

2017 Crofting Elections

2017 Crofting Elections

© Crown copyright 2016



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78652-175-0

Published by The Scottish Government, March 2016

Foreword from Minister

Crofting makes a vital contribution to the economy, environment and communities in Scotland's rural areas. There are over 18,000 crofts with around 30,000 people living in crofting households. In 2014, the sector generated an estimated revenue of almost £86 million.

The Scottish Government is committed to doing all that it can to support a vibrant future for crofting for the benefit of present and future generations.

This aim is shared by the Crofting Commission. The Commission fulfils a crucial role as the regulator of crofting, taking decisions in a transparent and consistent manner across all crofting areas. In 2012, the Commission gained new powers and a new way of selecting its Board, with the introduction of elected Commissioners, complemented by continued appointment of some Commissioners by the Scottish Ministers.

Over the course of the last 4 years, the Crofting Commission has made a number of changes to its processes which will improve its ability to take decisions efficiently and improve the service received by its customers. These changes have been driven by the Commission's senior management team and by its Commissioners who, while bringing their local knowledge and a great deal of individual experience to their role, have worked together for the good of all crofters. I am fully supportive of the improvements the Crofting Commission has implemented so far and welcome further developments to enable it to act as an effective regulator, now and for the foreseeable future.

The terms of Commissioners elected in 2012 are now coming to an end and preparations are underway for the next elections in March 2017. The Crofting Commission is one of a small number of public bodies which have elected Board members, but the Crofting Commission is unique in having the majority of its Board members elected by the people they serve. The first crofting elections in 2012 were also ahead of their time in allowing 16 and 17 year old crofters to vote – something which proved successful for the crofting elections and was subsequently successful in the referendum. In the next elections, I am keen to encourage a diverse range of candidates to stand for election and want to encourage all crofters to take the opportunity to make their vote count.

The Scottish Government is now seeking views of crofters on a number of matters relating to the March 2017 crofting elections, as set out in this consultation.

I would encourage as many crofters as possible to play their part in securing the future of crofting by cultivating and maintaining their crofts, taking an active role in their communities and by voting in the next crofting elections in March 2017.

DR AILEEN MCLEOD, MINISTER FOR ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM.

Contents

1.	Introduction	Page 3
2.	Background: What does the Crofting Commission do?	Page 5
3.	Consultation	Page 6
	Part 3.1 Constituencies	Page 6
	Part 3.2 Voters	Page 12
	Part 3.3 Candidates	Page 14
	Part 3.4 Elected Commissioner Vacancies	Page 16
	Part 3.5 Encouraging Diversity	Page 18
	Part 3.6 Expenses	Page 20
	Part 3.7 Business and Regulatory Impact	Page 21
	Part 3.8 Other Comments	Page 21
4.	Responding to this Consultation	Page 22

1. Introduction

The first crofting elections took place in 2012 with the next crofting elections due to take place in March 2017. The elections will result in 6 people from the 6 constituencies that make up the crofting counties and areas being elected as members of the Crofting Commission's Board.

The Crofting Commission Board's principal responsibility is to ensure the effective governance and operation of the Crofting Commission. It is important that as well as holding the required skills and experience, those elected to serve on the Board have a knowledge and understanding of crofting.

It is also important that the election process is undertaken in a way that encourages prospective candidates with appropriate experience to stand. Work is already underway between the Scottish Government, the Crofting Commission and Comhairle nan Eilean Siar to deliver a free, fair, open and transparent election process.

We want crofters to play their part in making sure the elections are a success. A key part of this will be encouraging people to stand for election as Crofting Commissioners who have the right skills, experience and passion for making a difference to the lives of crofters on the ground. This might be you or it might be someone you know in your community.

In the run up to the elections we will provide further information which will make clear to prospective candidates what the role of a Commissioner involves. We think that this will help people to decide whether they want to stand and help crofters decide who to vote for. We would also like you to raise awareness about the elections with crofters in your area so that we can get the highest turnout possible next year.

Right now, we are asking crofters, and others with an interest, to provide their views on some key aspects of about the election, including:

- the boundaries for the 6 constituency areas
- who should be able to vote in the elections
- who should be able to stand for election

We would also like your views on some points of detail such as:

- the process for appointing a new Commissioner should a vacancy arise before the 2022 crofting elections
- the maximum amount of election expenses

We would also like to hear ideas about how to improve the diversity of the people standing for election as Crofting Commissioners. We are particularly keen to encourage more women to stand for election. The Scottish Government's wider aim is to improve the gender balance of Boards as part of our Partnership for Change 50/50 by 2020 campaign. We would also like to understand any implications for businesses, the third sector or public bodies as a result of the election process.

