

## Introduction

Crofting is a system of land management unique to the Highlands and Islands of Scotland which guarantees security of tenure with heritable rights for tenants (crofters) occupying small land holdings (crofts). The claim of crofting as a lynchpin of rural development in the region has long been recognised (Hunter, 1991). However, there are concerns about its continuing capacity to fulfil this role effectively. These revolve around a complex set of relationships between land occupancy and use, population retention and the cohesion of rural communities. In turn, these relationships present significant challenges for policy-makers struggling to reconcile the individual legal rights granted to crofters in the 19th century with a 21st century policy context in which collective, inclusive and increasingly devolved approaches to rural development are fast gaining currency.

The aim of this briefing paper is to review recent developments in crofting reform and analyse key policy challenges linked to the reform agenda. It begins by placing crofting in legislative and policy context. The Scottish Government's administrative and proposed legislative responses to the 2008 report of the Committee of Inquiry on Crofting (the 'Shucksmith Inquiry') are then analysed. Finally, conclusions are drawn in relation to the preceding discussion.

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## Crofting Reform and the New Rural Paradigm

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### Summary

This paper reviews recent developments in crofting reform and analyses key policy challenges linked to the reform agenda. It locates legislative proposals contained in the Scottish Government's draft Crofting Reform (Scotland) bill within the broader policy context of what the Organisation for Economic Co-operation and Development (OECD) terms 'the new rural paradigm' (OECD, 2006). The paper argues that:

- *the Government's proposals, together with associated administrative reforms, are essentially process-orientated responses to the 2008 report of the Committee of Inquiry on Crofting;*
- *the Government has a responsibility to establish a clear strategic policy framework for crofting, together with an appropriate range of policy instruments and resources to put that strategy into practice;*
- *crofting's future viability is dependent upon it reconnecting to place-based developmental objectives within the communities in which it is practised.*

### Keywords:

**Crofting reform;  
crofting communities;  
place-based rural development.**

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## Crofting in Legislative and Policy Context

Crofting is undertaken in specific areas of the Highlands and Islands of Scotland as is illustrated on the map of the Crofters Commission administrative areas in figure 1.

Within these areas there are 17,923 crofts occupied by an estimated 10,000 to 12,000 crofting households with a total population of approximately 33,000 (Crofters Commission, 2009). These crofts can range in size from less than half a hectare to more than fifty hectares, with the average size of a croft being approximately five hectares. Crofting has historically focused mainly on livestock management of sheep and cattle and the small-scale raising of agricultural produce. Such activity tends to be subsidiary in nature and few crofters generate their household income solely from it. However, crofting has traditionally played an important part in contributing to the sustainability of the Highlands and Islands, given its role in maintaining population in the region. That role can be attributed to a unique legislative framework (see Box 1) – enforced by the Crofters Commission – which crofting inhabits. The framework is closely linked to the infamous ‘Highland clearances’ of the late 18th and early 19th centuries and was established in response to the specific demands of crofters for land reform as articulated by the Highland Land Law Reform Association (HLLRA) (Hunter, 2000).

At the beginning of the 21st century, however, a variety of factors threaten the viability of crofting as a driver for the sustainable regional development of the Highlands and Islands. Some of these factors are linked to demographics. There are fewer active crofters, many are elderly, and in an age of ‘occupational pluralism’ a higher proportion of crofters’ household income is earned from employment in the public and service sectors, fishing or manufacturing than in previous decades (Macaulay Institute, 2007). Other factors are shaped by shifting public policy agendas. Changes to subsidy rules relating to the Common Agricultural Policy mean that the availability of such funds – particularly in relation to livestock management – has been reduced. As a consequence livestock numbers are dwindling in crofting areas and livestock management, a once staple feature of crofting, is in decline.

