

## Crofting and Scottish Land Court (Scotland) Bill

## Stage 1 Briefing – 13<sup>th</sup> January 2026

## Introduction

Community Land Scotland (CLS) welcomes the introduction of this Bill as a starting point for reforming crofting for the 21<sup>st</sup> century.

Crofting is a crucial part of the culture, economy, repopulation and land management of the Highlands and Islands. It supports communities in often fragile, rural areas and has a close relationship with community ownership.

Many of our members, and founding members in 2010, were crofting community landowners. There is a particularly close relationship between crofting and community ownership. Last year figures were released by the Scottish Crofting Federation that almost 25 per cent of Scotland's 21,000 crofts are now on community-owned land.<sup>1</sup>

## Summary

CLS are broadly supportive of the technical changes set out in the Bill. The Bill's focus on simplifying and strengthening existing legislation and improve the regulatory function of the Crofting Commission, most importantly around provisions that seek to prevent misuse, neglect, absenteeism and excessive decrofting are very welcome.

We also welcome the potential to enable environmental initiatives on croft land, especially when the risks and benefits of such initiatives are equally shared.

However, the Bill could have gone further in terms of comprehensive reform of crofting. There needs to be a clear commitment across Parliament for a future Crofting Bill which builds upon Prof. Mark Shucksmith's 2008 Inquiry on crofting, and should include:

- addressing the escalating market in croft tenancies through tighter regulation
- restricting individual rights to buy on newly created crofts
- creation of new crofts on public land
- expansion of the crofting model across Scotland

This briefing addresses the current Crofting Bill and works through the legislation chronologically focusing on areas for amendment and strengthening.

CLS supports amendments at Stage 2 in relation to:

- The wording around environmental uses of crofts being strengthened to ensure active use by actual crofters
- expand the list of those who can report breaches of crofting duties

<sup>1</sup> Almost one quarter of Scottish crofts under community control | The National

- increased evidence required to satisfy residency duties
- extending Commission scrutiny to award of owner-occupier status (i.e. checking for genuine intention to croft before owner-occupier status is granted)
- exemptions for community organisations and rural housing bodies from prohibition on transfer of crofts to persons who are not individuals
- strengthening the regulation and prevention of unattached grazing shares
- reduce and clarify the contexts in which a landowner can refuse consent for environmental projects on common grazings
- grant rights to exclusive benefits of any crofter-led environmental initiatives to common grazing committees

The rationale behind these amendments are set out below.

### **Section 1 on enabling environmental uses of crofts:**

In principle CLS are supportive about the inclusion of environmental use of crofts. However, like other organisations, we have concerns that neglect/absenteeism should not be seen as ‘rewilding’ or other such environmental use of crofts. We would also want to ensure that crofts could still be cultivated in future, even if used for environmental purposes.

We would suggest amending some of the wording within the Bill, such as ensuring that **‘environmental use’ means ‘any form of use which is intentionally designed and systematically managed to deliver environmental outcomes’.**

The current phrasing does not adequately address these concerns and open the door to land management practices which are detrimental to the croft, public interest and landlord while still being ‘planned and managed’.

This nuance may need to be addressed through regulation but further clarity and amendment at Stage 2 is required.

### **Section 3 on reporting of breaches of duties:**

CLS believe that the definition of “crofting community” is too narrow. The current system isn’t currently working, it is widely recognised that something needs to change. Expanding the definition may be a helpful way of doing this.

A duty on the Commission to only investigate reported breaches of duties when coming from the same crofting township will not lead to any meaningful increase in uncovering breaches of duties.

**Crofters are unlikely to report their neighbours. The use of ‘Parish’ rather than ‘Township’ would be a more impactful way of addressing this issue.**

CLS also support a more proactive role in reporting suspected breaches of duties. We would support breaches being reported by aspirant crofters (registered with the Land Matching Service), local Community Councils and the Rural Payment and Inspections Divisions as well as local crofters, and that in these cases, the Commission should be under a duty to investigate.

#### **Section 4 on enforcement of duties:**

CLS broadly support the provisions strengthening the enforcement of breaches of duties. In essence we support the Crofting Commission to be carrying out its regulatory function more extensively.

We would like to see a provision that defines the evidence required to satisfy that residency duties are complied with, to ensure that people actually live within 32 kilometres of their croft. As it stands an occupier can merely stating that they comply with residency duties, even if absentee/overseas.

**The term ‘ordinarily defined’ should be named on the face of the Bill with the definition of what this means, and how it is assessed, set out in secondary legislation, with guidance on what evidence can be provided**

#### **Section 8 on assignation to family members:**

CLS consider public notice and consideration of assignation applications as key to crofting regulation. The position which has been arrived at in the Bill seems on balance to be reasonable, with a ‘fast-track’ assignation with some scrutiny.

