consulting are working with 'Skye Connect', a Destination Management Organisation, on Skye's Natural Capital. We are working with partners SCF, NFUS and our local NatureScot office. We think that there would be a benefit in setting up a body ('Skye Foundation') to tell visitors to the islands the stories of the landscapes and the people that work in them. This would help deepen their visitor experience and the Foundation would allow a collective effort by the islands' crofters and farmers. Innovative methods to seek donations from visitors are being investigated, for example, using QR codes for instant, cashless and contact-less online donating.

These donations could then be used to help support crofters, common grazings, farmers and community groups to finance Natural Capital management.

We have submitted a funding bid to NatureScot for a feasibility study, and I look forward to updating you on this and other aspects of the project in the future.

Roundtable discussion:

Question: how likely is this to help?

Answer: The similar project in the Lake District is very successful. Its not a panacea, but it is getting information out there. And this could work anywhere.

Chair thanked speakers and noted that this issue needs to be revisited.

III. National Development Plan for Crofting

a quick update from Michael Nugent, SG

- A draft was shared with SCF and NFUS and comments will be incorporated where possible (not always in agreement);
- The draft was looked at by Cabinet Secretary, who had comments too – to be incorporated;
- The draft has been put together working with the CC, other SG departments, agencies and other organisations;
- The formatting and appearance are being finalised;
- It is the aim to publish next month (February).

Round-table discussion:

Question: will the draft be shared with other members of the Crofting Stakeholders Forum before publication?

Answer: we will discuss the practicality of this and get back.

5. Crofting Administration

Bill Barron gave an update on the work of the Crofting Commission.

1. Covid 19, lockdown: staff working under increased lockdown restrictions. Hard but managing. Thanks to NatureScot, landlords of GGH, for their help in making it possible for a few staff to keep using GGH and ensuring it is a safe and pleasant environment to work in.

2. Recruitment in the Western Isles: three posts have been advertised, the fourth will be advertised when the first three have been allocated so that we can see what location is needed for the fourth post. There has been a very good response.

3. Working groups: commissioners, managers and staff are engaged in various working groups including:

1. Redeveloping application forms as part of the development of on-line applications
2. Gender balance on the commission - we need more women commissioners and more engagement from women. We have made a point of inviting women to commission board meetings.
3. Working from home and/or in remote parts of the crofting counties, and the possibility of continuing this to a certain extent after lockdown.
4. Enforcing duties on residency and land use and how best to broaden the work to include owner/occupied crofts more and to deal with the non-returners of the census. Intention is to look at land use as well as absenteeism starting with the worst cases of neglect that are easy to identify - neglect is notoriously difficult to define.

Roundtable discussion:

Question: SCF members asking why the census forms have to be returned to a company in Manchester; could you explain this please?

Answer: the commission doesn't process all the forms as there are too many, it would just take too long, they all need to be scanned, processed, compared to register (looking for non-returnees) and analysed. Not many firms can do all of the things that need doing. We have a duty to look for the best provider for the job; we looked in the Highlands and Islands and in Scotland but could find no companies offering fully what we needed, hence we then looked UK wide and found one in Manchester.

Comment: the commission should be creating jobs in Highlands and Islands, even if needing to use separate companies or indeed train up more people.

Question: are you only just now starting to look at those who do not respond? How long have you been issuing the annual census, five years? The Shucksmith enquiry was reported in 2008 and set out a clear route for getting crofts that are not being used re-assigned; are the board still discussing it? The demand for house sites is insatiable, there is, for example, a builder openly advertising for sites on crofts. The commission board needs to get a grip on this, it is time for action.

Answer: this is being taken as a priority; we did not have the resources to do everything so we concentrated on the more accessible respondents, those who say they are in breach. 200 of these were dealt with in 2019/20 with them being resolved in one way or another. The rate of dealing with these was increasing but has been knocked back by Covid 19. The challenge is huge with only three or four staff trying to get on top of it, but the team will now be increased.

Question: are you looking at purposeful use or just residency? Is social housing considered purposeful use? Land is a third of the value of a project.

Answer: residing is fundamental, but we are talking about huge tracts of land under crofting tenure so use is very important; they go together it is not one over the other.

Comment: the commission needs to hit those who don't return the census, immediately, they are clearly the ones in breach. Also, if the ground is full of rushes clearly it is not used. It just takes someone to look over the fence. In fact even satellite images can show up unused Crofts.

Answer: we are looking into using satellite images as it could be helpful in identifying the worst cases. With regards to chasing the non-returners it can be difficult to locate them and difficult to prove they are in breach other than not returning the form, whereas for those who self-confess, the breach is already proved and therefore we can do something about it, the objective being to free up unused crofts.

Comment: builders tend to be looking for decrofted sites where planning has already been given and the commission has already granted decrofting.

Comment: yes but in this case the builder was simply looking for croft land on which to develop. When the commission was asked if it is croft land they were unable to confirm so the building went ahead even though the township knows it is croft land so a substantial part of a croft was lost.

Question: if the commission has limited resources why not use assessors more and create more assessors.

Answer: yes that is the intention.

Comment: in days gone the commission was more active in going out into crofting communities, in being seen. The duty to report does not work, people do not like clyping on each other. The commission needs to get out into the communities to identify the unused crofts.

Answer: yes, the Commissioners are known but there are too few of them. Western Isles posts will help with visibility.

6. Crofting Legislation

This is a standing item and we hope to see progress in the new session of parliament.

7. Crofting Support

Michael Nugent The main points were:

- £1.5 million has been distributed to 49 crofters as grants for the CHGS over the last year. In December we received 21 applications.
- CAGS is hugely popular with 750 applications over the year with an average of 85% approval. The budget is £2.6 million but we have distributed £3.2 million (approved) every year.

8. AOB

Welfare of animals during transport consultations – submit responses by 25th and 26th February. The proposals could have a hugely detrimental effect on Scottish livestock production, especially islands.

9. DONM

16 March 6pm by Zoom

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.