Arguably the most insidious threat to

### Box 1:

#### Key crofting land rights in legislation

*The Crofters Holdings (Scotland) Act 1886 granted crofters the right of security of tenure to their crofts and rights of succession, fair rents and the value of improvements to their crofts. Subsequently, the Crofting Reform (Scotland) Act 1976 gave individual crofters the right to buy their crofts by removing them from crofting tenure; a process known as ‘decrofting’.*

Weblinks:

*Crofters Holdings (Scotland) Act 1886*

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1886/cukpga\\_18860029\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1886/cukpga_18860029_en_1)

*Crofting Reform (Scotland) Act 1976*

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1976/cukpga\\_19760021\\_en\\_1#l1g1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1976/cukpga_19760021_en_1#l1g1)

### Box 2:

#### Key Recommendations of the Committee of Inquiry on Crofting

- *Abolition of the Crofters Commission and decentralisation of regulation by creating a Federation of Area Crofting Boards,*
- *Transfer of the development function for crofting to Highlands and Islands Enterprise,*
- *Recasting the rights and responsibilities associated with crofting by placing what the Inquiry report termed an ‘occupancy burden’ on croft houses, tying their building and sale to residency conditions,*
- *Updating the Register of Crofts and transferring responsibility for its administration to the Registers of Scotland,*
- *Better targeting of policy support measures for crofting linked to the Scottish Rural Development Programme.*

*Source: ColoC (2008)*

crofting is market-driven. The 1976 Crofting Reform Act’s ‘right to buy’ provisions enable crofters to purchase their crofts and sell them on the open market, often for house-sites, after they have been removed from crofting tenure (decrofted). The process of decrofting and selling land on the open market can have negative implications both for crofting and for territorial or ‘place-based’ crofting communities. Firstly, it reduces the pool of land available for crofting in these locations. Secondly, the stock of affordable housing in crofting communities diminishes if the purchase of existing or newly built houses on decrofted land is beyond the financial means of local people. Thirdly, and more generally, links between crofting and population retention are weakened when houses on decrofted land are used as holiday or ‘second’ homes rather than as permanent residences.

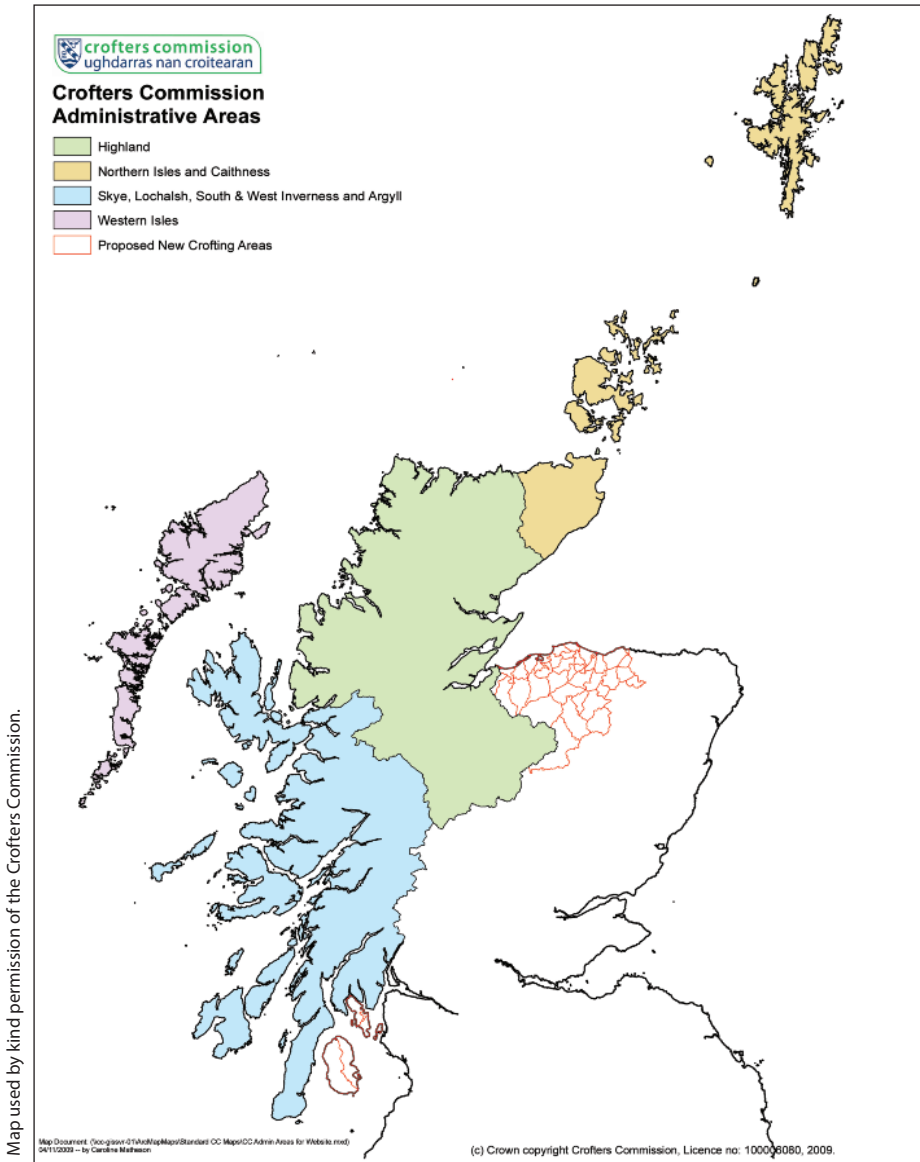
#### The ‘Shucksmith Report’ and the Scottish Government’s Response

