I have been asked to give evidence to the committee on Wednesday 20 January 2010. I am director of the UHI Centre for History, Dornoch, Sutherland. I have written extensively about the evolution of crofting, principally in my books, *The Making of the Crofting Community* (first published in 1976, with a new edition in 2000 and with a further new edition due this year) and *The Claim of Crofting* (published in 1991). I have also had active involvements with crofting and with the Highlands and Islands more generally. For example, from 1985 until 1990 I was director of the Scottish Crofters Union (now the Scottish Crofting Federation) which I helped to establish, and between 1998 and 2004 I was chairman of Highlands and Islands Enterprise. This statement summarises the historical development of crofting and touches on the historical background to problems that the Crofting Reform Bill attempts to address.

Crofting took shape in the years around and after 1800. Its emergence was bound up with the eighteenth-century collapse of clanship and the subsequent transformation of clan chiefs into commercially-minded landlords whose standing, once reliant on the number of fighting men their lands supported, now depended on their capacity to raise cash from their estates.

There were two main sources of such cash. One was wool – needed to clothe the UK’s burgeoning urban population. The other was kelp – an industrial alkali made from seaweed and, in the early 1800s, an even more lucrative commodity than wool.

To make way for the large-scale sheep farming which answered the demand for wool and provided Highland lairds with greatly increased rents, thousands of families were removed, or cleared, from inland areas and relocated on the coast. There settlements in which arable land had formerly been held in common were now divided into crofts, each occupied by a single family. Crofts were seldom more than a few acres in extent. This was to ensure that their occupants could not make a livelihood from agriculture but would be forced to join the huge seasonal workforce needed for kelp harvesting – a miserable business involving wading into icy waters to cut the growing seaweed.

*From the outset, then, crofts were intended to be, from an agricultural perspective, part-time units. Most of them remain so today.*

As well as dividing pre-existing settlements into crofts, landlords deposited evicted families in coastal localities that had not been previously cultivated. In such localities crofts had to be created from scratch.

There were parts of the Highlands and Islands, such as Sutherland and Shetland, where crofters were expected to become fishermen rather than kelpers – but the principle of manipulating the tenure system to force people into providing their lairds with a workforce was everywhere the same.
Although arable, or inbye, land was thus divided into individually-tenanted crofts, pasture land or hill grazings continued, as in the pre-clearance era, to be held in common. This is still the case.

Much is now made of the attractions of the crofting way of life. But the first recipients of crofts, many of them cleared from more productive areas, were deeply resentful of what was done to them by their lairds. Many people preferred to emigrate rather than become crofters. However, their departure was resisted by their landlords – who feared the loss of a kelping workforce and who, with government backing, took legislative and other measures to stop emigration.

During the nineteenth century’s opening decades, then, the north-west Highlands and Islands acquired the settlement pattern that, in its essentials, still prevails: a depopulated interior given over to sheep farms (and later sporting estates); a more thickly (once much more thickly) peopled coastal fringe in crofting occupation.

Scarcely had crofting been created when, in the 1820s, with the collapse of kelp prices as a result of new sources of alkali becoming available, the crofting system lost – from a landowning standpoint – its raison d’être. Crofters now became what commentators of the time called ‘a redundant population’. Their departure overseas, though earlier resisted, was now encouraged by both landlords and government.

In the absence of kelp-derived earnings, and lacking the capital to get into fishing, crofters, often too impoverished to emigrate, were thrown back on to the meagre resources of their crofts. There they turned to the one crop that could be grown on a croft in sufficient quantity to come close, in good years, to feeding a family. This crop was the potato – soon almost the sole source of nutrition.

In the later 1840s, potatoes failed repeatedly because of blight. Famine resulted. Contemporary accounts – dealing in ‘children with melancholy looks, big-looking knees, shrivelled legs, hollow eyes [and] strangely swollen bellies’ – underline the fact that conditions in crofting areas were then akin to those now confined to the most deprived parts of Africa.

Famine was accompanied by further clearances – sometimes supplemented by enforced and subsidised emigration. By the 1850s, however, a sort of stability had been reached. Virtually all the areas that could profitably be allocated to sheep farmers had been so allocated. Remaining crofters occupied only a small proportion of the available land – even surviving townships having usually been deprived of some of their grazings and those same townships made still more congested by the common estate management practice of subdividing already tiny crofts in order to accommodate refugees from localities that had been cleared entirely.

As is still the case, crofters, unlike tenant farmers, had no leases – renting their crofts on a year-by-year basis. Also unlike tenant farmers, whose landlords were responsible for the provision of homes and buildings on farms, crofters, and this too remains the case, had to construct their own homes and provide their own byres, etc.
Even when wholesale clearance ended in the 1850s, individual evictions were easily arranged and remained common – the consequent resentment intensified by the fact that evicted crofters were entitled to no compensation for the loss of homes and other ‘permanent improvements’ they had made to their crofts.