It is intended that most of the detail of the process for the next elections, including other procedural details of how the elections will be administered, will remain largely unchanged from 2012. If you would like to see details of these electoral processes, the law governing the 2012 crofting elections can be found here:

<http://www.legislation.gov.uk/ssi/2011/456/contents/made>

You can answer as many or as few of the questions in this consultation as you wish – you need not answer them all. Further details on how we will use your consultation responses and next steps in the process are included at the end of this consultation paper.

We are committed to keeping crofters informed of developments in this important area in the run up to the vote in March 2017, including through the Scottish Government's website: <http://www.gov.scot/Topics/farmingrural/Rural/crofting-policy>

2. Background: What does the Crofting Commission do?

Crofting

- The land in crofting tenure equates to around 1.7 million acres, or 700,000 hectares.
- This is approximately 25% of the land mass of the Highlands and Islands
- There are over 18,000 crofts and over 14,000 crofters

Crofting Commission

- Receives around 1,000 regulatory applications every year
- Has approximately 59 staff, based in Inverness
- Has a network of around 80 assessors, based in crofting communities.
- The Commission's Board is made up of 9 Commissioners, 6 elected by crofters and 3 appointed by the Scottish Government.
- The number of elected Commissioners will remain the same for the 2017 crofting elections.

The Crofting Commission is the regulator of crofting. Its role includes:

- Acting to enforce crofters duties to be resident on, maintain and cultivate (or make other purposeful use of) their crofts.
- Taking decisions on regulatory applications such as decroftings and apportionments.
- Maintaining the Register of Crofts and carrying out the annual crofting census.
- Supporting grazings committees by producing templates for grazings regulations.
- Promoting the interests of crofting and participating in a number of groups where crofting is discussed.

The Crofting Commission's Board provides leadership, direction, support and guidance to ensure the Crofting Commission delivers its functions effectively and efficiently. It promotes the efficient, economic and effective use of staff and other resources by the Crofting Commission and makes sure that that robust arrangements are in place in terms of financial management.

The Crofting Commission is unique as a public body in having a Board where the majority of its members are elected by the people it regulates.

Elected Commissioners are voted in by crofters from a particular geographical area. Once elected, Commissioners work together alongside appointed Commissioners for the good of all crofters – they do not work to further the interests of their constituency alone.

Details on some of the key skills that Commissioners require to have are provided on the [Scottish Government's website](#). This includes requirements set out in crofting law, such as a representative for landlords' interests and for at least one Board member to speak Gaelic. It is also important that some Commissioners have other skills – for example in financial management. Having appointed Commissioners in addition to elected Commissioners allows the Scottish Government to fill any skills gaps considered to be vital to the functioning of the Board.

3. Consultation

3.1 Constituencies

The first area where we would like to hear the views of crofters is on the best way to divide up the crofting areas into 6 constituencies.

- There are over 18,000 crofts.
- There are approximately 1,000 common grazings
- The Highland Council area has the most crofts with over 9,000
- Comhairle nan Eilean Siar is second with over 6,000
- 73% of crofts are tenanted, 27% owner-occupied
- There are regional variations – 84% of crofts in Orkney are owner-occupied

There were 6 constituencies at the last crofting elections, these were:

- East Highlands
- Orkney
- Shetland
- South West Highlands
- Western Isles
- West Highlands

We consulted on constituency boundaries for the 2012 crofting elections and used the boundary model that received most support in consultation responses.

When looking at what the constituency boundaries should be for this election, the Scottish Government has used data from the Register of Crofts to make the number of crofts in the 6 constituencies more equal. We have also taken into account the geographical accessibility of different areas.