As a consequence of the above factors, a process of crofting reform was initiated by the previous Labour-Liberal Democrat

coalition government and continued by the current Scottish National Party (SNP) minority government. This resulted in the passing of the Crofting Reform Act in early 2007 which, in draft form, raised concerns that market speculation in croft land would be given free rein. A controversial passage through its consultation and committee stages led to the Act’s provisions being amended to cover more prosaic definitional and administrative matters.

Shortly after the Crofting Reform Act’s introduction the Labour-Liberal Democrat coalition government established a Committee of Inquiry on Crofting (ColoC) chaired by Professor Mark Shucksmith. The Committee’s report, published in May 2008, presented a vision for the future of crofting encompassing growing, prosperous, inclusive and sustainable crofting communities; more resident, active crofters; and effective regulation of crofting in the interests of communities and the crofting system (ColoC, 2008). This vision was underpinned by a radical set of recommendations (see Box 2).

The broad thrust of the Committee’s vision was that a new balance was needed



**Figure 1: Crofters Commission Admin Areas**

between the interests of individual crofters and the wider interests of the crofting system to enable the latter to remain viable and play its full part in sustaining rural communities in the Highlands and Islands. This is in line with contemporary thinking on rural policy which shifts the focus from traditionally dominant but narrowly defined 'functional' communities of interest to wider and more inclusive 'place-based' community development (Bryden, 2007). In turn, the Committee's vision also resonated with what the OECD calls 'the new rural paradigm' in which rural competitiveness is driven by local assets and resources, broadly based rural economies, investment rather than subsidy, and the involvement of different levels of government and various local stakeholders (OECD, 2006).

The Scottish Government has responded to the Committee of Inquiry's

recommendations in two ways: firstly, by transferring responsibility for crofting community development from the Crofters Commission to Highlands and Islands Enterprise through its Growth at the Edge initiative as of April 1st 2009; secondly, by initiating a public consultation process, which concluded in August 2009, on legislative proposals contained within a draft Crofting Reform (Scotland) bill (Scottish Government, 2009). These proposals are organised around the issues of 'Governance', 'the Crofting Register', 'Support for Croft Housing', an 'Occupancy Requirement', and 'Crofting Regulation'.