Eventually, in the 1880s, crofters rebelled. They were inspired, in part, by developments in Ireland where the tenurial position was similar to that in crofting areas and where a mass protest movement, the Irish Land League, resulted in the British government, then in charge of all of Ireland, passing the Irish Land Act of 1881 which gave new rights – including security of tenure – to Irish farmers and smallholders.

Starting at Braes in Skye in the winter of 1881-82, crofters, adopting Irish Land League tactics, embarked on a long series of rent strikes and land seizures. One outcome was a royal commission of enquiry into crofting, the Napier Commission.

Napier conceded that crofters had legitimate grievances. But his commission, in essence, wanted to transform crofting into a farming system by conceding security of tenure only to tenants of the largest crofts – and by amalgamating smaller crofts into agriculturally viable units. This was rejected by crofters – organised now into the formidably effective organisation known eventually as the Highland Land League. The league held out for, and in the end got, a Highlands and Islands version of the Irish Land Act – in the shape of the Crofters Act of 1886.

In 1886 all crofters, however small their crofts, were granted security of tenure – of a much more far-reaching variety than has ever been conceded to any other agricultural tenants in Great Britain. A Crofters Commission, not the forerunner of the present Crofters Commission but the ancestor of today’s Scottish Land Court, was set up and empowered, for example, to fix fair rents for crofts – this leading, after 1886, to widespread rent reductions.

All those provisions remain in force – the Land Court, for instance, still being empowered to fix fair rents for crofts. Those rents – often no more than £10, £20 or £30 a year – today seem nominal. This is because, for reasons touched on above, a crofting landlord is considered to have provided a crofter with no more than a small piece of bare land – all value, in the form of home, buildings, fences, etc., being the creation of the crofter and his or her predecessors.

Because it deprived landlords of any meaningful control of croft land in their possession, the Crofters Act of 1886 was a drastic interference with property rights and with the market – a far more drastic interference than any government of any party would contemplate today. Although a tremendous crofting victory, which – by making further clearance and eviction impossible – guaranteed the continuation of crofting into the twenty-first century, the Act was nevertheless condemned as inadequate by crofters of the time. This was because it did not restore to crofters any significant amount of the land lost to them during earlier clearances. Agitation for the return of this land consequently continued – reaching a peak just before and after the First World War.
The result was a further series of radical legislative interventions culminating in the Land Settlement Act of 1919 which empowered the Board of Agriculture for Scotland (the ancestor of today’s SGRPID) to purchase – compulsorily if necessary – estates and sheep farms which were then subdivided and returned to crofting occupation.

*Land settlement of this type, which resulted in the creation of thousands of new crofts more especially in the islands, is the reason why the Scottish government, through SGRPID, continues to own extensive crofting estates – making government easily Scotland’s biggest crofting landlord.*

Although land settlement restored much land to crofting occupation, it did not solve the many economic and other difficulties confronting crofting communities. As had always been the case, crofts – even new crofts – were mostly small and most crofting families, it followed, depended on non-agricultural sources of income for the bulk of their livelihoods. All too often, such sources of income were unavailable. As a result, population – which in most crofting areas (other than the Western Isles where the peak came in 1914) had reached its maximum just before the 1840s famine – fell steadily as out-migration became endemic. In the 1920s and subsequently, this led to the emergence of a new phenomenon, the absentee crofter.

Absence to tenancy did not exist in the period following the Crofters Act of 1886 – the security of tenure introduced by the Act being limited, reasonably enough, to crofters whose croft was also their home. It became possible only in 1917 when the courts, adjudicating on a test case, interpreted the badly drafted wording of the Small Landholders Act of 1911 – which supplemented and partly superseded the Act of 1886 – to mean that security of tenure was no longer conditional on the occupancy of the holding to which it applied.

The decades-long effort – an effort which includes the Bill now before this Committee – to regulate and control crofting absenteeism was made necessary, then, by a poorly drafted piece of legislation which, from 1917 forwards, created absentee rights that legislators had not intended to create. The simple solution to absenteeism would have been to revert to the commonsense position of 1886 – that you can only be the secure tenant of a piece of land which you actually occupy. Unlike all the other solutions that have been attempted, and unlike the solution proffered by the present Bill, this one would have had the merit of being both simple and workable.

Faced during the 1920s, 1930s, 1940s and early 1950s with proliferating absenteeism and other problems, the authorities responded, by establishing, in 1955, the present Crofters Commission. A quite different body from its 1886 predecessor, the Commission was empowered to end the tenancies of absentee, to adjudicate on matters having to do with the transfer, or assignation, of croft tenancies, to create and maintain a register of crofts and otherwise look after crofting – in both the crofting and wider public interest.