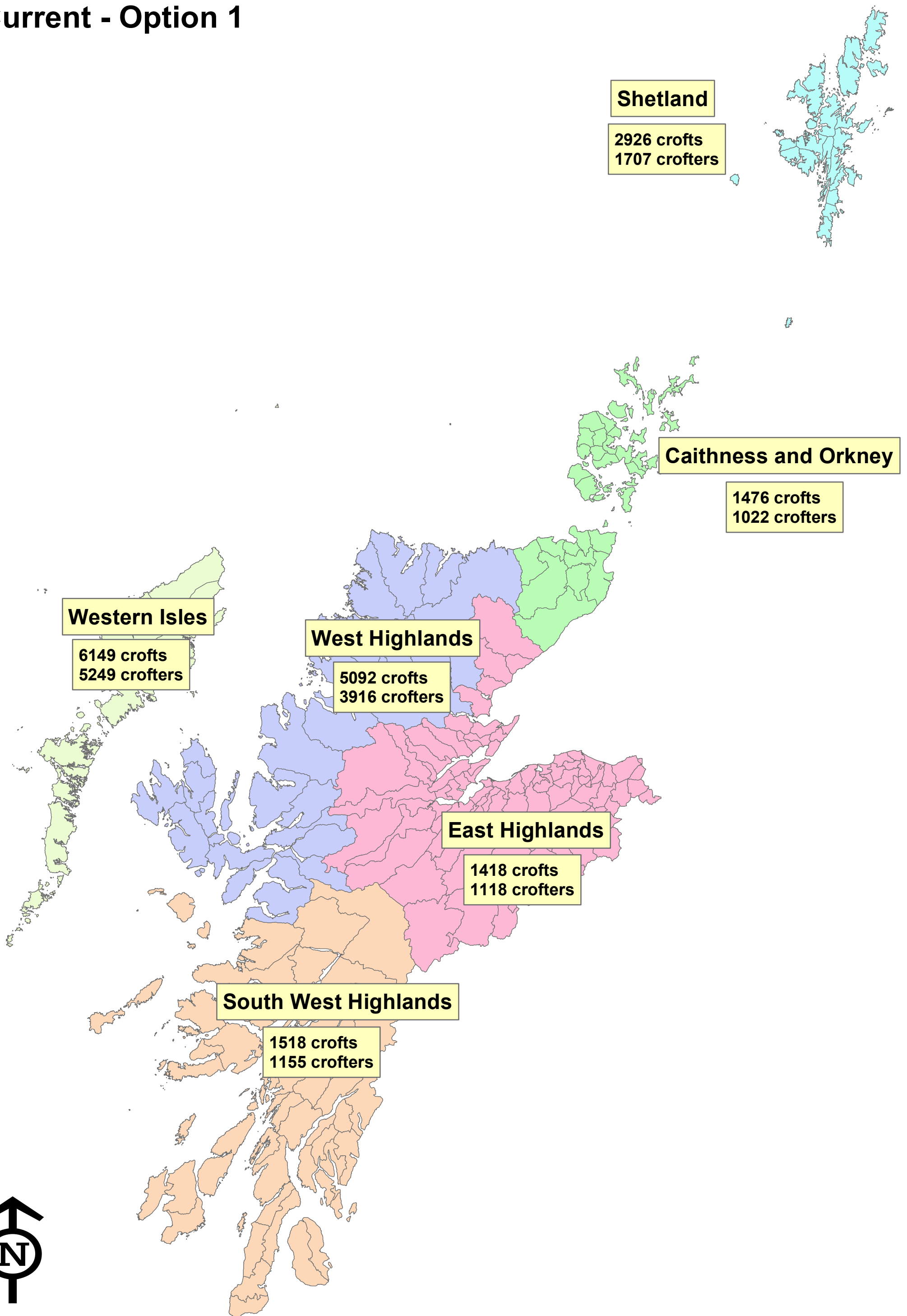
We have done this in response to feedback about the constituency areas used for the last elections. For example, it has been suggested that having 1 constituency for the Western Isles, containing almost one third of all crofts, is too large both in terms of number of crofts and difficulty in covering the number of islands the constituency contains. One solution to this that has been suggested is that this constituency should be divided into 2.

Other suggested changes to constituency boundaries include combining Caithness and Sutherland into 1 constituency which would reduce the number of crofts and geographical areas covered by the 2012 West Highland constituency. Taking forward this suggestion would be likely to require Shetland and Orkney to be combined as 1 constituency. They were separate in the 2012 election but the Orkney constituency also contained Caithness.

In order to help crofters decide what constituencies would be best to use for the 2017 elections, the Scottish Government has worked with the Crofting Commission, using information from the Register of Crofts, to prepare 3 constituency map options. These make clear where the proposed constituency boundaries will be.

