

# **Consultation on Crofting Elections**

## **Analysis of consultation responses**

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# 1. Executive Summary

The Scottish Government wishes to raise awareness of the forthcoming crofting election and ensure that it is transparent and fair. The election for appointments to the Crofting Commission's Board will take place in March 2017.

The Scottish Government issued a consultation paper on 18 March 2016 seeking wider views on key aspects of the election.

15 responses were received, five from organisations and ten from individuals. A summary of views from the responses follows.

## Constituencies

Of the three options proposed by the Scottish Government for constituency boundaries, a clear majority of respondents preferred option 2 as a way to divide the crofting counties into six constituencies<sup>1</sup>. This was perceived to be fair and equitable for all areas with a relatively balanced spread of crofters and croft numbers in each constituency. The remaining respondents favoured option 1.

It was highlighted that however elected, Commissioners have a remit to work for the good of all of the crofting community and not just their respective constituency areas.

## Voters

Most of those providing a view agreed that voter eligibility should operate on the same basis as for the 2012 crofting election, in which there was one vote per croft but a crofter with more than one croft was limited to one vote.

A few respondents recommended that the crofting census data form the basis of the voter register.

## Candidates

The majority view was that a crofter whom the Crofting Commission has determined is not complying with the duty to cultivate their croft, or put it to another purposeful use, should be disqualified from standing for election as a Crofting Commissioner. Several respondents remarked that Commissioners must lead by example.

All but one respondent agreed that a crofter whom the Crofting Commission has determined is neglecting their croft should be disqualified from standing for election.

A few respondents emphasised the need for more information for potential candidates on what the role of Crofting Commissioner entails.

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<sup>1</sup> <http://www.gov.scot/Publications/2016/03/2099/325928> links to the section on options in the consultation document.

## **Elected Commissioner Vacancies**

Most respondents were content that should an elected Commissioner vacancy arise before the 2022 crofting election, then the place should be filled by the next available placed candidate in that area. This was viewed as fair and would prevent delays in filling the vacancy.

The most common reason given in opposition to this proposal was that a by-election would be preferable.

Most of those providing a view perceived a Scottish Government appointment to fill a vacancy to be an option of last resort.

There were mixed views on whether a vacancy emerging a year or less prior to the next election should remain vacant until the election. Some considered that more than one vacancy could emerge, which if left unfilled could result in the remaining Commissioners being over-stretched and some constituencies under-represented.

Others, however, felt that Commissioners appointed at this late stage in term would have little mandate and have limited opportunities to be effective.

## **Encouraging Diversity**

A recurring view was that there should be more active encouragement of target groups in order to increase the diversity of Commissioners. Various recommendations were made to encourage more women and young people to become involved, including demonstrating the value placed on their contribution.

A few respondents raised the possibility of applying quotas to increase the number of women Board members, perhaps based on the proportion of female crofters.

Most respondents did not consider that the crofting election would have a particular impact on any equalities groups.

## **Expenses**

A majority of respondents thought that the current limit of election expenses for candidates should be increased to take account of increased costs of travel, overnight stays, hall hire, postal charges and advertising.

A few respondents argued for restricting the expense limit, which they considered could potentially increase the pool of respondents, in particular to involve those less well off.

A general view was that expenses should be transparent, accounted for and made public.

## **Business and Regulatory Impact**

Most of those providing a view did not think that the crofting election would impact significantly on businesses, public bodies or the third sector. Others felt that there might be implications, both direct and indirect, depending on the decisions of the Crofting Commission.

## **Other Comments**

A key theme was that Commissioners should have the necessary skills and support required for their role. A previous theme was repeated that clearer information on what is involved in being a Commissioner should be available to prospective candidates. On-going training for Commissioners was called for.

Ideas for ensuring consistency in skills and experience amongst Commissioners included staggering elections across constituencies; and strategic in-filling of Commissioners by the Scottish Government through Ministerial appointments to address gaps in skills on the Board.

## 2. Introduction

The first crofting election took place in 2012 with the next due in March 2017. The election is for appointments to the Crofting Commission's Board which provides leadership and support to the Crofting Commission, the public body which regulates crofting.

Six people from the six constituencies that make up the crofting counties and areas will be elected to the Board. Most of the Board members are elected by the people regulated by the Crofting Commission; the remainder are appointed by the Scottish Government.