*Few if any public bodies in Scotland have failed so continually and so conspicuously as the Crofters Commission to do what was asked of them by parliament. For example, despite the creation and maintenance of a Register of Crofts being one of*
the most basic duties imposed on the Commission by its founding legislation, no effective register has ever been created – which is why it is understandable that crofters resent the proposal in the present Bill that they should now pay one bureaucracy, the Registers of Scotland, to deliver what another bureaucracy, the Crofters Commission (by not doing what parliament instructed it to do) has not delivered in more than half a century.

Just as the Commission has failed to establish an effective Register of Crofts, so it has failed to deal adequately with absenteeism. To be fair to the Commission, it became clear to its principal office-holders within a few years of its formation that the Commission’s powers to deal with absenteeism, just like its powers to regulate the transfer (or assignation) of croft tenancies, were so complex, legalistic and time-consuming as to be ineffective. It was for this reason that the Commission concluded, in the late 1960s, that crofting needed to set on an entirely new basis.

Rather like the crofters of eighty years before, the Commission looked to Ireland for an answer to its problems. There the security of tenure granted by the Land Act of 1881 had been only a transient stage on a journey to the outright owner-occupation brought about, when British governments still ruled Ireland, by a series of Land Purchase Acts which enabled government to buy out Irish landlords and transfer the land thus acquired to its occupiers.

Hence the Crofters Commission proposal of 1968 that the same thing should happen in the Highlands and Islands – where, on a legislatively determined date, all land in crofting tenure would be bought compulsorily by the state and promptly handed on to its crofting occupiers. This would have brought crofting tenure, crofting law and crofting administration to an end and would thus have terminated the need for the Commission – which, in a gesture unique among quangos, was thus calling for its own abolition.

The Commission’s advocacy of a wholesale move to owner-occupation was, of course, controversial. The outcome, in the shape of the Crofting Reform Act of 1976, was the worst possible sort of compromise. While there might have been advantages to be gained from universal owner-occupation, just as there might have been advantages to be gained from leaving matters as they were, to do as the 1976 Act did – enable individual crofters to opt for (a) owner-occupation or (b) a continued existence as secure tenants – was inevitably to create an even worse mess, not least in relation to absenteeism, than had prevailed before.

It needs underlining, in this context, that post-1976 owner-occupying crofters are not owner-occupiers in the commonly understood sense of that term. Because their land (and this is not at all what the Commission proposed in 1968) remains subject to crofting law, they are technically landlords of vacant crofts – i.e., crofts without tenants. And because, from the 1886 Act forward, provisions have existed to ensure that landlords of vacant crofts can be obliged to place tenants on them, the Crofters Commission can, in principle, force any so-called owner-occupier at any time to place a tenant on his or her croft.
It is illustrative of the Alice in Wonderland thinking inherent in this state of affairs that the present Bill seeks to oblige all owners of crofts to live on or near them. Needless to say, no such provision would be contemplated for a moment in the case of other owners of land. The Scottish government is presumably confident that the court of public opinion, to say nothing of courts of law, will see no inconsistency or injustice in the law of Scotland forcing the owner of a five-acre croft to reside in its immediate vicinity while leaving the owner of a 50,000-acre estate perfectly free to live permanently on the other side of the world. I do not share the government’s confidence.

Suppose (and the family circumstances here are entirely imaginary) that I, a history professor in Dornoch, am left the tenancy of a croft in South Uist, say, on the death of my father. Once upon a time, I could only have staked my claim to the croft by living on it. Now I don’t have to. So I tell myself that it will be nice to retire one day to the family croft – or, even if I never get round to so doing, it will be equally nice for my daughter to have that opportunity. So I retain the tenancy – which costs me just £15 a year in rent.

But in South Uist there are young folk in search of crofts. So the Crofters Commission, looking to assist them, starts absentee proceedings against me. I have good lawyers and those proceedings go on for ever and a day – until, in the end, I agree to assign the tenancy of my croft to someone else. However, I’m now looking to get the best offer for my tenancy and, crofts today being in demand, this comes, not from a young person in South Uist, but from an aspiring crofter in Surbiton.

The Commission, whose powers in this matter are entirely negative, can – and do – veto the chap from Surbiton, but they can’t force me to sell my tenancy to even the most deserving individual in South Uist. So I’m left to come forward with nominee after nominee until, tiring of this charade and now wholly at odds with the Commission, I decide to exercise my purchase rights and buy the croft from the landlord (as crofters have been entitled to do since 1976) for fifteen times the annual rent – being £225.