The 6 constituencies used for the last crofting elections are set out as option 1. Alternative options for the 6 constituencies, based on number of crofts and geographical distances, are set out as option 2 and option 3. All options show the proposed constituency boundaries, the number of crofts and the approximate number of crofters that would be included in each constituency. For all options, each constituency would return one elected member using the Alternative Vote method who would then take up their position on the Commission's Board.

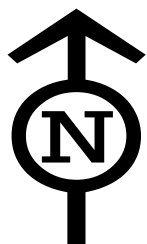
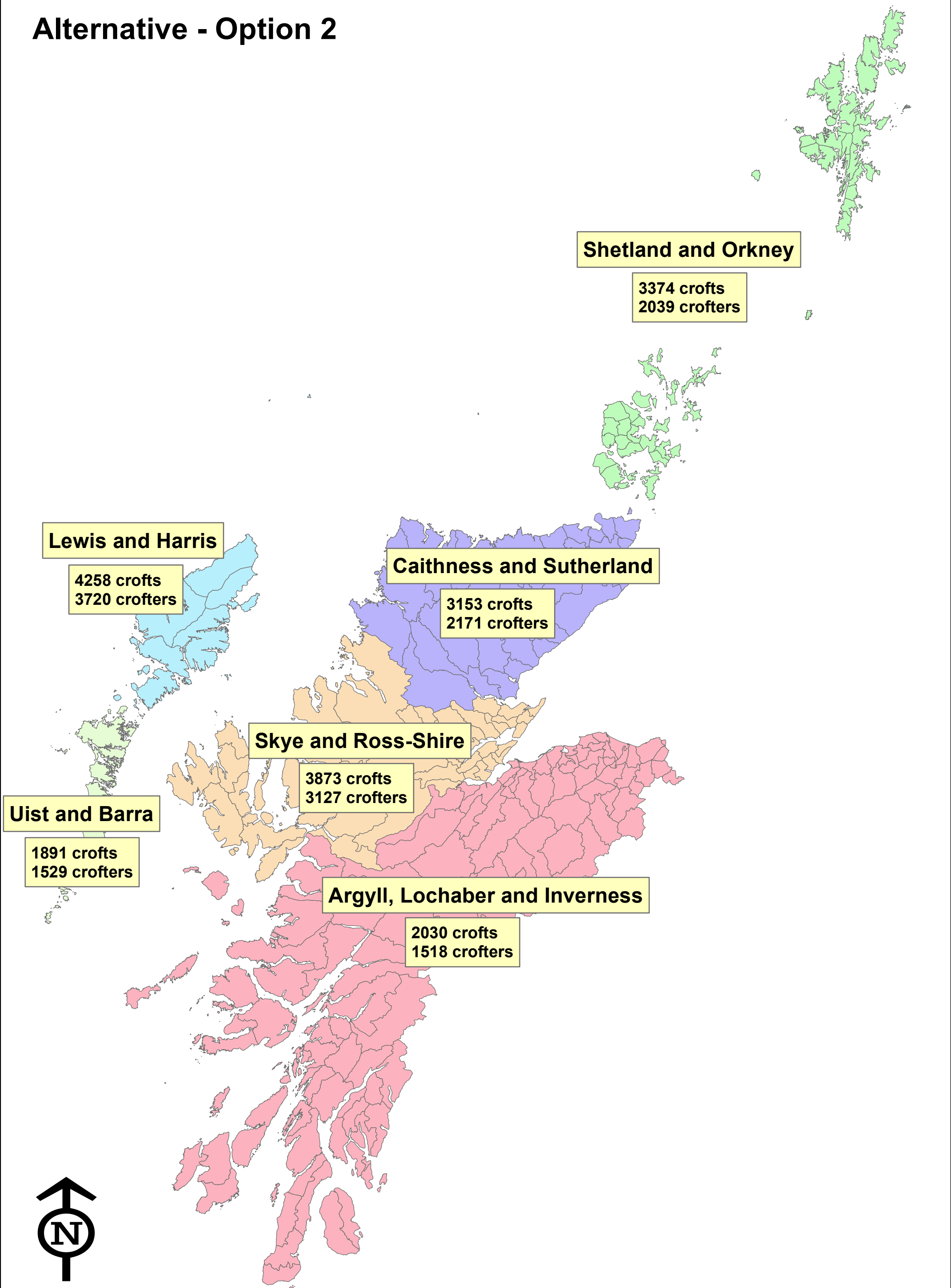
Current - Option 1