Board members need to hold the required skills and have relevant experience to undertake their role in addition to having knowledge and understanding of crofting. In 2012 there was a 41.5% participation rate in the postal vote for the election with 29 candidates put forward for election. The importance of having a range of suitable candidates emerged as key, with diversity in candidates a central aim. A particular emphasis was given to encouraging more women and young people to stand for election.

The Scottish Government wishes to raise awareness of the forthcoming crofting election and also ensure that the election is transparent and fair. To this end they issued a consultation paper seeking wider views on key aspects of the election: the boundaries for the six constituency areas; who should be able to vote in the election; and who should be able to stand for election; the process of appointing a new Commissioner should a vacancy arise before the 2022 crofting election; and how to encourage a diverse range of candidates to stand for election.

The consultation contained 13 questions and was published on 18 March 2016 with views invited by 22 June 2016.

### Consultation responses

The Scottish Government received fifteen responses to the consultation. Ten of these were from individuals; five were from organisations. The organisations which responded represented a range of stakeholder categories. Table 2.1 overleaf lists the respondents to the consultation by their category.

**Table 2.1: Respondents to the consultation**

<b>Respondent</b>	<b>Category of respondent</b>
Community Land Scotland	Representative body
National Farmers' Union Scotland	Representative body
Scottish Crofting Federation	Representative body
Comhairle nan Eilean Siar	Local Government
Storas Uibhist	Community Company
Individual respondents	10 individuals

## **Analysis of responses**

The analysis of responses is presented in the following eight chapters which follow the order of the topics raised in the consultation paper. 13 questions were posed by the consultation inviting a mix of closed and open responses. The analysis of responses to these is based on the views of those who responded to the consultation which are not necessarily representative of the wider population and cannot be extrapolated further.

All respondents used Citizen Space, the online system established to receive consultation responses, to submit their views. This database was exported by the analyst to an Excel database for detailed analysis.

## 3. Constituencies

### Background

There were six constituencies at the last crofting election. These were decided on following consultation prior to the election and based on the boundary model that received most support.

In considering the most appropriate boundary model for the forthcoming election the Scottish Government has used data from the Register of Crofts in order to make the number of crofts in the six constituencies more equal.

Three options for the 2017 election are proposed. Option 1 reflects the status quo. Options 2 and 3 are alternative models based on number of crofts and geographical accessibility of different areas.

The consultation contained three maps detailing numbers of crofts and crofters in each constituency to illustrate the options proposed.

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

14 respondents provided a preference for one of the options proposed. Of these, 11 preferred option 2; three preferred option 1; and option 3 was not preferred by any respondent.

Eight of the individual respondents preferred option 2, with two preferring option 1. Of the organisations, three preferred option 2 with one (National Farmers' Union Scotland) indicating their preference for option 1.

### Suggestions for further options

Comhairle nan Eilean Siar did not choose any one option over others, but instead proposed a fourth option in which the Outer Hebrides have two Commissioners but the Northern Isles also retain two Commissioners. Their rationale for this fourth option was based largely on their concerns regarding the challenge of travel to and from the Shetland Isles including the cost implications.

One individual respondent, whilst indicating a preference for option 2, proposed that Harris joins the Uist and Barra constituency, due to its historical and cultural connections with these islands. Another individual respondent agreed that Harris could usefully join Uist and Barra in order to balance the number of crofts and crofters across constituencies in the Outer Hebrides. This respondent also suggested separating Skye from Ross-Shire due to having quite different crofting issues and differences in land type, population and remoteness. They proposed

consideration of having Rosshire as part of the Inverness/Argyll area and perhaps Locharaber in with Skye.

The Scottish Crofting Federation also indicated a preference for option 2 out of the three options tabled, but suggested that more options could be considered and more constituencies drawn up. They agreed that further options could include separating Skye from Ross-Shire, separating Shetland from Orkney, and regrouping Harris with Uist and Barra.

### Benefits and drawbacks of the proposed options

Respondents provided views on the benefits and drawbacks of the options and these are summarized in Table 3.1.