This all takes forever – just as it takes forever, all over again, when the Commission, as it’s entitled to do, now decides to force me, as the landlord of what’s both a vacant (in law) and unoccupied (in fact) holding, to place a tenant on my croft. (The present Bill will change the definition of a purchased croft but will leave non-resident owners of those crofts open to being forced by the Commission to let their crofts.)

Since I’ve belatedly seen the light, or simply become fed up, I agree to let or sell my croft to a South Uist twenty-year-old – let’s call him lain – who assures both me and the Commission that he’s determined to make a go of crofting. Unfortunately, one year into his occupancy of the croft lain loses his job in South Uist and gets another in Glasgow where he marries and settles down.

Five years on, the Crofters Commission gets round to inquiring once more into absenteeism in South Uist and writes to lain asking when, or if, he intends taking up residence on his croft. He replies that he intends eventually to retire there, just as I once did, and the Commission, still looking to help aspiring crofters in South Uist,
starts proceedings against him ...

All of this will have taken many years, occupied many hundreds of man-hours at the Commission, cost the public purse a small fortune and achieved precisely nothing.

Since 1976 a new ingredient has been injected into the crofting mix – money. In part, this is the consequence of a marked upturn in Highlands and Islands prospects. The region’s economy has strengthened. Across much of the area, though not all of it, depopulation has been reversed – population being up by 20 per cent across the region as a whole and by much more in places like Skye. Much of this is down to immigration – as today, for the first time in centuries, far more people are moving into the Highlands and Islands than are leaving. Some of those incomers want to have crofts. Many of them are cash-rich.

Back in the 1960s, when out-migration left hundreds of crofts vacant, the tenancy of a croft could be got for next to nothing. Now tenancies are being assigned, and ‘owner-occupied’ crofts sold, for sums way beyond the reach of local people – especially younger local people. At the same time, further pressures on an already creaking system are arising from the decrofting and selling of croft land for house sites and the like.

Much of this is paradoxical. In 1886 the market forces – in the form of landlord-organised clearances and landlord-imposed rents – which posed a clear threat to crofting’s survival were fenced out of crofting in order to sustain it.

Now, inside the fence thus put in place, new market forces are at work. This time the beneficiaries are not landlords but crofters – or some crofters. But these new market forces, if left unchecked, will destroy crofting as surely, maybe more surely, than their pre-1886 equivalents threatened to do. All of this is set out clearly and comprehensively in the report delivered to government by Mark Shucksmith and his colleagues.

That report advocated a fresh start in the administration of crofting – to be achieved, in particular, by abolishing the Crofters Commission and making crofters themselves responsible for crofting’s administration and, indeed, for its survival. This would have been in accord with the trend towards community ownership in the Highlands and Islands. It would have been in accord, too, with the present Scottish government’s stated commitment to other forms of local control and local empowerment.

Depressingly, however, all of Shucksmith’s more radical and more far-reaching recommendations have been set aside – ministers and their civil servants opting instead for a continuation of the demonstrably bankrupt and busted approach to crofting that has been in place since the 1950s. Hence the present Crofting Reform Bill which will simply add further layers of legal and bureaucratic complexity to an administrative structure which is already so complex as to be incapable of doing what it is meant to do.
As the Shucksmith Report stresses, crofting has delivered many benefits to the Highlands and Islands and is capable of delivering more – but only if steps are taken urgently to control the forces now putting the continuation of crofting at risk.

The present Bill may be well-intentioned. But by keeping in existence a Crofters Commission which has achieved little, and by opting for still more of the same in the shape of an additional raft of externally-imposed rules and regulations, ministers and civil servants seem determined to ignore the main lesson to be learned from what has gone before – that this sort of approach to crofting has not worked and is most unlikely, with or without the injection of an elected element into the Commission, to work in future. (This is not to criticise Crofters Commission personnel. It is simply to say that what is expected of them cannot be delivered.)

Not the least remarkable feature of the Bill now before the committee, it needs noting finally, is to be found in the fact that its guiding principles are totally at odds with the much-advertised outlook and philosophy of the present Scottish government. Here is a government which constantly stresses (I think rightly) the need for our society to stand tall on its own feet (as is happening, incidentally, on community-owned estates in crofting areas). And here is the same government insisting that crofting should be administered from outside by a highly bureaucratic and paternalist organisation, the Crofters Commission, which deals (and will continue to deal) with crofting difficulties by sending commissioners and staff from its Inverness offices to faraway crofting townships where those same commissioners and their aides, by means of the hearings they hold there, dispense justice to the natives as if commissioners were, for all the world, colonial district officers in 1920s Kenya. In twenty-first-century Scotland we ought to be able to do a bit better than this.