1:1,600,000

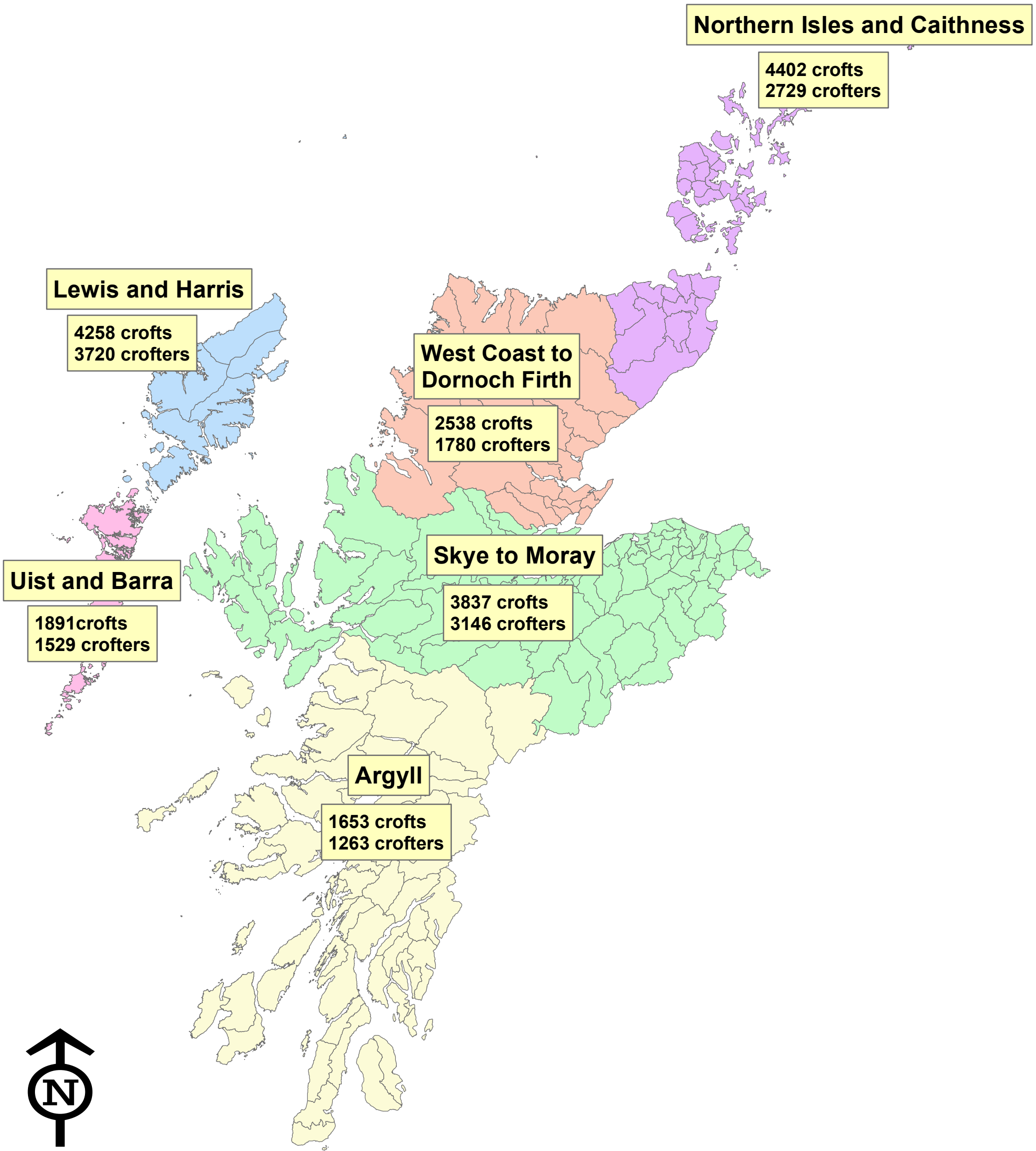
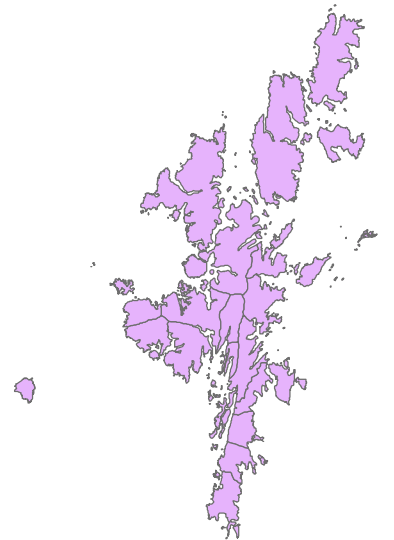
© Crown copyright. All rights reserved Crofting Commission, 100006080, 2016.

