

## The Crofting (Amendment)(Scotland) Bill 2013

### Final Business and Regulatory Impact Assessment

#### Title of Proposal

The Crofting (Amendment)(Scotland) Bill 2013.

#### Purpose and intended effect

- **Objectives**

The objective of this Bill is to deliver the original policy intent of the Crofting Reform Act 2010 (the 2010 Act)(which amended the Crofters (Scotland) Act 1993 – the 1993 Act) and enable owner-occupier crofters to apply to the Crofting Commission to de-croft their land. The Bill will also aim to give retrospective effect to the owner-occupier de-crofting directions that have already been made in error by the Crofting Commission since 1 October 2011 and will allow outstanding de-crofting applications from owner-occupier crofters to be progressed.

- **Background**

The 2010 Act introduced a new category of “owner-occupier crofter” into the 1993 Act from 1 October 2011.

Subsections 19B(2) to (4) of the 1993 Act provide that a person is an owner-occupier crofter if:

- They are owner of a croft; and
- They were either the tenant crofter who exercised the right to buy the croft; a crofter's nominee; or an individual who purchased the croft from the constituting landlord (or a successor in title to these persons);
- The croft has not been let to any person as a crofter since it was acquired from the landlord or constituted as a croft.

An issue was raised by the Crofting Commission in relation to the inability of owner-occupier crofters, under the existing legislation, to de-croft their land if the croft is not vacant. The Crofting Commission only has power to give a direction to de-croft if the croft is vacant or tenanted.

Applications to de-croft areas of registered croft land are made for different reasons but are often made to satisfy lenders over standard securities and give banks and other lenders the confidence to issue mortgages to crofters to allow them to build houses. A similar situation exists in relation to financing wind turbine renewable schemes.

Amongst other things, the initial policy intent was for the 2010 Act was to amend

the 1993 Act to extend the de-crofting provisions to owner-occupier crofters. However, the actual effect of the relevant provisions in the 2010 Act is that an owner-occupier crofter can only apply to de-croft where a croft is vacant.

As a consequence of the unintended omission of the 2010 Act it is the intention of Scottish Government to introduce the Crofting (Amendment)(Scotland) Bill 2013 to bring into effect amending provisions that will -

- enable an owner-occupier crofters to apply for a direction from the Crofting Commission that the croft (or part thereof) shall cease to be a croft; and
- confer power on the Crofting Commission to give a direction that the croft (or part thereof) shall so cease to be a croft.

It is intended that the above noted provisions apply without any reference to the croft being vacant.

The amending Bill will also aim to give retrospective effect to the 159 erroneous de-crofting directions granted by the Crofting Commission since the de-crofting provisions of the 1993 Act as amended by the 2010 Act came into force on 1 October 2011. In addition to this it is intended that the amending Bill will provide for the applications held in abeyance by the Commission to be processed without the need for re-submission.

In short it is the intent of the Crofting (Amendment)(Scotland) Bill 2013 to place owner-occupier in the same position they should have been from 1 October 2011 onwards. In this regard the Regulatory Impact Assessment that was undertaken prior to the 2010 Act being introduced is still relevant. This is attached below.



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- **Rationale for Government intervention**

Primary legislation is required to deliver the initial policy intent of the Scottish Government to treat owner-occupier crofters in the same way as tenant crofters and crofting landlords, providing a mechanism by which applications can be submitted to the Crofting Commission for a de-crofting direction.

The effect of introducing this legislation will contribute directly to the aim and purpose of Scottish Government and that is to create a more successful country, with opportunities for all to flourish through increasing sustainable economic growth. In particular the legislative provision will contribute towards maintaining and enhancing the sustainability of communities in remote rural parts of Scotland.

## **Consultation**

- **Within Government**

Following discussion at Cabinet on 26 March and the Parliamentary announcement on 28 March 2013 that an amending Bill would be progressed using expedited procedures, extensive discussions have taken place with Ministers and colleagues in SGLD; OSPC; Finance; the Scottish Land Court; the Crofting Commission; and Registers of Scotland. We have also consulted the Cabinet Sub-Committee on legislation regarding the way forward.

- **Public Consultation**

The public will not be consulted prior to the Bill being laid before Parliament due to:

- a) Timing constraints; and
- b) Extensive consultation already having been undertaken prior to the 2010 Act being introduced.