**Table 3.1: Summary of views on the benefits and drawbacks of the different options.**

Option	Summary of Benefits	Summary of Drawbacks
1	<ul style="list-style-type: none"> <li>• Shetland remains a constituency in its own right.</li> <li>• Argyll is separate from the much larger constituency proposed in option 2.</li> </ul>	<ul style="list-style-type: none"> <li>• Comhairle nan Eilean Siar is challenging in terms of numbers of crofts and crofters.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Fair and equitable for all areas.</li> <li>• More even/balanced spread of crofters and croft numbers.</li> <li>• Groups similar croft types together – ensures a “connectedness” within constituencies.</li> <li>• Provides Comhairle nan Eilean Siar with two seats to reflect the higher number of crofts in that area.</li> <li>• Good that a Commissioner is elected from Uist and Barra so that their particular crofting identity is understood.</li> </ul>	<ul style="list-style-type: none"> <li>• Lewis and Harris still have by far the largest number of crofters.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Comhairle nan Eilean Siar provided with two seats to reflect the relatively high number of crofts and crofters in that area.</li> </ul>	<ul style="list-style-type: none"> <li>• Argyll left with relatively small numbers of crofts and crofters.</li> <li>• Northern Isles and Caithness left with most number of crofts and crofters.</li> <li>• Shetland loses its Commissioner.</li> <li>• Travel logistics challenging and high cost of overnight stays and travel.</li> </ul>

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

Two substantive comments were made relating to constituencies by three respondents. Two individual respondents both highlighted that Commissioners,

however elected, have a remit to work for the good of all of the crofting community and not just their respective constituency areas:

“It is important for the candidates and voters to understand they are not being elected as representatives for the area but will contribute to the overall management of the Commission and application of the legislation.”

The other respondent (an individual) considered this to be a good time to break up the constituencies even further to produce smaller areas.

## 4. Voters

### Background

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

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 one 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 constituency where any of their crofts was located, a decision on the constituency where the crofter was eligible to vote was taken by the Chief Executive of the Crofting Commission.

Only the crofter is permitted to vote, not spouses or other family members. The Scottish Government thinks that crofters who are not fulfilling their residency duty should not be allowed to vote in the 2017 election. However, they suggest that those crofters who have been granted consent to be absent, and those 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.

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

All 15 respondents answered this question with a majority of 11 respondents agreeing that voter eligibility should operate as for the 2012 election and four respondents disagreeing. All of the organisations who responded favoured the status quo which they perceived to be fair and reasonable.

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

Two respondents, the National Farmers' Union Scotland and an individual respondent, both recommended that in future the crofting census data form the basis of the voter register. One individual respondent provided their view that if a crofter does not return a completed census form then they should not be eligible to vote.

According to another individual respondent, in the 2012 election some crofters ended up with more than one ballot paper on account of having multiple crofts and their name registered in different ways for each. They emphasised that care should be taken to ensure that this situation is not repeated.

One individual commented that for the assessment of the duty compliance status, residence and activity is now dependent on a specific legal process, so excluding crofters from voting should only occur when this process has been concluded in respect of the individual crofter. They recommended that historic data relating to absentee crofters should not be used for assessments.

## 5. Candidates

### Background

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

Currently crofters who the Crofting Commission has determined are not meeting the duty to be resident cannot stand for election. 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.

### **Question 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?**

All 15 respondents answered this question with 12 agreeing with these reasons for disqualification from standing for election and three respondents, all individuals, disagreeing.

A recurring view amongst those agreeing with the proposal was that Commissioners must lead by example and being non-compliant with the duty to cultivate their croft would lead to both the Commissioner and the Crofting Commission losing credibility.

Two of the three opponents considered that this would be difficult to police, with a judgement on whether a croft is cultivated or put to a purposeful use, subject to debate. One individual argued that disqualifying a crofter from standing for election on such a subjective basis could be open to abuse.

The third opponent argued that:

“Since non crofters can stand for election it seems perverse to exclude an inactive or even non-resident crofter from standing....”

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

All 15 respondents answered this question with all but one individual agreeing with this reason for disqualification from standing for election.

Most respondents repeated their reasoning provided in relation to question 5 regarding leading by example and loss of credibility should a Commissioner neglect their croft.

The one dissenting voice repeated their previous argument that it would appear incongruous if a crofter who neglected their croft was disqualified from standing for election when non crofters or non-resident crofters were permitted to stand.