The Scottish Government does not propose to abolish the Crofters Commission, as was recommended by the Committee of Inquiry. Instead, a renamed Crofting Commission would have new governance arrangements with six area committees, of up to 12 members each, responsible for

regulatory decision-making in their regions. As well as devolving regulatory responsibility from the current 7 Commissioners, each area committee would also broaden such responsibility by including a majority of crofters (elected by crofters) and also non-crofters (including landlords and community trust representatives) as members. If and when these arrangements are established through statute, their successful implementation will be crucially dependent upon the extent to which a fit can be found between the interests of crofters and the wider community in interpreting the committees' regulatory responsibilities.

The bill also proposes strengthening a restructured Commission's approach to regulation by requiring it to take action on absenteeism 'unless there is good reason not to' (Scottish Government, 2009). 'Good reason' may be something of a moveable feast however and what constitutes 'acceptable' and 'unacceptable' absenteeism merits further careful consideration.

While the bill's proposal to establish a new and definitive Register of Crofts seems a sensible step in providing legal certainty regarding the extent and interests in crofts, concerns have been raised regarding the prospect of crofters having to pay a £250 registration fee. Moreover, the bill's proposal to enable a standard security to be taken over a croft tenancy to secure a bank loan is viewed in some quarters as a direct threat to the ethos of security of tenure on which the crofting system is founded (Macleod, 2009).

The bill also contains a proposal relating to the thorny issue of 'occupancy requirements', recommended by the Committee of Inquiry as an antidote to absenteeism and 'second home syndrome' by tying croft houses to residency. However, this proposal was subsequently withdrawn by the Scottish Government in October 2009 in the face of widespread opposition.

**Conclusions**

The longer term prospects for the survival of the crofting system remain uncertain. Legislative proposals contained in the Crofting Reform (Scotland) Bill signal the Scottish Government's intention – on the surface at least – to tackle the elephant on the croft; namely, reconnecting concepts of 'function' and 'place' within the context of the crofting communities of the future. Transferring crofting's development

function to Highlands and Islands Enterprise suggests a recalibration of influence from the narrowly defined functional interests of 'communities of crofters' towards the broader and more inclusive place-based interests of 'crofting communities' in which crofting tenure predominates but which also encompass other, non-crofting, residents and functions (Bryden, 2007). Similarly, the proposed changes to governance arrangements for the regulation of crofting indicate a model of decision-making which is increasingly decentralised and widened to include the perspectives of crofters and other stakeholders.

Notwithstanding the current focus on administrative and legislative reform, the path towards a reconnection of function and place within the context of crofting remains tricky policy ground to navigate for two linked reasons. Firstly, the individual property rights granted to crofters in the 19th century sit uneasily with the shift towards place-based community land management evident in the early 21st century. Secondly, the demographic, policy and economic factors discussed earlier in this paper have undermined crucial elements of what policymakers and other stakeholders describe as a unique 'crofting way of life' (Scottish Government, 2008). These elements have historically included a shared sense of cultural identity and values, a focus on stewardship of land and small-scale, communal crofting activity orientated predominantly but not exclusively towards agricultural production and livestock management. The fundamental challenge for the Government and other stakeholders is how to reconcile the politics of interest and place within the economic, social, cultural and environmental contexts that crofting now inhabits.

The Scottish Government has only partly addressed that challenge thus far because its responses to the Committee of Inquiry on Crofting's report are essentially process-orientated. Two critical questions remain largely unanswered. Firstly, what is the contemporary purpose of crofting? Secondly, where does crofting fit within the strategic context of rural development within the Highlands and Islands? Notwithstanding the devolved nature of the 'new rural paradigm' as outlined by the OECD, the Scottish Government has a responsibility to establish a clear strategic policy framework for crofting, together with an appropriate range of policy instruments (regulatory, financial, informational) and resources to put that strategy into practice. At the same time, it is vital to recognise that if crofting is to have continuing relevance in the Highlands and Islands of the 21st century it must reconnect to wider place-based developmental objectives within the communities in which it is practised.

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