Notwithstanding the above, preliminary discussions have taken place with stakeholder groups, including the Cross Party Working Group on Crofting and its key stakeholder members, including the Scottish Crofting Federation on the intention to adopt a narrow focused approach and introduce de-crofting provisions that should have been introduced in the first place.

Nevertheless, we plan further discussion on the approach with stakeholders on or around the time that the Bill is laid in Parliament.

- **Business**

For the same reasons outlined at the Public Consultation section above, we have not specifically consulted business interests regarding the intention to introduce the legislative resolution detailed in the draft amending Bill. However legal firms and crofting businesses will get the opportunity to comment on the Bill from a legal technical perspective as the Bill progresses through Parliamentary process. This will include a face to face consultation with crofting representative organisations at or around stage 1 of the Parliamentary process.

- **General**

A Policy Memorandum will be published on introduction of the Bill, which will include further detail of the consultation process associated with the Bill development.

## **Options**

Two options have been considered:

(1) Do nothing; and

(2) Introduce an amending Bill to meet requests from key stakeholders, including crofters themselves and other organisations representing stakeholder interests.

### **Option 1 – Do nothing**

Doing nothing would have a negative impact on owner-occupier crofters and crofting communities as it would not allow de-crofting directions to be issued for owner-occupier crofters. This in turn would impact adversely on owner-occupiers and the sustainability of crofting communities at large. It is for those reasons that this option has been discounted.

### **Option 2 – Introduce an amending Bill**

In exploring this option consideration has been given to the scope of the Crofting Bill and in particular whether aspects other than owner-occupier de-crofting should be taken forward at the same time. However, there is consensus that the Bill should have a narrow focus and only deal with the issues relating to owner-occupier de-crofting applications and directions, including matters subject to retrospection. Other issues that require to be resolved will be taken forward at a later date. This means that the Bill will have a narrow focus and aim to introduce the conditions that were initially considered to prevail. **This means that the regulatory impact of introducing the Bill provisions should be no greater than those impacts identified prior to the 2010 Act being implemented.**

- **Sectors and groups affected**

The main sectors and groups affected are:

1. Owner-occupier crofters;
2. The Crofting Commission;
3. Banks, Building societies and other lenders;
4. Legal firms;
5. Local authorities;
6. Highland and Islands Enterprise;
7. The Cross Party Group on Crofting and its members; and
8. The crofting communities at large.

- **Benefits – Option 1 – Do Nothing**

There are no identifiable benefits, only dis-benefits, as failure to introduce the amending legislation will fail to deliver stakeholders needs. This option would have unquantifiable financial consequences for the 120 or so owner-occupiers that would otherwise submit applications to de-croft on an annual basis. It would also have a negative financial impact on the crofting communities at large as the resultant products of de-crofting would not be achieved e.g. house building and

installation of renewables infrastructure.

- **Benefits – Option 2 – Amending Bill**

The Bill will provide a positive benefit to the main sectors and groups 1-8 identified above in that it will address concerns relating to the inadvertent inability of owner-occupier crofters to de-croft their land. The financial benefits cannot be identified as the reasons for submitting de-crofting applications will differ on a case to case basis.

- **Costs**

A Financial Memorandum will be published on introduction of the Bill, setting out in the anticipated costs on relevant bodies. This will include details of the registration fee (£90) payable to Registers of Scotland to register changes to records when the recording of such details in the Crofting Register becomes compulsory from November 2013. The impact of those costs were considered separately prior to the Crofting Register (Fees) (Scotland) Order 2012 being introduced.

### **Scottish Firms Impact Test**

Introducing a mechanism by which owner-occupier crofters can apply for a de-crofting direction will not in itself have an impact on the competitiveness of crofting businesses, but any subsequent opportunities that arise from exploitation of diversification initiatives on de-crofted land are likely to have some positive impacts e.g. it will enable renewable schemes to be taken forward and it will enable houses to be built.

Due to timing and the wish of Parliament that the Bill be progressed using expedited procedures it has not been possible to consult businesses on the detail of the Bill prior to introduction. However, details of the proposals to address stakeholder concerns will be discussed with stakeholder representative organisations at or around Stage 1 to the Parliamentary process. This will include consideration of crofting business interests.