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

Few substantive comments were made by respondents. The Scottish Crofting Federation and one individual emphasised what they considered to be the importance of making potential candidates more aware of what the role of Commissioner entailed. The Scottish Crofting Federation suggested that if advertising a Commissioner job, a Job Description and Person Specification should be issued, with essential and desirable criteria that candidates need to fulfil, prior to being invited to apply.

One individual respondent recommended that would-be candidates should not be eligible if they have no crofting background or have not applied for a Crofting Counties Agricultural Grant Scheme.

Another individual commented that voters can decide for themselves when voting on the significance to place on the duty of compliance.

## 6. Elected Commissioner Vacancies

### Background

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.

The Scottish Government believes that the best way to replace a Commissioner who has left their post is to appoint the second placed candidate from the previous election. If that person no longer wishes to be a Commissioner, then the third placed candidate should be approached, 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 accepts office, then the Scottish Government thinks that the Scottish Government should select someone to fill the vacancy or, if there is less than a year until the next election, the post should be left vacant.

Some crofters have suggested that holding a by-election might be another possibility by which a vacancy could be filled although that option would require an amendment to crofting law which currently does not allow for this.

### **Question 8 (a): Should an elected Commissioner vacancy that arises before the 2022 crofting elections be filled by the next available placed candidate in that area?**

Ten respondents were content with the next available placed candidate in that area filling a vacant Commissioner post ahead of the 2022 crofting elections. Whilst not ideal, this was viewed as acceptable and the fairest way to proceed; it would prevent delays in filling the vacancy and avoid the costs of a by-election.

Five respondents disagreed with this proposal, four being individuals, the other was Storas Uibhist.

The most common reason to oppose the proposal was because the respondent favoured holding a by-election instead. Two respondents expressed concern that the next available placed candidate may not have much support from their constituency who will, in effect, have the runner up from the previous election “imposed” upon them.

### **Question 8 (b): Should an elected Commissioner vacancy that arises before the 2022 crofting elections be filled by appointment by the Scottish Government**

Of the 14 respondents who answered, three agreed that the Scottish Government should fill a Commissioner vacancy arising prior to the 2022 crofting election; the remaining 11 respondents disagreed.

Of the three who agreed, two (Comhairle nan Eilean Siar and an individual) viewed this option as a fall-back position in the event of the next available candidate not being able or willing to serve as a Commissioner. The other respondent (an individual) considered that this provided the Scottish Government with the opportunity to fill any skill gaps amongst Commissioners.

The most common reason given against the proposal was that a by-election should be held instead. A few individual respondents considered that appointment by the Scottish Government should be the last resort option. The Scottish Crofting Federation opposed the proposal on the grounds that an elected commissioner needs to be replaced by an elected commissioner to maintain the proportion of elected to appointed commissioners.

### **Question 8 (c): Should an elected Commissioner vacancy that arises before the 2022 crofting elections remain as a vacancy if it is a year or less until the next election?**

Of the 14 respondents who answered, views were evenly split between those who considered that the vacancy should remain and those who thought it should be filled.

Those in favour of the vacancy remaining until the next election argued that any incoming Commissioner at this late stage would “barely scratch the surface”; would have very little mandate, being the second-placed candidate four years down the line; and that expense would be saved by the post remaining unfilled. The National Farmers’ Union Scotland agreed with leaving the post vacant only if the Commission remained quorate.

Those against leaving the vacancy until the next election argued that as more than one vacancy could arise, the burden on the remaining Commissioners who would need to share the extra workload, would be too great. They also considered it important that each constituency retains a representative on the Board.

## 7. Encouraging Diversity

### Background

The Scottish Government is keen to do whatever it can to encourage the diversity of elected and appointed Board members in terms of age, gender, disability or ethnicity.

32% of crofters are women, however at the last crofting election only four of the 29 candidates were women, of whom one was elected. Currently two of the seven Crofting Commissioners are women.

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.

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

13 respondents addressed this question. Several agreed that increasing the diversity of elected Commissioners required more active encouragement of target groups. Various approaches to this were proposed.

The National Farmers' Union Scotland suggested deploying the current female Commissioners in encouraging women to stand for election. The Union also highlighted the Rural Leadership Programme as a potentially useful network to encourage more women but remarked that this programme is not available in the Highlands & Islands Enterprise area.

