

Woodland Crofts Partnership response to Crofting Consultation 2017: A consultation on the future of crofting law

The Woodland Crofts Partnership

The Woodland Crofts Partnership (WCP) is a partnership of 4 third-sector organisations, seeking to promote and develop woodland crofts. It comprises the Scottish Crofting Federation, the Community Woodlands Association, the Highlands Small Communities Housing Trust and Woodland Trust Scotland. We welcome this opportunity to comment on this consultation on the future of crofting law.

The Scottish Crofting Federation is the only member-led organisation dedicated to promoting crofting and it is the largest association of small scale food producers in the UK. Its mission is to safeguard and promote the rights, livelihoods and culture of crofters and their communities. Tel: 01599 530 005, www.crofting.org

The Community Woodlands Association is the direct representative body of Scotland's community woodland groups. It helps community woodland groups across the country achieve their aspirations and potential, providing advice, assistance and information, facilitating networking and training, and representing and promoting community woodlands to the wider world. Tel: 01309 674 004, www.communitywoods.org

The Highlands Small Communities Housing Trust is a registered charity helping rural communities secure long term solutions to their local housing needs. It represents a wide range of interests including communities, local government, landowners, crofters and housing associations. By helping rural communities meet their needs for additional affordable housing it plays an important role in actively supporting their long term viability. Tel: 01463 233 549, www.hscht.co.uk

Woodland Trust Scotland is part of the Woodland Trust, the UK's leading woodland conservation charity. Its vision is a UK rich in native woods and trees, enjoyed and valued by everyone. In Scotland it is currently leading the Croft Woodlands Project. Tel: 01738 635544, www.woodlandtrust.org.uk

Our response represents the collective view of the Woodland Crofts Partnership, however individual partners of the WCP may be submitting their own responses on behalf of their members.

Introduction

We provide answers to only those questions in the consultation document of most relevance to woodland crofts, with some further comments in addition. The relevant questions, answers and additional comments are reproduced below.

Question 1 - Do you agree with the stated Scottish Government policy on crofting?

No. At present the text is neither a succinct vision nor a detailed policy statement, focusing selectively as it does on some issues but not others (eg crofters' responsibilities, but not their rights). It might be better if condensed to just the opening paragraph (with some appropriate amendments to wording), dispensing with the current 2nd and 3rd paragraphs.

Somewhere – perhaps in the forthcoming National Development Plan for crofting – it would then be helpful to state an agreed vision for crofting (much as the Scottish Forestry Strategy includes a vision statement). This could usefully reflect the diversity of crofting, not least in respect of the opportunity for woodland crofts.

Question 2 - Options for legislative change

We believe that whilst consolidation is desirable, resolving the anomalies and inconsistencies currently inherent in crofting law is essential, and the higher priority. The emphasis therefore should be on amending legislation as soon as possible to adopt the priority actions identified by the Crofting Law Sump report (and any others).

Thereafter, consolidation as in Option 2 would seem the most sensible approach – but there might also be another option, a hybrid of options 2 & 4: a 'clean sheet bill' introduced after an appropriate period once the initial amending bill had bedded in. This would have the benefit of simplifying legislation rather than just consolidating it.

Remaining questions - Specific legislative priorities

We highlight below those issues of most relevance to woodland crofts, rather than those outlined in the consultation document. We also include issues that might be considered policy matters, rather than legislative, but we do so because they are important in the context of the wider discussion of the future of crofting, and also because in some cases a legislative solution may exist as well as a policy one.

Residency: is key and at the heart of retaining populations. Woodland crofting is no different from any other model of crofting in this respect, and notions that woodland management does not require an intimate connection with the land (along with spurious comparisons with 'commercial' plantation management) should be dismissed.

We would like crofting law to recognise a presumption that residency should be on, or immediately nearby, the croft; the 32km rule should be retained but explicitly referenced to a technical status of 'absenteeism' where breached. Current arrangements have been misinterpreted by some to imply that residency on or immediately nearby the croft is neither necessary nor indeed desirable.

Common Grazings: Crofter Forestry provisions allow for common grazings to be planted – as long as the whole grazings is not planted (section 48(6) of the Crofters (Scotland) Act 1993). Notwithstanding the fact that this is unlikely to be practical in any event, it is not clear why this restriction is necessary. If all shareholders were agreed, we do not see why it should not be permitted. We do not suggest that it should be promoted as an option through policy, simply that legislation should not prohibit it.

‘Common woodland’ – it is possible to create a common grazings from a woodland; equally where common grazings have been extensively planted, a similar result is achieved. However, the language of ‘grazings’ and their associated regulation fits this situation poorly – consideration should be given to recognising in legislation the situation of ‘common woodland’.

Regulation: firm and effective regulation is essential to give confidence in crofting. This is especially the case for woodland crofting which as a newer model of crofting suffers from a lack of understanding and recognition in some quarters. Some may view it as an opportunity to circumvent other crofting obligations rather than the positive management opportunity that it is. Proper regulation by the Crofting Commission – and indeed Forestry Commission Scotland – will ensure that all stakeholders will retain a positive view of the model.

Registration of new crofts: should be integrated better with the croft creation process. Current arrangements whereby separate forms and maps are required for both Crofting Commission and Registers of Scotland applications involves duplication and unnecessary work. It is also illogical to have to separately apply to register a croft which does not actually exist at the time of application; the registration process could helpfully be absorbed into the croft creation one.

Similarly, where a tenant has already been identified for the croft being created, it should be possible to complete the tenancy assignation again as a part of the croft creation process, assuming that it proves to be the consensus that assignation should continue to require Crofting Commission approval (which we are not persuaded is necessary if proper regulation is subsequently applied) – if it does not this issue disappears.

Owner-occupier crofters: it needs to be made possible for owners of land to choose to become crofters and not constituting landlords when they create a new croft; current solutions to this issue are involved and expensive (this is a particular issue for woodland crofters as due to the lack of woodland crofts generally, those wanting one are having to consider purchasing a woodland to create a croft for themselves).

Equality between types of crofter: this needs to be further enhanced; the moves to make equivalent tenants and owner-occupiers need to be extended as per Sump recommendations. However this requirement extends beyond legislation to a policy approach: the current issues surrounding eligibility for CAGS are one example where crofters who are all meeting their legal obligations are not equally eligible for support for their activities.

Expansion of the Crofting Areas: the occasion of new legislation is an opportunity to expand the crofting areas. Though many have called for this in the past, woodland crofts could act as a catalyst for change, as many well-wooded parts of Scotland otherwise ideal for the development of woodland crofts lie outwith the current crofting counties (eg Dumfries & Galloway, the Borders, Perthshire & Aberdeenshire).

We recognise that the Crofting Reform (Scotland) Act 2007 does provide a route for the designation of new crofting areas by Scottish Ministers, however this is not equivalent to having the opportunity for crofting as of right. Furthermore, there appears to be no current policy guidance from the Scottish Government to inform individuals and communities of the required procedure to be followed to request the designation of new such areas by Ministers – guidance on this could be usefully introduced.

Woodland Crofts Partnership
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