Alternative - Option 2



1:1,600,000

Alternative - Option 3



1:1,600,000

© Crown copyright. All rights reserved Crofting Commission, 100006080, 2016.

1. Please indicate whether you prefer option 1, option 2 or option 3 as the way to divide the crofting counties into 6 constituencies.

1 2 3

Please can you explain your answer.

2. Please set out any other comments in relation to constituencies here:

Comments

3.2 Voters

For the 2012 crofting elections:

- 10,877 ballot papers were issued
- 4,513 ballot papers were returned
- 41.5% turnout

Who can vote?

Currently only registered crofters (including those of deemed crofts) and owner-occupier crofters aged 16 years or older can vote in the crofting elections.

The 2012 election operated on the basis of one vote per croft but a crofter could only have one vote no matter how many crofts they had. If a crofter had crofts in more than 1 constituency, the constituency where they were eligible to vote was the one where they lived. For a very small number of more complex cases where the crofter did not reside in the a constituency where any of their crofts were located, a decision on the constituency where a crofter was eligible to vote was taken by the Chief Executive of the Crofting Commission.

The Scottish Government is not proposing any changes to voter eligibility from that set out above.

Who can't vote?

Whether spouses or family members should be able to vote was considered as part of the consultation process for the last crofting elections. However, it was concluded that allowing more than one person to vote from a crofting household would be unfair as some crofters are single whilst others have large households. To allow all members of a crofter's household to vote would give those crofters with large households disproportionate voting power. As it is the crofter and the croft that is subject to regulation, it would appear to make sense that the crofter alone is allowed to vote.

The Scottish Government thinks that crofters who are not fulfilling their residency duty should not be allowed to vote in the 2017 election. However, we suggest that those crofters who have been granted consent to be absent, and those whose applications to sublet their crofts have been approved, and owner-occupier crofters whose applications to lease their crofts on a short lease have been approved, should be eligible to vote. This is the same basis on which the 2012 crofting elections operated.

At present, the Scottish Government does not think that voter eligibility should be restricted any further. However, we would like to understand crofters' views on whether there should be any other clearly defined reasons why crofters should not be allowed to vote.

Any decision to increase the reasons why crofters were not allowed to vote would need to be taken after considerable thought about the implications and fairness of this – including whether reliable evidence is available in order to support the further restriction of voter eligibility

3. Should voter eligibility operate on the same basis as for the 2012 crofting election?:

Yes No

Please can you explain your answer.

4. If you have any other comments on voter eligibility please include these here:

Comments

3.3 Candidates

In the last crofting elections:

- 29 people stood for election
- 9 people stood in the West Highlands, the highest of the 6 constituencies
- 1 person stood in Orkney and Caithness, the lowest number

Who can stand for election?

Currently, any registered crofter or owner-occupier crofter who is at least 16 years of age can stand for election. A crofter can only stand for election in the constituency where they live.

In addition, someone who is not a crofter can stand for election if they are nominated by a crofter. This method of nomination is set out in crofting primary legislation and so must be included in the regulations. The nominated person can stand for election in the constituency that the crofter who nominate lives in. If someone is nominated by crofters in more than one constituency then they must decide which constituency they wish to stand in – they cannot stand in more than one. A crofter may only nominate one person for election – they cannot nominate multiple candidates.

Who cannot stand for election?

People who are, or have in the last year been, MSPs, MPs and MEPs cannot stand for election as Crofting Commissioners. Crofters who the Crofting Commission has determined are not meeting the residency duty cannot stand for election. However, we suggest that those crofters who have been granted consent to be absent, and those whose applications to sublet their crofts have been approved, and owner-occupier crofters whose applications to lease their crofts on a short lease have been approved, should be eligible to stand. This is the same basis on which the 2012 crofting elections operated.