An individual respondent proposed that all potential candidates are encouraged to shadow current Commissioners before the elections in order to allay fears and have questions answered.

Another individual supported mentoring by local Commissioners of young crofters in their area.

A few respondents called for greater publicity of the Commissioner opportunities for women and young people, with an emphasis on the value placed on the current female Commissioners.

Two respondents (Scottish Crofting Federation and one individual) suggested that quotas for the proportion of women Board members be established: for example, 50% or 34% to reflect the current proportion of female crofters. The Scottish Crofting Federation remarked that the Scottish Government could assist in achieving the quota by addressing imbalance in diversity with their appointed posts.

Two individuals provided suggestions for making the Commissioner role more family and employment-friendly with teleconferencing opportunities and weekend meetings rather than meetings during the working week.

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

Nine respondents addressed this question with six considering that the crofting elections will not have a particular impact on any equalities groups; three (two individuals and Storas Uibhist) thought that particular groups would be impacted.

One individual provided his view that he was not aware of any discriminatory practice regarding women in crofting, with many active female crofters and National Farmers' Union Scotland branch meetings frequently attended by as many females as males.

The three respondents who considered that the elections would impact particularly on equalities groups all called for targeted promotional campaigns to engage with under-represented groups such as women and younger people.

## 8. Expenses

### Background

For the last election the limit that a candidate could spend on campaign expenses was £600. Given that a number of constituencies are geographically large and may include a number of islands, constituency candidates may need to travel considerable distances to speak to crofters. The costs of travel in addition to other expenses such as hiring meeting halls has led to suggestions that the upper limit for expenses should be increased.

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

All respondents provided a view on whether the limit of election expenses should be increased. Overall, a majority of 12 respondents thought that the limit should increase, with the remaining three (Scottish Crofting Federation; Community Land Scotland; and an individual) opposing any increase. Indeed, the Scottish Crofting Federation called for a decrease in the limit.

Those in favour of increasing the limit for election expenses cited the costs of travel, overnight stays, hall hire, advertising and postal expense as contributing to the need for an increase. A few individuals considered that by raising the limit, a greater pool of possible applicants may result.

Whilst one individual welcomed the proposal for an increase of £100, others (National Farmers' Union Scotland and one individual) recommended an increase to £1,000 to reflect the actual costs involved.

Those arguing against any increase felt that by restricting the expense limit this could lead to an increase in potential applicants, particularly amongst those less well off. Community Land Scotland also pointed out that inflation had been low since the last elections and increasing the limit by £100 would be disproportionate.

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

Six respondents provided further comments. There was general agreement with the view of the Scottish Crofting Federation:

“Expenses should be receipted, checked and published.”

Two individual respondents recommended that expenses be published on the Commission website; two individuals emphasised that the process of claiming and declaring expenses should be transparent. One individual called for random audits

of expense claims. Another emphasised the importance of explaining to candidates the expenses protocol prior to their standing for election.

## 9. Business and Regulatory Impact

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

14 respondents addressed this question. Eight did not think that the crofting election will impact on businesses, public bodies or the third sector.

Six respondents including individuals and organisations envisaged potential direct and indirect impacts on these different sectors, depending on the operation and decisions of the Crofting Commission. One respondent remarked that prospective candidates for election will need to consult with their respective employers regarding the time off required for duties; other comments were more general in terms of acknowledging potential impacts without being specific.

## 10. Other Comments

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

Four respondents addressed the question. A common theme emerged around ensuring that the new Commissioners have the necessary skills and support required for their role which was viewed as challenging and resulted in a steep learning curve for new appointees.

Suggestions were made that prior to elections the Scottish Government should outline clearly to prospective candidates and the electorate exactly what is involved in being a Commissioner. More publicity was called for using plain English.

One individual respondent recommended introducing an interview process in addition to holding elections, so that potential candidates can be “sifted” as happens for example, when constituencies vet potential MPs.

The Scottish Crofting Federation proposed staggered elections with overlapping appointments, as in the Third Sector with the appointment of Trustees.

Ongoing training and support for Commissioners was called for by one individual with a recommendation that civil servants can advise and, “where necessary overrule the commissioners”.

Another individual argued for the Scottish Government appointments of Commissioners to be timed for after the elected Commissioners are in post in order for the additional postings to fill emerging skill gaps.



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