

Dear Colleague/Stakeholder

**CROFTERS (SCOTLAND) ACT 1993 and CROFTING REFORM ETC. ACT 2007:
CONSULTATION ON DESIGNATION OF NEW AREAS FOR CROFTING**

I am writing to invite your views on the attached consultation document, which sets out proposals to designate new areas in Scotland, outwith the Crofting Counties, where crofts can be created. The results of this consultation will be considered along with the results of the report by the Committee of Inquiry on Crofting due in April 2008.

Section 3A of the Crofters (Scotland) Act 1993, inserted by section 6 of the Crofting Reform etc. Act 2007, gives Scottish Ministers the power to designate new areas by Order. This consultation seeks views on the proposal to align areas where crofting tenure applies with the area covered by Highlands and Islands Enterprise. This would entail the designation of the isles of Arran, Bute, Greater and Little Cumbrae; the local government area of Highland not currently within the Crofting Counties; and the local government area of Moray as new croft areas.

More information about crofting and crofting areas can be found on the Scottish Government website at <http://www.scotland.gov.uk/Topics/Rural/Crofting> Maps of the new areas are available in the 'Overview of Crofting' section of this website.

To support this consultation, the Scottish Government will hold public meetings on Arran and in the Grantown-on-Spey area. More information on these events and registration details will be publicised locally in due course.

Responses are invited **by 12 March 2008** by e-mail to NewCroftAreas@scotland.gsi.gov.uk or to

Phil Burns
Scottish Government: Rural Directorate
Rural Communities Division: Land Tenure, Land Reform
Area 1D
First Floor
Pentland House
47 Robb's Loan
EDINBURGH
EH14 1TY

This consultation and all other Scottish Government consultations can be viewed online at <http://www.scotland.gov.uk/consultations/current> You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government has an e-mail alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations>). This system allows stakeholder individuals to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents have given permission for their response to be made public, these will be made public in the Scottish Government Library and on the Scottish Government web pages by the end of **April 2008**. All responses not marked confidential will be checked for any possible defamatory material before logging them in the Library or placing them on the website. You can make arrangements to view responses by contacting the Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

Next Steps

Following the closing date, all responses will be analysed and considered along with the recommendations of the Committee of Inquiry on Crofting due in April 2008. If Ministers subsequently decide to designate new croft areas, legislation to that end will require to be laid in Parliament.

Comments and complaints

If you have any comments or queries about how this exercise has been conducted please send them to Phil Burns, Scottish Government: Rural Directorate, Rural Communities Division: Land Tenure, Land Reform, Area 1D, First Floor, Pentland House, 47 Robb's Loan, EDINBURGH EH14 1TY (tel: 0131 244 6192) or by e-mail to phil.burns@scotland.gsi.gov.uk

Thank you for your help.

Yours sincerely

GS Selkirk
Rural Directorate: Rural Communities Division

PROPOSALS FOR DESIGNATING NEW AREAS FOR CROFTING IN SCOTLAND

1. This consultation paper is seeking views on the designation of areas outside of the Crofting Counties where crofting tenure will apply. It proposes that crofting tenure should be extended to those areas covered by Highlands and Islands Enterprise which are not in the Crofting Counties.

Background

2. Crofting plays a strong part in helping to maintain viable communities in some of Scotland's rural and less accessible areas, and potentially in enabling their populations to grow once again. Crofting is recognised as providing home bases for people linked with small-scale nature-friendly agriculture and forestry responsibilities. There is also a wide range of alternative land uses that have a croft as their base.

3. Crofting as a form of land tenure is presently confined to the Crofting Counties. However, the Scottish Government is of the view that there is merit in extending the potential benefits of crofting tenure to other parts of Scotland. To this end, Scottish Ministers announced on 1 October their intention to consult on a proposal to designate new areas in Scotland where crofts can be created.

4. The new crofting legislation enacted earlier this year provides the means to create new crofts within the Crofting Counties. The new legislation also provides powers for Scottish Ministers to extend this capacity to create new crofts to the newly designated areas, which should likewise provide opportunities for owners outwith the Crofting Counties to make provision for small scale starter farms for new entrants. Creating new crofts may also provide an opportunity for self-build housing (subject to planning) which could be attractive to enterprising workers seeking a land-based unit from which to develop an enterprise.

5. In addition, there is also an opportunity for tenants of certain small landholdings¹ to be fully recognised as Crofters with the right to buy their house and land (subject to the land remaining in crofting tenure).

6. Options to exempt new Crofts from statutory rights of assignation and the right to buy (see paragraph 21 below) should provide greater confidence and encouragement to landowners, including community landowners, to offer croft tenancies with less risk. Public Sector land bodies funded or supported by the Scottish Government will be encouraged to consider ways of creating Crofts on their land. In this respect, Forestry Commission, Scotland is actively working to facilitate the creation of woodland crofts on National Forest land.