Changes to crofting law in 2010 put the duties to not neglect the croft and to cultivate the croft (or put it to another purposeful use) on the same footing as the duty to be resident.

Given that the role of a Crofting Commissioner involves putting a framework in place to regulate crofting, the Scottish Government wants to know if crofters think that candidates standing for election should be required to meet their other duties – cultivating their croft (or putting it to another purposeful use) and not neglecting their croft

If we were to extend the restrictions on those who can stand then it would be important to consider whether reliable evidence is available in order to support this and if the person affected has had an opportunity for their case to be heard. It is likely that restricting eligibility to stand because of breach of the maintenance and cultivation duties could only be applied if the Crofting Commission had made a determination on a particular case - in a similar way to that applied to crofters in breach of the residency duty.

If the Scottish Government were to increase the requirements for crofters to be able to stand for election, it is not clear what additional requirements, if any, should be in place for non-crofters who are nominated.

5. **Should a crofter who the Crofting Commission has determined is not complying with the duty to cultivate their croft, or put it to another purposeful use, be disqualified from standing for election as a Crofting Commissioner?**

Yes No

Please can you explain your answer.

6. **Should a crofter who the Crofting Commission has determined is neglecting their croft be disqualified from standing for election as a Crofting Commissioner?**

Yes No

Please can you explain your answer.

7. **If you have any other comments on candidate eligibility please include these here:**

Please can you explain your answer

3.4 Elected Commissioner Vacancies

At present, the only way to select a replacement Commissioner should an elected Commissioner leave their post part way through their elected term is for Scottish Ministers to appoint a replacement.

This happened in 2012 when a 2nd placed candidate in the East Highlands constituency was subsequently appointed as a Commissioner by the Scottish Government following the resignation of a Commissioner. However, it may be helpful to make the process of what should happen in cases like this clearer.

We think that appointing a 2nd placed candidate as a Commissioner would usually be the best way to proceed but it may be that person no longer wishes to be a Commissioner. In that case it may be that the 3rd placed candidate should have the opportunity to become Commissioner and so on for however many candidates stood in that constituency.

If only one candidate stood for election in a constituency, or if none of the other placed candidates accepted office, then we think that the Scottish Government should be able to leave the vacancy unfilled until the next election, depending on how far into the election term the vacancy arises. Alternatively, in the absence of any original candidates wishing to become Commissioners, the Scottish Government should be able to select someone to fill the vacancy.

It has been suggested by some crofters that holding a by-election might be another route by which to fill a vacancy, however, crofting law does not allow a vacancy to be filled in this way. If this is a mechanism that crofters would like to see then this could be one of the matters that can be considered as part of the wider work on simplification of crofting law that is underway.

8. Should an elected Commissioner vacancy that arises before the 2022 crofting election be filled by:

a) the next available placed candidate in that area?

Yes No

Please can you explain your answer.

b) appointment by the Scottish Government?

Yes No

Please can you explain your answer.

c) remain as a vacancy if it is a year or less until the next election?

Yes No

Please can you explain your answer.

3.5 Encouraging Diversity

- 34% of crofters are women
- At the last crofting elections 4 of the 29 candidates were women, 1 was elected.
- Currently 2 of the 8 Crofting Commissioners are women

- The average age of a crofter is 58
- 12% of crofters are 40 or under
- The average age of the current Commissioners is 60.

It is important the Crofting Commission has a Board that is representative of crofters. Bringing together people with a broad and diverse range of backgrounds, views and experiences as Commissioners allows a fuller discussion of important issues and the opportunity to devise creative solutions to the challenges facing crofting.

The Scottish Government is committed to Ministerial public appointments across public bodies becoming more diverse and being broadly representative of the general population. Over 70 of Scotland's public bodies have committed to having a gender balance on their Boards by 2020, as part of the Scottish Government's Partnership for Change 50/50 by 2020 campaign. The Crofting Commission has not made this commitment, as the majority of its Commissioners are elected by crofters – who should have the final say on who is elected as their representative. Around one third of crofters are women and at present 2 of the 8 Commissioners are female. The Scottish Government is keen to do whatever we can to encourage the diversity of elected and appointed Board members be that in terms of age, gender, disability or ethnicity.