### **Competition Assessment**

The proposals are not expected to have any appreciable adverse impact on competition. However, any potential impacts will be considered when stakeholder representative organisations are consulted at or around Stage 1 of the Bill.

- **Test run of business forms**

The proposals will utilise existing forms prepared by the Crofting Commission. These have proved fit for purpose in enabling decrofting by those currently legally entitled to do so.

## Legal Aid Impact Test

Advice has been sought from the Scottish Government Legal Aid Team and it has been established that impact of owner-occupier crofters in lodging appeals with the Scottish Land Court will vary depending on a number of factors including duration of appeals, legal representation being used and other related factors.

During 2008/9 there was a total of 6 cases involving appeals against decisions of the Crofters Commission (now Crofting Commission) refusing to issue de-crofting directions to tenant crofters and that the total legal aid cost was £5655. However, this related to appeals relating to tenant crofters as opposed to owner-occupier crofters. As only 4 owner-occupier de-crofting applications were refused by the Crofting Commission between 1 October 2011 and 1 October 2012 and only around 2% of refusals are typically appealed and eligible for legal aid, the legal aid financial impact is likely to be inconsequential.

## Enforcement, sanctions and monitoring

As the Bill merely introduces what was considered to have been introduced previously under the auspices of the 2010 Act, insofar as owner-occupier de-crofting matters are concerned, no additional impacts are anticipated to arise. The Crofting Commission already has a monitoring and enforcement structure in place.

## Implementation and delivery plan

The Bill will follow Parliamentary procedure following introduction, and once passed, it is anticipated that its provisions will be commenced following Royal Assent around July/Aug 2013.

- **Post-implementation review**

The 1993 Act requires the Crofting Commission to produce an annual report and this will serve as a useful vehicle to monitor the number of de-crofting applications received. The Crofting Commission will also ensure only legally competent applications are actioned.

The amending legislation will be reviewed within 10 years following introduction of the new provisions to ensure that the amendment remains fit for purpose.

## Summary and recommendation

- **Summary costs and benefits table**

Bill Provision	Cost	Benefit
<b>Option 2</b> - Introduce ability for owner-occupier crofters to apply to the Crofting Commission for a	Administrative provision only using existing application forms that are made available to owner	Benefit arising from the ability of owner-occupiers to de-croft their land and secure the necessary

<p>direction to de-croft croft land.</p>	<p>occupiers by the Crofting Commission free of charge.</p> <p>No requirement or need to engage legal representation and no or insignificant costs incurred by crofting businesses when submitting compliant eligible applications to the Crofting Commission for consideration. Only small unquantifiable opportunity cost incurred when completing applications prior to submission and dealing with any subsequent clarifications sought by the Crofting Commission.</p> <p>Unquantifiable costs incurred by crofting businesses of dealing with appeals to the Scottish Land Court against decisions made by the Crofting Commission to refuse to issue de-crofting directions.</p> <p>£90 registration fee payable to Registers of Scotland to record details of changes in status of land in crofting tenure from November 2013. However costs, benefits and impacts of this have been considered separately prior to the Crofting Register (Fees) (Scotland) Order 2012 being brought into force.</p> <p>Costs to the Crofting</p>	<p>finances and permissions to develop and/or utilise that land for croft housing and alternative productive uses.</p> <p>Benefit to lenders in securing the confidence to lend on the basis that standard security arrangements are satisfied.</p>
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	Commission in processing applications from owner-occupier crofters to de-croft are identified separately in the financial memorandum of the Bill.	
<b>Option 1 – Do nothing</b>	Costs unquantifiable as the impact of owner occupiers being unable to de-croft will vary on a case by case basis depending on the intended purpose of de-crofting.	This would have dis-benefits in that owner-occupier crofters who wish to de-croft croft land would not be able to realise the benefit resulting from the ability to de-croft. This will vary on a case by case basis depending on the purpose to which the owner occupier crofter would otherwise wish to use the de-crofted land for. It would also have dis-benefits for the wider crofting communities at large in that the economic sustainability of those communities would be negatively impacted upon.

## Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

9<sup>th</sup> May 2013

**Minister's name, title etc**

Paul Wheelhouse  
Minister for Environment and Climate Change

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