**However, the limit of three crofts is arbitrary given crofts can largely vary in size. As such adding a hectarage threshold, as an alternative not replacement, for the number of crofts and adding a provision that third parties can intervene on assignations, would provide greater flexibility and oversight.**

#### **Section 9 on the meaning of “owner-occupier crofter” etc:**

We understand the desire for simplification of this process and allowing those who lost owner-occupier status due to selling part of the croft and who became landlord of a vacant croft to remedy their situation.

However, there is a difference between anomalies of those in limbo as the owner occupier of vacant croft and incoming owner-occupiers who should go through the same kind of requirements as tenancy assignation.

**CLS would like to see a provision that ensures that owner-occupier status will only be granted after the Commission is satisfied as to the evidence given by aspirant crofters, analogous to the assignation process. Proof of owner occupiers desire to cultivate and live on the croft could be provided upfront to avoid long-winded breach of duty procedures.**

Arguments that oversight on owner-occupier's status might depress the market for crofts are welcome – the market needs to be regulated and dampened so that more aspirant crofters can afford crofts. The policy intent of the Crofting Reform (Scotland) Act 2010 was to get parity between owner occupiers and tenants. This has not happened and the current Bill could take steps toward addressing this.

**Section 10 on Prohibition on transfers of owner-occupied crofts to persons who are not individuals:**

CLS agree that owner-occupier crofters should be natural persons rather than legal entities. Crofts should be occupied by real people who can work them and be resident. However, there are exceptional circumstances when crofts are acquired by locally democratic organisations to meet pressing local needs, for example housing.

As it stands the proposed mechanism may result in unintended consequences for Rural Housing Bodies and community organisations who wish to buy croft land for housing and to attach a Rural Housing Burden.

**At Stage 2 exemptions for Rural Housing Bodies and community organisations should be introduced.**

**Section 15 on unattached grazing shares:**

**CLS's view is that grazing shares should reside with the croft as a matter of principle.** Grazing shares should not be seen as having a profit generating potential – they are the foundation of making the township a viable agricultural and economic unit.

If this is changed it could cause further fragmentation and disbanding of crofting townships and common grazings. These structures, and the co-operation which is at the heart of them, are central to crofting and need to be protected. This is particularly pertinent when considering Section 18 and the possibility of speculation on common grazings for natural capital purposes.

**Environmental/natural capital interventions on common grazings will be more effective if done collaboratively across the whole, rather than as an individualistic patchwork.**

**Section 18 on the use of common grazings for forestry and environmental purposes:**

CLS welcome the provisions aimed at making it easier for crofters to pursue environmental initiatives on common grazings. However, there are some key points to consider:

- the instances in which a landowner can refuse consent are too wide and open to all sorts of interpretation e.g. what qualifies as 'intended' resumptions?

- Too many uncertainties remain around rights to carbon and how natural capital development profits will be shared between crofters and landlords. This will be a considerable barrier to uptake of environmental schemes on common grazings. As such further legal opinion on this issue needs to be developed, as well as working case studies of how projects can go forward.
- CLS would **strongly reject any attempt to give crofting landlords 'step in rights' to develop common grazings if they are deemed 'abandoned' by grazing committees** without co-operation and shared benefits with the crofters who have rights to the grazings.
- Common grazings operate on a system of mutual co-operation and collaboration, with costs and benefits being shared equally. This model should be continued when new developments, such as natural capital projects, are explored on common grazings.
- subsection 50ZA(3) provides no role for the Commission where a landowner grants unconditional consent to a grazings committee application to use common grazings for forestry or environmental purposes. There is no reason why the Commission is not given discretionary oversight of this as with most crofting matters.

### Crofting and community ownership: a symbiotic relationship

The relationship between crofting and community ownership is rooted in the long history of crofter resistance and activism which kickstarted the land reform movement in Scotland. Crofting communities have led the way with community ownership and inspired people across Scotland to follow in their footsteps.

Crofting and community ownership work well together because:

- community owned land gives crofters a much stronger voice on what happens in their area
- both are locally democratic and promote communal working between crofters but also between crofters and the rest of the local community
- challenges are dealt with locally and collaboratively, if land management changes, then everyone has chance to feed into that process
- crofting communities have a good understanding of land reform, are business-minded and are used to working together cooperatively

In areas such as the Western Isles the symbiotic relationship which can exist between community landownership and crofting is clear to see. This model, of land reform and crofting working together, is one that we would like to see expanded and further supported. For that reason, crofting reform is welcomed as a means of strengthening, simplifying and growing crofting as a form of secure tenure at the heart of rural Scotland.

*About Community Land Scotland*

- Community Land Scotland was established to provide a collective voice for community landowners in Scotland.
- We have 140 member organisations across Scotland, ranging from community landowners of major crofting estates in the Western Isles to inner city community hubs in diverse communities.
- We believe that we cannot create a more socially just Scotland without addressing the issue of concentrated land ownership, with the growth of community land ownership a key part of developing a more diverse land ownership pattern
- We believe that communities should have the opportunity to lead development in their areas and an important way of achieving this is the democratic ownership of local land and assets.
- We are a company limited by guarantee with charitable status. We are members of the International Land Coalition, which seeks to support community land rights and land reform movements around the world.

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