The Crofting Commission has already taken steps to improve the diversity of its Board in the future and is committed to continuing to do so. For example, it recently arranged for two young crofters to be mentored by 2 current Crofting Commissioners to help them understand what a Commissioner's job involves. This included attending a Crofting Commission Board meeting, discussing what a Commissioner does with their mentor and a meeting with the Crofting Minister, Dr Aileen McLeod. The Commission expects to continue to work with other young crofters in this way and is continuing to consider what else it could do in this important area – for example if the format and timing of its meetings could be changed to make it easier for people who work full time or have caring responsibilities to attend.

The Scottish Government will encourage a diverse range of candidates to stand in as many ways as possible: using social media, video clips, public awareness raising and stakeholder networks to encourage people with different backgrounds to stand for election, in particular women and young crofters.

We would very much welcome suggestions on any other ways to encourage a diverse range of candidates to stand for election, including any additional support that the Scottish Government or Crofting Commission could provide to help this happen.

We would also like to make sure that all crofters are able to participate in the elections. If you think that the crofting elections will have a particular impact on any equalities group it would be helpful if you could set these out.

9. Do you have any suggestions for how the diversity of the elected Crofting Commissioners can be increased?:

Yes No

Please can you explain your answer.

10. Do you think that the crofting elections will have a particular impact on any equalities groups?

Yes No

Please can you explain your answer.

3.6 Expenses

For the last election, the limit that a candidate could spend on campaign expenses was £600.

A number of constituencies are large, or include a number of islands, and in order to speak to crofters across the whole constituency candidates may be required to travel considerable distances which may lead to costs in excess of £600. Similarly, hire of a hall for a meeting can be expensive. Therefore, it may be that the upper limit for expenses should be increased.

If this was to be done, we think it would be important not to raise the maximum spend so high that only very well-off crofters would be able to campaign effectively for election, discouraging less well-off crofters to stand.

We would welcome suggestions on the correct amount to set as the limit for campaign expenditure and on any additional support that the Scottish Government or Crofting Commission could provide to help this happen.

11. Should the limit of election expenses for candidates be increased from £600 to £700 ?

Yes No

Please can you explain your answer.

12. Please include any other comments about election expenses or the process for declaring expenses here:

Please can you explain your answer.

3.7 Business and Regulatory Impact

The Scottish Government is committed to consulting all organisations that will be potentially affected by proposals for new regulation, or where any regulation is being changed significantly.

All policy changes which may have an impact upon business or the third sector should be accompanied by a Business and Regulatory Impact Assessment (BRIA).

The BRIA helps us to use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. Through consultation and engagement with business, the costs and benefits of the proposed legislation can be analysed. It also ensures that any impact on business, particularly small enterprises, is fully considered before regulations are made.

In order for us to help us with this process, we would be grateful if you could let you know any impact you think the crofting elections may have on businesses, public bodies or the third sector.

13. Do you think the crofting election will have impacts on businesses, public bodies or the third sector ?:

Yes No

Please can you explain your answer.

3.8 Other comments

14. If you have any other comments on arrangements for the crofting elections, please include these here:

Comments

4. Responding to this Consultation

We are inviting responses to this consultation by 22 June 2016.

Please respond to this consultation online at <https://consult.scotland.gov.uk/agriculture-and-rural-communities/2017-crofting-elections>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 22 June 2016.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) and send to:

The Scottish Government
Crofting Policy Team
D Spur, Saughton House
Broomhouse Drive
Edinburgh
EH11 3XG

Handling your response

If you respond using Citizen Space, you will be automatically directed to the **Respondent Information Form** at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached to the end of this document 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 will treat it accordingly.

All respondents should be aware that the Scottish Government is 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 said Act for information relating to responses made to this consultation exercise.

Next steps in the process

After the consultation has closed we will analyse the responses received and these will inform the decision making process for how the crofting elections will operate. Where respondents have given permission for their response to be made public, we will publish these responses and, thereafter, publish a report of the analysis of the consultation responses.

The regulations that allow the crofting elections to take place are expected to be laid before Parliament in October 2016. The crofting elections themselves will take place in March 2017. We will provide updates on progress on the [Scottish Government's crofting webpages](#):

If you have any questions please contact: CroftingElections@gov.scot



**The Scottish
Government**
Riaghaltas na h-Alba

© Crown copyright 2016

ISBN: 978-1-78652-175-0

This document is also available on The Scottish Government website:
www.gov.scot

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS67986 (03/16)

w w w . g o v . s c o t