Proposed New areas

7. Section 3A of the Crofters (Scotland) Act 1993² (the 1993 Act) (as inserted by the Crofting Reform etc (Scotland) Act 2007³ (the 2007 Act)) gives Scottish Ministers

¹ holdings subject to the Small Landholders Acts 1886-1931

² http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930044_en_1.htm

³ <http://www.opsi.gov.uk/legislation/scotland/acts2007/20070007.htm>

the power to designate new areas outwith the crofting counties where crofting tenure can apply. This power is to be exercised by order made by statutory instrument, subject to an affirmative resolution of the Scottish Parliament.

8. Recognising the development aims of much of crofting policy, Scottish Ministers now plan to invite Parliament to approve the use of these powers to designate the whole of the area outside the Crofting Counties which lies within the Highlands and Islands Enterprise (HIE) area of operation as land that may be constituted as crofts.

9. The proposal to align places where crofting tenure can apply with HIE coverage requires the designation of the following areas:

- Arran
- Bute
- Greater & Little Cumbrae
- The local government area of Highland which lies outwith the Crofting Counties
- The local government area of Moray

These areas are considered to have a particular historical link with crofting and have more examples of crofting-type land management than most other areas in Scotland. In addition, there is some merit in treating the whole of the Highlands & Islands area on a similar basis for land tenure purposes, rather than relying solely on the historic definition of the Crofting Counties. Maps showing these new areas (and the Crofting Counties) can be downloaded from the Scottish Government website at <http://www.scotland.gov.uk/Topics/Rural/Crofting/17096/7492>

Crofting Counties & Crofts

10. The Crofting Counties are defined in section 61 of the 1993 Act as being the former counties of Argyll, Caithness, Inverness, Orkney, Ross & Cromarty, Sutherland and Zetland. There are no powers within current legislation to allow that definition to be changed or extended. The newly designated areas will not therefore form part of the Crofting Counties.

11. A Croft is a holding defined in Section 3 of the 1993 Act. While the 1993 definition previously restricted crofts to the Crofting Counties, this has been amended by the 2007 Act to include holdings in an area outwith the Crofting Counties designated by Scottish Ministers⁴.

12. New crofts in the proposed new designated area will not be in the Crofting Counties and thus will not be covered by arrangements which are restricted to the Crofting Counties. In addition, whilst references or provisions which depend on the definition of a Croft will apply to the newly designated area, those which are defined by reference to the Crofting Counties will not.

⁴ inserting Sect 3(1)(cc)

13. In practice, this means that Small Landholders Acts holdings in the newly designated areas will be eligible for conversion to crofts (paras 15-18 below) and that new crofts will be able to be constituted (para 20 below). In principle, this may mean that any crofting communities established in the designated areas might seek to exercise the absolute purchase powers under the Crofting Community Right to Buy legislation in due course (paras 25 & 26 below). On the other hand grant assistance will continue to be restricted to the Crofting Counties (paras. 28 & 29 below); neither will it be possible to create new common grazings governed by the provisions of crofting legislation outside of the Crofting Counties.

Small Landholdings – Conversion

14. Ministers have no power to designate an area for certain purposes and not for others. It is therefore not open to Ministers to provide for the establishment of new crofts outwith the Crofting Counties without also extending the provisions in relation to small landholdings.

15. Section 3A of the 1993 Act (as inserted by the 2007 Act) provides powers for the Crofters Commission to constitute and register as a croft any small landholding within the Crofting Counties to which the provisions of the Small Landholders (Scotland) Acts 1886-1931 solely apply.

16. The tenant of such a smallholding who wishes to apply to convert their holding to a croft must obtain a certificate from the Land Court confirming the status of the tenancy of the holding (under the Small Landholders Acts 1886-1931), before they can make an application to the Crofters Commission. The application must be made public by the Commission, who are to give the owner and any person with an interest in the land an opportunity to appeal.

17. The application must also fulfil the following conditions before a decision can be made by the Commission:

- the holding must not be part of a larger agricultural unit that is (or has been) worked, managed or let as a single unit;
- the tenant must be a natural person;
- the fixed equipment which enables the tenant to cultivate the croft must not have been provided by the landlord; and,
- the Commission must be satisfied that the tenant has paid the owner of the land compensation for the holding being constituted as a croft; either agreed or as assessed by the Scottish Land Court.

18. Tenants of Small Landholders Act holdings converted to a Croft will benefit from current crofting tenure rights including the absolute right to buy and assignation rights. Any such land bought by the tenant after conversion will continue to be subject to crofting tenure with the tenant becoming the owner of the Croft and expected to work it. Any subsequent action to seek de-crofting of the holding or any part of it will need to be justified to the Crofters Commission on the grounds of why it is appropriate so soon after conversion into a Croft.

19. There are provisions for other land under Agricultural Holdings legislation to be converted⁵. However, the owner of a tenanted agricultural holding⁶, wherever situated, cannot apply to constitute the holding as a croft without the written consent of the tenant.

Creating New Crofts & New Croft Leases

20. An owner of any land in the Crofting Counties can make an application to the Commission to constitute land as a Croft. In the same way, an owner of any land in newly designated areas will also be able to make an application to the Commission to constitute land as a Croft.

21. Section 5 of the 1993 Act (as amended by the 2007 Act) provides for leases of new crofts (whether in the Crofting Counties or in newly designated areas) to exclude rights for the tenant to assign or compulsorily acquire. This makes it possible for a landowner to create new crofts without the risk of these crofts being acquired by the incoming crofter or their successors in tenancy or assigned without the agreement of the Landlord.

Common Grazings

22. Section 51A of the 1993 Act (inserted by the 2007 Act) gives the Crofters Commission the power, on the application by a landowner, to constitute 'eligible land' as common grazing by entering it as such in the Register of Crofts. Public notification of such applications is required with provision for appeal.

23. Section 51A(5) makes clear that 'eligible land' is to be situated in the Crofting Counties. Accordingly, it will not be possible formally to constitute eligible land as common grazings in the newly designated areas.

Crofting Community Right to Buy

24. Part 3 of the Land Reform (Scotland) Act 2003 (the 2003 Act) provides a right to buy for Crofting Communities subject to land being eligible croft land, which is defined in section 68 as land within the meaning of 'Croft' in section 3 of the 1993 Act. Eligible croft land does not however include any Croft occupied or worked by its owner or a member of its owner's family.

25. As a result of the creation of new Crofts, the Crofting Community Right to Buy (CCRTB) could in principle be extended to the newly designated areas. This would be subject to the statutory definitions of Crofting Community Body and Crofting Township. However, in section 71 of the 2003 Act the definition of Crofting Township is currently dependent on at least 2 crofts⁷ sharing a Common Grazing. As there are no powers to create Common Grazings outside the Crofting Counties, exercise of the Crofting Community Right to Buy in any newly designated areas would therefore require Ministers to approve an alternative definition of a Crofting Community.

⁵ section 3A(9) of the 1993 Act (inserted by the 2007 Act)

⁶ under the Agricultural Holdings (Scotland) Acts 1991 and 2003

⁷ with tenants resident within 16km.

26. Ministers have no current intention to extend Part 3 of the 2003 Act (CCRtB) outwith the Crofting Counties. If, in due course, recognisable crofting communities become established outwith the Crofting Counties, Ministers may consider whether the Crofting Community Right to Buy should be similarly extended. At this stage, any alternative definition of what might constitute a Crofting Community would be purely hypothetical; and would run counter to Ministers' wish to facilitate new crofting developments outside the Crofting Counties. In these circumstances, the possibility of extending the CCRtB would only be considered after further public consultation in the light both of the Committee of Inquiry on Crofting report and experience of the operation of the 2003 Act in the round.

27. The pre-emptive Community Right to Buy provisions set out in Part 2 of the 2003 Act will, of course, continue to apply as normal in the newly designated areas.

Financial support to crofting

28. The Ministerial announcement on 1 October made clear that designating new areas will not mean extending the application of crofting-specific grant support to these areas. Financial support to crofting is one of the issues being considered by the Committee of Inquiry on Crofting, which is due to report early in 2008. Ministers will consider financial support to any newly designated areas later in 2008 in that context. New crofts in the designated areas will, however, still be eligible for support and assistance under the Scotland Rural Development Programme on the same basis as other landholdings elsewhere in Scotland.

Committee of Inquiry on Crofting

29. The Committee of Inquiry on Crofting has been tasked with identifying a vision for the future of crofting, contributing to sustaining and enhancing the population, improving economic vitality, safeguarding landscape and biodiversity, and sustaining cultural diversity through proactively engaging with crofting communities and others with an interest in sustainable rural development in the crofting counties and other areas of Scotland where crofting may have a role to play. It should be noted that proposals for designation of new areas may be affected by the Committee's recommendations for the future of crofting tenure. Further information on the Committee can be found at <http://www.croftinginquiry.org/>

QUESTIONS TO BE POSED.

1. Do you agree that new areas should be designated for Crofting?

2. Do you agree the new areas should align with those of Highland and Islands Enterprise?

If not, Why?

3. Is there another area which has a stronger claim?

If so, Why?

4. Do you agree that Crofting Community Right to Buy should not be extended to the new areas?

5. Any other comments?

6. What is your background? (please tick)

Crofter

Small landholder

Agricultural tenant

Landowner

Other

RESPONDENT INFORMATION FORM

CROFTING REFORM ETC. ACT 2007: CONSULTATION ON DESIGNATION OF NEW AREAS FOR CROFTING

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) As an individual go to Q2a/b and then Q4
- (b) **On behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation **will be** made available to the public in The Scottish Government library and/or on The Scottish Government website. Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for The Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No